

AGENDA

REGULAR COUNCIL MEETING
TUESDAY
SEPTEMBER 1, 2015

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

4:00 P.M. MEETING

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

1. CALL TO ORDER

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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

2. ROLL CALL

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

MAYOR NABOURS
VICE MAYOR BAROTZ
COUNCILMEMBER BREWSTER
COUNCILMEMBER EVANS

COUNCILMEMBER ORAVITS
COUNCILMEMBER OVERTON
COUNCILMEMBER PUTZOVA

3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

MISSION STATEMENT

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

4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

- A. Consideration and Approval of Minutes: City Council Regular Meeting of August 25, 2015, and the Special Meeting (Executive Session) of August 25, 2015.

5. PUBLIC PARTICIPATION

Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the

discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

6. PROCLAMATIONS AND RECOGNITIONS

None

7. APPOINTMENTS

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

None

8. LIQUOR LICENSE PUBLIC HEARINGS

None

9. CONSENT ITEMS

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

A. Consideration and Approval of Payment/Contract Renewal: Annual Computer Software Maintenance

RECOMMENDED ACTION:

Approve payment of annual software maintenance costs in a budgeted amount not to exceed \$583,784.00 pursuant to contracts with:

- Harris Enterprise (City Contract No. A2012-0619.1), draft invoice for \$133,402.50;
- SHI (reseller for Microsoft) (Arizona Procurement Office Contract No. ADSP011-007500), draft invoice for \$137,947.86;
- SirsiDynix (Library) (City Contract No. A2000-1023.1, as amended 10/23/2000), draft invoice for \$74,577.44;
- Intergraph Corp. (Public Safety) for \$210,085.00 plus any applicable taxes, and approve its contract renewal.

10. ROUTINE ITEMS

A. Consideration and Approval of Contract: Installation of an Emergency Generator at Fort Tuthill Well located within the Coconino County Fairgrounds (Approve contract with Commonwealth Electric Company in the amount of \$506,500.00**).**

RECOMMENDED ACTION:

- 1) Approve construction contract with Commonwealth Electric Company for \$506,500.00, and a contract time of sixty (60) calendar days.
- 2) Authorize change order authority to the City Manager in the amount of \$50,650.00 (10% of contract amount).
- 3) Authorize City Manager to execute the necessary documents.

- B. **Consideration and Approval of Contract Amendments:** Innovation Mesa Business Accelerator and Secondary Emergency Operations Center, Business Incubator and Service Agreement. (Amendments to leases and service agreements with NACET).

RECOMMENDED ACTION:

Authorize the city to amend the existing master leases and service agreement with NACET for the service provided to the Business Incubator and Accelerator; both city owned facilities on McMillan Mesa.

- C. **Consideration and Approval of Contract:** An IGA between the City of Flagstaff and the Westwood Estates Fire District for Fire Medical Rescue services (***Approve IGA with Westwood Estates Fire District for fire and emergency medical services***).

RECOMMENDED ACTION:

Approve the IGA between the City of Flagstaff and the Westwood Estates Fire District.

- D. **Consideration and Approval of Contract:** Roads & Streets Operations and Maintenance Efficiency Study RFP 2015-70 (***Approve contract with LA Consulting, Inc. in the amount of \$197,769***).

RECOMMENDED ACTION:

Award the contract for the Roads & Streets Operations and Maintenance Efficiency Study RFP 2015-70 to LA Consulting, Inc. of Manhattan Beach, CA in the amount of \$197,769.

- E. **Consideration and Approval of Grant Agreement:** A grant agreement between the City of Flagstaff and the U.S. Department of Transportation, Federal Aviation Administration for Update Airport Master Plan Study with Airport Geographic Information System (AGIS) and Airport Layout Plan (ALP). (Grant agreement for airport master plan study).

RECOMMENDED ACTION:

- 1) Approve the acceptance of an FAA Grant Agreement in the amount of \$500,000 for the Update Airport Master Plan with AGIS and ALP project.
- 2) Authorize the City Manager to execute the necessary documents.

- F. **Consideration and Adoption of Ordinance No. 2015-14:** Amending the Employee Handbook of Regulations and Flagstaff City Code by adopting amendments relating to Retiree Insurance eligibility.

RECOMMENDED ACTION:

- 1) Remove Ordinance No. 2015-14 from the table
- 2) Read Ordinance No. 2015-14 for the final time
- 3) City Clerk reads Ordinance No. 2015-14 for the final time (if approved above)
- 4) Adopt Ordinance No. 2015-14

- G. **Consideration and Adoption of Ordinance No. 2015-16:** An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title I, Administrative, by adding a new Chapter 12, Consideration of Petition, thereto. (***Citizen Petition Submittal Form***)

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2015-16 by title only for the final time
- 2) City Clerk reads Ordinance No. 2015-16 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2015-16

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

-

RECONVENE

PLEASE NOTE: DUE TO THE NATURE OF THE AGENDA ITEMS, THERE WILL BE NO 6:00 P.M. PORTION OF THIS MEETING. ALL ITEMS WILL BE DISCUSSED AND ACTED ON DURING THE 4:00 P.M. PORTION.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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

11. ROLL CALL

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

MAYOR NABOURS

VICE MAYOR 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****15. REGULAR AGENDA****16. DISCUSSION ITEMS****17. FUTURE AGENDA ITEM REQUESTS**

After discussion and upon agreement of three members of the Council, an item will be moved to a regularly scheduled Council meeting.

18. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS**19. ADJOURNMENT**

CERTIFICATE OF POSTING OF NOTICE

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

Dated this _____ day of _____, 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: 08/27/2015
Meeting Date: 09/01/2015



TITLE

Consideration and Approval of Minutes: City Council Regular Meeting of August 25, 2015, and the Special Meeting (Executive Session) of August 25, 2015.

RECOMMENDED ACTION:

Amend/approve the minutes of the City Council Regular Meeting of August 25, 2015, and the Special Meeting (Executive Session) of August 25, 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

Attachments: [08.25.2015.CCRM.Minutes](#)
[08.25.2015.CCSMES.Minutes](#)

4:00 P.M.

1. CALL TO ORDER

Mayor Nabours called the Regular Meeting of August 25, 2015, to order at 4:02 p.m.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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2. ROLL CALL

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

PRESENT

ABSENT

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

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

3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

The audience and City Council recited the Pledge of Allegiance and Mayor Nabours 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 Work Session of July 14, 2015; Special Work Session of July 16, 2015; and Regular Meeting of July 21, 2015.

Moved by Councilmember Scott Overton, **seconded by** Councilmember Coral Evans to approve the minutes of the City Council Work Session of July 14, 2015; Special Work Session of July 16, 2015; and Regular Meeting of July 21, 2015.

Vote: 7 - 0 - Unanimously

5. PUBLIC PARTICIPATION

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

The following individuals address the City Council regarding issues indicated:

- ♦Aidan Barry and Peter Burger, Pine Canyon, presented a check in the amount of \$922,099.30 for their transportation funds.
- ♦Bill Gonzalez regarding a vision he had of a Love Conference Center to be located on McMillan Mesa.
- ♦Joseph Bullis, Whyld Ass, regarding their attempt to work with the City to provide music at their venue within the noise ordinance regulations of the City.
- ♦Sagemaya Dandi regarding the need for more bus routes to downtown with NAIPTA.
- ♦Ladd Vagen and Kim Ott regarding the City's new high definition streaming system for Council meetings which includes a scrolling calendar when meetings are not in session.

6. PROCLAMATIONS AND RECOGNITIONS

None

7. APPOINTMENTS

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

A. Consideration of Appointments: Board of Adjustment.

Mayor Nabours noted that there were actually three vacancies, but they currently only had two applications on file. He encouraged members of the community to consider applying for this Board.

Moved by Vice Mayor Celia Barotz, **seconded by** Mayor Jerry Nabours to appoint Pat Loven and Greg Parker to the Board of Adjustment with terms expiring May 2018.

Vote: 7 - 0 - Unanimously

B. Consideration of Appointments: Parks and Recreation Commission.

Moved by Councilmember Eva Putzova, **seconded by** Councilmember Karla Brewster to appoint Ardis Easton and Brett Caldwell to the Parks and Recreation Commission, terms expiring August 2018.

Vote: 7 - 0 - Unanimously

C. Consideration of Appointments: Sustainability Commission.

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Scott Overton to appoint Eli Chamberlain and Jeremy Krones to the Sustainability Commission, terms expiring October 2016.

Vote: 7 - 0 - Unanimously

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Scott Overton to appoint John Kistler to the Sustainability Commission, term expiring October 2017.

Vote: 7 - 0 - Unanimously

8. LIQUOR LICENSE PUBLIC HEARINGS

A. Consideration and Action on Liquor License Application: Felipe Guzman, "La Santisima Gourmet Taco Shop", 119 S. San Francisco, Series 12 (restaurant), New License.

Mayor Nabours noted that Community Development, Sales Tax and Police all found no issue with the application. He then opened the Public Hearing. There being no public input, the Public Hearing was closed.

Moved by Councilmember Jeff Oravits, **seconded by** Councilmember Karla Brewster to forward a recommendation to the State for approval of the liquor license application submitted by La Santisima Gourmet Taco Shop at 119 S. San Francisco.

Vote: 7 - 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.

Mayor Nabours removed Item 9-B from the Consent Agenda.

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Karla Brewster to approve Consent Agenda Items 9-A and 9-C.

Vote: 7 - 0 - Unanimously

A. Consideration and Approval of Street Closure(s): Hopi All Native Arts and Cultural Festival

Approve the street closure of Aspen Ave (between Leroux Avenue and San Francisco Street) from September 26, 2015 at 6:00 a.m. through September 27, 2015 at 6:00 p.m.

B. Consideration of Appointments: Accept resignation of Interim City Manager, appoint new City Manager, and approve First Amendment to Agreement for Services to reflect transition as of August 25, 2015.

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Coral Evans to reluctantly accept the resignation of Jeff Meilbeck as Interim City Manager, effective at the end of the Council Meeting of August 25, 2015.

Vote: 7 - 0 - Unanimously

Mayor Nabours then presented Mr. Meilbeck with a token of appreciation, noting that he was asked by Council to fill in to that position and he had graciously accepted it. He left his position at NAIPTA with their gracious approval and has served the City extremely well. He has done more than tread water for the past eight months; he has advanced all of the City programs and he was very much appreciated.

Deputy City Manager Copley then presented Mr. Meilbeck with a framed picture, and said that on behalf of the City employees they appreciated him and his leadership. He said that Mr. Meilbeck's connection with the community and his deep understanding of the challenges helped him to hit the ground running and his leadership and fingerprint on the City, even in eight months, is exceeding what other city managers would have accomplished in a number of years.

Councilmember Evans said that she truly appreciated the opportunity to get to know him and she wished him the best in returning to NAIPTA.

Councilmember Brewster said that she has known Mr. Meilbeck for quite awhile, having been on the NAIPTA Board twice. She said that she fully expected it to be the way it was. He stepped in with not much notice and has been able to move the City forward in their goals and objectives. He carried forth his effort in his same objective manner in dealing with issues and people.

Vice Mayor Barotz said that she has also known him for many years, having served on the NAIPTA Board as well, and she tried to tell him that the City was a different animal. She thought that he had done a terrific job and appreciated his calmness and level-headed approach. In his eight months with the City he moved many important issues forward.

Councilmember Oravits echoed the comments, stating he has done an excellent job, leaving the City in better shape and wished he him the best of luck.

Councilmember Overton said that he appreciated Mr. Meilbeck taking the risk, realizing it was a sacrifice. It has been an invaluable experience for him and for the Council and City. He said that it was a treat and he thanked him for his service. He looked forward to serving

on the NAIPTA Board.

Councilmember Putzova noted that she and Mr. Meilbeck started near the same time and she really appreciated his leadership style. She said that it was the exact type of style the City needed in the interim period. They did a lot of work, but one of the processes she wanted to highlight was the incredible job he did with the budget and the overall budget process.

Ms. D'Andrea said that she had previously conveyed her thoughts at the Leadership meeting, but she added that she very much appreciated working with Mr. Meilbeck and he helped to bring the leadership together.

Mr. Meilbeck thanked everyone for the gifts and kind words. He said that it has been a tremendous honor to be able to do this work with this team. He said that it was a great organization and a reflection of a great community.

Moved by Councilmember Jeff Oravits, **seconded by** Councilmember Karla Brewster to appoint Josh Copley as the City Manager, effective at the end of the August 25, 2015, Council meeting and approving and ratifying his Agreement and the First Amendment to reflect the transition date.

Vote: 7 - 0 - Unanimously

- C. **Consideration and Approval of Cooperative Contract:** Purchase of one (1) Caterpillar D5 Dozer for Utilities Wildcat Hill Water Reclamation Plant (Facility) on a National IPA cooperative purchase agreement with the City of Tucson--- Bid #12077 (***Approve Agreement with Empire Machinery in the amount of \$159,344.48***) .

Approve the purchase of one (1) D5 Dozer from Empire Machinery through a National IPA cooperative purchase agreement with the City of Tucson, AZ. for the amount of \$159,344.48 (tax and freight included.

10. **ROUTINE ITEMS**

None

RECESS

The 4:00 p.m. portion of the Regular Meeting of August 25, 2015, recessed at 4:40 p.m.

6:00 P.M. MEETING

RECONVENE

Mayor Nabours reconvened the Regular Meeting of August 25, 2015, at 6:28 p.m.

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.

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.

12. PUBLIC PARTICIPATION

Lisa Hutchinson, Flagstaff, commented on the issue related to the sidewalk repair in front of her property and asked that someone on the Council champion changing the sidewalk ordinance.

13. CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA**14. PUBLIC HEARING ITEMS**

None

15. REGULAR AGENDA

- A. Consideration and Approval of Event Postponement:** ~~Dew Downtown Flagstaff Urban Ski and Snowboard Festival~~ **ITEM REMOVED FROM THE AGENDA BY CITY MANAGER ON AUGUST 24, 2015**

- B. Consideration and Approval of Amendment to Financial Assistance Award :** From the U.S. Department of Commerce Economic Development Administration (EDA) for the Revolving Loan Fund (RLF) Program as a financing tool to support economic development.

Business Retention and Extension Manager John Saltonstall gave a PowerPoint presentation which addressed:

OVERVIEW

Description and History
Loan Size and Target Industries
Community Need
Role of Private Lending
Marketing
Existing Access to Capital Framework
Process and Example

WHAT IS THE REVOLVING LOAN FUND?

Economic Development Administration federal grant of \$217,000

City will manage the federal grant

Grant will be used to make loans to small businesses in Northern Arizona

As loans are repaid, those funds become available for new loans (revolving)

HISTORY

Economic Development Administration RLF for rural Arizona

Department of Commerce to NACOG to City of Flagstaff

Council Approval

LOANS

\$217,000

\$25,000 - \$75,000

Term not to exceed five years

TARGET INDUSTRIES

Healthcare/Biotechnology

Software and Systems Design/Engineering/Development

Aviation Related Businesses

Transportation/Logistics

Research and Testing

Medical Device Manufacturers

Renewable/Clean Technology

Workforce Development/Education

Agriculture

Tourism/Entertainment/Destination Experience

COMMUNITY NEED

Comprehensive Economic Development Strategy

Serves Apache, Coconino, Mohave, and Navajo Counties

INDUSTRY EXPERTISE

Financial Lending Institution will service loans

MARKETING

Commercial and industrial brokers

Commercial banks that serve the Target Area

Article per year in a local newspaper or periodical direct marketing

Business associations

EDD Native communities

NACOG website

EXISTING REGIONAL FRAMEWORK LOCAL PARTNERSHIP

www.nazfunds.org

SEDI

NACET

ECoNA

City of Flagstaff

Chamber

Mr. Saltonstall said that right now the City of Flagstaff participates, but they do not have any cash on the table. With this acceptance, they will be bringing the \$217,000, providing \$25,000 to \$75,000 loans. The funds themselves are being received from NACOG and the City will administer them with personnel time involved, but no direct funding.

PROCESS

Apply

Loan Review Committee

Loan Administration Board

PROCESS EXAMPLE

Councilmember Oravits asked, if there are three Flagstaff staff members and two from the lending institution serving on the Loan Administration Board, how they are sure to be administered equally throughout the four counties. Vice Mayor Barotz noted that a lot of what is being discussed is reflected in the agreement drafted by the EDA. Mr. Saltonstall explained that there was a lot of dialogue back and forth and they worked with the EDA to find out exemplary administrative plans. They took what NACOG used for this reason and met the EDA's needs and the City's needs. Based on that, they determined this would provide good oversight for the community and region and keep them in good standing of financial practices.

Economic Vitality Director Heidi Hansen added that by going back to the Process flowchart, they will see that before it even gets to the City's Loan Administration Board, it first goes to the Loan Review Committee which has representatives from the various partners.

Councilmember Putzova asked how much of the \$217,000 was designated to cover administration costs. Mr. Saltonstall said that one percent is designated for administration.

DEFAULT

No payment

Collection

Write-off

Mr. Saltonstall said that the City would not be required to repay the loan in the case of a write-off. The only exception to this would be if the City fails to follow prudent lending practices or fails to follow the plan.

Councilmember Oravits said that they are coming to get these loans because they are not able to go to a traditional lending source--they are a higher risk. Mr. Saltonstall said that was one of the reasons that the EDA developed and made these funds available. Money gets tight over time, but at the same time there is interest in spurring economic activity and new business. He then read the list of different types of collateral that are accepted with the program.

Councilmember Putzova asked Mr. Saltonstall, in his professional opinion, if the City of Flagstaff will benefit from this relationship and if it is good, understanding that they have to put in staff for the administration. Mr. Saltonstall said that he hoped so; it is anyone's guess with the economy at this time, but in terms of their role in providing the business community with the greatest number of tools to succeed, he thinks it is a good thing.

Vice Mayor Barotz suggested that they report back to Council in 12-18 months to evaluate how much time staff has put in the process. Mr. Saltonstall said that there were mandatory

reports due to EDA which could easily be shared with the Council at the same time.

Moved by Vice Mayor Celia Barotz, **seconded by** Councilmember Coral Evans to approve and accept the Amendment to Financial Assistance Award from the Economic Development Administration (EDA) for the Revolving Loan Fund (RLF) for a total estimated amount of \$217,000.

Vote: 5 - 1

NAY: Councilmember Jeff Oravits

- C. Consideration and approval of the City of Flagstaff, Revolving Loan Fund Administrative Plan** . The administrative plan has been approved by the Economic Development Administration (EDA) and will guide the administration of the revolving loan fund program, an economic development financing tool.

Moved by Vice Mayor Celia Barotz, **seconded by** Councilmember Coral Evans to approve the Revolving Loan Fund Administrative Plan that will manage the Economic Development Administration (EDA) Revolving Loan Fund (RLF) Program monies.

Vote: 5 - 1

NAY: Councilmember Jeff Oravits

- D. Consideration and Adoption of Resolution No. 2015-31:** A resolution of the Flagstaff City Council pursuant to A.R.S. 9-511.01 adopting notice of intention to increase water, reclaimed water, wastewater and stormwater rates or rate components, fees or service charges and establishing a date for a public hearing on October 6, 2015.

Utilities Engineering Manager Ryan Roberts explained that this item was to adopt the Notice of Intention which allows the City to notify the public of the upcoming Public Hearing scheduled to begin on October 6, 2015, on the utilities rate study and recommendations. He began a PowerPoint presentation (Exhibit A attached hereto and made a part hereof) which addressed:

ACTION REQUESTED
PURPOSE/OBJECTIVE
AGENDA

Mr. Roberts then introduced Jonathan Varnes of Willdan Financial Services, who continued the presentation:

BACKGROUND
UTILITIES RATE STUDY REPORT STRUCTURE (Report 1 of 2)
CAPACITY FEE REPORT STRUCTURE (Report 2 of 2)
KEY ITEMS OF NOTE IN THE REPORT

Vice Mayor Barotz asked for clarification of when Mr. Varnes said "water" he meant just water and did not include reclaimed. Mr. Varnes said that was corrected

Councilmember Evans asked if they tied the study to conservation efforts. Mr. Varnes said that the mere fact of having a tiered structure leads to conservation which included commercial rates, but they did not do an empirical analysis.

Councilmember Putzova asked if she understood correctly that all rates will be looked at--water, sewer, and reclaimed water. Mr. Varnes said that was correct, as well as stormwater.

Mr. Hill said that for those that had their report in front of them, if they looked at the Executive Summary page 3, that is an outline table of what Mr. Varnes has presented to them.

Vice Mayor Barotz said that with the reclaimed water rate structure, she recollected that where it outlines all of the rates, there are various categories of reclaimed water users, such as golf course, noncommercial, etc. She assumed that this proposed Option 1 and Option 2 would just mean that those different rates would be adjusted accordingly. Mr. Hill said that was correct. Only the water is looking at the tiered structure; everything else stays the same. He said that there was no recommendation to changing the reclaimed water categories.

Councilmember Putzova said that when they have the presentation it would be helpful for them to understand, to look at the entire water budget and how it is used by different types of users. Mr. Roberts said that they have a pie chart that will assist with that.

NEXT STEPS

Mr. Roberts said that right now they have met with five outside public agencies and civic groups. They have another seven or eight to go. They will be back on October 6 to hold the first public hearing and there will be additional public hearings to receive feedback. The current schedule plans to come back before Council on November 3 for first reading of the ordinance, with rate changes to become effective in the first part of 2016.

Vice Mayor Barotz asked what the difference was between the draft report and the final report they just received. Mr. Varnes said that the new one was truncated; more streamlined and reader friendly. It includes an Executive Summary and they actually streamlined the body of the report for that purpose. They also added a couple more scenarios, as requested by the Water Commission.

Mr. Hill conveyed that by adopting the resolution, Notice of Intention, they were not obligated to increase rates. He said that this was a statutory requirement, giving a 60-day signal, but it does not bind the Council.

Moved by Vice Mayor Celia Barotz, **seconded by** Councilmember Coral Evans to read Resolution No. 2015-31 by title only.

Vote: 6 - 0 - Unanimously

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL ADOPTING NOTICE OF INTENTION TO INCREASE WATER, RECLAIMED WATER, WASTEWATER AND STORMWATER RATES OR RATE COMPONENTS, FEES OR SERVICE CHARGES AND ESTABLISHING A DATE FOR A PUBLIC HEARING ON THE PROPOSED

Moved by Vice Mayor Celia Barotz, **seconded by** Councilmember Coral Evans to adopt Resolution No. 2015-31.

Vote: 6 - 0 - Unanimously

A break was held from 7:30 p.m. to 7:34 p.m.

- E. **Consideration and Adoption of Ordinance No. 2015-16:** An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title I, Administrative, by adding a new Chapter 12, Consideration of Petition, thereto. (***Citizen Petition Submittal Form***)

City Clerk Elizabeth Burke briefly reviewed the ordinance presented, noting the changes made between the draft and final agenda. After brief discussion, staff was directed to move the individual requirement for contact information into the text required only of the individual submitting the petition and not everyone signing it. Staff was also directed to request some type of contact information, understanding that some people do not have e-mail.

Councilmember Evans also requested that once the petition form is adopted that it be translated into Spanish, Hopi and Navajo, and that there is an outreach effort made, with all forms available on the website.

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to read Ordinance No. 2015-16 by title only, with the changes discussed (person submitting petition provide their name, residence, address and contact information; other signers provide printed name, signature, residence address and date signed).

Vote: 6 - 0 - Unanimously

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE TITLE I, ADMINISTRATIVE, BY ADDING A NEW CHAPTER 12, CONSIDERATION OF PETITION, RELATED TO CITIZEN PETITIONS AND ESTABLISHING AN EFFECTIVE DATE

16. **DISCUSSION ITEMS**

- A. **Review of Draft Agenda Items:** September 1, 2015, City Council Meeting.*

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

Mayor Nabours asked that in the final packet for September 1, 2015, more information be provided on the proposed purchase of a backup power system for \$500,000 at the Fort Tuthill Water Well. He would like to hear what the worst case scenario would be if the well went down, winter versus summer, and what other systems they have, as well as the likelihood that they would be out of power to that well for any sustained period of time.

Councilmember Overton said that he had the same concerns. Plus, he would like to have local vendors looked at for potential supply of a portable generator. He said that this would get very little use for such a high capital cost.

Mayor Nabours also asked that the ordinance regarding retiree insurance have the penalty clause removed.

17. **FUTURE AGENDA ITEM REQUESTS**

After discussion and upon agreement of three members of the Council, an item will be moved to a regularly-scheduled Council meeting.

- A. **Future Agenda Item Request** : Citizen Petition to place on a future agenda a resolution urging the United States Congress to support a carbon fee-and-dividend, which is designed to reduce greenhouse gas emissions while stimulating the economy.

The following individuals address the Council, requesting that this item be placed on a future agenda for discussion:

- ◆ Claire Herrick
- ◆ Paul Deasy

Mayor Nabour said that he would not be supporting this request, and it had nothing to do with the pros or cons of this particular program. He said that he regularly gets requests for support of one thing or another, but he does not believe that they should adopt resolutions of support as an organization, although individuals could do as they please.

Councilmember Oravits said that he has supported some resolutions in the past urging action of a particular sort, but he would not be supporting this request.

Vice Mayor Barotz said that she thinks that it is important to at least have a discussion on this issue in depth. She actually believes that it is an important part of Council's function to communicate with other elected officials when they support specific action.

Councilmember Putzova said that she also supports putting this on a future agenda. They lobby their representatives all the time and she thinks it is an appropriate action to consider an item that is important to their constituency and has an effect on their community.

Councilmember Evans said that according to the City Charter, the Council acts by resolution, ordinance and policy and one of the things they look at is citizen petitions.

With the support of three Councilmembers, this item will move to a future agenda.

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

Councilmember Putzova said that she was approached by a citizen with concerns about the heroine problem in the City. She asked for a Council Communication Report (CCR) on the subject, to include reaching out to their health care providers to get a better understanding of whether there is an increase concern.

She also requested a future agenda item request (FAIR) for a declaration of Indigenous Peoples Day, instead of Columbus Day, and have an opportunity to talk with the Native American community on what other meaningful action they could take to foster respect.

Councilmember Putzova also asked for a FAIR to discuss the Council's travel policy or to create a travel policy, how funds are used within that fund, and whether those funds could be used elsewhere.

Councilmember Evans supported the discussion of Indigenous People's Day and also asked for a CCR on traffic in the Linda Vista Corridor. She has had residents in that area comment that the police used to patrol more and there are a lot of speeders in that area.

Councilmember Oravits requested a FAIR on amending the Rules of Procedure to require

four votes by Council to move an item from the FAIR to a future agenda.

Vice Mayor Barotz reiterated their thanks to Mr. Meilbeck for his service to the City.

Mayor Nabours reported that he was in Tucson last week for the League of Arizona Cities and Towns Annual Conference and Flagstaff had quite an influence on the proceedings with representatives from Northern Arizona University, the Forest Service, Forest Management, City staff, etc. He presented on trains in cities which was well attended. He said that the biggest hit was Louie the Lumberjack and he thanked staff for getting that arranged as well as the booth activities.

Mayor Nabours requested a FAIR on review of the Sidewalk Repair Ordinance.

Mr. Meilbeck congratulated Barbara Goodrich on her new position as Deputy City Manager. Additionally, he reported that work will begin next week on the Francis Short Pond to get the weeds cleared out.

Council was also reminded of the upcoming Joint Meeting with the County Board of Supervisors scheduled for September 21, 2015.

19. ADJOURNMENT

The Regular Meeting of the Flagstaff City Council held August 25, 2015, adjourned at 8:13 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 August 25, 2015. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 1st day of September, 2015.

CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)
TUESDAY, AUGUST 25, 2015
COUNCIL CHAMBERS
211 WEST ASPEN
IMMEDIATELY FOLLOWING THE 4:00 P.M.
PORTION OF THE REGULAR MEETING

MINUTES

1. Call to Order

2. Roll Call

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

PRESENT

ABSENT

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

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

3. Recess into Executive Session.

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to recess into Executive Session.

Vote: 7 - 0 - Unanimously

The Flagstaff City Council recessed into Executive Session at 4:40 p.m.

4. Executive Session:

- A.** Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, pursuant to A.R.S. 38-431.03(A)(7).

1. Property Negotiations - Pelota Court

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

- i. Possible Amendment to Lease/DA with Nestle-Purina

5. Adjournment

The Flagstaff City Council reconvened into Open Session at 5:12 p.m. at which time the Special Meeting (Executive Session) of August 25, 2015, adjourned.

Mayor

ATTEST:

City Clerk

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Ladd Vagen, Information Technology Director
Date: 08/26/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Approval of Payment/Contract Renewal: Annual Computer Software Maintenance

RECOMMENDED ACTION:

Approve payment of annual software maintenance costs in a budgeted amount not to exceed \$583,784.00 pursuant to contracts with:

- Harris Enterprise (City Contract No. A2012-0619.1), draft invoice for \$133,402.50;
- SHI (reseller for Microsoft) (Arizona Procurement Office Contract No. ADSP011-007500), draft invoice for \$137,947.86;
- SirsiDynix (Library) (City Contract No. A2000-1023.1, as amended 10/23/2000), draft invoice for \$74,577.44;
- Intergraph Corp. (Public Safety) for \$210,085.00 plus any applicable taxes, and approve its contract renewal.

Executive Summary:

Policy Decision or Reason for Action:

- Annual Payments are issued to provide ongoing software licensing support and maintenance as necessary.
- The attached schedule outlines the anticipated expenditures for fiscal year 2016.
- Actual costs may vary from attached draft invoices and therefore approval is sought for "amount not to exceed."

Decision Points:

- Annual purchase orders pursuant to contracts provide for the means to conduct day-to-day activities of the City without delay.

Financial Impact:

Purchases are budgeted in the department divisions software maintenance. The overall cost for FY16 is expected to increase by approximately \$31,000.00 due to increased CPI.

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

Has There Been Previous Council Decision on This:

Yes.

Options and Alternatives:

- 1) Approve the recommended action as submitted;
- 2) Present to Council the software maintenance support services exceeding the bid threshold on an individual basis.

Background/History:

For the past six years, Purchasing has presented a comprehensive master list outlining most computer software maintenance and support services. City staff's recommendation is to receive payment authorization as one action item at the onset of the fiscal year. During the current fiscal year we have expended to date \$552,435.15 to the various vendors as outlined in the attached schedule.

City has existing contracts with all vendors. Intergraph requires a new contract on an annual basis, with its current terms (attached).

Key Considerations:

Software maintenance and support services are being acquired from designated vendors from whom we purchased the computer software.

Expanded Financial Considerations:

Ongoing maintenance and support services assure the City the latest products enhancements and technical support that is critical in support of the City's computer infrastructure.

Community Benefits and Considerations:

None.

Community Involvement:

Inform.

Attachments: [FY16 Software Maintenance](#)
 [Harris invoice](#)
 [SHI quote](#)
 [SirsiDynix quote](#)
 [Intergraph renewal](#)

EXHIBIT A

CITY OF FLAGSTAFF

DEPT / DIV	FY14 ACTUAL	FY15 ACTUAL	FY16 BUDGET
IT MAINTENANCE FY15			
ERP - Financial Applications	\$132,142.00	\$151,000.00	\$151,000.00
SHI SOFTWARE-Microsoft enterprise Agreement	\$128,721.47	\$135,000.00	\$140,000.00
DoIT Maintenance Total	\$257,142.00	\$286,000.00	\$291,000.00
PD - IT MAINTENANCE FY15			
INTERGRAPH PUBLIC SAFETY INC - Maintain the map and corresponding DB for system	\$196,428.08	\$196,428.08	\$210,085.00
LIBRARY - IT MAINTENANCE FY15			
SIRSI - Online Library Catalog 4/1-3/31 \$66,950.00	\$67,968.00	\$77,352.44	\$82,699.00
Library Maintenance Total:	\$67,968.00	\$77,352.44	\$82,699.00
Total all	\$ 521,538.08	\$552,435.15	\$583,784.00



Invoice
Date
Page

MN14040836
5/21/2015
1 of 1

Remit To: Harris Enterprise Resource Planning, a division of
Harris Systems USA Inc.
62133 Collections Center Drive
Chicago, IL 60693-0621

Bill To
Flagstaff, City of 211 W. Aspen Avenue Flagstaff, AZ 86001 USA

Ship To
Flagstaff, City of 211 W. Aspen Avenue Flagstaff, AZ 86001 USA

PO Number	Customer No.	Salesperson ID	Shipping Method	Payment Terms
	FLA01		LOCAL DELIVERY	Net 30

Ordered	Item Number	Description	Unit Price	Ext Price
1.00	NOTE	Coverage Period: August 01, 2015 - July 31, 2016	US\$0.00	US\$0.00
1.00	INN - MAINTENANCE	Harris ERP - Annual Software Maintenance	US\$133,402.50	US\$133,402.50
<p>Please note that payment is due on or before the maintenance period start date. Therefore, please allow 10 business days prior to the due date to mail your payment.</p>				
			Subtotal	US\$133,402.50
			Misc	US\$0.00
			Tax	US\$0.00
			Freight	US\$0.00
			Trade Discount	US\$0.00
			Total	US\$133,402.50

Invoice Questions? Please call Renata Stoochnoff at 613-226-5511 ext 2195 OR e-mail
RStoochnoff@harriscomputer.com



Pricing Proposal
Quotation #: 10008046
Reference #: 6930411
Created On: Jul-22-2015
Valid Until: Aug-31-2015

City of Flagstaff AZ

Ladd Vagen

Phone:

Fax:

Email: lvagen@FLAGSTAFFAZ.GOV

IAM

Gregory Gonedes

290 Davidson Avenue

Somerset, NJ 08873

Phone: 7326527408

Fax: 7326527409

Email: Gregory_Gonedes@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 Windows Enterprise - Software Assurance Only Microsoft - Part#: CW2-00307 Note: Annual Payment	562	\$31.00	\$17,422.00
2 Office Pro Plus - Software Assurance Only Microsoft - Part#: 269-12442 Note: Annual Payment	562	\$85.00	\$47,770.00
3 Enterprise User CAL w/ Services - Software Assurance Only Microsoft - Part#: 76A-00016 Note: Annual Payment	572	\$88.00	\$50,336.00
4 SQL Server Standard 2 Core - Software Assurance Only Microsoft - Part#: 7NQ-00292 Note: Annual Payment	6	\$585.00	\$3,510.00
5 SQL Server Standard 2 Core - License & Software Assurance Microsoft - Part#: 7NQ-00302 Note: Annual Payment	4	\$1,365.00	\$5,460.00
6 System Center Standard 2 Processor - Software Assurance Only Microsoft - Part#: T9L-00223 Note: Annual Payment	2	\$144.00	\$288.00
7 System Center Datcenter 2 Processor - Software Assurance Only Microsoft - Part#: T6L-00238 Note: Annual Payment	1	\$393.00	\$393.00
8 Windows Server Standard 2 Processor - Software Assurance Only Microsoft - Part#: P73-05898 Note: Annual Payment	7	\$144.00	\$1,008.00
9 Windows Server DataCenter 2 Processor Step Up from Windows Server Standard Microsoft - Part#: P71-07281 Note: Annual Payment	1	\$2,008.00	\$2,008.00

10	Azure Monetary Commit ShrdSvr ALNG Subscription Microsoft - Part#: 6QK-00001 Note: Annual Payment	1	\$1,212.00	\$1,212.00
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Subtotal	\$129,407.00
*Tax	\$10,739.79
Total	\$140,146.79

*Tax is estimated. Invoice will include the full and final tax due.

Additional Comments

State of Arizona Contract: ADSPO11-007500

Please include the following statement on your order if applicable:

"All products purchased on this order are to be distributed via electronic download only. No tangible media or documentation is to be shipped in association with this order. Access to the products purchased on this order is in no way dependent upon any tangible media that may have been previously received prior to, or separately from this order."

If the following statement is not on your PO, sales tax will be applied accordingly.

The Products offered under this proposal are subject to the SHI Return Policy posted at www.shi.com/returnpolicy, unless there is an existing agreement between SHI and the Customer.

**SirsiDynix®****SCHEDULE/EXHIBIT "A"****Flagstaff City/Coconino County Public Library**

Item Number	Item Description	Serial Number	Qty	Coverage Effective Dates From To	EOL Date	Price
10015	SirsiDynix Symphony Additional Branch Fee (ea)		1	1/Apr/16 - 31/Mar/17		
10015	SirsiDynix Symphony Additional Branch Fee (ea)		1	1/Apr/16 - 31/Mar/17		
10015	SirsiDynix Symphony Additional Branch Fee (ea)		1	1/Apr/16 - 31/Mar/17		
10015	SirsiDynix Symphony Additional Branch Fee (ea)		1	1/Apr/16 - 31/Mar/17		
10015	SirsiDynix Symphony Additional Branch Fee (ea)		1	1/Apr/16 - 31/Mar/17		
10015	SirsiDynix Symphony Additional Branch Fee (ea)		1	1/Apr/16 - 31/Mar/17		
10031	SirsiDynix Symphony Unicode Server Extension		1	1/Apr/16 - 31/Mar/17		
M-1967	Additional Library Fee		2	1/Apr/16 - 31/Mar/17		
M-1999	Authority Control		1	1/Apr/16 - 31/Mar/17		
M-2233	Information Gateway		1	1/Apr/16 - 31/Mar/17		
M-2357	Reference Librarian-PKG		2	1/Apr/16 - 31/Mar/17		
M-2375	Request Module		1	1/Apr/16 - 31/Mar/17		
M-2615	UnicornOASIS Bundled		1	1/Apr/16 - 31/Mar/17		
M-2655	WebCat WWW Catlog		1	1/Apr/16 - 31/Mar/17		
M-2665	WorkFlows Staff Clients		34	1/Apr/16 - 31/Mar/17		
M-2714	Z39.50 Version 3 Server		1	1/Apr/16 - 31/Mar/17		
12320	Symphony Web Services		1	1/Apr/16 - 31/Mar/17		
12850	Web Services Annual Recurring Package		1	1/Apr/16 - 31/Mar/17		
Symphony						45,125.91
10030	SirsiDynix Symphony Test System		1	1/Apr/16 - 31/Mar/17		
10032	SirsiDynix Symphony Unicode Server Extension Tes		1	1/Apr/16 - 31/Mar/17		
Test system						1,874.58
M-2408	Serials Control		1	1/Apr/16 - 31/Mar/17		
Serials						0.00
M-1958	Acquisitions and Fund Accting		1	1/Apr/16 - 31/Mar/17		
M-2085	Electronic and Data Interchange		1	1/Apr/16 - 31/Mar/17		
Acquisitions						0.00
M-2334	Outreach Services-PKG		1	1/Apr/16 - 31/Mar/17		
Outreach/Homebound						0.00
M-2288	Materials Booking		1	1/Apr/16 - 31/Mar/17		
Media Booking						0.00
M-0542	Datastream Subscription		44000	1/Apr/16 - 31/Mar/17		
Datastream Subscription						7,039.13
M-3108	Oracle Embedded License Upgrade from ISAM		1	1/Apr/16 - 31/Mar/17		
11780	Oracle Embedded Test License		1	1/Apr/16 - 31/Mar/17		
Oracle Renewal						2,574.43
12455	Red Hat Linux Operating Sysem SW, ES		1	1/Apr/16 - 31/Mar/17		
RedHat renewal						875.90
M-2021	Bibliographic and Inv. Control		1	1/Apr/16 - 31/Mar/17		
M-2424	SmartPORT Client		4	1/Apr/16 - 31/Mar/17		
M-2428	SmartPORT Concurrent User		1	1/Apr/16 - 31/Mar/17		
Cataloging						0.00
M-2049	Circulation Control		1	1/Apr/16 - 31/Mar/17		
Circulation						0.00
11711	SirsiDynix Symphony SIP2 Interface Per Certified V€		1	1/Apr/16 - 31/Mar/17		
11711	SirsiDynix Symphony SIP2 Interface Per Certified V€ Page Public Lib		1	1/Apr/16 - 31/Mar/17		
SIP/SIP2 License						440.30
12978	SirsiDynix SMS Notification for Symphony - 25K Mes		1	1/Apr/16 - 31/Mar/17		
SMS Notification						1,613.72

Flagstaff City/Coconino County Public Library

Item Number	Item Description	Serial Number	Qty	Coverage Effective Dates From	To	EOL Date	Price
13057	SirsiDynix eResource Central Gateway Services - Ar		1	1/Apr/16	31/Mar/17		
13137	SirsiDynix eRC Connector for OverDrive - Annual St		1	1/Apr/16	31/Mar/17		
13138	SirsiDynix eRC Connector for Recorded Books One		1	1/Apr/16	31/Mar/17		
E-Resource Central							1,557.54
11681	SirsiDynix Enterprise, Annual Subscription		1	1/Apr/16	31/Mar/17		
Enterprise Subscription							9,696.33
M-2178	iBistro Suite-F		1	1/Apr/16	31/Mar/17		
SirsiDynix PAC							3,113.54
12854	SirsiDynix Social Library, Annual Subscription		1	1/Apr/16	31/Mar/17		
Social Library Subscription							10.38
13149	BLUEcloud MobileCirc, Annual Subscription		1	1/Mar/16	31/Mar/17		
Mobile Circ Subscription							0.00
10534	Data Services - Authority Annual Subscription - Qua		1	1/Apr/16	31/Mar/17		
Quarterly Update Service							0.00
M-2788	3M Self Check Interface		2	1/Apr/16	31/Mar/17		
Hardware Renewal							655.68
Total							74,577.44

SOFTWARE MAINTENANCE CONTRACT (RENEWAL)

This Software Maintenance Contract (Renewal) with Intergraph Corporation SGI Division for services is entered into this _____ day of _____, 2015 by and between the City of Flagstaff, a political subdivision of the state of Arizona ("City" or "Customer") and Intergraph Corporation ("Intergraph"), and consists of the following documents attached hereto related to services to be provided to the City Police Department:

Quote dated March 2, 2015, signed by authorized representative of Intergraph, including:

Exhibit A

U.S. Maintenance Terms and Conditions for Software

Addendum to U.S. Maintenance Terms and Conditions for Software

INTERGRAPH CORPORATION

Its Authorized Representative

CITY OF FLAGSTAFF

Mayor

Attest by:

City Clerk

Approved as to form:

City Attorney's Office



March. 2, 2015

Flagstaff AZ City of
Attn: Larry Zamora
Police Department
911 E. Sawmill Rd
Flagstaff, AZ 86001

Reference: [Previous Maint Contract 1-8QADXD and Renewal Quote 1-B4IDB1]
Performance period begin date: 7/01/2015
Performance period end date: 6/30/2016

Dear Mr. Zamora

Thank you for being a customer of Intergraph products and maintenance services. Our records indicate that your maintenance service contract will expire soon, so ensure that you are able to continue using your Intergraph products to their fullest potential and renew your maintenance today. The renewal performance period is shown above.

The total contract value for this renewal period is \$210,084.04 excluding tax, and can be seen in detail on the attached cover sheet. Applicable Maintenance Terms and Conditions are included with this quotation for your convenient reference.

If the attached quotation requires no revisions, simply sign and fax to Intergraph the enclosed quotation summary sheet, along with your purchase order and tax exempt certificate, as applicable. If you do require changes to the attached quotation, in order to expedite your service contract and ensure uninterrupted coverage, send via fax or e-mail any required revisions to us at least thirty days prior to the performance period begin date shown above, and we will then issue to you a revised quotation. **Please note that if we do not receive your maintenance renewal prior to the performance period begin date, in addition to any reinstatement fees that may be charged as described below, maintenance services for the new coverage period will be terminated or suspended by Intergraph, including your ability to access system support or the knowledge base, or the ability to log or check support requests. Therefore it is important that you do not delay in renewing your maintenance service contract.** If however, you should decide to decline maintenance services at this time, please notify us at your earliest convenience so that we may update our records.

We want to bring to your attention the following policies that apply to Intergraph maintenance services:

Reinstatement Fee for Lapse in Intergraph Maintenance Coverage. Effective January 1, 2011, Intergraph will begin charging a 25% reinstatement fee for any renewal not received by the performance period begin date. The reinstatement fee will be calculated and assessed for each month in which there has been a lapse in coverage. The details of this fee may be found in Section 4.1 of the Terms and Conditions. To ensure that you are not assessed a reinstatement fee, please return your renewal instructions before the performance period begin date.

Reinstatement Fee for Lapse in Oracle Maintenance Coverage. Effective January 1, 2006, Oracle Corporation began charging Intergraph a 50% reinstatement fee for all Oracle products for which renewal instructions are not received by the performance period begin date. The Oracle reinstatement fee is calculated and assessed for each month in which there has been a lapse in coverage. Therefore, in addition to Intergraph's 25% reinstatement fee, if your renewal for Oracle license maintenance is not received by the performance period begin date, Intergraph will pass along the reinstatement fee to you, and you will be responsible for all Oracle reinstatement fees resulting from your late renewal.

License Re-purchase for Lapse in Microsoft SQL Server and BizTalk Maintenance Coverage. There is no allowance under Intergraph's agreement with Microsoft for reinstating maintenance that has lapsed on Microsoft SQL Server and BizTalk licenses obtained from Intergraph and for which Intergraph provides maintenance and support. Microsoft only allows Intergraph to provide maintenance (including upgrades of the Microsoft products) to you if you provide renewal instructions prior to the performance period begin date shown in the attached quote and without any lapse in coverage. Any maintenance renewal received on or after the performance period begin date is considered to be a lapse in coverage and will not be accepted by Intergraph. Therefore, if your renewal for the Microsoft license maintenance is not received by Intergraph by the performance period begin date, when you wish to upgrade to a new version of SQL Server and/or BizTalk, you shall be required to re-purchase the licenses for the Microsoft products at the then current list price of those products, plus one year of maintenance coverage from the date of re-purchase. You will not be eligible to obtain support services from Intergraph during any lapse in maintenance coverage for SQL Server and/or BizTalk.

Business Intelligence Maintenance Begins with License Purchase; Maintenance Renewals Must be Received Before Current Maintenance Term Expires. Due to constraints related to third party content in the Business Intelligence suite, the maintenance term must begin when Business Intelligence licenses are purchased. The maintenance must renew, if elected, on the anniversary of the license purchase; therefore, your renewal instructions must be received prior to the performance period begin date shown in the attached quote and without any lapse in coverage. Any maintenance renewal received on or after the performance period begin date is considered to be a lapse in coverage and will not be accepted by Intergraph. Therefore, if your renewal for the Business Intelligence license maintenance is not received by Intergraph by the performance period begin date, when you wish to upgrade to a new version of Business Intelligence, you shall be required to purchase an upgrade of the Business Intelligence products at a price that is fifty percent (50%) of the then current list price, plus one year of maintenance coverage from the date of the upgrade purchase. You will not be eligible to obtain support services from Intergraph during any lapse in maintenance coverage for the Business Intelligence products.

Charges are Payable Annually and In Advance. Effective March 27, 2008, Intergraph implemented annual, in advance, payment terms for maintenance service contracts. If you wish to instead pay quarterly in advance, please request a revised quotation. A convenience fee of 15% will be added to contracts with quarterly payment schedules instead of annual. The convenience fee will be prorated across the four quarterly invoices.

The following are different from your current contract:

- a) Price increases for software

Please note also the following:

Update Your Contact Information. We have enclosed with this letter a list of the contact people that we have on file for your maintenance services contract. Please help us to ensure the accuracy of your contact information. Contact information is used by Intergraph to communicate to you regarding your Intergraph maintenance services contract, including information about upgrades, fixes, service requests and change requests. Contact information will not be disclosed to any third party that is not affiliated with Intergraph, except to the limited extent necessary to fulfill your requests for products, services, or support. Please edit the contact list as necessary and return the updated list to us via email at sgimaintcont@intergraph.com or bjverdon@intergraph.com. If any of the contact people would like an Intergraph e-Service login, please place a "Y" in the first column of the list and include a valid email address for that person. An email address is required for every individual requesting an e-Service login.

Hexagon 2015 International Users' Conference Registration Special Offer

Make plans to attend the Hexagon 2015 conference in Las Vegas scheduled for June 2015. International Users' Conference registrations are available through your maintenance contract renewal. At Hexagon 2015 you can take advantage of focused technical and hands-on sessions tailored to your industry; preview new and future Intergraph innovations; discuss industry trends, operational challenges, and technology applications with your colleagues from around the world...and much more.

If purchased through your maintenance services contract, the Hexagon 2015 conference fee is only \$699.00 per user. All of the registrations processed through this program are payable 100% in advance, no later than May 31, 2015, and are non-refundable. Please notify us within 30 days of the date of this letter if you would like to take advantage of this offer. We will add the required number of registrations to your quotation and send the revised quotation to you. The offer to add conference registrations to your maintenance services contract is available for up to twenty attendees. All maintenance orders must be paid no later than May 31, 2015. Information regarding redemption of the registrations purchased through this program will be provided to you at a later date.

Organization Name: The correct name of the Intergraph division issuing this quotation is "Security, Government & Infrastructure" (SG&I). Please issue all purchase orders in the name of either "Intergraph Corporation" or "SG&I."

Thank you again for your interest in Intergraph products and services. We look forward to hearing from you soon. If you have questions concerning this quotation, please feel free to call me at 256-730-2389.

Sincerely,

Trey Sampson

Trey Sampson
Maintenance Contract Administrator
Intergraph Corporation, Inc.
Security, Government & Infrastructure (SG&I) Division
305 Intergraph Way
Huntsville, AL 35824
treysampson@intergraph.com
FAX: (256) 730-1164
Enclosure: as stated

MAINTENANCE QUOTATION SUMMARY

Quote: 1-B4IDB1
Service Level: Premium

Performance Period: 07/01/2015 through 06/30/2016
Billing Terms: PREPAID

Customer:

Flagstaff AZ City Of
ATTN: Larry Zamora
Police Department
911 East Sawmill Road
Flagstaff, AZ 86001
USA

Billing Address:

Flagstaff AZ City Of
ATTN: Accounts Payable
City Hall
211 West Aspen Avenue
Flagstaff, AZ 86001
USA

Quotation Summary:

SW Maint	\$209,584.04
Services	\$500.00
Total Services Cost*	\$210,084.04

* Total is exclusive of applicable taxes. Applicable taxes will be added to the invoice.

The maintenance services quoted herein are subject to the attached U.S. Maintenance Terms and Conditions. This agreement shall only become binding and effective upon the written acceptance by Intergraph. This quotation expires ninety (90) days from the date of issue by Intergraph.

THIS IS NOT AN INVOICE

Offered by: Intergraph Corporation
Security, Government & Infrastructure (SG&I) Division

Accepted by:

Signature: Trey Sampson
Name: Trey Sampson
Date: 03/02/2015
Email: trey.sampson@intergraph.com
Telephone: 256-730-2389
Fax: 256-730-5641

Signature: [Signature]
Name: Senifer Brown
Title: Support Services Manager
Date: May 18, 2015
Email: JBrown@cox.az.gov
Telephone: 928-556-2305
Fax: 928-513-3308

Please mark one of the following options when submitting your acceptance:

☒ A Purchase Order will not be issued. Customer signature above constitutes notice to proceed with this agreement.

☐ A Purchase Order will be issued and shall reference the terms and conditions of above referenced quote.

INTERGRAPH

Exhibit A

Security, Government & Infrastructure

INTERGRAPH

Flagstaff AZ City Of

Account Nbr: MDC-1320

Quote: 1-B4IDB1-Flagstaff AZ City of SW 2015

PO#:

Performance Period: 07/01/2015 through 06/30/2016

Service Level: Premium

Bill To:

Flagstaff AZ City Of
ATTN: Accounts Payable
City Hall
211 West Aspen Avenue
Flagstaff, AZ 86001
USA

Ship To:

Flagstaff AZ City Of
ATTN: Larry Zamora
Police Department
911 East Sawmill Road
Flagstaff, AZ 86001
USA

Ln	Base Part	Description	Serial	Begin	End	Coverage	Mths	Qty	Monthly Cost	Total Cost
Site Number: 00098398										
1	IPS0001	I/Executive	MME-1-XRNO	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$738.00	\$8,856.00
2	IPS0002	I/Dispatcher	MME-1-XRNQ	07/01/2015	06/30/2016	Ph Supp with Upg's	12	12	\$316.00	\$45,504.00
3	IPS0002TRN	I/Dispatcher - Training License	MME-1-AIPAR	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$316.00	\$3,792.00
4	IPS0004	I/Informr	MME-1-XXGW	07/01/2015	06/30/2016	Ph Supp with Upg's	12	2	\$422.00	\$10,128.00
5	IPS0004A	I/Informr to I/LEADS	1-288980758	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$0.00	\$0.00
6	IPS0007	I/Executive 2	MME-1-XXH0	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$526.00	\$6,312.00
7	IPS0009	I/Mobile Data Terminal	MME-1-9P9BA	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$844.00	\$10,128.00
8	IPS0012	I/Page	MME-1-XXH2	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$383.00	\$4,596.00
9	IPS0015	I/Tracker	MME-1-9P9F2	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$477.00	\$5,724.00
10	IPS0019	I/LEADS-Server	MME-1-XXH4	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$401.00	\$4,812.00
11	IPS0020	I/LEADS-Records Management System CC - Desktop Client	MME-1-XXH6	07/01/2015	06/30/2016	Ph Supp with Upg's	12	60	\$30.00	\$21,600.00
12	IPS0024	I/LEADS-Civil Process System	MME-1-XXJY	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$183.00	\$2,196.00
13	IPS0026	I/LEADS-Jail Management System - Client	MME-1-XXK0	07/01/2015	06/30/2016	Ph Supp with Upg's	12	20	\$20.00	\$4,800.00
14	IPS0030	I/LEADS-CAD Link	MME-1-XXL4	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$0.00	\$0.00

Exhibit A**Security, Government & Infrastructure****INTERGRAPH**

Flagstaff AZ City Of

Account Nbr: MDC-1320

Quote: 1-B4IDB1- Flagstaff AZ City of SW 2015

PO#:

Performance Period: 07/01/2015 through 06/30/2016

Service Level: Premium

Ln	Base Part	Description	Serial	Begin	End	Coverage	Mths	Qty	Monthly Cost	Total Cost
15	IPS0038	I/Mobile	MME-1-9P9BI	07/01/2015	06/30/2016	Ph Supp with Upg's	12	27	\$22.00	\$7,128.00
16	IPS0042A	I/NetViewer - 15 users	MME-1-XXLI	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$477.00	\$5,724.00
17	IPS0048	I/FRMS-CADlink	MME-1-88551	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$192.00	\$2,304.00
18	IPS1163-M	I/MapEditor CC	17HURF9000098398	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$78.00	\$936.00
19	IPSCUSTOM12	E-Citation SW Interface	1-268633407	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$506.10	\$6,073.20
20	IPSF520AA-1002A	Oracle Standard Ed.- Application Sp	ORA-11059	07/01/2015	06/30/2016	Ph Supp with Upg's	12	96	\$10.00	\$11,520.00
23	IPSF584AA-A	Oracle Std Ed-Appl Spec Named User	MME-1-9QLA7	07/01/2015	06/30/2016	Ph Supp with Upg's	12	120	\$9.00	\$12,960.00
24	IPS0082-M	Map Admin Utility NL for I/Map & I/Executive Users		07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$184.00	\$2,208.00
26	GSPX5007	GeoMedia Professional	18QADXD000098398	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$208.00	\$2,496.00
Subtotal for Site Number 00098398										\$179,797.20
Site Number: 50000554										
22	IPS0002	I/Dispatcher	MME-1-9VZXH	07/01/2015	06/30/2016	Ph Supp with Upg's	12	2	\$316.00	\$7,584.00
Subtotal for Site Number 50000554										\$7,584.00
Site Number: 50001020										
27	IPSCUSTOM11	I/Leads upgrade Livescan Interface	MME-1-63RLDV	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	\$81.90	\$982.80
28	IPS0038	I/Mobile from Coconino		07/01/2015	06/30/2016	Ph Supp with Upg's	12	5	\$92.75	\$5,565.00
29	IPS0020	I/Leads from Coconino		07/01/2015	06/30/2016	Ph Supp with Upg's	12	5	\$132.50	\$7,950.00
31	IPSCUSTOM10	I/Leads RMS Custom Services for DPS Mugshot		01/01/2016	06/30/2016	Ph Supp with Upg's	6	1	\$533.34	\$3,200.04
Subtotal for Site Number 50001020										\$17,697.84

Site Number: Billing

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Page 2 of 3

Exhibit A

Flagstaff AZ City Of

Account Nbr: MDC-1320

Quote: 1-B4IDB1- Flagstaff AZ City of SW 2015

Security, Government & Infrastructure**INTERGRAPH**

PO#:

Performance Period: 07/01/2015 through 06/30/2016

Service Level: Premium

Ln	Base Part	Description	Serial	Begin	End	Coverage	Mths	Qty	Monthly Cost	Total Cost
30	BackMaint5	3/1/15-6/30/15 Coconino I/Mobile and I/Leads		07/01/2015	07/31/2015		1	1	\$4,505.00	\$4,505.00
32	ESCROW	Annual Software Escrow Fee		07/01/2015	07/31/2015		1	1	\$500.00	\$500.00
Subtotal for Site Number Billing										\$5,005.00

Grand Total Excluding Tax \$210,084.04



Security, Government & Infrastructure (SG&I)

U.S. Maintenance Terms and Conditions for Software

This document ("Terms and Conditions") and the Quote to which these Terms and Conditions are attached set forth the terms and conditions for the maintenance of software and related support services by Intergraph Corporation, doing business as the Security, Government and Infrastructure Division ("Intergraph") for Customer.

1. DEFINITIONS

- 1.1. "Affiliate" means any entity or person controlled by or under common control of Intergraph Corporation. For the purposes of this Agreement, the term "control" means ownership, directly or indirectly, of equity securities entitling the owner to exercise in the aggregate equal or more than twenty-five percent (25%) of the voting power of the entity in question. For the avoidance of doubt, any Affiliate of Intergraph Corporation is as well deemed an Affiliate of any other Affiliate of Intergraph Corporation; also Intergraph Corporation is an Affiliate of any of its Affiliates.
- 1.2. "Agreement" means (1) the binding contract incorporating these Terms and Conditions as well as the Quote submitted to Customer under Section 2 and/or, if applicable, (2) the binding contract incorporating a Quote submitted to Customer under Section 3.2 and/or Section 12.1 as well as the maintenance service contract terms and conditions referenced therein.
- 1.3. "Coverage Period" means the period of performance set forth in the Quote.
- 1.4. "Covered Products" means the software listed on the Quote for which Services are to be provided to Customer by Intergraph. Covered Products shall also include additional copies of the software (i) where the original software is already covered by the Agreement and (ii) for which additional licenses are purchased or otherwise obtained by Customer during the Coverage Period. Covered Products may include Software Products, as well as Third Party Software.
- 1.5. "Customer" means the entity or person purchasing Services.
- 1.6. "Quote" means a quotation for Services submitted to Customer by Intergraph or an authorized Intergraph partner, along with a product quotation at time of purchase of the product to be maintained, according to Section 2, or a quotation for Services submitted to Customer by Intergraph, according to, Section 3.2 and/or Section 12.1.
- 1.7. "Services" means the maintenance and support services for Covered Products that are further described in the Agreement.
- 1.8. "Software Product" includes Intergraph's or Intergraph's Affiliate's computer software and all of the contents of the files, disk(s), CD-ROM(s) or other media with which the software is provided, including any templates, data, printed materials, and "online" or electronic documentation, all copies, and any Updates of such Software Products. Software Products

are subject to all of the terms and conditions of the End-User License Agreement ("EULA") provided with the Software Product.

- 1.9. "Third Party Software" means computer software or other technology in which any person or entity, other than Intergraph or Intergraph's Affiliate, has any right, title or interest, including any restrictions or obligations (such as obligations to obtain consents or approvals and restrictions that may be eliminated only by obtaining such consents or approvals) applicable to the computer software or technology, but does not include software embedded in the Software Products by license from third parties. The use of Third Party Software is subject to all of the terms and conditions of the third party's software license or similar agreement ("SLA") provided with the Third Party Software.
- 1.10. "Update(s)" means any Upgrade, modified version, fix, patch and/or update of Covered Products. The use of Updates is subject to all of the terms and conditions of the EULA or SLA provided with Customer's current version of the Covered Products.
- 1.11. "Upgrade(s)" means each new release of Covered Products. Upgrades require a full installation and may be provided with a separate EULA or SLA. Any EULA or SLA delivered with the Upgrade will supersede any EULA or SLA associated with prior releases of the Covered Products.

2. AUTHORIZATION OF SERVICES

By either (a) returning a signed Quote; (b) submitting a signed purchase order referencing a Quote; (c) paying any charges as set forth on a Quote; or (d) accepting delivery of Services as set forth on a Quote, Customer authorizes Intergraph to provide the Services for Covered Products during the Coverage Period in accordance with the Agreement. The Services will be provided by Intergraph in accordance with the Scope of Coverage as set forth in Section 5. The Agreement shall only become binding and effective upon the written acceptance by Intergraph or the first delivery of the Services set forth in the Quote, whichever is earlier.

3. TERM

- 3.1. Term. This Agreement shall begin, retroactively (if applicable), on the first calendar day of the first month of the applicable Coverage Period, and shall expire at the end of the Coverage Period unless terminated earlier as provided in Section 18, or renewed by mutual agreement of the parties in accordance with Section 3.2. The Coverage Period shall be for whole months only.
- 3.2. Renewal. Approximately ninety (90) days prior to the expiration date of any Coverage Period, Intergraph will submit to Customer a renewal Quote that includes pricing for the upcoming Coverage Period. Section 2 shall apply mutatis mutandis to the formation of the Agreement based on the renewal Quote as well as the maintenance service contract terms and conditions referenced therein or made available to Customer together with the renewal Quote. If the Agreement is not entered into based on the renewal Quote as well as the maintenance service contract terms and conditions referenced therein, Intergraph, after the preceding Coverage Period has expired, shall be entitled to discontinue Services for the affected Covered Products, including access to system support or knowledge base, and/or end the ability of Customer to log or check support requests.

4. REINSTATEMENT OF MAINTENANCE SUPPORT COVERAGE

- 4.1. Lapse in Software Maintenance Coverage. To reinstate Services after any termination or suspension thereof, Customer must pay a reinstatement fee. The Coverage Period for any reinstated Services (the "Renewal Coverage Period") shall begin on the first day after the

expiration or termination of the last paid-in-full Coverage Period and extend until the next purchase anniversary date of the lapsed Covered Products. The reinstatement fee will equal twenty-five percent (25%) of the past due maintenance charges (rounded up to whole months only) for the Renewal Coverage Period, and shall be in addition to the total maintenance charges due for the Renewal Coverage Period, all calculated at the current maintenance list price. Upon request of Customer, Intergraph will provide a Quote for the Renewal Coverage Period, to include the reinstatement fee, which is applicable only for reinstatement made in the then-current month.

- 4.2. **Failure to Obtain Maintenance Coverage.** In the event Services were not purchased at the time that the Covered Product was originally purchased, in order to obtain Services, Customer must pay one hundred twenty-five percent (125%) of all maintenance payments from the date the original Covered Product was purchased up to the date the Services are actually purchased, plus one hundred percent (100%) of the remaining Coverage Period that expires upon the anniversary date of the original Covered Product purchase, all calculated at the current maintenance list price. The Coverage Period for such Covered Products will begin on the first day of the month in which the Covered Products were originally purchased.

5. SCOPE OF COVERAGE FOR SOFTWARE PRODUCTS

Services described in this Section apply to Software Products only. Services for Third Party Software are set forth in Section 10.

Intergraph offers two levels of Services for Software Products included in the Covered Products: Standard Support and Premium Support. Under both levels of Services, Intergraph shall provide reasonable commercial efforts to aid in the diagnosis and correction of defects in and provide general advice as to the use of the Software Products included in the Covered Products. The level of Services will be set forth on the Quote and will include the following:

5.1. **Standard Support:** Standard Support will include and be limited to the following:

- 5.1.1. **Help Desk Support.** Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's Customer Support Web Site where available at <http://esupport.intergraph.com>). Phone support for all priority levels of software errors is available on Monday through Friday from 8AM – 5PM at Customer's local time, excluding Intergraph-observed holidays. Local variances in support hours will be posted on the Customer Support Web Site or applicable local support website, or can be determined by contacting Customer's local Intergraph office.
- 5.1.2. **Updates.** Access to all available Updates of Software Products included in the Covered Products. Intergraph will notify Customer when Updates are made available for any Software Products for which Service has been purchased, by way of posting notices of such to the "Support Notices and Announcements" section on the Customer Support Web Site or applicable local support website or via direct notification by Intergraph. If applicable, Customer may also register on the Customer Support Web Site or applicable local support website to automatically receive email notifications when a new release of a Software Product is made available by Intergraph. Updates are shipped to Customer upon Customer request. Intergraph is not obligated to produce any Updates.
- 5.1.3. **Knowledge Base.** Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool.

5.2. **Premium Support:** Premium Support will include all of the features available under Standard Support. Additionally, when the software error is considered to be critical (meaning

production is down), then phone support is also available after-hours and on Intergraph-observed holidays.

Intergraph may not provide both levels of support for all Software Products in all countries. Customer may choose any level of Services offered, however all Software Products included in the Covered Products under the Agreement must have the same level of Services when available.

Services are only available for the current version and the one version prior to the current version of a particular Software Product. Services are limited to the specific Software Products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

6. MINIMUM SYSTEM REQUIREMENTS; CUSTOMER'S OBLIGATIONS

Performance of Services by Intergraph is specifically conditioned upon the following minimum system requirements and fulfillment by Customer of the following obligations (collectively, minimum system requirements and customer obligations hereinafter referred to as "Customer Obligations"):

- 6.1. Customer's hardware and operating system software must meet the minimum system requirements specified by Intergraph and made available to Customer upon request.
- 6.2. Customer's system must have input and output devices that enable the use of Intergraph's diagnostic programs and supplemental tests. The specifications of such devices shall be made available to Customer by Intergraph upon request.
- 6.3. Customer will be responsible for any required adjustments or updates to its hardware and/or operating system software required to accommodate Updates of Covered Products.
- 6.4. Customer will ensure availability of its own system technical support personnel so that Intergraph can fulfill its Service obligations.
- 6.5. When reporting problems to Intergraph's Help Desk, Customer will provide a complete problem description, along with all necessary documents and information that is available to Customer and required by Intergraph to diagnose and resolve the problem. Customer will grant all necessary access to all required systems as well as to the Covered Products, and any other reasonable assistance needed.
- 6.6. Customer will carry out any reasonable instructions on troubleshooting or circumvention of the problem provided by Intergraph through the Authorized Contact (as defined below in Section 8.1) immediately and in conformity with these instructions, and will install any necessary patches, defect corrections or new versions from Intergraph.
- 6.7. Customer is solely responsible for assuring the compatibility of non-Intergraph products with products provided by Intergraph.
- 6.8. Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. Intergraph will not be liable for lost data.

In addition, Customer shall provide for any other requirements reasonably specified by Intergraph and related to the rendition of the Services to be met.

If Customer fails to fulfill its Customer Obligations, Intergraph is entitled to bill Intergraph's time and effort made necessary by Customer's failure at Intergraph's currently stated hourly rates.

7. EXCLUDED SOFTWARE SERVICES

Services for the following are outside the scope of this Agreement and may be available under separate agreement at an additional charge (collectively "Excluded Services"):

- 7.1. Installation of any Covered Product, Update, or interface software
- 7.2. Network configuration
- 7.3. Configuration or customization of Covered Products to customer requirements.
- 7.4. System-level tuning and optimization and system administration support

- 7.5. Programming or software development
- 7.6. Training
- 7.7. Services required because the Authorized Contact is not available or is not trained in accordance with Section 8
- 7.8. On-site Services
- 7.9. Services outside of the regular business hours associated with the applicable level of Services
- 7.10. Services required due to modifications of Covered Products by Customer. In the case of Intergraph software modules which assist in the creation and use of Customer software, the performance of Services under the Agreement is restricted to unmodified components of these Covered Products
- 7.11. Services required due to use other than in the ordinary manner intended for the Covered Products, or use in a manner that contravenes terms hereunder, or Customer's disregard of the installation and operating instructions according to the documentation provided with the Covered Products
- 7.12. Services required due to failure of software or hardware not supplied by Intergraph and not covered in the Agreement
- 7.13. Services required due to Customer's use of hardware or software that does not meet Intergraph specifications or failure of Customer to maintain or perform industry standard maintenance on Customer's hardware or software
- 7.14. Services required due to software or portions thereof that were incorrectly installed or configured, or use in an environment inconsistent with the support environment specified by Intergraph, or used with peripherals, operational equipment or accessories not conforming to Intergraph's specifications
- 7.15. Services required due to cases of force majeure, especially lightning strikes, fire or flood or other events not caused through Intergraph's fault.
- 7.16. Services required due to customer's failure to fulfill the Customer Obligations set forth in Section 6
- 7.17. Services required due to faulty or incomplete Customer data.

When ordered by Customer, Excluded Services or other software maintenance support services that are outside the scope of this Agreement will be billed by Intergraph according to the stated hourly rates and material prices in effect at the time such service is performed.

8. SYSTEM SUPPORT TECHNICIAN

- 8.1. Customer will appoint a minimum of two and a maximum of three contact people who are each authorized to make use of the Services ("Authorized Contacts").
- 8.2. Customer must make sure that the Authorized Contacts have adequate expertise and experience to make possible a targeted and professionally accurate description of malfunctions and make it possible for Intergraph to handle them efficiently. Authorized Contacts must have successfully completed Intergraph product training or complete it at the next available scheduled opportunity, for those products for which formal training is available. Customer will bear the cost of this training. Customer is obligated to select only those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's operating system, network, and hardware and software systems. Customer agrees to promptly notify Intergraph of any replacement of an Authorized Contact.

9. REMOTE ACCESS

Customer will permit Intergraph to electronically access Customer's system via SecureLink™. SecureLink™ is a tool for providing secure, auditable remote access to Customer's system in order for Intergraph support personnel ("Customer Support") to effectively troubleshoot critical or complex

problems and to expedite resolution of such issues. The Authorized Contacts should be available to assist Intergraph Customer Support as needed during this entire process. Customer Support will only access Customer's system with the knowledge and consent of Customer. For local variances specific to the use of remote access tools other than SecureLink™, Customer should contact the local Intergraph support office.

10. THIRD PARTY SOFTWARE

Support and Updates of Third Party Software shall be provided in the fashion and to the extent or duration that Intergraph is authorized to provide such by the third party manufacturer of the Third Party Software, and such Third Party Software Services may be subject to additional terms and conditions of the third party manufacturer of the Third Party Software.

Services and Updates for any Third Party Software that are not listed on the Quote must be obtained from the third party owner of the products or their designated representative.

11. REQUIRED COVERAGE

11.1. Multiple or Interdependent Licenses. Customer may not decline maintenance for individual licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site, except in accordance with the relinquishment process described in Section 12.2.

11.2. Prerequisite Licenses. All prerequisite Intergraph software licenses that are necessary to operate the Covered Products for which Customer desires Services under the Agreement must also be included as Covered Products and listed on the Quote.

12. ADDITIONS AND REMOVALS OF COVERED PRODUCTS

12.1. Additions of Covered Products to Maintenance.

12.1.1. Additional Software Products from Intergraph. In the event Customer purchases additional licenses of Software Products from Intergraph during the term of this Agreement, Intergraph will provide Customer with a written extension Quote that reflects the additional licenses, the effective date of Service, and charges for the additional licenses, pursuant to the Agreement.

12.1.2. Additional Software Products from a third party. In the event Customer obtains additional licenses of Software Products from an authorized reseller or by any other means, Customer agrees to promptly notify Intergraph in writing about the newly acquired Software Products, and upon receipt of such notice, Intergraph will provide Customer with a written extension Quote that reflects the additional licenses, the effective date on which Intergraph may commence the Services with respect to the copies of the Software Product pertaining to the additional licenses, and the charges that would be due in return for these Services pursuant to the Agreement.

12.1.3. Section 2 shall apply mutatis mutandis to the formation of the Agreement based on the extension Quote submitted to Customer under Section 12.1.1 or Section 12.1.2 as well as the maintenance service contract terms and conditions referenced therein or made available to Customer together with the extension Quote. If the Agreement is not entered into based on the extension Quote as well as the maintenance service contract terms and conditions referenced therein, then the terms and conditions in Section 4 regarding reinstatement of Services will apply to the additional licenses of Software Products. If, however, the additional Software Products are multiple, interdependent, or prerequisite licenses as described in Section 11 above, Services

may not be declined, and Services and the appropriate monthly charges will begin on the effective date as shown on the extension Quote.

12.1.4. Additional Software Products via Software Transfer Policy. Customer shall purchase Services on all additional licenses of Software Products for a site obtained via software license transfer. Any such software license transfers shall be in accordance with the then-current Intergraph Software Transfer Policy and the EULA or other applicable Software License Agreement delivered with the Software Product.

12.2. Removal of Covered Products from Maintenance. Either party may provide written notice to the other party at least sixty (60) calendar days prior to the end of any Coverage Period of its intent to remove any individual Covered Products from the Agreement for the renewal period. Neither party may remove Covered Products except upon Agreement renewal. Customer may not remove from the Agreement individual software licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site, unless Customer has first certified to Intergraph on a "Software Relinquishment Agreement" that the copies of the Covered Product for which Customer desires to cease Services (the "Relinquished Licenses") for the renewal Coverage Period have been uninstalled and removed from its system(s). Should Customer desire to reinstate Services for the Relinquished Licenses at a later date, Customer must re-purchase the licenses at the then current list price.

13. PAYMENT

13.1. Terms of Payment. Charges for Services are due and payable annually and in advance. For Customers desiring to pay quarterly and in advance instead of annually and in advance, Customer must request a revised Quote which shall include a convenience fee increase of fifteen percent (15%) of the total annual charges, which convenience fee Customer agrees to pay. The convenience fee shall be prorated and charged to the four quarterly invoices. All charges are due net thirty (30) calendar days from the date of invoice or prior to the beginning of the applicable Coverage Period, whichever is earlier. Charges for Covered Products added during a Coverage Period shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon receipt of invoice.

13.2 Past Due Accounts. INTERGRAPH RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE. At the discretion of Intergraph, Customers who have not paid any charges when due (i) under this Agreement, (ii) under any other agreement between the parties, or (iii) under any agreement between Intergraph and Customer's parent and/or subsidiary at least fifty percent (50%) owned by Customer, may not be rendered Services until all past due charges are paid in full. Additionally, Intergraph shall charge and Customer agrees to pay interest at the rate of two percent (2%) per month or the maximum amount allowed by law, whichever is less, for all amounts not received when due. The start of the Coverage Period shall not be postponed due to delayed payment of any charges. If Intergraph is required to use a collection agency or attorney to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These collection costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees and court costs.

13.3 Customer's Responsibilities Concerning Invoice Questions. Subject to applicable law, if Customer intends to dispute a charge or request a credit, Customer must contact Intergraph within ten (10) calendar days of the date on the invoice. Customer waives any right to dispute a charge or receive a credit for a charge or Services that Customer does not report within such period.

14. CUSTOMER WARRANTIES

During the Coverage Period, Customer shall commit to the following:

- 14.1. Subject to Section 12.2, Customer warrants that for all Covered Products supported under the Agreement, all licenses of a Covered Product for which Customer has multiple copies in its possession and that are located at the site referenced on the Quote, and all prerequisite licenses necessary to operate Covered Products, are listed on the Quote. If all like Covered Products or prerequisite software licenses are not listed on the Quote, Customer agrees to notify Intergraph so that Intergraph may issue a revised Quote to Customer.
- 14.2. Customer warrants that Services provided herein shall be utilized only for the quantity of Covered Products licenses listed on the Quote.
- 14.3. Customer shall, and Customer shall cause each of Customer's employees and representatives to, comply with each and every term and condition of the EULA and/or SLA applicable to the Covered Products supported under the Agreement.

15. INTELLECTUAL PROPERTY

- 15.1. Software License. Any Upgrades furnished hereunder shall remain the property of Intergraph, Intergraph's Affiliate or applicable third party, and are licensed in accordance with the then current Intergraph EULA, EULA of Intergraph's Affiliate or third party SLA, which shall supersede any EULA or SLA associated with prior releases of the Software Products or Third Party Software. Upon Customer's request, Intergraph shall provide customer with such EULA or SLA. Upon Intergraph's request, Customer agrees to execute a EULA or SLA, as applicable, for Covered Products provided without an included EULA or SLA.
- 15.2. Confidential Information. Intergraph and Customer each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other party which such party considers to be confidential, proprietary, a trade secret or otherwise restricted. As used in this Agreement "Confidential Information" shall mean all information, which may include third party information, in any form, furnished or made available directly or indirectly by one party to the other that is marked confidential, restricted, proprietary, or with a similar designation. The terms and conditions, and existence, of this Agreement shall be deemed Confidential Information. Confidential Information also shall include, whether or not designated "Confidential Information" (i) all specifications, designs, documents, correspondence, software, documentation, data and other materials and work products produced by either Intergraph or its subcontractors, and (ii) with respect to either party, all information concerning the operations, financial affairs and businesses, and relations with its employees and service providers.

Each party's Confidential Information shall remain the property of that party or relevant third party except as expressly provided otherwise by the other provisions of this Agreement. Customer and Intergraph shall each use at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own information of a similar nature.

The parties shall take reasonable steps to ensure that their respective employees comply with these confidentiality provisions. This Section shall not apply to any particular information which either party can demonstrate (i) was, at the time of disclosure to it,

generally publicly available; (ii) after disclosure to it, is published or otherwise becomes generally publicly available through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without restriction on disclosure; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the disclosing party. In addition, a party shall not be considered to have breached its obligations by disclosing Confidential Information of the other party as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such party advises the other party promptly and prior to making such disclosure in order that the other party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

16. LIMITED WARRANTIES; WARRANTY DISCLAIMERS

16.1. Limited Warranties.

16.1.1. Intergraph Services Warranty. Intergraph warrants for a period of thirty (30) days from the date of Services that the Services provided pursuant to this Agreement, in the form of a defect correction and/or maintenance services, will be performed with reasonable skill and care in accordance with the requirements set forth herein, provided the Covered Products for which the Services are provided are used under normal conditions and in strict accordance with the terms and conditions herein. Customer agrees to promptly notify Intergraph of any unauthorized use, repair, or modification, or misuse, as well as suspected defects in any Services provided pursuant to this Agreement.

16.1.2. Intergraph Software Warranty. Intergraph warrants for a period of thirty (30) days from the date of shipment of any Software Product that, under normal use, software delivery media shall be free from defect in material or workmanship. Additional warranties for Software Products may be provided in the applicable Intergraph Terms and Conditions for Sale or other agreement between the parties governing the delivery of Software Products.

16.1.3. Pass-Through Third Party Warranties. Third Party Software is only warranted pursuant to a pass-through warranty to Customer from the applicable Third Party Software manufacturer and only to the extent warranted by the applicable Third Party Software manufacturer.

16.1.4. NO OTHER WARRANTIES. THE ABOVE LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND REPRESENT THE FULL AND TOTAL OBLIGATION AND/OR LIABILITY OF INTERGRAPH. THE LIMITED WARRANTIES PROVIDE CUSTOMER WITH SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY JURISDICTION TO JURISDICTION. IF A GREATER WARRANTY IS MANDATED PURSUANT TO THE LAW HELD APPLICABLE TO THIS AGREEMENT, THEN INTERGRAPH WARRANTS THE SERVICES OR COVERED PRODUCTS TO THE MINIMUM EXTENT REQUIRED BY SAID LAW.

16.2. Remedies. In the event a warranted Service, Covered Product, or Update provided pursuant to this Agreement does not substantially comply with the limited warranties set forth in the Agreement, Intergraph's entire liability and Customer's exclusive remedy shall be, in Intergraph's sole and absolute discretion, either (i) providing of a Service, Covered Product,

or Update which conforms substantially with the warranty; or (ii) a refund of the purchase price of the particular warranted Service, Covered Product, or Update for the period of time that the warranted Service, Covered Product, or Update did not substantially conform to the limited warranties set forth in this Agreement.

Intergraph is acting on behalf of its suppliers for the sole purpose of disclaiming, excluding and/or limiting obligations and liability as provided in this Agreement, but in no other respects and for no other purpose.

- 16.3. WARRANTY DISCLAIMERS. ANY WARRANTIES HEREUNDER ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY, OR INDIRECTLY, FROM AN UNAUTHORIZED MODIFICATION OF A WARRANTED ITEM; AN UNAUTHORIZED ATTEMPT TO REPAIR A WARRANTED ITEM; OR MISUSE OF A WARRANTED ITEM, INCLUDING WITHOUT LIMITATION, USE OF WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR WITHOUT ROUTINELY MAINTAINING A WARRANTED ITEM. CUSTOMER SHALL PROMPTLY NOTIFY INTERGRAPH OF ANY SUSPECTED DEFECTS IN COVERED PRODUCTS DELIVERY MEDIA. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTERGRAPH AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES, COVERED PRODUCTS, AND UPDATES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. INTERGRAPH DOES NOT WARRANT THAT ANY SERVICES, COVERED PRODUCTS, AND UPDATES PROVIDED PURSUANT TO THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS, AND UNDER NO CIRCUMSTANCES DOES INTERGRAPH WARRANT THAT ANY SERVICES, COVERED PRODUCTS, AND UPDATES WILL OPERATE UNINTERRUPTED OR ERROR FREE. IF ANY PART OF THIS DISCLAIMER OF EXPRESS OR IMPLIED WARRANTIES IS RULED INVALID, THEN INTERGRAPH DISCLAIMS EXPRESS OR IMPLIED WARRANTIES TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

17. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INTERGRAPH OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OR PRODUCTION, LOSS OF REVENUE OR PROFIT, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION, CLAIMS OF THIRD PARTIES OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THIS AGREEMENT, EVEN IF INTERGRAPH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. INTERGRAPH'S ENTIRE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO INTERGRAPH DURING THE PAST TWELVE MONTHS UNDER THIS AGREEMENT AS OF THE DATE THE EVENT GIVING RISE TO THE CLAIM OCCURS. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NO CLAIM, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN TWO (2) YEARS FOLLOWING THE INITIAL EVENT GIVING RISE TO THE CAUSE OF ACTION. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. IF ANY PART OF THIS SECTION IS HELD INVALID, THEN INTERGRAPH LIMITS ITS LIABILITY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

18. TERMINATION

This Agreement may only be terminated prior to its expiration in the following ways:

- 18.1. Either party petitions for reorganization under the Bankruptcy Act or is adjudicated as bankrupt, or a receiver is appointed for the other party's business.
- 18.2. Customer fails to pay Intergraph any amount when due (i) under this Agreement; or (ii) under any other agreement between the parties.
- 18.3. Customer's license to the Covered Products for which Customer has purchased Services is terminated.

19. RESTRICTIONS

- 19.1. **Non-Solicitation of Employees.** Customer agrees that it will not, without the prior written consent of Intergraph, solicit or hire any Intergraph employee, or induce such employee to leave Intergraph's employment, directly or indirectly, during the term of this Agreement and for a period of twelve (12) months after the Agreement expires or is terminated. Customer agrees that a breach of this provision would cause actual and substantial damages to Intergraph such that it would be very difficult to calculate actual damages. Accordingly, any such breach will entitle Intergraph to recover liquidated damages from Customer in the amount equal to one (1) year of the affected employee's annual salary plus benefits for each such breach, as well as expenses, costs, and reasonable attorneys' fees incurred by Intergraph in seeking enforcement of this Agreement. Customer agrees that the foregoing amount is intended to be, and in fact is, a reasonable estimate of the actual damages that would be incurred by Intergraph if Customer were to breach this provision, and that this amount is not intended to be, and in fact is not, a penalty. In addition, Intergraph shall be entitled to equitable or injunctive relief to prevent further breaches. For purposes of this Section, the term "employee" means employees of Intergraph and/or any Intergraph subsidiary and/or any of Intergraph's subcontractors who directly support Customer.
- 19.2. **United States Government Restricted Rights.** If a Covered Product (including any Updates, documentation or technical data related to such Covered Products) is licensed, purchased, subscribed to or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Section also applies.
 - 19.2.1. For civilian agencies: The Covered Product was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with the Federal Acquisition Regulations ("FAR") 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).
 - 19.2.2. For units of the Department of Defense ("DoD"): The Covered Product was developed at private expense and is "commercial computer software" submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations ("DFARS") DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).
 - 19.2.3. Notice: The Covered Product is "commercial computer software" as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes "technical data" as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this "commercial computer software" shall be in strict accordance with the manufacturer's standard commercial license, which is attached to and incorporated into the governing Government contract.

Intergraph and any applicable Third Party Software manufacturers are the manufacturers. This Covered Product is unpublished and all rights are reserved under the Copyright Laws of the United States.

- 19.3. Export Restrictions. All Software Products and all Third Party Software (including any Updates, documentation or technical data related to such software products) licensed, purchased, subscribed to or obtained, directly or indirectly, from Intergraph, its subsidiaries or distributors (collectively, "Export Controlled Products") are subject to the export control laws and regulations of the United States. Diversion contrary to United States law is prohibited. The Export Controlled Products, and the direct product thereof, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

19.3.1. To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.

19.3.2. To any person or entity listed on any United States government denial list, including but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists (www.bis.doc.gov/complianceand enforcement/liststocheck.htm), the U.S. Department of Treasury Specially Designated Nationals List (www.treas.gov/offices/enforcement/ofac/), and the U.S. Department of State Debarred List (<http://www.pmddtc.state.gov/compliance/debar.html>).

19.3.3. To any entity if Customer knows, or has reason to know, the end use of the Export Controlled Product is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.

19.3.4. To any entity if Customer knows, or has reason to know, that an illegal reshipment will take place.

Any questions regarding export or re-export of an Export Controlled Product should be addressed to Intergraph Corporation's Export Compliance Department, 19 Interpro Road, Madison, Alabama, United States 35758 or at exportcompliance@intergraph.com.

20. TAXES

All charges under this Agreement are exclusive of each and every country's federal, provincial, state, municipal, or other governmental, withholding, excise, sales, use, value added or other taxes, tariffs, custom duties and importing fees ("Taxes"). Customer shall be liable for, and shall indemnify and hold Intergraph harmless from and against, any and all Taxes. Taxes shall expressly exclude any federal, state, municipal, or other governmental income taxes, franchise taxes, business license fees and other like taxes measured by Intergraph's income, capital and/or assets. The total invoice amount for charges under this Agreement is subject to increase by the amount of any Taxes which Intergraph is required to withhold, collect, or pay regarding the transactions under this Agreement so that Intergraph receives the full amount of the charges on Intergraph's invoices. Any certificate to exempt the Agreement from tax liability or other documentary evidence of statutory exemption shall be obtained by Customer at Customer's expense.

21. GENERAL

21.1. Third Party Providers. Intergraph reserves the right to provide Services through a third party provider.

21.2. Entire Agreement. The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. The Agreement supersedes any and all prior

discussions and/or representations, whether written or oral, relating to the subject matter of the Agreement and no reference to prior dealings may be used in any way modify the expressed understandings of the Agreement. Intergraph does not accept any contradictory or additional terms and conditions, even by accepting a purchase order referencing different terms and conditions. The Agreement may be amended only by a written instrument signed by authorized representatives of both parties, and cannot be amended by subsequent purchase order or writing received from Customer without the express written consent of Intergraph. Any reproduction of the Agreement made by reliable means (for example, photocopy or facsimile) will be deemed an original.

- 21.3. Order of Precedence. In the event of a conflict between the documents that form the Agreement, the order of precedence will be as follows: (i) any addenda executed by Intergraph and Customer, with the latest addendum taking precedence over any earlier addenda; (ii) the Quote; and (iii) these Terms and Conditions.
- 21.4. Severability. Whenever possible, each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. However, if any provision of the Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Agreement.
- 21.5. Headings. The various headings in these Terms and Conditions are inserted for convenience only and shall not affect the meaning or interpretation of these Terms and Conditions or any section or provision of these Terms and Conditions.
- 21.6. No Waiver. Any failure by either party to enforce performance of the Agreement shall not constitute a waiver of, or affect said party's right to avail itself of, such remedies as it may have for any subsequent breach of the terms of the Agreement.
- 21.7. Notices. Any notice or other communication ("Notice") required or permitted under the Agreement shall be in writing and either delivered personally or sent by overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. A Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent. A Notice that is sent by certified mail or registered mail shall be deemed given forty-eight (48) hours after it is mailed. If any time period in this Agreement commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given. Intergraph's address for Notices is Intergraph Corporation, 19 Interpro Road, Madison, Alabama 35758, Attn: SG&I Contracts, M/S IW17A1.
- 21.8. Assignment. Neither party shall have the right to assign any of its rights nor delegate any of its obligations under this Agreement without the prior written consent of the other party, except that Intergraph may assign its rights and obligations under this Agreement, without Customer's approval, to (i) an entity which acquires all or substantially all of the assets of Intergraph or the Intergraph division providing a product or service under this Agreement; (ii) an entity which acquires all or substantially all of the Software Products or product line assets subject to this Agreement; or (iii) any subsidiary, affiliate or successor in a merger or acquisition of Intergraph. Any attempt by Customer to sublicense, assign or transfer any of Customer's rights or obligations under this Agreement, except as expressly provided in this Agreement, is void.
- 21.9. Force Majeure. Except for payment obligations under the Agreement, neither party shall be liable for any failure to perform or observe any of its obligations under this Agreement

for as long as and to the extent that such performance is prevented or hindered by any circumstances beyond its reasonable control. By way of example, and not limitation, such causes may include acts of God or public enemies; labor disputes; acts of local, state, or national governments or public agencies; utility or communications failure; fire; flood; epidemics; riots; or strikes. The time for performance of any right or obligation delayed by such events will be postponed for a period equal to the delay. If, however, a party is subject to a force majeure that endures for more than sixty (60) calendar days, the other party has a right to terminate the Agreement upon providing thirty (30) calendar days prior written notice to the party subject to the force majeure.

- 21.10 **Governing Law.** This Agreement shall for all purposes be construed and enforced under and in accordance with the laws of the State of Alabama and shall be deemed to have been accepted in Madison, Alabama, United States. The parties agree that any legal action or proceeding relating to this Agreement shall be instituted in the Circuit Court for Madison County, Alabama, or the United States District Court for the Northern District of Alabama, Northeastern Division. The parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceedings. This Agreement shall not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 21.11 **Waiver of Jury Trial.** Intergraph and Customer each hereby waive, to the fullest extent permitted by applicable law, any right either may have to a trial by jury for any legal proceeding arising, directly or indirectly, out of or relating to this Agreement.
- 21.12 **Injunctive Relief; Cumulative Remedies.** Customer acknowledges and agrees that a breach of the Agreement by Customer could cause irreparable harm to Intergraph for which monetary damages may be difficult to ascertain or may be an inadequate remedy. Customer agrees that Intergraph will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any breach of the Agreement by Customer, and Customer expressly waives any objection that Intergraph has or may have an adequate remedy at law with respect to any such breach. The rights and remedies set forth in this Agreement are cumulative and concurrent and may be pursued separately, successively or together.
- 21.13 **Attorneys' Fees and Costs.** In the event of any legal proceeding arising out of or relating to this Agreement, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs for all such legal proceedings, including for trial and all levels of appeal.
- 21.14 **Governing Language.** The controlling language of this Agreement is English. If Customer has received a translation into another language, it has been provided for Customer's convenience only.
- 21.15 **Survival.** The provisions of the Agreement which require or contemplate performance after the expiration or termination of the Agreement shall be enforceable notwithstanding said expiration or termination.

SGI-092410b



Security, Government & Infrastructure (SG&I) ADDENDUM to the U.S. Maintenance Terms and Conditions for Software

This Addendum ("Addendum") to the SG&I U.S. Maintenance Terms and Conditions for Software ("Terms and Conditions") consists of this cover page, the additional terms and conditions on the next page, and the additional Scopes of Coverage marked below (the "Additional Scopes"). This Addendum modifies the Agreement (comprised of the Terms and Conditions and the Quote) between Customer and Intergraph to include the Additional Scopes. By signing this Addendum the parties agree to be bound by the terms of this Addendum. Once signed, 1) the parties agree any reproduction of the Addendum made by reliable means (for example, photocopy or facsimile) is considered an original, and 2) the Agreement is subject to it.

This Addendum replaces all prior oral or written communications between the parties regarding the Additional Scopes. This Addendum shall only modify, alter or waive those specific provisions or language of the Terms and Conditions addressed or referred to herein regarding the Additional Scopes, with all other provisions of the Terms and Conditions remaining in full force and effect, and reflecting the continued intent of the parties for Services of Covered Products.

This Addendum shall be incorporated into the Terms and Conditions and construed and interpreted according to the entirety of the Terms and Conditions. This Addendum shall remain effective for the term of the Agreement, unless terminated earlier.

Scopes of Coverage

If checked below, the following Scopes of Coverage are made a part of the Agreement:

- ☐ System Optimization Funds
- ☒ Custom Interface Software Services
- ☐ Third Party Hardware Services

In witness whereof, the parties have hereto executed this Addendum as of the date of execution by Intergraph.

**Intergraph Corporation, doing business as the,
Security, Government & Infrastructure Division**

Signature: Trey Sampson

Printed Name: Trey Sampson

Title: Contract Administrator

Date: 3/2/2015

Flagstaff AZ City of

Signature: Jennifer Brown

Printed Name: Jennifer Brown

Title: Support Services Manager

Date: May 18, 2015

ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions apply to the items identified in this Addendum. In case of conflict between any of the parts of the Terms and Conditions, the order of precedence shall be as follows: 1) any addenda executed by the Customer and Intergraph, with the latest addendum taking precedence over any earlier addenda in which a conflict may appear; and 2) the unmodified Terms and Conditions.

Section 1, DEFINITIONS of the Terms and Conditions is modified by adding the following definitions:

- 1.12 "System Optimization Funds" means amount included on the Quote to cover expenses for services related to Customer's Intergraph system during the Coverage Period that are otherwise considered Excluded Services under the Agreement.
- 1.13 "Custom Interface Software" means one or more software interfaces previously developed by Intergraph for Customer that work in conjunction and function with specific Covered Products (the specific Covered Products hereinafter referred to as the "Interfaced Covered Products").
- 1.14 "Third Party Hardware" means the hardware products of any entity other than Intergraph Corporation that are listed on the Quote and for which services are offered.

Scope of Coverage for System Optimization Funds

Upon Customer's request and prepayment of System Optimization Funds, Intergraph will establish an account for Customer's System Optimization Funds.

1. Designation of System Optimization Funds

Once payment is received by Intergraph, Intergraph will hold System Optimization Funds as advance payment for future purchases of goods and services not provided for under the Agreement, which may include installation of Upgrades, user group registration fees, upgrade of Custom Interface Software, and/or training and installation of Custom Interface Updates (as defined in part 1.(c) of the Scope of Coverage for Custom Interface Software Services).

2. Quote and Statement of Work for Use of System Optimization Funds

Upon the request of the Customer, Intergraph will provide to the Customer a quotation and statement of work detailing the scope of proposed services against which System Optimization Funds are to be applied.

3. Use of System Optimization Funds

If Customer accepts the quotation and statement of work by signing and returning to Intergraph the quotation and statement of work, Intergraph will deliver the proposed services detailed in the statement of work according to a mutually agreed schedule, and will credit the quoted amount against Customer's System Optimization Funds balance. In the event the accepted quotation exceeds the balance of System Optimization Funds held in account for Customer by Intergraph, Customer shall provide a purchase order to Intergraph for the amount of the quotation in excess of Customer's System Optimization Funds balance before Intergraph shall undertake any effort identified in the particular statement of work.

4. Expiration of System Optimization Funds

Unused System Optimization Funds expire on a three (3) year rolling basis from the date of receipt.

Scope of Coverage for Custom Interface Software Services

1. CUSTOM INTERFACE SOFTWARE SERVICES

Intergraph will provide services for Custom Interface Software, subject to the following.

- (a) Services are limited to Custom Interface Software listed on the Quote.
- (b) Intergraph will provide Help Desk support to the Customer for Custom Interface Software commensurate with the level of Help Desk support of the Interfaced Covered Products.
- (c) Intergraph will provide updates, upgrades, fixes, patches and/or enhancements for Custom Interface Software only to the extent required for Custom Interface Software to function with Updates of Interfaced Covered Products (such updates, upgrades, fixes, patches and enhancements of Custom Interface Software are referred to as the "Custom Interface Updates").

2. EXCLUDED CUSTOM INTERFACE SOFTWARE SERVICES

Support for the following are outside of the scope of coverage for Custom Interface Software services and may be available through a separate agreement for which Intergraph will provide a quotation at Intergraph's prevailing rates:

- (a) Upgrades, updates, fixes and enhancements of Custom Interface Software that are requested by the Customer (other than those specified in Section 1.0., part (c) above).
- (b) Upgrades, updates, fixes and enhancements of Custom Interface Software for the purpose of operating with third party software or systems.
- (c) Installation of Custom Interface Software or Custom Interface Updates.

Scope of Coverage for Third Party Hardware Services

THIRD PARTY HARDWARE SERVICES

Calls from Customer for Third Party Hardware services shall be passed by Intergraph directly to the third party manufacturer of the hardware or their designated service representative (the "Service Provider"). Third Party Hardware services are provided to the Customer by the Service Provider in accordance with the Service Provider's support policies. Intergraph has no obligation for Third Party Hardware services other than to pass Customer's support call to the Service Provider.

Services for any third party hardware that are not listed on the Quote must be obtained by Customer directly from the Service Provider.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Thomas Bolyen, Water Production Manager
Co-Submitter: Patrick Brown
Date: 08/26/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Approval of Contract: Installation of an Emergency Generator at Fort Tuthill Well located within the Coconino County Fairgrounds (***Approve contract with Commonwealth Electric Company in the amount of \$506,500.00***).

RECOMMENDED ACTION:

- 1) Approve construction contract with Commonwealth Electric Company for \$506,500.00, and a contract time of sixty (60) calendar days.
- 2) Authorize change order authority to the City Manager in the amount of \$50,650.00 (10% of contract amount).
- 3) Authorize City Manager to execute the necessary documents.

Executive Summary:

The Fort Tuthill Well is the largest producing well in the City's inventory producing upwards of 3 million gallons per day. This facility is the first water production facility to be equipped with emergency back-up generation in order to provide the community with water during an extended power outage. The City of Flagstaff water production facilities rely upon a single source of electrical power provided by Arizona Public Service. In the event of a catastrophic forest fire, mechanical failure or statewide emergency, this single source exposes the Utilities Division's ability to provide water to our customers during an extended power outage. Our reservoir system can currently provide approximately 1.5 days of water during the summer months without power before we begin to compromise life safety assuming no additional water is needed to fight a structure or forest fire. Additionally, many of our water production facilities are constantly impacted by power supply interruptions during monsoon lightning events. It is a common standard practice nationally that utility's maintain emergency back-up power generation at key critical facilities in the event of an extended emergency power outage. The installation of the back-up generator at Fort Tuthill Well is the first step in Utilities Division's ongoing quest to become more resilient and prepared for extreme conditions.

Financial Impact:

This project has been funded through the Utilities Fund's Operations and Maintenance Budget. Funds are budgeted in account 202-08-301-1014-0-4402 \$125,000.00 and account 202-08-301-1020-0-4405 \$375,000.00. Remainder of the needed funds to be provided by the Water Production Operating Budget.

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

- 2) Ensure Flagstaff has a long-term water supply for current and future needs
- 3) Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics

REGIONAL PLAN GOALS:

Chapter VI, WR.2.1, Develop and adopt an integrated water master plan that addresses water resources, water production and its distribution, wastewater collection and its treatment, and reclaimed water treatment and its distribution. Chapter VI, Policy WR.2.2, maintain and develop facilities to provide reliable, safe, and cost-effective water, wastewater and reclaimed water services

Has There Been Previous Council Decision on This:

No

Options and Alternatives:

- 1) Award the contract to Commonwealth Electric Company as the lowest responsive, responsible bidder.
- 2) Do not award this contract and request staff to re-bid the project.
- 3) Do not approve this request increasing the city's risk during an emergency or sustained loss of power for insufficient fire protection.

Background/History:

Fort Tuthill Well Pump Station is a modern well and pumping facility located in south Flagstaff adjacent to the Coconino County Fair Grounds. This well is our largest producing individual well with a capacity of 1.4 MGD with disinfection capability. It is the largest single water source for our limited funding, and will impact the largest segment of the population.

Staff issued a solicitation for construction bids, and was advertised on June 14 and June 21, 2015. Four bids were received by the opening date of June 29, 2015, and Commonwealth Electric Company was determined to be the lowest responsive responsible bidder. A tabulation of bids received is summarized below in the Expanded Financial Considerations.

Key Considerations:

The Flagstaff water system is very robust in its sources and facilities which are a definite advantage for problems internal to the city's electrical grid, but all the water services for the City of Flagstaff rely on a single source of power coming up the mountain. The allocation of electricity from another provider or an additional mountain source of electrical power is currently unavailable. Our only power source provided by APS is from a single substation susceptible to mechanical failure, lightning, wild fire, and statewide emergency. During heavy monsoons we are constantly challenged by interruptions in our power supply. A sustained long term power outage or actual emergency that may impact the power distribution grid leaves the city vulnerable limiting our ability to pump or provide any reliable water and storage supplies will become depleted.

Expanded Financial Considerations:

Power requirements are significant and require 750 KW of power for most city wells. All available water sources will require generators to be operational in a power outage.

Tabulation of Bids:

<u>Contractor</u>	<u>Bid</u>
Commonwealth Electric Co.	\$506,500.00
LE Ludvik Electric	\$509,315.00
N.J. Shaum & Son, Inc.	\$537,904.00
TSG Constructors, LLC	\$587,000.00

Community Benefits and Considerations:

Allowing the community water supply to become more resilient when it comes to electrical outages.

Community Involvement:

None

Expanded Options and Alternatives:

Approve and implement more generator installations as a continuing strategic initiative to become power independent during a regional emergency

Attachments: Construction Contract
 PowerPoint

CONSTRUCTION CONTRACT

City of Flagstaff, Arizona and Commonwealth Electric Company of the Midwest

This Construction Contract ("Contract") is made and entered into this ____ day of _____ 2015, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and Commonwealth Electric Company of the Midwest, an Arizona corporation ("Contractor") with offices at 3901 East Winslow Avenue, Phoenix, Arizona. Contractor and the Owner may be referred to each individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Owner desires to obtain construction and installation services; and
- B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

NOW, THEREFORE, the Owner and Contractor agree as follows:

1. Scope of Work. The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of **Fort Tuthill Well Station Generator Installation Project** (the "Project"). Contractor shall construct the Project for the Owner in a good, workmanlike and substantial manner and to the satisfaction of the Owner through its engineers and under the direction and supervision of the City Engineer, or his properly authorized agents including but not limited to project managers and project engineers. Contractor's work shall be strictly pursuant to and in conformity with the Contract.

- 1.1 A Pre-Construction Conference will be held with the successful Contractor after the Notice of Award is issued. The date and time of the Conference will be agreed upon between the Contractor and the Engineer. The meeting will be held at City Hall, 211 West Aspen Avenue, Flagstaff, AZ 86001. The purpose of the meeting is to outline specific construction items and procedures that the City of Flagstaff (the "Owner") feels require special attention on the part of the Contractor. The Contractor may also present any variations in procedures to improve the workability of the Project, reduce the cost, or reduce inconvenience to the public. The Contractor shall submit a written proposal at this conference outlining intended plans for pavement replacement, maintaining continuous access to residences and businesses along the construction site, and traffic control.

2. Contract; Ownership of Work. Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with this Contract; Construction Plans; Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and

Specifications; the latest version of the Maricopa Association of Governments (“MAG”) Specifications for Public Works Construction and City revisions to the MAG Specifications for Public Works Construction (“Exhibit A”); and any Arizona Department of Transportation (A.D.O.T.) Standards that may be referenced on the Plans or in the specifications, incorporated in this Contract by reference, plans and associated documents. All provisions of the Invitation for Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders and Field Orders, if any, are hereby incorporated into this Contract. All materials, work, specifications and plans shall be the property of the Owner.

The following exhibits are incorporated by reference and are expressly made a part of this Contract:

2.1.1 Revisions of MAG Standard Specifications for Public Works Construction Exhibit A
 (“Flagstaff Addendum to MAG”)

2.1.2 Special Provisions Exhibit B

3. Payments. In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed **\$506,500.00** to the Contractor for work and materials provided in accordance with the bid schedule, which amount includes all federal, state, and local taxes, as applicable. This amount shall be payable through monthly progress payments, subject to the following conditions:

- 3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials;
- 3.2 Progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Contract prices of labor and material, and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the Owner, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the Owner, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the Owner determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Contract;
- 3.3 The City Engineer shall have the right to finally determine the amount due to Contractor;
- 3.4 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;
- 3.5 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;

3.6 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

4. Time of Completion. Contractor agrees to complete all work as described in this Contract within **sixty (60) calendar days** from the date of the Owner's Notice to Proceed free of all liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or persons, in the manner and under the conditions specified within the time or times specified in this Contract.

5. Performance of Work. All work covered by this Contract shall be done in accordance with the latest and best accepted practices of the trades involved. The Contractor shall use only skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

6. Acceptance of Work; Non Waiver. No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials which are not strictly in accordance with the Contract.

7. Delay of Work. Any delay in the performance of this Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of the Contractor and not caused by any wrongful act or negligence of the Contractor shall entitle the Contractor to an extension of time equal to the delay so caused. The Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in Section 14 below (Contract Violations).

8. Failure to Complete Project in Timely Manner. If Contractor fails or refuses to execute this Contract within the time specified in Section 4 above, or such additional time as may be allowed, the proceeds of Contractor's performance guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to perform this Contract as required. If Contractor has submitted a certified check or cashier's check as a performance guaranty, the check shall be returned after the completion of this Contract.

9. Labor Demonstration. It is understood that the work covered by this Contract is for the Owner's business purposes and that any unfavorable publicity or demonstrations in connection with

the work will have a negative effect upon the Owner. If Contractor's actions in performance of the Contract result in any public demonstration on behalf of the laborers or organized labor in the vicinity of the Owner's premises, whether such demonstration is in the form of picketing, posting of placards or signs, violence, threats of violence or in any other form, which in the Owner's judgment, might convey to the public the impression that the Owner or the Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate this Contract immediately, unless the Contractor shall have caused such demonstration to be discontinued within two (2) days after request of the Owner to do so. In the event any such demonstration is attended by violence, the Owner may fix lesser time within which a discontinuance shall be accomplished. In the event of Contract termination, the Contractor agrees to remove from the Premises within twenty-four (24) hours of termination, all machinery, tools, and equipment belonging to it or to its subcontractors. All obligations or liabilities of the Owner to the Contractor shall be discharged by such termination, except the obligation to pay to the Contractor a portion of the Contract price representing the value based upon the Contract prices of labor and materials incorporated in the work as established by the Owner, less the aggregate of all previous payments, but subject to all of the conditions pertaining to payments generally.

10. Material Storage. During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at his or her own expense. The Contractor shall at all times keep the premises reasonably free from debris and in a condition which will not increase fire hazards. Upon completion of the work, the Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials and supplies belonging to the Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of any temporary construction yard, material storage area or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit A, Section 107.2.1.)

11. Maintenance during Winter Suspension of Work. A "Winter Shutdown" is the period of time typically including December through March during which no Work will be performed by any person or entity (including but not limited to the Contractor) on the Project and Contractor shall shutdown, properly insulate and shelter the Project in a safe and workmanlike manner pursuant to local, state and federal laws. Although December through March is typically the time frame, the City reserves the right to initiate and terminate a Winter Shutdown at the City's sole discretion in the event of adverse weather conditions. A Winter Shutdown may be declared by the City despite delays, *for any reason*, on the Project. City retains the right to declare a Winter Shutdown. If work has been suspended due to winter weather, the Contractor shall be responsible for maintenance and protection of the improvements and of partially completed portions of the work until final acceptance of the project. Winter Shutdown shall be by field order, change order or original contract. If repairs and/or maintenance are needed during the Winter Shutdown, the Contractor is required to perform the repairs and/or maintenance within twenty-four (24) hours of notification from the City. If the needed repairs and/or maintenance are not addressed within the timeframe, the City will accomplish the work and deduct the cost from monies due or become due to the Contractor.

The City shall provide snow removal operations on active traffic lanes only during the Winter Shutdown. All other snow removal and maintenance operations shall be the responsibility of the Contractor during the Winter Shutdown. All cost associated with snow removal and proper disposal shall be considered incidental to the work including repair of temporary surface improvements due to normal wear and snow removal operations during the Winter Shutdown.

12. Assignment. Contractor shall not assign this Contract, in whole or in part, without the prior written consent of the Owner. No right or interest in this Agreement shall be assigned, in whole or in part, by Contractor without prior written permission of the City and no delegation of any duty of Contractor shall be made without prior written permission of the City. The City shall not unreasonably withhold consent to such assignment. Contractor agrees that any assignment agreement between Contractor and the Assignee shall include and subject to the assignee to all obligations, terms and conditions of this Agreement and that Contractor shall also remain liable under all obligations, terms and conditions of this Agreement.

13. Notices. Many notices or demands required to be given, pursuant to the terms of this Contract, may be given to the other Party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested at the address set forth below *and* to legal counsel for the party to whom the notice is being given.

If to Owner:

Patrick Brown, C.P.M.
Senior Procurement Specialist
211 West Aspen Avenue
Flagstaff, AZ 86001

If to Contractor:

Joe Graham
Vice President
3901 E. Winslow Avenue
Phoenix, AZ 85040

14. Contract Violations. In the event of any of the provisions of this Contract are violated by the Contractor or by any of Contractor's subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract (the "Notice to Terminate"). The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner's notice of termination, the Owner may complete the work at the expense of the Contractor, and the Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work. If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances and plants as may be on the worksite site and necessary for completion of the work.

15. Termination for Convenience. The Owner may terminate this contract at any time for any reason by giving at least **thirty (30) days** written notice to the Contractor. If termination occurs under this Section 15, the Contractor shall be paid fair market value for work completed by Contractor as of the date of termination. The parties agree that fair market value shall be determined based on the Contractor's original bid price, less any work not yet completed by the Contractor as of the date the written notice of termination is given to the Contractor.

16. Contractor's Liability and Indemnification. To the fullest extent permitted by law, Provider shall indemnify, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against liabilities, damages, losses and costs, including reasonable attorney fees, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of the contractor, subcontractor or design professional or other persons employed or used by the contractor, subcontractor or design professional in the performance of the contract. The amount and type of insurance coverage requirements set forth in the Contract (Section 103.6 of Exhibit A) will in no way be construed as limiting the scope of the indemnity in this paragraph.

17. Non Appropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner to meet the Owner's obligations under this Contract, the Owner will notify Contractor in writing of such occurrence, and this Contract will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Contract are exhausted. No payments shall be made or due to the other party under this Contract beyond these amounts appropriated and budgeted by the Owner to fund the Owner's obligations under this Contract.

18. Amendment of Contract. This Agreement may not be modified or altered except in writing and signed by duly authorized representatives of the parties.

19. Subcontracts. Contractor shall not enter into any subcontract, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, prior written approval shall have been given by the Owner. Contractor shall be fully responsible to the Owner for acts and omissions of Contractor's subcontractors and all persons either directly or indirectly employed by them.

20. Cancellation for Conflict of Interest. This Contract is subject to the cancellation provisions of A.R.S. § 38-511.

21. Compliance with All Laws. Contractor shall comply with all applicable laws, statutes, ordinances, regulations and governmental requirements in the performance of this Contract.

22. Employment of Aliens. Contractor shall comply with A.R.S. § 34-301, which provides that a person who is not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal public works project.

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

24. Contractor's Warranty. Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A, Verification of Employment Eligibility. Contractor shall not employ aliens in accordance with A.R.S. § 34-301, Employment of Aliens on Public Works Prohibited. Contractor acknowledges that pursuant to A.R.S. § 41-4401, Government Procurement; E-Verify Requirement; Definitions, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this Contract, and that the Owner retains the legal right to inspect the papers of any employee who works on the Contract to ensure compliance with this warranty.

25. Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. The Contractor hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

26. Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

27. Time is of the Essence. Contractor acknowledges that the completion of the Contract by the dates specified final completion is critical to the Owner, time being of the essence of this Contract.

28. No Third Party Beneficiaries. The parties acknowledge and agree that the terms, provisions, conditions, and obligations of this Contract are for the sole benefit of, and may be enforceable solely by, the Parties to this Contract, and none of the terms, provisions, conditions, and obligations of this Contract are for the benefit of, or may be enforced by, any person or entity not a party to this Contract.

29. Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Contract.

30. Severability. If any part of this Contract is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

IN WITNESS WHEREOF, the Owner and Contractor, by their duly authorized representatives, have executed this Contract as of the date written above.

(Please sign in blue ink. Submit original signatures – photocopies not accepted)

Owner, City of Flagstaff

**Commonwealth Electric Company of the
Midwest**

Josh Copley, City Manager

Signature

Attest:

Printed Name

City Clerk

Title

Approved as to form:

City Attorney

Emergency Power Continuity of Operations Plan

Council Meeting September 1, 2015

By

Utilities Division
Water Production



What is our Tolerance for Risk?

Nationally

Public Health Security and Bioterrorism Preparedness and Response Act of 2002 - Asked Utilities to prepare and think critically about their infrastructure and emergency response plans

Arizona

AZWARN (state-wide equipment sharing agreement)

Flagstaff

Internal Preparedness Planning: How best to maintain Continuity of Operations? (e.g., Resiliency and Preparedness Plan – 2012)

- Incident-Specific Emergency Action Procedures: What to do with complete loss of APS Power?



Why be Prepared?

Maximum Potable Water Storage Capacity: 22.70 MGD

10-year average Peak Demand: 12.6 MGD will last 1.8 days in Summer

Our critical water needs in Flagstaff: Flagstaff Medical Center, Fire Protection, Potable Water for cooking and drinking

Causes for electrical power interruptions include: Extreme Storms & Heat, Flooding, Tornado, Electrical Grid Instabilities & Wildfires

September 8, 2011 – Arizona, California & Mexico ~12 hour outage affecting 5 million people due to a single APS worker in Yuma

December 11-24, 2008 - New Hampshire, ~2 week outage due to severe ice storm

Caused Boil Water Advisory, restaurant closures, etc. in numerous affected communities

Future? Wildfires burn transmission power lines into Flagstaff, well fields, etc.



Emergency Back-Up Wastewater

Wildcat Hill WRP has 2 diesel powered emergency back-up generators in order to prevent a health and environmental calamity by not discharging raw sewage into the Rio de Flag.



Emergency Back-Up Water

No emergency back-up power exists for any water production facility (Lake Mary WTP, wells or booster pumps). Utilities owns a semi-truck mounted diesel generator and second trailer mounted switch gear.



Generator for a single well
1000 kW

Continuity of Operations

Critical Utilities infrastructure to maintain Continuity of Operations for water & sewer service

- **Fort Tuthill Well** Capacity 1.4 MGD: *Proposed Generator for Council decision tonight*
- **Shop Well** Capacity 1.2 MGD Re-locate existing semi-truck generator, hard-wire into well electronics
- **Wildcat Hill WRP** Capacity 6 MGD Generators already on-site



Utilities Division Continuity of Operation Strategy

Minimize risk and protect the community in the event of a catastrophic loss of power and bring Flagstaff in-line with national American Water Works Association recommendations

~5 days average water use in the summer with the implementation of emergency notification & water conservation efforts



City Council Questions?

- What is the worst case scenario not having this pump and the current one goes down?
- Do the seasons make a difference if it goes down (i.e. winter versus summer)?
- Do we not have other water resources to accommodate need in the event the generator goes down?
- What is the likelihood of the current generator going down?



City Council Questions?

- If the current generator went down, would we (or portion of Flagstaff) be without water? And at what rate (e.g. 3m gallons a day)? And do we have an idea how long we would be without water?
- What is the cost of renting a generator from a local vendor in an emergency situation versus the \$509K we are wanting to spend?
- Have we identified local vendors that can supply a generator in an emergency situation?
- Talk about the reason or need for spending \$509K on this generator.



CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Gail Jackson, Business Attraction Manager
Co-Submitter: Stacey Brechler Knaggs
Co-Submitter: Stacey Brechler-Knaggs, Grants Manager
Date: 08/26/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Approval of Contract Amendments: Innovation Mesa Business Accelerator and Secondary Emergency Operations Center, Business Incubator and Service Agreement. (Amendments to leases and service agreements with NACET).

RECOMMENDED ACTION:

Authorize the city to amend the existing master leases and service agreement with NACET for the service provided to the Business Incubator and Accelerator; both city owned facilities on McMillan Mesa.

Executive Summary:

The following changes are administrative changes for the Agreement for Services:

- Updated insurance language to be compliant with current city policy.

The following changes are administrative changes for the Accelerator Master Lease:

- The address for the accelerator should read 2201 N. Gemini.
- Updated leasable square feet now that the building is built.
- Updated leasable rates based on square footage and compliance with pro forma. Rates will be approved annually by the Management Service or Finance Director in order to meet the pro-forma required.
- Updated the cleaning of the common space from weekly cleanings to customary janitorial services schedule.
- Updated insurance language to be compliant with current city policy.

The following changes are administrative changes for the Incubator Master Lease:

- Tenant agrees to submit monthly instead of quarterly invoices to the City based upon actual expenses incurred during the term of this Agreement. Tenant will also submit with its invoices a balance sheet and profit and loss statement for each such month.
- Updated insurance language to be compliant with current city policy.

Financial Impact:

The city of Flagstaff received funding through the Economic Development Administration (EDA), Arizona Commerce Authority (ACA) and Northern Arizona University (NAU) for the design and construction of the Business Incubator and Accelerator. The City of Flagstaff will issue bonds which will be repaid through lease proceeds.

The financial obligation of the city of Flagstaff remains the same. The Business Incubator will be compensated for services performed and costs incurred not to exceed \$220,000 per fiscal year. The Business Accelerator will receive \$45,000 in year 1 and increases annually by \$5,000 per year until year four. These costs as well as the additional operational costs are anticipated to be fully supported through lease revenues by year five. Financial commitments are budgeted in the Economic Development Fund.

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

#3: Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics.

REGIONAL PLAN:

ED 3: Regional economic development partners support the start-up, retention and expansion of existing business enterprises.

ED 4: Support efforts to recruit diverse new businesses and industries compatible with the region.

ED 7: Continue to promote and enhance Flagstaff's unique sense of place as an economic development driver.

Has There Been Previous Council Decision on This:

Yes, in September 2008, as well as January 2015 subsequent amendments were approved by City Council authorizing the service agreement and master lease for the Business Incubator and Accelerator. City Council approved the EDA grant application, grant award and the design and construction contracts for the Business Accelerator over the last two years.

Options and Alternatives:

1. Approve amendments to the Service Agreement and both Master Leases and continue existing operational services with NACET.
2. Do not approve amendments to the Service Agreement and both Master Leases and continue existing operational services with NACET.

Background/History:

The Science and Technology Park was conceived in 2003. In 2004 bonds in the amount of \$61.2 million were approved by the voters to advance the project. The debt is to be paid with lease revenues and not secondary property taxes. McMillan Mesa was chosen as an ideal site due to the existing USGS campus. A Science Park Master plan was developed around 2005 and determined the need for a Business Incubator for entrepreneurs and business starts-ups.

The Business Incubator was constructed in 2008 and the Business Accelerator followed in 2014. Both facilities are currently operated by Northern Arizona Center for Entrepreneurship and Technology (NACET). The Business Accelerator also serves as an alternate secondary emergency operations center for first responders to efficiently deliver vital services to communities and tribal nations during disasters.

Community Involvement:

Collaborate

Attachments: First Amendment to Agreement for Services NACET
 First Amendment to Master Lease Incubator
 First Amendment to Master Lease Accelerator

**AGREEMENT FOR SERVICES FOR THE BUSINESS INCUBATOR AND
ACCELERATOR**

**CITY OF FLAGSTAFF
and
NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., DBA
NACET**

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

THIS FIRST AMENDMENT TO AGREEMENT FOR SERVICES ("FIRST AMENDMENT") is entered into this ____ day of _____, 2015, by and between the City of Flagstaff (the "City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider"), an Arizona corporation, with offices at 2225 North Gemini Drive, Flagstaff, Arizona, 86001, as further set forth below.

RECITALS

A. Landlord and Provider are parties to an Agreement for Services dated February 9, 2015, respecting that building located at 2225 North Gemini Drive in the City of Flagstaff, Arizona, which building is commonly known as the Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider").

B. The Landlord and Provider now desire to amend the Agreement for Services on the terms and conditions contained in this First Amendment.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement for Services as follows:

Section 1. Amendments. The Agreement for Services is hereby amended as follows:

(A) Section 5.2 and 5.3 of the Agreement for Services are hereby amended and replaced in their entirety as follows:

5.2. Insurance. Provider shall procure and maintain, for the duration of the Lease, insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Provider, Provider's agents, representatives, employees or contractors, and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Provider from liabilities that might arise out of this Lease, and Provider is free to

purchase such additional insurance as Provider may determine is necessary.

5.2.1. Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits not less than those stated below.

5.2.1.1. Commercial General Liability - Occurrence Form

General Aggregate -- \$2,000,000

Each Occurrence -- \$1,000,000

5.2.1.2. Workers' Compensation and Employer's Liability

Workers' Compensation -- Statutory

Employer's Liability: Each Accident -- \$500,000

Disease - Each Employee -- \$500,000

Disease - Policy Limit -- \$500,000

5.2.2. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Landlord.

5.2.3. Umbrella/Excess Liability

Umbrella/Excess Liability insurance with a limit of not less than \$4,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.

5.2.4. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

5.2.4.1. Commercial General Liability.

5.2.4.1.1. Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Evidence of insurance and formal endorsements to that effect shall be current and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

5.2.4.1.2. Coverage provided by Provider shall not be limited to the liability assumed under the indemnification provisions of this Lease.

5.2.4.2. Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Provider's operations, occupancy and use of the Premises subject to this Lease.

5.2.5. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

5.2.6. Acceptability of Insurers. Provider shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

5.3. Liability Insurance. Provider agrees to procure and maintain at its own cost and expense, during the entire term of this Agreement and any extensions thereof, comprehensive public liability insurance covering the Premises, which insurance shall also name Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Premises, Provider will provide Master Lessor with certificates of such insurance and appropriate endorsements, satisfactory to Master Lessor, evidencing Provider's compliance with the requirements of this **Section 5.3**.

Section 2. No Further Modification. Except as specifically modified and amended pursuant to the terms of this First Amendment, the Lease shall remain in full force and effect, and the terms and conditions thereof are hereby ratified and affirmed by the parties thereto.

Section 3. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 4. Effective Date. This Amendment shall be effective as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to Master Lease as of the date first above written.

City of Flagstaff

**Northern Arizona Technology & Business
Incubator, Inc., dba NACET (Provider)**

Gerald Nabours, Mayor

Annette Zinky, President and CEO

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution:_____

FIRST AMENDMENT
TO BUSINESS INCUBATOR MASTER LEASE

THIS FIRST AMENDMENT TO BUSINESS INCUBATOR MASTER LEASE ("FIRST AMENDMENT") is entered into this ____ day of _____, 2015, by and between the City of Flagstaff (the "City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider"), an Arizona corporation, with offices at 2225 North Gemini Drive, Flagstaff, Arizona, 86001, as further set forth below.

RECITALS

A. Landlord and Provider are parties to the Business Incubator Master Lease dated January 1, 2015, respecting that building located at 2225 North Gemini Drive in the City of Flagstaff, Arizona, which building is commonly known as the Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider")

B. The Landlord and Provider now desire to amend the Business Incubator Master Lease on the terms and conditions contained in this First Amendment.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Business Incubator Master Lease as follows:

Section 1. Amendments. The Business Incubator Master Lease is hereby amended as follows:

- 5.2 **Insurance Requirements**. In addition to the requirements in *Section 7* of this Lease, Tenant shall not engage in or permit any activity which will cause the cancellation of, or increase the existing premiums on, any insurance relating to the Premises. Tenant shall not permit to remain in or about the Premises any article that may be prohibited by the broadest form of "All Risk" or "Special Form" property damage insurance.

7. WAIVER, INDEMNITY AND TENANT'S INSURANCE.

- 7.1 **Assumption and Waiver**. Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant equipment and other personal property:

- 7.1.1. All-risk casualty loss insurance with respect to all Improvements constructed by Tenant on the Premises,
- 7.1.2. Any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks;
- 7.1.3. The disrepair of any equipment;
- 7.1.4. The bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises;
- 7.1.5. The backup of any sewer pipe or down spout;
- 7.1.6. The escape of steam or hot water;
- 7.1.7. Water, snow or ice;
- 7.1.8. The falling of any fixture, plaster or stucco;
- 7.1.9. Broken glass; and
- 7.1.10. Any unauthorized or criminal entry of third parties within the Premises.

7.2 **Indemnification.**

7.2.1 **Tenant's Indemnification of Landlord.** To the fullest extent permitted by law, the Tenant agrees to indemnify, defend, save and hold harmless Landlord, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnatee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") including but not limited to, personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Tenant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent acts of the Indemnatee, be indemnified by Tenant for, from and against any and all Claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

7.3. **Environmental Indemnification of Landlord by Tenant.** Tenant shall defend, indemnify, and hold harmless Landlord for, from and against any and all future claims, demands, complaints and/or actions made or brought against Landlord pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under CERCLA, WQARF, RCRA, and federal and state common law pertaining to Hazardous Materials, including any such claim based upon Landlord's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.

7.4. **Insurance.** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Tenant, Tenant's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Tenant from liabilities that might arise out of this Lease, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

7.4.1. **Minimum Scope and Limits of Insurance.**

7.4.1.1. **Commercial General Liability - Occurrence Form**

General Aggregate -- \$2,000,000
Each Occurrence -- \$1,000,000

7.4.1.2. **Workers' Compensation and Employer's Liability**

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

7.4.2. **Other Insurance Requirements.** The policies shall contain, or be endorsed to contain, the following provisions:

7.4.2.1. **Commercial General Liability Coverage.**

7.4.2.1.1. Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured.

Evidence of insurance and formal endorsements to that effect shall be current and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

7.4.2.1.2. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

7.4.2.2. **Workers' Compensation and Employee's Liability Coverage.** The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

7.4.3. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

7.4.4. **Acceptability of Insurers.** Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

S U B L E A S E

11. **INDEMNIFICATION OF SUBLESSOR AND MASTER LESSOR.** To the fullest extent permitted by law, the Sublessee agrees to indemnify, defend and hold harmless Sublessor and the Master Lessor for, from and against any and all penalties, costs, expenses (including attorneys' fees), claims, demands and causes of action arising out of or in connection with any accident or other occurrence in or on the common areas (including without limiting the generality of the term "common areas," and "common areas," including but not limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC), the use of which Sublessee may have in conjunction with other tenants and occupants of the Premises, when such injury or damage shall be caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Sublessee, its agents, servants, employees, invitees, visitors, permittees, customers, clients, guests or tenants.

12. **INSURANCE.**

12.1 Insurance. Sublessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Sublessee, Sublessee's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Master Lessor and Sublessor do not represent or warrant that the minimum limits set forth herein are sufficient to protect Sublessee from liabilities that might arise out of this Lease, and Sublessee is free to purchase such additional insurance as Sublessee may determine is necessary.

12.2 Minimum Scope and Limits of Insurance. Sublessee shall provide coverage at least as broad and with limits not less than those stated below.

12.2.1. Commercial General Liability - Occurrence Form

General Aggregate -- \$2,000,000
Each Occurrence -- \$1,000,000

12.2.2. Workers' Compensation and Employer's Liability

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

12.2.3. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Master Lessor and Sublessor.

12.2.5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

12.2.5.1. Commercial General Liability Coverages.

12.2.5.2 Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Evidence of insurance and formal endorsements to that effect shall be current and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

12.2.5.2.1. Coverage provided by Sublessee shall not be limited to the liability assumed under

the indemnification provisions of this Lease.

12.2.5.3. Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Master Lessor and Sublessor, its officials, officers, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.

12.2.5. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Master Lessor and Sublessor.

12.2.6. Acceptability of Insurers. Sublessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Master Lessor and Sublessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

12.3. Liability Insurance. Sublessee agrees to procure and maintain at its own cost and expense, during the entire term of this Sublease and any extensions thereof, comprehensive public liability insurance covering the Subleased Premises, which insurance shall also name Sublessor and Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Subleased Premises, Sublessee will provide Sublessor with certificates of such insurance and appropriate endorsement, satisfactory to Sublessor, evidencing Sublessee's compliance with the requirements of this ***Section 12.3.***

Section 2. No Further Modification. Except as specifically modified and amended pursuant to the terms of this First Amendment, the Lease shall remain in full force and effect, and the terms and conditions thereof are hereby ratified and affirmed by the parties thereto.

Section 3. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 4. Effective Date. This Amendment shall be effective as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to Master Lease as of the date first above written.

City of Flagstaff

**Northern Arizona Technology & Business
Incubator, Inc., dba NACET (Provider)**

Gerald Nabours, Mayor

Annette Zinky, President and CEO

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution:_____

FIRST AMENDMENT
TO BUSINESS ACCELERATOR MASTER LEASE

THIS FIRST AMENDMENT TO BUSINESS ACCELERATOR MASTER LEASE ("FIRST AMENDMENT") is entered into this ____ day of _____, 2015, by and between the City of Flagstaff (the "City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider"), an Arizona corporation, with offices at 2225 North Gemini Drive, Flagstaff, Arizona, 86001, as further set forth below.

RECITALS

A. Landlord and Provider are parties to the Business Accelerator Master Lease dated January 1, 2015, respecting that building located at 2225 North Gemini Drive in the City of Flagstaff, Arizona, which building is commonly known as the Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider")

B. The Landlord and Provider now desire to amend the Business Accelerator Master Lease on the terms and conditions contained in this First Amendment.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Business Accelerator Master Lease as follows:

Section 1. Amendments. The Business Accelerator Master Lease is hereby amended as follows:

RECITALS

B. Pursuant to the terms of the Grant, Landlord has constructed, equipped and furnished an approximate 28,000 square foot LEED facility on that parcel of real property located at 2201 North Gemini Drive in the city of Flagstaff, Arizona, which building is commonly known as Innovation Mesa Business Accelerator Facility (the "Premises").

D. Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord for the purpose of the operation for research and development, science, technology and clean energy focused business accelerator for the benefit of Landlord, Tenant and the citizens of the city of Flagstaff and the State of Arizona. In connection therewith, subject to the limitations and other provisions of this Lease, the parties hereto acknowledge that the Tenant intends to sublease portions of the Premises to third parties for the purpose of the development of

technology and science startups, Tier 2 companies, and entrepreneurs meeting the objectives of the Grant, a copy of which has been provided to Tenant.

3.1 **Rent.** At the times and in the manner set forth herein, Tenant shall pay to Landlord as rent for the Premises ("Rent") the sum of the following amounts:

3.1.1. **Rental Agent/Calculation of Rents.** NACET will act as the Rental Agent for the City of Flagstaff, refer to section 3.4. A Rental Rate Sheet which meets the City pro-forma will be submitted by NACET and approved annually by the Landlord or designated agent. In addition, NACET will levy a 6% common area (such as conference room, policy room, collaborative space, kitchen, etc.) charge to each tenant's base rent. NACET will collect these rents per the terms and conditions noted in the Sublease Agreement. The Base Rent payable shall be calculated on July 1 by the increase (if any) (on a percentage basis) in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U), USA City Average (1982 – 84 =100) ("Index") for the prior month and applied on annual anniversary date. In addition, the City of Flagstaff will monitor utility usage and costs on an annual basis and reserves the right to make adjustments based on mutual consent.

5.2 **Insurance Requirements.** In addition to the requirements in *Section 7* of this Lease, Tenant shall not engage in or permit any activity which will cause the cancellation of, or increase the existing premiums on, any insurance relating to the Premises. Tenant shall not permit to remain in or about the Premises any article that may be prohibited by the broadest form of "All Risk" or "Special Form" property damage insurance.

7. WAIVER, INDEMNITY AND TENANT'S INSURANCE.

7.1 **Assumption and Waiver.** Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant equipment and other personal property:

7.1.1. All-risk casualty loss insurance with respect to all Improvements constructed by Tenant on the Premises,

7.1.2. Any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks;

7.1.3. The disrepair of any equipment;

7.1.4. The bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises;

7.1.5. The backup of any sewer pipe or down spout;

- 7.1.6. The escape of steam or hot water;
- 7.1.7. Water, snow or ice;
- 7.1.8. The falling of any fixture, plaster or stucco;
- 7.1.9. Broken glass; and
- 7.1.10. Any unauthorized or criminal entry of third parties within the Premises.

7.2 **Indemnification.**

7.2.1 **Tenant's Indemnification of Landlord.** To the fullest extent permitted by law, the Tenant agrees to indemnify, defend, save and hold harmless Landlord, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnatee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") including but not limited to, personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Tenant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent acts of the Indemnatee, be indemnified by Tenant for, from and against any and all Claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

- 7.3. **Environmental Indemnification of Landlord by Tenant.** Tenant shall defend, indemnify, and hold harmless Landlord for, from and against any and all future claims, demands, complaints and/or actions made or brought against Landlord pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under CERCLA, WQARF, RCRA, and federal and state common law pertaining to Hazardous Materials, including any such claim based upon Landlord's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.

- 7.4. **Insurance.** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Tenant, Tenant's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Tenant from liabilities that might arise out of this Lease, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

7.4.1. **Minimum Scope and Limits of Insurance.**

7.4.1.1. **Commercial General Liability - Occurrence Form**

General Aggregate -- \$2,000,000
Each Occurrence -- \$1,000,000

7.4.1.2. **Workers' Compensation and Employer's Liability**

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

- 7.4.2. **Other Insurance Requirements.** The policies shall contain, or be endorsed to contain, the following provisions:

7.4.2.1. **Commercial General Liability Coverage.**

7.4.2.1.1. Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Evidence of insurance and formal endorsements to that effect shall be current and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

7.4.2.1.2. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

7.4.2.2. **Workers' Compensation and Employee's Liability Coverage.** The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

7.4.3. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

7.4.4. **Acceptability of Insurers.** Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

13.2 **Minimum Sublease Occupancy Requirement.** Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby acknowledge and agree that, as a material part of the consideration to Landlord for its execution of this Lease, Tenant shall, commencing upon the first anniversary of the Commencement Date, and continuing thereafter through the duration of the Term, and each Extension Term, as applicable, maintain a minimum number of Subtenants within the Premises occupying these minimum amounts of leasable square footage for the following years: Year 1 (partial and/or full) - 25% of leasable square footage or 4,706 square feet; Year 2 - 50% of leasable square footage or 9,412square feet; Year 3 - 75% of leasable square footage or 14,117 square feet; Year 4 and subsequent years - 80% of leasable square footage or 15,058square feet, exclusive of any space occupied by Tenant for Tenant's offices and "common areas," including but limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC, the "Minimum Sublease Occupancy Requirement"). Except by mutual agreement otherwise between the parties, at any time after the first anniversary of the Commencement Date, if Tenant fails to satisfy the Minimum Sublease Occupancy Requirement for a period of ninety (90) consecutive days or more, Landlord shall have the right, but not the obligation, to elect to terminate or extend this Lease by written notice to Tenant. In the event that Landlord terminates the lease, all further rights, duties and obligations of the parties hereunder shall terminate, except with respect to any continuing indemnity obligations of the parties hereunder.

14. **MAINTENANCE AND UTILITIES.**

14.1 **Obligations of the Landlord.** The Landlord will be responsible to set up and pay the utilities including electric, gas, water, wastewater/sewer, storm

water, environmental management fee, natural gas, electricity, power, telephone, public internet access which includes equipment and Internet Service (EOC/conference room, policy room and collaborative space), trash removal, recyclables and all other services or utilities used within or about the Premises by the Tenant or any Subtenant. The Landlord will monitor above mentioned utility costs and reserves the right to amend the terms. The Landlord will provide janitorial services, including supplies and pest control as agreed upon through the Landlord's service contracts. Any enhanced janitorial services requested by NACET and/or the Tenant(s) is NACET or the Tenant(s) responsibility. The Landlord will be responsible for any structural maintenance. Tenants will be responsible to pay for any and all excessive or careless damages outside of normal wear and tear. The Landlord will provide weekly cleaning service for common areas, and the Tenants shall furnish and clean their own leased areas. The Landlord will be responsible for maintenance of the exterior landscaping and shall be responsible for snow removal from the sidewalks and parking areas.

24. **NOTICES.** No notice, consent, approval or other communication given in connection herewith shall be validly given, made, delivered or served unless in writing and delivered in person or sent by registered or certified United States mail, postage prepaid, to the parties at the following addresses:

To Tenant:	NACET
	2201 N. Gemini Dr.
	Flagstaff, Arizona 86004
	Attn: President/CEO

- 25.4 **No Waiver.** No delay or omission of Landlord to exercise any right or power shall impair any such right or powers or shall be construed to be a waiver of any nonperformance by Tenant or acquiescence therein. No waiver of any nonperformance shall be effective unless it is in writing. No written waiver by Landlord shall be deemed to be a waiver of any other Lease provision, or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the procurement of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved.

S U B L E A S E

11. **INDEMNIFICATION OF SUBLESSOR AND MASTER LESSOR.** To the fullest extent permitted by law, the Sublessee agrees to indemnify, defend and hold harmless Sublessor and the Master Lessor for, from and against any and all penalties, costs, expenses (including attorneys' fees), claims, demands and causes of action arising out of or in connection with any accident or other occurrence in

or on the common areas (including without limiting the generality of the term "common areas," and "common areas," including but not limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC), the use of which Sublessee may have in conjunction with other tenants and occupants of the Premises, when such injury or damage shall be caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Sublessee, its agents, servants, employees, invitees, visitors, permittees, customers, clients, guests or tenants.

12. INSURANCE.

12.1 Insurance. Sublessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Sublessee, Sublessee's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Master Lessor and Sublessor do not represent or warrant that the minimum limits set forth herein are sufficient to protect Sublessee from liabilities that might arise out of this Lease, and Sublessee is free to purchase such additional insurance as Sublessee may determine is necessary.

12.2 Minimum Scope and Limits of Insurance. Sublessee shall provide coverage at least as broad and with limits not less than those stated below.

12.2.1. Commercial General Liability - Occurrence Form

General Aggregate -- \$2,000,000
Each Occurrence -- \$1,000,000

12.2.2. Workers' Compensation and Employer's Liability

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

12.2.3. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Master Lessor and Sublessor.

12.2.5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

12.2.5.1. Commercial General Liability Coverages.

12.2.5.2 Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Evidence of insurance and formal endorsements to that effect shall be current and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

12.2.5.2.1. Coverage provided by Sublessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.

12.2.5.3. Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Master Lessor and Sublessor, its officials, officers, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.

12.2.5. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Master Lessor and Sublessor.

12.2.6. Acceptability of Insurers. Sublessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Master Lessor and Sublessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

12.3. Liability Insurance. Sublessee agrees to procure and maintain at its own cost and expense, during the entire term of this Sublease and any extensions thereof, comprehensive public liability insurance covering the Subleased Premises, which insurance shall also name Sublessor and Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Subleased Premises, Sublessee will provide Sublessor with certificates of

such insurance and appropriate endorsement, satisfactory to Sublessor, evidencing Sublessee's compliance with the requirements of this *Section 12.3*.

Section 2. No Further Modification. Except as specifically modified and amended pursuant to the terms of this First Amendment, the Lease shall remain in full force and effect, and the terms and conditions thereof are hereby ratified and affirmed by the parties thereto.

Section 3. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 4. Effective Date. This Amendment shall be effective as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to Master Lease as of the date first above written.

City of Flagstaff

**Northern Arizona Technology & Business
Incubator, Inc., dba NACET (Provider)**

Gerald Nabours, Mayor

Annette Zinky, President and CEO

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution:_____

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Mark Gaillard, Fire Chief
Date: 08/26/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Approval of Contract: An IGA between the City of Flagstaff and the Westwood Estates Fire District for Fire Medical Rescue services ***(Approve IGA with Westwood Estates Fire District for fire and emergency medical services).***

RECOMMENDED ACTION:

Approve the IGA between the City of Flagstaff and the Westwood Estates Fire District.

Executive Summary:

The City of Flagstaff has provided contractual services to the Westwood Estates Fire District since 1997. This IGA continues the provision of Fire Medical Rescue services to the District from the City of Flagstaff. The proposed IGA represents a reduction in revenue from the previous IGA of approximately \$202,020.80 over the 5 year term. This 40% reduction equates to an annual reduction of approximately \$40,404. Two factors are attributed to the significant reduction in IGA terms. 1) The 2010 IGA was negotiated with pre-recession assessed values and an annual inflator. 2) City Code has been adjusted since the IGA to provide a consistent methodology for the determination of fees. The recently approved Lockett Ranch Fire District IGA used the same City Code methodology to determine conditions for costs. (Flagstaff City Code Chapter 5-01, Fire Limits)

Financial Impact:

The base annual contract rate of 60,512.05 over the life of the five year agreement is \$302,560.25. (Annually, the base rate will be adjusted in accordance with the Consumer Price Index)

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS:

Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics

Has There Been Previous Council Decision on This:

City Council authorized the most recent IGA with Westwood Estates in July of 2010.

Options and Alternatives:

1. Approve the IGA as presented. Continue services to Westwood Estates Fire District.
2. Amend the IGA and Direct Staff to negotiate different terms with the Westwood Estates Fire District.
3. Disapprove the IGA and cease the provision of Fire Medical Rescue services to Westwood Estates Fire District.

Key Considerations:

The City of Flagstaff has provided fire medical rescue services to the Westwood Estates Fire District since 1997 under the provisions of an IGA. The IGA provides general fund revenue for the City of Flagstaff in return for fire medical rescue services for the district. The District receives a level of services that would be difficult to attain given its smaller size (tax base) and Flagstaff receives equitable reimbursement for service without the necessity of adding staffing or equipment. (Note: Over the course of the previous 5 year IGA, the Flagstaff Fire Department responded to 4 requests for service.)

Community Involvement:

Inform

Attachments: [2015 IGA COF WEFD](#)
 [Westwood Estates FD Map](#)

After recording, return to:

City Clerk
Flagstaff City Hall
211 W. Aspen Avenue
Flagstaff, AZ 86001

INTERGOVERNMENTAL AGREEMENT
between
City of Flagstaff
and
Westwood Estates Fire District

This intergovernmental agreement (“Agreement”) is entered into this ____ day of _____, 2015, between the City of Flagstaff (“CITY”), an Arizona municipal corporation, with offices at 211 West Aspen Avenue, Flagstaff, Arizona, on behalf of the Flagstaff Fire Department (“DEPARTMENT”), and the Westwood Estates Fire District (the “DISTRICT”), a political subdivision of the State of Arizona, created pursuant to A.R.S. §48-261, with offices at 3951 Westwood Circle, Flagstaff, Arizona 86001 Flagstaff, Coconino County, Arizona. DISTRICT and the CITY may be referred to as a Party or, collectively, as the Parties in this Agreement.

RECITALS

A. The DISTRICT, a political subdivision formed pursuant to A.R.S. § 48-261, seeks to obtain fire and emergency medical services for the residents of its district and is authorized to do so by A.R.S. § 48-805(7).

B. The CITY, through its DEPARTMENT, operates, manages and maintains fire and emergency medical services.

C. The DISTRICT desires that the CITY, through the DEPARTMENT, provide fire and emergency medical services for incidents occurring within the boundary response area of the DISTRICT.

D. The CITY is authorized to enter into agreements to provide fire protection and emergency medical services by Flagstaff City Code Section 5-01-001-0003 and is willing to provide such services to the DISTRICT in accordance with the terms of this Agreement.

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements for services among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. Duration and Termination of Agreement.

This Agreement shall become effective upon execution by the parties. The DEPARTMENT will

begin service to the DISTRICT at 12:01 AM on _____, 2015, and, subject to early termination or renewal as provided below, will continue to provide services as described in this Agreement to the DISTRICT with the Agreement terminating at 11:59 PM on _____, 2020. If the parties reach agreement under Section 4.1.3, they shall amend this Agreement to extend the duration for five (5) years, with the Agreement terminating on _____, 2025. The CITY shall also have the right to terminate this Agreement upon written notice thereof to DISTRICT in the event the DISTRICT fails to make any payment due the CITY under this Agreement within thirty (30) calendar days after receiving written notice from the City that such payment is past due.

2. Level of CITY Services

The CITY, through the DEPARTMENT, agrees to provide fire and emergency medical services to the DISTRICT, twenty-four (24) hours a day, seven (7) days a week as follows:

2.1. Personnel. All DEPARTMENT response personnel will be certified as firefighters under state of Arizona guidelines and certified to the minimum level of Emergency Medical Technician. All response personnel will have been trained to the operations level for Hazardous Materials.

2.2 Staffing Levels. Each fire apparatus responding to an incident within the DISTRICT will be staffed with a minimum of three fire/emergency medical services personnel (collectively, "One Unit"). On confirmed structural fires or larger wild land fires, additional units will be dispatched, as well as a Chief Officer who will assume command operations. A two (2) person rescue vehicle may respond to calls for emergency medical services if it is the closest fire unit available. A two (2) person rescue vehicle may also respond as part of a full force contingent for fire related events.

2.3 Station Locations and Response Assignments. The DEPARTMENT will provide services to the DISTRICT in a manner consistent with that provided within the City of Flagstaff. The DEPARTMENT will not have equipment or personnel stationed at existing or proposed Westwood Estates facilities. The initial response to a structure fire will be a complement of fire companies and a Chief Officer that will provide a minimum of fourteen (14) personnel. An automatic fire alarm sounding will receive a One Unit response and an emergency medical services request will receive the closest available unit which could be an engine or a two (2) person rescue vehicle response. The CITY and the DISTRICT both acknowledge, response times to the DISTRICT will vary, depending upon the circumstances of each call and availability of emergency response units.

2.2.1 The CITY may alter staffing assignments, the type of equipment responding, and service levels provided to the DISTRICT if such changes are consistent with changes in CITY practices and procedures.

2.4 Emergency Communications Center (911). The DISTRICT will make every effort to ensure that its residents direct all requests for assistance to the combined City/County Emergency 911 Dispatch Center. This facility is staffed and operated by trained emergency

dispatchers 24 hours a day, seven days per week. All communications are time-stamped and radio transmissions are voice recorded. Dispatchers maintain constant contact with responding and on-scene personnel to provide support and to dispatch additional resources.

2.5 Fuel Management. The DEPARTMENT will assist groups or businesses within the DISTRICT, such as homeowners' associations, developers and others, with the development and implementation of fuel management maintenance plans and will provide periodic assessments of the plans. The DEPARTMENT will report to the DISTRICT any maintenance or storage concerns that it may observe.

2.6 Hydrant Testing. The DEPARTMENT will conduct annual hydrant maintenance testing on all fire hydrants within the DISTRICT with permission of the appropriate water company. The DEPARTMENT will notify the DISTRICT and the appropriate water company in writing with regard to any problems or repair work that is necessary. The DISTRICT will cooperate with the DEPARTMENT and with the appropriate water company to seek to insure that all hydrants are functional and can provide the necessary fire flow to meet the design of the protection system in the DISTRICT. In no event will the DEPARTMENT be liable for any injury, damages or other loss resulting from a failure of the fire hydrants within the DISTRICT to provide the necessary fire flow to meet the design of the protection system in the DISTRICT.

2.7 Road Access. The DISTRICT will cooperate with the DEPARTMENT to ensure that all roadways have clear access for emergency response vehicles. In no event will DEPARTMENT be liable for any injury, damages or other loss resulting from a failure of the DISTRICT to provide clear access for the DEPARTMENT'S emergency response vehicles.

2.8 Personnel and Equipment Shortages. DISTRICT acknowledges and agrees that the occurrence of a major fire, several concurrent fires, other emergency, reduction in force, road closure, or other situation resulting in a shortage of available personnel or equipment may cause DEPARTMENT to respond with fewer units or personnel than specified above. The DISTRICT further acknowledges that the DEPARTMENT may request assistance from its mutual aid partners to assist with responses in a manner consistent with operations within the City.

2.9 Response Time. DISTRICT acknowledges and agrees that DEPARTMENT response times are subject to variations due to existing weather conditions, travel distance for fire units already engaged elsewhere, traffic conditions, property identification and the provision of standard access and routing information to property or individuals, and that under these circumstances DEPARTMENT may be unable to respond, or be delayed in responding, to an emergency call in the DISTRICT.

3. Disposition of Property

During the term of this Agreement any property purchased by the CITY with its own funds will remain the property of the CITY, and any property purchased by the DISTRICT with its own funds will remain the property of the DISTRICT.

4. Fee for Service.

4.1 The DEPARTMENT will provide the services described in this Agreement for the fees described below:

Pursuant to Flagstaff City Code, Section 5-01-001-003, the fee shall be determined as follows:

Westwood Estates Fire District's Assessed Valuation for 2015 / 100 x City's combined primary and secondary tax rates x 18% = Base Rate.

Westwood Estates Fire District's Base Rate shall be as follows:

$$\$3,055,374 \text{ (AV)} / 100 = \$30,553.74$$

$$\$30,553.74 \times 1.6784 = \$51,281.40$$

$$\underline{\$51,281.40 \times 18\%} = \$9,230.65$$

$$\text{BASE CONTRACT RATE} = \$60,512.05$$

4.2. The Base Contract Rate shall be increased on an annual basis by an amount equal to the Consumer Price Index for all Urban Consumers using the U.S. City average. In no event shall the Base Contract Rate be reduced in any subsequent year as a result of a decrease in the CPI-U.

4.3 Method of Payment. The DISTRICT shall make payments in full by _____, 2015, and thereafter fifty percent (50%) of the total annual amount shall be due no later than November 15 and May 15 each year.

4.3.1 Late Payment. All amounts due from the DISTRICT to the CITY that are not paid by DISTRICT when due shall be subject to a penalty of ten percent (10%) of the amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid.

4.4 Equipment Purchases. The CITY will be solely responsible for the purchase of its equipment, if any, and will make such purchases within its discretion.

5. Liability and Indemnification

5.1 Force Majeure. The CITY, the DEPARTMENT and their agents, officials and employees, shall not be liable to the DISTRICT for failure to comply with any of the terms and conditions of this Agreement where any failure to comply is caused by an act of God, court order, government regulation or requirement, strike or labor difficulty, fire, flood, windstorm, breakdown or other damage to equipment, power failure or any other cause beyond the reasonable control of the CITY.

5.2 The City desires to serve the District in a manner consistent with service extended to any part of the City's Fire Protection System that provides coverage to residents of the City of Flagstaff, its Mutual Aid Partners, and contract/IGA holders. However, the CITY shall not be liable to the DISTRICT or DISTRICT's residents for failure to comply with any of the terms and conditions of this Agreement where any failure to comply arises from CITY requirements to

provide services to any or all parts of the entire service system, including its own residents, Mutual Aid Partners, or contract/IGA holders within its jurisdictional limits.

5.3 Indemnification. Each party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other party (as “Indemnatee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (collectively referred to as “Claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnatee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

6. Dispute Resolution

6.1 Litigation and Attorneys Fees. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys’ fees and court costs from the non-prevailing party.

7. Notices

Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given shall be in writing and sent to the address given below for the party to be notified, or to such other address notice of which is given:

If to CITY:

Mark Gaillard, Fire Chief
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

If to DISTRICT:

_____, Chairperson
Westwood Estates Fire District Board
3951 Westwood Circle
Flagstaff, Arizona 86001

Copy to:

City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

8. General Provisions

8.1 Status of Employees. Employees of the respective parties shall not be considered employees or agents of the other, and the CITY and the DISTRICT agree that they shall retain sole responsibility and authority over their respective employees.

8.2 Authorization to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has

taken all required acts or actions necessary to authorize the same.

8.3 Integration; Modification. Each party acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes the parties' entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement signed by or for both parties and recorded by the County Recorder, and any modification or amendment will become effective on the date so specified, but no earlier than the date of the recording by the County Recorder.

8.4 Cancellation for Conflict of Interest. Pursuant to A.R.S. §38-511, either the CITY or DISTRICT may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other party of the Agreement in any capacity or as a consultant to the other party of the Agreement with respect to the subject matter of this Agreement.

8.5 Waiver. No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a party to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

8.6 Termination for Lack of Funds. The DISTRICT agrees to levy in good faith an amount sufficient to pay for the services to be provided by the CITY under this Agreement. If the DISTRICT determines, based upon the County Treasurer's tax collection data, and the City concurs that there will not be sufficient tax revenues available to the DISTRICT to pay the fee for services described in this Agreement, the DISTRICT may terminate this Agreement by giving the CITY ninety (90) days' notice of the lack of available funds. Termination of this Agreement will not relieve the DISTRICT of the obligation to pay the CITY the pro rata portion of the annual amount due before the termination date of the Agreement. In the event of termination, CITY agrees to refund to DISTRICT on a pro rata basis fees paid by DISTRICT in advance for any period following the date of termination.

8.7 Non-Discrimination. The Parties shall comply with the provisions of Arizona Executive Order 2009-09 which is incorporated by reference as if fully set forth in this Agreement.

8.8 Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. Sec. 41-4401, each Party warrants to the other Party that the warranting Party and its subcontractors, if any, are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. Sec. 23-214(A). The Parties acknowledge that a breach of this warranty by a Party or any of its subcontractors is a material breach of this Agreement subject to penalties up to and including termination of this

Agreement or any subcontract. Each Party retains the legal right to inspect the papers of any employee of the other Party or any subcontractor who works on this Agreement to ensure compliance with this warranty.

8.9 Compliance with All Laws. Both Parties will comply with all applicable Federal, State, County and City laws, regulations and policies.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written above.

City of Flagstaff

Westwood Estates Fire District

Gerald W. Nabours, Mayor

Shawn Winiecki, Chairperson

Attest:

Attest:

City Clerk

Attorney's Approval:

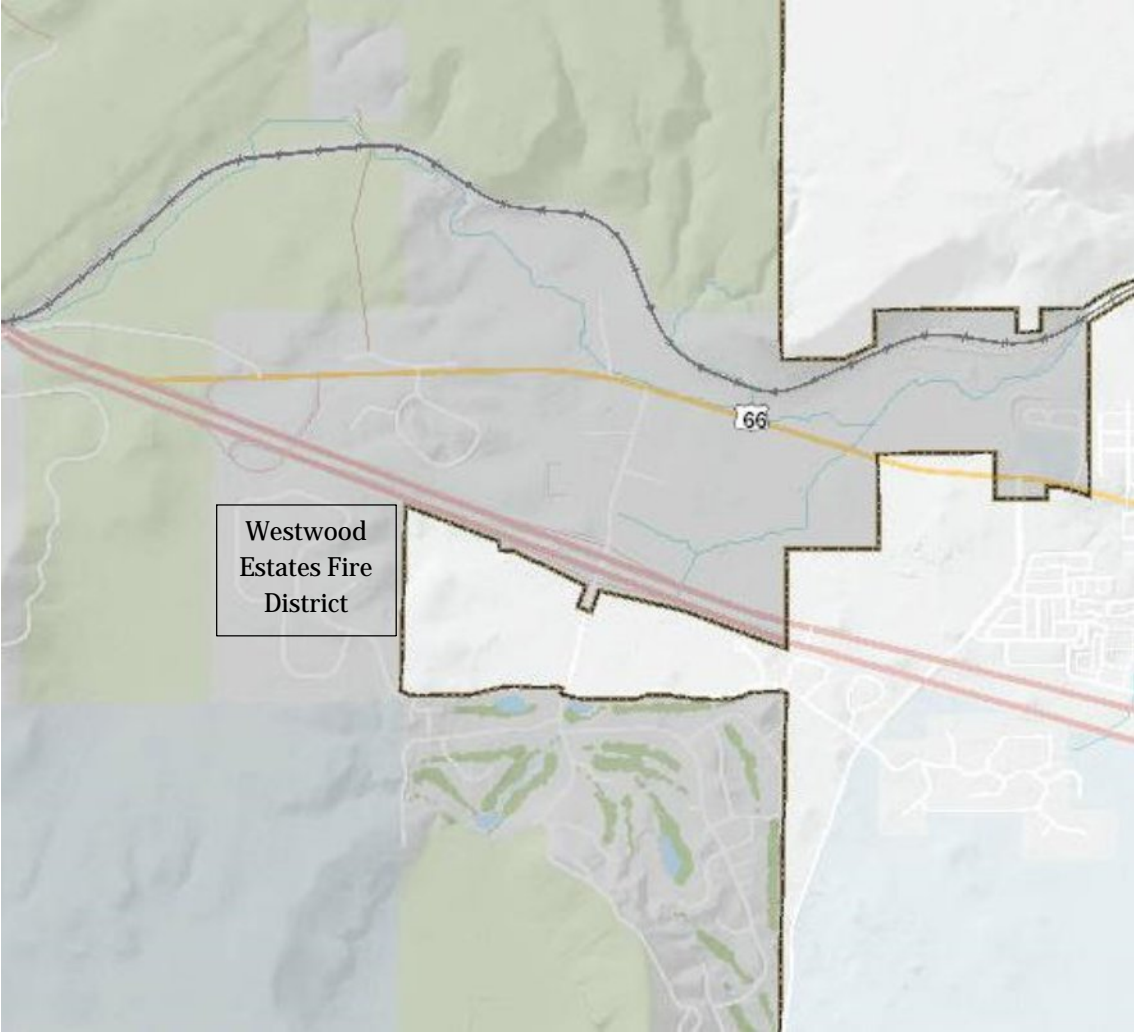
Approved, pursuant to A.R.S. § 11-952(D), as being in proper form and within the powers and authority granted under the laws of this State.

Attorney's Approval:

Approved, pursuant to A.R.S. § 11-952(D), as being in proper form and within the powers and authority granted under the laws of this State.

City Attorney

Attorney for the DISTRICT





CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: David Wessel, Metro Planning Org Manager
Co-Submitter: Di Ann Butkay, Buyer
Date: 08/24/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Approval of Contract: Roads & Streets Operations and Maintenance Efficiency Study RFP 2015-70 (*Approve contract with LA Consulting, Inc. in the amount of \$197,769*).

RECOMMENDED ACTION:

Award the contract for the Roads & Streets Operations and Maintenance Efficiency Study RFP 2015-70 to LA Consulting, Inc. of Manhattan Beach, CA in the amount of \$197,769.

Executive Summary:

The Road & Streets Operations and Maintenance Efficiency Study will provide a full evaluation and needs assessment for these activities in the City and County Public Works Departments. LA Consulting has performed more than 80 such studies and has a track record of improving client productivity. Modernization of management systems will be implemented and areas for further cooperation between the agencies explored. Funding is provided through the Flagstaff Metropolitan Planning Organization. Contract management will be performed by the City Public Works Department.

Financial Impact:

The cost of the contract is \$197,769. Funds are through a federal grant to the Flagstaff MPO. The process will take approximately 17-months to complete because of the extensive field work and intensive implementation regime. The prospects for improved efficiency are unknown at this time. Real-world examples of saving hundreds of thousands of dollars annually and more exist resulting in a high probability that the pay-back period on this investment will be short.

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
- 6) Relieve traffic congestion throughout Flagstaff
- 11) Ensure that we are as prepared as possible for extreme weather events

REGIONAL PLAN:

- T.5.3 "...build and maintain [necessary pedestrian improvements]"
- T.6.2 "Establish and maintain...bikeways and trails"
- T.8.6 "Maintain the City's street infrastructure in a cost effective manner..."

Has There Been Previous Council Decision on This:

The Council made no previous decision on this. This is the first study of its kind for the City and County Public Works Departments.

Options and Alternatives:

1. Award the contract to LA Consulting, Inc. as recommended.
2. Remand the project to the FMPO Executive Board for further consideration. The City through the Council acts as the fiscal agent for the FMPO. The FMPO Executive Board set the work program and authorized the expenditure. The City could ask the Board to de-fund the project. The City and County Public Works Departments would continue business as usual or embark on internal efforts to improve efficiency. The FMPO funds would be de-obligated and programmed to different purposes.
3. Remand the project to the selection committee for further consideration. A team of seven individuals considered proposals from six firms. Two firms were interviewed. A strong consensus in support of LA Consulting, Inc. was reached.

Background/History:

The FMPO is charged with monitoring the conditions of regional roads and streets as well as for long-term capital transportation project planning. Inherent to that charge is assuring that investment of federal dollars in capital projects will be protected by appropriate upkeep. Roads and streets operations and maintenance (O&M) is a significant expense for the City and County. Because funding sources for capital construction and maintenance are often the same and capital plans are to be fiscally constrained, it is a necessity to understand the impacts of O&M expenses on the fiscal ability to deliver capital projects. Conversely, O&M needs are increased by additional lanes, new trails and new roads and traffic signals as well as the increase in traffic created by growth. The data needs between O&M and Capital overlap significantly.

During the recession, the City and County saw large decreases in the Highway User Revenue Fund, the state gas tax that is the traditional source of O&M funding. In response, the City and County decreased staff size, deferred vehicle replacement and, in some instances, decreased service. The idea for this study was born from these challenging circumstances: How can we do more with less?

Simultaneously, the City and County explored new funding sources. In November 2014 City and County voters passed propositions 403 and 406 providing sales tax revenue for improving roads and streets and O&M support. This study was deferred until after that election and is now of value to ensure the public trust is well met.

In April of 2015, the City's Purchasing Section conducted a Request for Proposals (RFP). There were a total of six (6) proposal responses that were evaluated by a committee comprised of five (5) evaluators who evaluated and scored each proposal according to the evaluation criteria outlined in the RFP document. LA Consulting ended up being the highest scoring Proposer whose proposal was determined to be the most advantageous to the City taking into consideration the evaluation criteria set forth in the RFP document.

Key Considerations:

Meeting Public Expectations: The City and County received a vote of public confidence to meet the very real need of safe and well-maintained roads & streets. Employing best practices within the resources available will assure that trust is held.

Consultant Accountability/Return on Investment: The contract is structured to allow agency review after the needs assessment phase to determine if the consultant is performing as expected and that the scale of the needs justify the investment in the implementation phase.

Prospect for Additional Expenses: There are prospects for additional expenses in two arenas: Management Software Procurement and Implementation. The project schedule aligns with budget

CONTRACT FOR PROFESSIONAL SERVICES

Contract No. _____

This Contract is entered into this _____ day of _____, 20____ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and LA Consulting, Inc., ("Contractor").

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

NOW THEREFORE, in consideration for the mutual promises contained herein, the City and Contractor (the "parties") agree as follows:

SERVICES

1. Scope of Work: Contractor shall provide the professional services generally described as follows:

STREETS OPERATION AND MAINTENANCE STUDY

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

2. Schedule of Services: Contractor shall perform all work per the schedule set forth in Exhibit A.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Key Personnel/Subcontractors: Contractor's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

5. City Representative: The City Representative is Michael O'Connor, Public Works Section Head or his/her designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.
6. City Cooperation: City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Contractor's performance of this Contract.

CONTRACT TERM

7. Contract Term: The Contract shall be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed, and shall be completed on or before _____, 20____ consistent with the Schedule of Services.

8. Renewal: This Contract may be renewed for up to Two (2) additional One (1) year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
9. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.

PAYMENT

10. Compensation: Contractor shall be paid for satisfactory performance of the work, in accordance with the Compensation Schedule attached hereto as part of Exhibit A.
11. Price Adjustment: If price adjustments are permitted (see Exhibit A), any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

DATA AND RECORDS

12. City Ownership of Document and Data: Any original documents prepared or collected by Contractor in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of City ("City's work product"), unless otherwise agreed by the parties in writing. Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the City all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.
13. Re-Use. City may use City's work product without further compensation to Contractor; provided, however, City's reuse without written verification or adaption by Contractor for purposes other than contemplated herein is at City's sole risk and without liability to Contractor. Contractor shall not engage in any conflict of interest nor appropriate any portion of City's work product for the benefit of Contractor or any third parties without City's prior written consent.
14. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to City copies all of City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

INSURANCE

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

MISCELLANEOUS

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

To the City:

To Contractor:

Di Ann Butkay, Buyer
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001
dbutkay@flagstaffaz.gov

With a copy to:

With a copy to:

David Wessel, Manager FMPO

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

CONTRACTOR

Print name:_____

Title:_____

CITY OF FLAGSTAFF

Print name:_____

Title:_____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Notice to Proceed issued:_____, 20____

EXHIBIT A SCOPE OF WORK

SCOPE OF WORK

The following work plan includes some initial ideas that demonstrate our understanding of a systematic approach that could work for the City and the County.

STUDY APPROACH

Successful completion of this comprehensive Maintenance Operations Review is dependent on successful interaction and participation between LAC and the City/County personnel, as well as LAC's background and experience. The work plan has been developed to ensure effective and interactive communication – leading to a comprehensive result that reflects the true needs for both the City and County streets and road maintenance and operations. The City/County has outlined three desired deliverables as a result of the project in four Phases. Our scope has been developed to provide the City/County with these desired deliverables. The first deliverable is to have a project initiation and then to review the City/County's maintenance operations for effectiveness and efficiency opportunities. This will be accomplished in Phase I and II. This deliverable will include providing a written project report which details the findings and recommendations with a cost analysis to the consultant recommendations. The second deliverable in the optional Phase III is assisting the City/County to select the best system to be used as a tool to manage their operations in adherence with recommendation from the first deliverable. It is assumed, for costing, that the existing systems in the City/County will be adequate. The third deliverable in Phase IV is to implement a Maintenance and Asset Management System (MMS) to meet the identified opportunities and to provide support in implementing the selected system. This deliverable includes the actual implementation of Phase II recommendations using the configured software from Phase III. The detail on how LAC will address each of the areas of the scope is outlined in detail in the following Phases/Tasks.

Phase I Project Initiation

The following tasks are intended to familiarize the City/County staff with the approach that LAC will take to evaluate and improve efficiency within each of the agencies. The tasks will also serve to educate LAC on the work processes and features found in the City/County.

Task 1-1 – Project Startup

LAC team will develop planning efforts associated with the project. LA Consulting (LAC) will initiate the project immediately after the contract is signed. LAC staff will conduct initial meetings with the Road Superintendent(s) and the Director of Public Works, as well as with managers within each agency to review the City/County's objectives and their perception of the approach to the work methods and procedures that are needed to compile and analyze maintenance information.

Structured interviews will also be conducted with other key employees including maintenance supervisors and various other staff that have a major impact on the control and directing of maintenance. Further, overview site visits will occur on general work performed and assets. The objective of these sessions is to develop working relationships with key staff and a general

understanding of each of the objectives. Meetings will be held to further refine our approach, work plan, and methodology to effectively accommodate the specific needs and desires.

End Product: Key City/County staff will be consulted and concepts for improvements and enhancements will be prepared. A list of information requested will be provided.

Task 1-2 – Prepare a Detailed Work Plan

Based on our observations and discussions in the initial task, LAC will prepare a detailed schedule and work plan.

End Product: A detailed schedule will be prepared.

Task 1-3 – Establish a Review Committee

A Review Committee will be established with a group, comprised of management staff of various personnel, who shall be updated at major milestones and will provide direction to LAC. The Committee members will develop a firsthand understanding of the study developments as they are documented and presented. This method will promote a sound understanding of the analysis process and ensure the credibility of the findings and recommendations of LAC.

End Product: A Committee and study coordinator appointed for the study.

Task 1-4 – Conduct Orientation

LAC will describe in detail our proposed approach, our schedule, and identify any potential problems. In addition, a review of a systematic approach will be given to all Committee

members along with what data will be researched and compiled, and the results and benefits that can be expected from the efficiency study. In addition, the participants will identify contacts that will assist in compiling the data. Finally, a series of two meetings will be conducted with key City/County operational personnel outlining the process being planned.

End Product: A uniform understanding between staff participating and LAC.

Phase II Management review

Task 2-1 – Data Collection and Field Review

LAC will begin interviewing staff and collecting data on all aspects of current operations with specific attention to collecting baseline information for the three areas outlined in the scope

including Preventive, Routine, and Operations issues. In addition, LAC will review work history and activities performed to get a greater understanding of each operation. This will be done in a series of sub-tasks described below.

Task 2-1.1 – Activity Analysis (City/County performs -- LAC analyzes)

A general listing of the types of activities conducted in each agency will be determined. These may include such activities as pothole repair, AC dig out, lane striping and sign installation. Attempts will be made to generally estimate the amount of effort made in each activity. Rather than cover all activities, an effort will be made to utilize principals, such as Pareto's law, that allows a focus by estimating that approximately 20% of maintenance activities comprise of 80% of the work. It is anticipated that between 25 and 35 activities will be identified for each agency.

In this activity process, an inventory item that best describes the potential workload over the life of the asset will be identified. Examples would be, square feet of pavement repaired, number of signs installed, and miles of roadway striped. These lists would then be compiled for a composite list of activities and their units of measure. An example of this is shown below:

<i>Activity</i>	<i>Measurement Unit</i>
Pothole Repairs	Tons
Signs installed	Each

End Product: Activity list with units of measure would be identified and documented.

Task 2-1.2 – Work History (City/County performs -- LAC analyzes)

A compilation of work performed by major activity will be made for a multi-year basis. This can be done through a review of daily work reports, work orders, or use of any existing reporting systems, estimates of material used, and field observations of the existing operation. The data compiled will be person-days of work annually by activity along with work units accomplished. Examples for a fiscal year would be: pavement marking refreshment for 24 days in which 3,000 sf feet was painted.

End Product: A history of maintenance compiled.

Task 2-1.3 – Features Inventory and Asset Collection (City/County performs -- LAC analyzes)

LAC will estimate the inventories of infrastructure (signs, culverts, pavement, etc.) features that relate to work being performed. Existing files, information from agency staff, and observations will be used to determine initial values. The City/County will assist in the actual research.

End Product: An estimate of infrastructure features made and placed into a database.

Task 2-1.4 – Customer Service Practices (City/County performs -- LAC analyzes)

LAC will review the practices for each shop for customer service. Specifically, LAC will review customer service processes, response time, complaint handling and tracking, communication protocol and procedures for prioritizing work.

End Product: Customer engagement work practices identified.

Task 2-1.5 – Resource, Organizational and Staffing (City/County performs -- LAC analyzes)

LAC will request org charts and a listing by general category for labor, equipment and material resources. LAC will review the organizational structure, reporting relationships and span of control in each agency. Existing personnel and equipment files, information of maintenance staff, and field and office observations will be used. If not available, unit costs will be estimated. LAC will make an estimate of avoidable overhead that could be applied to labor costs.

End Product: Organizational, Staffing and Resources data will be collected.

Task 2-1.6 – Budget and Financial Resource Data (City/County performs -- LAC analyzes) The existing systems and City/County website locations will be identified, along with past budgetary information, and will be used to collect the financial data. LAC will obtain all data on current budgeting and financing procedures so that fee structures can be established in workloads and compiled from a combination of material records, time sheets, field estimates and historical estimates. This would include budgeted dollars for each agency and those actually spent.

End Product: Workload and financial data will be captured.

Task 2-1.7 – Competitive Assessment (City/County performs --LAC analyzes)

LAC will map the business process and methodology, for each of the agencies, and utilize the information for determining which work to perform in-house vs. by contract. The complete contracting support effort will be compiled including contract, the methodology used, and analysis applied to select a vendor, cost, work units, and contractual scope with quality and quantity measurements. Using LAC database and International City/County Management Association (ICMA), American Public Works Association (APWA) and North American Fleet Association (NAFA) benchmarks, data will be compared to City/County data.

End Product: Methodology for contracting determined and a contracts list compiled.

Task 2-1.8 – Inventory Control and Management (City/County performs -- LAC analyzes) LAC will review inventory control management processes and document. The location of warehouse (s) will be defined along with the process for reordering parts, and control procedures. ***End***

Product: Existing processes documented and a complete inventory compiled.

Task 2-1.9 – Equipment Fleet History (City/County performs -- LAC analyzes)

LAC will utilize their database to make estimates of equipment needs and utilization for the major Agency Operations activities being performed. These values will be compared to actual numbers of equipment available. Also, histories from the equipment shop will be evaluated to ascertain general downtimes and operating costs. These values will be compared between other agencies and industry standards data. In performing this analysis, an effort will be made to determine costs borne by equipment resources used by each agency's staff. Additionally, we will explore the use and/or feasibility of sharing equipment resources with other organizations, contracting equipment and the procedures used to maintain equipment.

End Product: An estimate of equipment units available and unit costs.

Task 2-1.10 – Technology Review

LAC will review the City/County's current databases, existing software platforms, and associated data models for all infrastructure and system operations as they relate to various maintenance functions. Technology from wireless applications, GIS, and GPS to web enabled capabilities will be outlined. LAC will look at the various inputs and outputs and develop an understanding of how the existing data is processed. A general logic flow will be developed that will outline the process. Interviews will occur with the IT Manager(s) and database managers.

End Product: List of current databases and technology utilized by each agency.

Task 2-1.11 – Policies and Goals (City/County performs -- LAC analyzes)

An analysis of current policies established by the City/County will be conducted and impacts on operations will be determined. The City/County's documented vision, mission and strategic goals will be reviewed versus actual employee's direction and core competencies.

End Product: A review of City policies and direction.

Task 2-1.12 – Management Approach and Preparation of a Baseline Paper

These existing work processes will be documented in a short summary and the areas of the basic management processes of planning; organizing, scheduling, and controlling that are in need of improvement and enhancement will be identified. LAC will flowchart how work is identified, planned, organized, scheduled and performed. All reporting information will also be documented. Both the proactive and responsive maintenance will be identified. LAC will outline precise workflows for each agency including data and automated system approaches. This will

be documented in a concise 20-25 page working paper and distributed to the Committee. Further, LAC will present baseline information to all key employees for their input.

End Product: Interview and define basic existing management processes and document information in a concise baseline working paper for each agency.

Task 2-2 – Evaluate Opportunities/Findings

The LAC team will use collected information and past experience to evaluate opportunities where improvements can occur. LAC will use a combination of observations, LAC data and other benchmarks to evaluate the operations. The following subtasks will be performed.

Task 2-2.1 – Work Flow Analysis

The ideal workflow will be compared to the actual processes. Any differences will be identified. Also, opportunities to streamline or eliminate unnecessary steps will be identified.

Task 2-2.2 – Work Method

A sample of several key activities would be observed by LAC in the field and equipment, method, quality of work and productivity will be noted. From previous consultant's experience, discussions with staff and other agency data, comparisons and opportunities for improvement will be identified. Employees and their work products will be observed by LAC in the field as required to understand work methods and their impacts on overall operations.

Task 2-2.3 – Organization Evaluation

Information collected in previous tasks will be stored in an internal database. LAC, using estimated frequencies or levels of service, will then estimate workload and resources needed to meet this level of service. These labor and equipment resources would be compared to the current operation resources. LAC's work model would then estimate the staffing that matches the desired service levels and related workload and compare to other agencies by work function

Task 2-2.4 – Workload and Budget Evaluation

Using the working paper information from previous tasks and discussion with maintenance staff, the procedures used by the County to develop annual maintenance budgets will be examined. This review will focus on the relationship of funding to workload.

Task 2-2.5 – Competitive Assessment and Macroscopic Benchmarking

LAC will compare a group of comparable agency performance parameters, from no less than three (3) agencies to those of the City/County. Comparable agencies throughout the US and various agencies within the State would be compared on such items as crew size and average daily production for agency functions. Any areas of opportunity for improvement would be identified. In addition, where information is available, LAC will compare industry costs in the private sector and municipal government sectors and determine if there are opportunities to contract work or perform work in-house.

Task 2-2.6 – Equipment Management Evaluation

LAC will evaluate fleet usage using information collected and determine fleet rates, compare staff per equipment compared to other agencies, and the pros and cons of leasing versus purchasing equipment. Further, LAC will look at the utilization of the equipment within each group and make estimates of the hourly equipment rates by classification to determine if there is

low use or high maintenance cost for the pieces of equipment. NAFA and APWA benchmarks will be used for evaluations along with LAC observations. LAC will also review material inventory control management and personnel used for managing fleet parts. Finally, LAC will evaluate the vehicle replacement plan and fund to determine if it is adequate to meet the future needs of the City/County.

Task 2-2.7 – Technology Evaluation

A comparison of the existing City/County's Operations will be made with desired goals for technology and management systems. Areas not covered or lacking from desired outcomes will be documented. An outline of the City/County's current system with functions that are operational and any efforts needed to meet desired goals will be prepared. This task involves the review of the system requirements and evaluating various software systems, database options and existing capabilities. This task will be used to outline the appropriate system alternatives for the County. The potential capabilities of the various systems will be outlined by LAC showing how each agencies existing and desired goals can be successfully met.

End Product: A compilation of findings and opportunities to improve operations.

Task 2-3 – Document and Present Findings

The findings of this first phase will be compiled and documented by LAC during this task and presented to the Committee and general staff for review and further discussion. Further, LAC will present initial findings in a series of three (3) meetings to all relevant employees for their input. After that presentation, the information will be assembled into a working paper submitted to the Committee for their comments.

End Product: A working paper that documents the findings (20-25 pages).

Task 2-4 – Document and Present Recommendations

After comments from the Committee, the findings and related baseline information will be used to outline a series of recommendations. LAC will present initial recommendations to both the Committee and to all agency employees in a series of three (3) meetings for their input. After the recommendation presentation, the information will be assembled into a working paper submitted to the Committee for their comments.

End Product: A working paper for the City/County that documents the recommendations (15-20 pages).

Task 2-5 – Document Results

The report will be finalized after meeting with City/County staff and getting final input. The reports will include explicit recommendations that when implemented will generate more effective and efficient operations. The benefits and cost will be estimated. The focus will be on developing a "play book" that will allow for the City/County to be the most effective.

End Product: A final written report that documents the baseline operations, findings and recommendations will be submitted.

Phase III Maintenance Management System Software and Hardware (Optional)

This optional phase encompasses work tasks (with 8 associated sub tasks). A description of each work task follows. These descriptions include the processes, methods and procedures to be used, as well as the expected end product. This will be exercised only if Phase 2's final report outlines enough value to justify changing from the current systems to another one. These tasks may not be needed if the current system(s) enable the City/County to achieve their goals identified.

Task 3-1 Draft RFP, Assist in Select of New CMMS

Efforts will include work to draft the request for proposal (RFP), assisting in the selection process of the Computerized Maintenance Management System (CMMS). Efforts will also include integration and linkage of all current systems, fully implementing necessary critical management tools and functionality of the CMMS. Work will include the ability to use the system at all levels for work-planning and managing, which includes the ability to plan, cost, monitor and improve. Either the latest version of current CMMS system or a new system will be used through a competitive process. This includes four subtasks.

- Task 3-1.1 – Prepare Draft Software RFP to Meet Goals
- Task 3-1.2 – Provide Technical Support and Guide in Selection Process
- Task 3-1.3– Participate In Software Demonstrations
- Task 3-1.4 –Provide Technical Support to Select Software

End Product: System selected that matches City/County’s needs.

Task 3-2 -Selection of CMMS Modules

This effort will include facilitation of effort in selecting modules, support for installing, the configuration of the system, and training of staff to use the systems. Evaluation of current CMMS modules, identifying proper “module grouping” for each groups and needs will also occur. Coordination with IT to ensure maximum hardware and current technology configurations do not impede functionality and speed is important.

- Task 3-2.1– Select Software Modules
- Task 3-2.2– Install Software
- Task 3-2.3– Configuration Of Software
- Task 3-2.4– Software System Training Support

End product: Provide backup training, coaching and configuration support as necessary.

Phase IV Operations Process Development /Implementation

This implementation plan from Phase II provides a “playbook” for actual implementation of the recommendations. Further, the implementation will occur in the selected program (or using existing system) that is populated and configured in Phase III. The type of recommendations from Phase II is unknown at this time and only basic functional tasks for implementation are included in this Phase. If other recommendations are outlined and support of LAC is desired, then that effort will have to be negotiated at that time. Much of the effort will focus on full implementation of the selected or existing CMMS software for work planning, organizing, scheduling and controlling.

Task 4-1 – Initiate Implementation

General orientation meetings are planned at the start of the project, in order to familiarize participants with the general approach of both software and system implementation. The project initiation effort will have a project startup; preparation of a detailed schedule; reengagement of a Management Working Committee (MWC); outline and establishment of a Working Committee (WC); and conducting an Orientation. Two (2) meetings are anticipated to complete this effort.

End Product: Complete City/County exposure to the planned implementation.

Task 4-2 – Define And/or Revise Work Activity List

A list of the significant maintenance work activities performed by each group will be refined, prepared and entered into a database. This list will include a description of the work activity, a unit of measure to calculate the work accomplished, and a physical feature inventory on which the work is performed. An example is for *Pothole repair*... “Repair of roadway surface to ensure the integrity and usability of the pavement system and to maintain overall structure” with a measurement unit of each or tons.

End Product: A list of all work activities by group with a description and measurement unit.

Task 4-3 – Inventory Guidance of Physical Features

An inventory listing and database of all physical features in the infrastructure network will be prepared by the City/County’s project manager in the format required and guided by LAC. This listing will include the type, quantity and location of features for each infrastructure type (signs, storm drains, pavement, ditches etc.) Existing data files will be used to compile an existing database of features. Existing data files may be limited and some inventories will have to be compiled by City/County forces.

End Product: A complete inventory and database of key physical features of infrastructure will be established.

Task 4-4– Determine Maintenance Service Levels

LAC will facilitate the establishment of the maintenance service levels required for each defined activity, and the quantity and frequency of work expected to be accomplished on an annual basis, per inventory unit. This will include the determination of the desired service level needed to maintain a feature element and a funded service level documenting the service level appropriate to funding constraints. For example; *pavement marking enhancement* will be performed annually and a *pipe culvert* will be inspected twice a year. Four (4) meetings are estimated.

End Product: Desired and funded service levels for each activity will be determined.

Task 4-5 – Establish Routine and PM Programs

LAC will work with the MWC and WCs to establish PM routines for several major activities. LAC will work to outline maintenance routines for activities that exist, such as sign inspection. It is anticipated that LAC will establish three routines and guide City/County staff to do the remainder.

End Product: Routines will be established for key maintenance activities.

Task 4-6 – Define Work Methods and Guidelines

The most efficient work methods will be reviewed or developed for each activity and the purpose of this will be to determine the logical sequence of steps to be followed while performing the activity along with resources and estimated productivity. The most efficient approach to each activity will be identified by utilizing the consultant project team's experience with similar agencies throughout the United States. This process will be further enhanced by using the experience of City/County staff. The best management practices will be established for all activities with an additional focus on key activities and some new ones that are relevant. This effort will include a detailed review of up to three major activities per group where direct cost, productivity and method comparisons can be made. We anticipate 4 meetings.

End Product: An activity guideline for each activity with specific work methods.

Task 4-7 – Develop Equipment Rates and Populate Database

LAC, with Fleet assistance, will develop hourly rates for all equipment that includes all costs. A listing by vehicle will be prepared with rates and classifications. A separate FEMA rate will also be compiled by general vehicle classification. The two rates will be identified for each piece of equipment. Two (2) meetings are anticipated.

End Product: Produce a working paper outlining equipment rates.

Task 4-8 – Assist Department in Developing both Avoidable and Full Overhead Rates

LAC will work with Finance staff to determine two overheads that reflect the City/County's actual cost of performing work. One will be an avoidable overhead cost and another will be a full overhead cost that would be developed for use in external billing and reimbursement. A presentation of final overheads will be presented to the MWC. Two (2) meetings are anticipated.

End Product: Assist to establish and document overhead rates and an update process.

Task 4-9 – Develop Performance-Based Work Program and Budget

After the activities, inventories, and work calendar have been established, a performance-based work program and budget will be prepared, and a balance between desired service levels and available funds will be developed. A system will be established with the ability to compile summaries of plans. The plan will have the capabilities to project effort for various special events with activities and service levels established. Further, the plan will be used to estimate all work to be done for the year including all after hours and overtime effort. Three (3) meetings are anticipated.

End Product: Annual work program and budget for each activity.

Task 4-10– Determine Resource Requirements

After the initial work program and budget are determined, the annual labor, equipment and material needs for each organization unit will be identified by LAC.

End Product: A list of required resources by organization.

Task 4-11 – Work Calendar

A work breakdown by activity by month will be done. This will allow for work to be scheduled on a proactive basis. Routines, work history and desire of work will be used to allocate determined work. Three (3) meetings are anticipated.

End Product: Work calendar by month by activity for each management unit.

Task 4-12 – Implement a Work Request System (optional)

This task will be done only if a new CMMS is chosen and will not be done if the current system(s) are accepted as the appropriate tool. LAC will implement the work request process for all groups utilizing the selected system. LAC will work with the vendor to make the best of selected software to match customer needs and provide a tool for scheduling. A series of three (3) training sessions will be performed.

End Product: Implementation of an automated Service Request System.

Task 4-13 – Establish Work Scheduling Procedures

LAC will work with employees and supervisors to establish short term work scheduling procedures. A process for the identification, assignment and allocation of resources and estimation of time required to complete the various activities will be determined. The scheduling procedures will be presented and taught by LAC to the appropriate personnel. LAC will monitor

and direct this procedure during the first two months of implementation to ensure compliance and allow for fine tuning of all processes involved. Three (3) meetings are anticipated.

End Product: Development of a bi-weekly scheduling system.

Task 4-14 – Establish Work Reporting Procedures

LAC will establish and implement routine work reporting procedures to properly obtain CMMS data for all groups. The work reporting procedures will be presented and taught to the appropriate personnel and monitored during the first four months of implementation to ensure compliance. The completed daily work reports will be entered to allow comparisons of planned and actual values as well as costing of work. Three (3) meetings/training sessions are anticipated.

End Product: Standardized work reporting system established.

Task 4-15 – Develop Work Control and Monitoring Processes

LAC will develop and document work control and monitoring processes that will provide answers to the various questions. The CMMS system will have standard reports that allow for complete evaluation of the work planned versus actual effort given. Standardized reports will be generated for various staff to use, which will depict labor, equipment, contracts and material by location and activity. Additional reports may be established with vendor assistance.

End Product: Process for monitoring and controlling work.

Task 4-16 – Develop System Documentation (optional)

This task will be done only if a new CMMS is chosen and will not be done in current system(s) are accepted as the appropriate tool. A series of documents outlining the system and management processes will be developed as a reference and guide for applying the developed system. The manuals will be included to document the various procedures and processes required for operating and administering the maintenance system: Operations Manual and Computer User Manual. The software vendor selected will provide copies that will outline how to enter and modify data; produce the various reports, and a general description of how to operate the software.

End Product: Documentation of the maintenance system.

Task 4-17 – Overall CMMS System Training and Administration (Optional)

This task will be done only if a new CMMS is chosen and will not be done in current system(s) are accepted as the appropriate tool. City/County managers, department managers and supervisors will be trained in all aspects of the CMMS. A series of training sessions (3) will be conducted.

End Product: All staff trained in CMMS system use.

Task 4-18– Conduct Implementation Training

LAC will conduct a series of training sessions at four different intervals during the process. These will include use of the CMMS for formulation of the annual plan, organization of resources, and scheduling and controlling maintenance. The sessions will include both general management training and actual implementation direction. The final training session will detail the use of computer operations in the maintenance system. Staff will be trained on the entry of work data, production of reports, system parameters and database update.

End Product: Implementation training sessions.

Task 4-19 – Report Interpretation Training

LAC will train staff in the use of CMMS reports to adjust operations in order to become more effective and efficient in the use of maintenance resources, to monitor adherence to the annual plan, and to identify problems in productivity and work methods. This effort would be provided in order to allow staff the opportunity to use data to make the necessary decisions to improve operations. Two (2) meetings are anticipated.

End Product: Training on report interpretation and customization.

Task 4-20– Final Evaluation and Report

A final summary (3-5 pages) report will be prepared after implementation of the system with the overall impact of the effort. This report will document all data collected, results of actions, future steps required to maintain the CMMS system, documented improvements after implementation, and any recommendations for future improvements in operations.

End Product: Final evaluation and report.

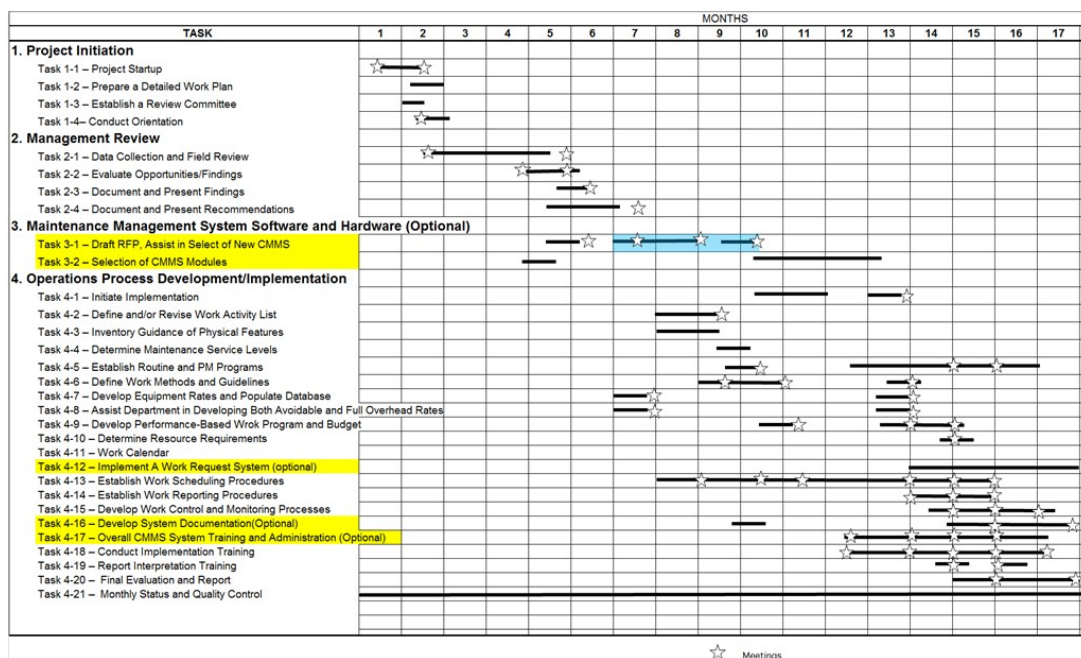
Task 4-21– Monthly Status and Quality Control

Monthly status reports will be prepared for the City/County. These reports will include a listing of all the project tasks with a summary status and a percent complete for each task.

End Product: A monthly status report will be provided, along with telephone support.

PROPOSED SCHEDULE

LAC estimates a 17 month work schedule to complete the task outlined below. Note the shaded blue area is the section of the optional software selection and contract which is totally controlled by the procurement process so the schedule is dependent on that process. LAC estimated 4 months, but often agencies can take much longer. Also, there are several tasks shown as optional in yellow, which may be done with City/County resources or not warranted to be done.



Restrictions: LAC's successful process outlined in our scope, along with our experience in various projects, is based on considerable employee involvement to meet the rigorous seventeen month schedule, and the following must occur:

- Project Coordinator, with City/County background, for the entire project established.
- Staff must be made available for interviews.
- Assistance provided to schedule meetings, presentation locations, yards, etc.
- Key staff must attend all relevant meetings.
- Documents requested must be produced within ten working days of request.
- Provide data in electronic formats to expedite the process.
- The LAC documents must be reviewed by the City/County each in 10 working days.
- Provide relevant input with corresponding support data for working papers.
- Staff must be available for meetings and follow-up within a week's notice.

PROPOSED COMPENSATION

The total estimated cost of the four phases is \$197,769 and is shown below. Many of the tasks that are thought by LAC to be needed but are depend on completion of the Phase II recommendations and those accepted by the City/County.

TASK	Cost	TASK	Cost
1. Project Initiation		Task 4-4 – Determine Maintenance Service Levels	\$5,863
Task 1-1 – Project Startup	\$6,644	Task 4-5 – Establish Routine and PM Programs	\$8,208
Task 1-2 – Prepare a Detailed Work Plan	\$1,955	Task 4-6 – Define Work Methods and Guidelines	\$12,507
Task 1-3 – Establish a Review Committee	\$1,368	Task 4-7 – Develop Equipment Rates and Populate Database	\$4,690
Task 1-4 – Conduct Orientation	\$6,058	Task 4-8 – Assist Department in Developing Both Avoidable and Full Overhead Rates	\$4,690
2. Management Review	\$16,025	Task 4-9 – Develop Performance-Based Work Program and Budget	\$7,035
Task 2-1 – Data Collection and Field Review	\$16,806	Task 4-10 – Determine Resource Requirements	\$6,254
Task 2-2 – Evaluate Opportunities/Findings	\$10,944	Task 4-11 – Work Calendar	\$4,300
Task 2-3 – Document and Present Findings	\$9,771	Task 4-12 – Implement A Work Request System (optional)	\$0
Task 2-4 – Document and Present Recommendations	\$10,162	Task 4-13 – Establish Work Scheduling Procedures	\$10,162
Task 2-5 – Document Results	\$10,162	Task 4-14 – Establish Work Reporting Procedures	\$7,035
	\$57,845	Task 4-15 – Develop Work Control and Monitoring Processes	\$8,989
3. Maintenance Management System Software and Hardware (Optional)		Task 4-16 – Develop System Documentation(Optional)	\$0
Task 3-1 – Draft RFP, Assist in Select of New CMMS	\$0	Task 4-17 – Overall CMMS System Training and Administration (Optional)	\$0
Task 3-2 – Selection of CMMS Modules	\$0	Task 4-18 – Conduct Implementation Training	\$8,989
	\$0	Task 4-19 – Report Interpretation Training	\$5,863
4. Operations Process Development/Implementation		Task 4-20 – Final Evaluation and Report	\$8,989
Task 4-1 – Initiate Implementation	\$5,081	Task 4-21 – Monthly Status and Quality Control	\$5,081
Task 4-2 – Define and/or Revise Work Activity List	\$8,599		
Task 4-3 – Inventory Guidance of Physical Features	\$1,564		
		TOTAL COST	\$197,769

Phase I, project initiation effort, is estimated at \$16,025. Phase II is a complete management review at \$57,845. Phase III is optional and is the management system software selection and configuration which may not be needed and depends on Phase II's recommendations. Phase IV is the implementation of recommendations from Phase II with software from Phase III and is estimated at \$123,899. Note several tasks indicated in yellow may be needed if new software is decided to be needed and process done to select it. It is assumed the current system is adequate.

LAC is comfortable with lump-sum costing on our projects because of our experience in this type of effort and knowledge of the area. However, without knowing the software to be used and the exact recommendations made from Phase II accepted by City/County, the cost in Phase IV is only an estimate.

EXHIBIT B

CITY OF FLAGSTAFF STANDARD TERMS AND CONDITIONS

IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
7. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials, and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to City upon City's acceptance of the materials.
10. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall

be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

11. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
12. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.
14. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
15. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
16. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

17. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
18. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
19. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment

insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

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

- 20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
- 21. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.
- 22. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.
- 23. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.
- 24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

SERVICES

- 25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
- 26. **CONTROL:** Contractor shall be responsible for the control of the work.
- 27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
- 28. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
- 29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
- 30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
- 31. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within

a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

- 32. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.
- 33. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
- 34. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.
- 35. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION, INSURANCE

- 36. **GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City's Specific Terms and Conditions.
- 37. **INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker's compensation.
- 38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 39. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 40. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
- 41. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
- 42. **SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
- 43. **NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 44. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.
- 45. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 46. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
- 47. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.
- 48. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
- 49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated

to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

- 50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.
- 51. CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
- 52. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
- 55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
- 56. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is

appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.

- 57. **PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
- 58. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
- 59. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

- 60. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
- 61. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.
- 62. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
- 63. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
- 64. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 65. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys fees, costs, professional fees and expenses.

INSURANCE

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –
Any Automobile or Owned, Hired
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. Workers' Compensation and Employer's Liability

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

e. Professional Liability \$2,000,000

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.

5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

- a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
- b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
- c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
- d. Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.

6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: Di Ann Butkay, Buyer
Contract No. _____
Purchasing Department
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001.

7. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of

insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.

9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

**CITY OF FLAGSTAFF
PURCHASING DIVISION
RFP # 2015-70 STREET OPERATION AND MAINTENANCE STUDY**

SCORING TABULATION

Evaluation Criteria Ranking						
	LA Consulting	Applied Pavement Technology	Woodson Engineering	Matrix Consulting Group	Talbot, Korvola & Warwick, LLP	The Barnhardt Group
Total Score:	2300	1735	1500	1460	1245	1155
Ranking:	#1	#2	#3	#4	#5	#6

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Barney Helmick, Airport Director
Co-Submitter: Stacey Brechler-Knaggs, Grants Manager
Date: 08/26/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Approval of Grant Agreement): A grant agreement between the City of Flagstaff and the U.S. Department of Transportation, Federal Aviation Administration for Update Airport Master Plan Study with Airport Geographic Information System (AGIS) and Airport Layout Plan (ALP). (Grant agreement for airport master plan study).

RECOMMENDED ACTION:

- 1) Approve the acceptance of an FAA Grant Agreement in the amount of \$500,000 for the Update Airport Master Plan with AGIS and ALP project.
- 2) Authorize the City Manager to execute the necessary documents.

Executive Summary:

The Flagstaff Airport is an important part of the economic growth of Flagstaff and Northern Arizona. To meet the future needs of our communities' air service needs we must complete community involved planning. Cost of maintaining Flagstaff Airport sustainability requires an outline of the needs, knowledge of the public and stakeholder requirements and methods of achieving those plans. This Airport Master Plan will give an outline of current and future facility needs, a list of grant eligible projects, along with public input.

Financial Impact:

The grant award is in the amount of \$500,000 (91.06% Federal share), \$24,545 (4.47% City share), and \$24,544 (4.47% State share) for a total project cost of \$549,089. Not completing the Airport Master Plan could impact the City of Flagstaff in future FAA grant funded projects. This project is budgeted in FY 2016 in account 221-07-222-3334-0-4421 for the amount of \$600,000.

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.
- 7) Address key issues and processes related to the implementation of the Regional Plan.
- 9) Foster relationships and maintain economic development commitment to partners.

REGIONAL PLAN:

Transportation - Goal T.10 and associated policies, Public Buildings, Services, Facilities and Safety.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

1. Approve FAA Grant for Airport Master Plan
2. Do not approve FAA Grant for Airport Master Plan

Background/History:

The FAA requires Publicly funded airports to complete Airport Master Plans on a regular basis to justify Grant funding. This shows to the FAA that the Airport Sponsor is doing long term responsible planning to meet the public needs. The Flagstaff Airport last completed an Airport Master Plan in 2007. Since that Airport Master Plan was completed annual passenger traffic has increased from 88,000 to 136,000 total. At that continued growth rate Flagstaff Airport should see 183,000 passengers in the year 2023 and upwards of 300,000 by 2030. The current infrastructure is not designed to handle this growth. This Airport Master Plan will address, future parking, terminal needs, public egress and facility needs for the next 20 years.

Key Considerations:

This Airport Master Plan will allow public impute to the next 20 years of growth for the Flagstaff Airport.

Expanded Financial Considerations:

Failure to accept this Grant and complete the Airport Master Plan could negatively impact the ability to qualify for future FAA grants.

Community Benefits and Considerations:

The Airport Master Plan will benefit the community by allowing them to give impute in the needs of our airport to provide service in the future. We expect continued growth to meet the public needs and that growth will require long term planning to make the Airport sustainable and cost effective.

Community Involvement:

Inform; The public will be informed multiple times as to the progress of this project.

Collaborate; Members of the public will be on the Airport Master Plan committee to provide public and stake holder impute. Public impute is a critical component of Airport Master Planning

Attachments: Grant Agreement-FAA AIP 39 Update Master Plan with AGIS and ALP



U.S. Department
of Transportation
Federal Aviation
Administration

GRANT AGREEMENT

PART I – OFFER

Date of Offer	<u>August 11, 2015</u>
Airport/Planning Area	<u>Flagstaff Pulliam Airport</u>
AIP Grant Number	<u>3-04-0015-039-2015</u>
DUNS Number	<u>088302625</u>
TO:	<u>City of Flagstaff, Arizona</u> (herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated 10/7/2014, for a grant of Federal funds for a project at or associated with the Flagstaff Pulliam Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Flagstaff Pulliam Airport (herein called the "Project") consisting of the following:

Update Airport Master Plan Study with AGIS and ALP

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated April 3, 2014, and the Sponsor's acceptance of this Offer, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 91.06 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$500,000.00.

For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b), the following amounts are being specified for this purpose:

\$500,000.00 for planning

2. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable. .
3. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs. .
4. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement. .
5. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor. .
6. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **09/15/2015**, or such subsequent date as may be prescribed in writing by the FAA. .
7. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary. .
8. **United States Not Liable for Damage or Injury.** The United States is not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement. .

9. System for Award Management (SAM) Registration And Universal Identifier.

- A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- B. Requirement for Data Universal Numbering System (DUNS) Numbers
 - 1. The Sponsor must notify potential sub-recipient that it cannot receive a contract unless it has provided its DUNS number to the Sponsor. A sub recipient means a consultant, contractor, or other entity that enters into an agreement with the Sponsor to provide services or other work to further this project, and is accountable to the Sponsor for the use of the Federal funds provided by the agreement, which may be provided through any legal agreement, including a contract.
 - 2. The Sponsor may not make an award to a sub-recipient unless the sub-recipient has provided its DUNS number to the Sponsor.
 - 3. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-492-0280) or the Internet (currently at <http://fedgov.dnb.com/webform>).

10. Electronic Grant Payment(s). Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees. .

11. Informal Letter Amendment of AIP Projects. If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter to the Sponsor unilaterally reducing the maximum obligation. The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. If the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the FAA can issue a letter to the Sponsor amending the grant description..

By issuing an Informal Letter Amendment, the FAA has changed the grant amount or grant description to the amount or description in the letter.

12. Air and Water Quality. The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this grant..

13. Financial Reporting and Payment Requirements. The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports..

14. Buy American. Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

15. Maximum Obligation Increase For Primary Airports. In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

- A. May not be increased for a planning project;
- B. May be increased by not more than 15 percent for development projects;
- C. May be increased by not more than 15 percent for land project.

16. Audits for Public Sponsors. The Sponsor must provide for a Single Audit in accordance with 2 CFR Part 200. The Sponsor must submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. The Sponsor must also provide one copy of the completed 2 CFR Part 200 audit to the Airports District Office.

17. Suspension or Debarment. The Sponsor must inform the FAA when the Sponsor suspends or debars a contractor, person, or entity.

18. Ban on Texting While Driving.

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

19. Trafficking in Persons. .

- A. Prohibitions: The prohibitions against trafficking in persons (Prohibitions) that apply to any entity other than a State, local government, Indian tribe, or foreign public entity. This includes private Sponsors, public Sponsor employees, subrecipients of private or public Sponsors (private entity) are:
 - 1. Engaging in severe forms of trafficking in persons during the period of time that the agreement is in effect;
 - 2. Procuring a commercial sex act during the period of time that the agreement is in effect; or
 - 3. Using forced labor in the performance of the agreement, including subcontracts or subagreements under the agreement.
- B. In addition to all other remedies for noncompliance that are available to the FAA, Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), allows the FAA to unilaterally terminate this agreement, without penalty, if a private entity –
 - 1. Is determined to have violated the Prohibitions; or

2. Has an employee who the FAA determines has violated the Prohibitions through conduct that is either:
 - a. Associated with performance under this agreement; or
 - b. Imputed to the Sponsor or subrecipient using 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 49 CFR Part 29.
20. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated 12/4/08, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.
21. **Current FAA Advisory Circulars for AIP Projects:** The sponsor will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the *Current FAA Advisory Circulars Required For Use In AIP Funded and PFC Approved Projects*, dated February 11, 2015, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
22. **Assurances:** The Sponsor agrees to comply with the Assurances attached to this offer, which replaces the assurances that accompanied the Application for Federal Assistance.
23. **Excess Cost:** It is understood and agreed that notwithstanding that the Application includes therein planning work that the Sponsor has estimated at a total cost of \$500,000.00, the total allowable cost for purposes of determining federal participation shall not exceed \$500,000.00. Any project costs in excess of the federal allowable costs shall be the sole responsibility of the Sponsor.
24. **Grants Issued on Estimates.** The Sponsor understands and agrees that this Grant Offer is made and accepted based on estimates; and the parties agree that within 60 days from the date of acceptance of this Grant Offer, the Sponsor will receive bids for Airport Master Plan with AGIS and ALP contained within the grant description. If, after the Sponsor has received bids, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000.00 or five percent (5%), whichever is greater based on the actual bid prices received, the FAA can issue a letter to the Sponsor unilaterally reducing the maximum obligation. The Sponsor understands that amendment calculations will then be limited by this reduced maximum obligation.
25. **Coordination.** The Sponsor agrees to coordinate this master planning study with the metropolitan planning organizations, other local planning agencies, and with the State Airport System Plan prepared by the State's Department of Transportation and consider any pertinent information, data, projections, and forecasts which are currently available or as will become available. The Sponsor agrees to consider any State Clearinghouse comments and to furnish a copy of the final report to the State's Department of Transportation.
26. **AGIS Requirements:** Airports GIS requirements, as specified in Advisory Circular 150/5300-18, apply to the project included in this grant offer. Final construction as-built information or planning deliverables must be collected according to these specifications and submitted to the FAA. The submittal must be reviewed and accepted by the FAA before the grant can be administratively closed.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

Michael N. Williams

(Signature)

Michael N. Williams

(Typed Name)

Manager, Phoenix Airports District Office

(Title)

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.¹

Executed this _____ day of _____, _____.

City of Flagstaff, Arizona

(Name of Sponsor)

(Signature of Sponsor's Designated Official Representative)

By:

(Printed Name of Sponsor's Designated Official Representative)

Title:

(Title of Sponsor's Designated Official Representative)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Arizona. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____, _____.

By _____

(Signature of Sponsor's Attorney)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

PLANNING AGENCY SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act – 5 U.S.C. 1501, et seq.²
- d. Rehabilitation Act of 1973 - 29 U.S.C. 794
- e. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin)
- f. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability
- g. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- h. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- i. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

EXECUTIVE ORDERS

- a. Executive Order 12372 - Intergovernmental Review of Federal Programs

FEDERAL REGULATIONS

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures
- e. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- g. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- h. 49 CFR Part 20 - New restrictions on lobbying.
- i. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- j. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- k. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- l. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- m. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- n. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- q. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252).

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary

5. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies in the planning area.

6. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any

books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

7. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not mean constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

8. Reports and Inspections.

It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request.

9. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability

- 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
- 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 4) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 5) So long as the sponsor retains ownership or possession of the property.

a.) Required Solicitation Language.

b.) It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

d. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a.) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b.) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- e. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- f. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

10. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

11. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

12. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary.

13. Disadvantaged Business Enterprises.

The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Parts 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. § 3801).



FAA Airports

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

Updated: 2/11/2015

View the most current versions of these ACs and any associated changes at:
<http://www.faa.gov/airports/resources/advisorycirculars>

NUMBER	TITLE
70/7460-1K	Obstruction Marking and Lighting
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Change 2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13B	Development of State Standards for Nonprimary Airports
150/5200-28D	Notices to Airmen (NOTAMS) for Airport Operators
150/5200-30C Change 1	Airport Winter Safety And Operations
150/5200-31C Changes 1-2	Airport Emergency Plan
150/5210-5D	Painting, Marking, and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications
150/5210-13C	Airport Water Rescue Plans and Equipment
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Aircraft Rescue and Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel

NUMBER	TITLE
150/5210-19A	Driver's Enhanced Vision System (DEVS) Ground Vehicle Operations on Airports
150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16D	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26 Change 1	Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment
150/5300-7B	FAA Policy on Facility Relocations Occasioned by Airport Improvements of Changes
150/5300-13A Change 1	Airport Design
150/5300-14C	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
150/5320-5D	Airport Drainage Design
150/5320-6E	Airport Pavement Design and Evaluation
150/5320-12C Changes 1-8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces

NUMBER	TITLE
150/5320-15A	Management of Airport Industrial Waste
150/5235-4B	Runway Length Requirements for Airport Design
150/5335-5C	Standardized Method of Reporting Airport Pavement Strength - PCN
150/5340-1L	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18F	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30H	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	FAA Specification For L-823 Plug and Receptacle, Cable Connectors
150/5345-27E	Specification for Wind Cone Assemblies
150/5345-28G	Precision Approach Path Indicator (PAPI) Systems
150/5345-39D	Specification for L-853, Runway and Taxiway Retro reflective Markers
150/5345-42G	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
150/5345-43G	Specification for Obstruction Lighting Equipment
150/5345-44J	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46D	Specification for Runway and Taxiway Light Fixtures

NUMBER	TITLE
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49C	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flashing Light Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing and Graphics
150/5360-13 Change 1	Planning and Design Guidelines for Airport Terminal Facilities
150/5360-14	Access to Airports By Individuals With Disabilities
150/5370-2F	Operational Safety on Airports During Construction
150/5370-10G	Standards for Specifying Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness
150/5390-2C	Heliport Design
150/5395-1A	Seaplane Bases

THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY

Updated: 3/7/2014

NUMBER	TITLE
150/5100-14E	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-17 Changes 1 - 6	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5300-9B	Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects
150/5300-15A	Use of Value Engineering for Engineering Design of Airports Grant Projects
150/5320-17A	Airfield Pavement Surface Evaluation and Rating (PASER) Manuals
150/5370-6D	Construction Progress and Inspection Report – Airport Improvement Program (AIP)
150/5370-12A	Quality Control of Construction for Airport Grant Projects

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
AIRPORT IMPROVEMENT PROGRAM
SPONSOR CERTIFICATION
DRUG-FREE WORKPLACE**

City of Flagstaff, Arizona
(Sponsor)

Flagstaff Pulliam Airport
(Airport)

3-04-0015-039-2015
(Project Number)

Description of Work:

Update Airport Master Plan Study with AGIS and ALP

Title 49, United States Code, section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on the drug-free workplace within Federal grant programs are described in Title 49, Code of Federal Regulations, Part 29. Sponsors are required to certify they will be, or will continue to provide, a drug-free workplace in accordance with the regulation. The AIP project grant agreement contains specific assurances on the Drug-Free Workplace Act of 1988.

Except for the certified items below marked not applicable (N/A), the list includes major requirements for this aspect of project implementation, although it is not comprehensive, nor does it relieve the sponsor from fully complying with all applicable statutory and administrative standards.

	Yes	No	N/A
1. A statement has been (will be) published notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace, and specifying the actions to be taken against employees for violation of such prohibition.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. An ongoing drug-free awareness program has been (will be) established to inform employees about:			
a. The dangers of drug abuse in the workplace;			
b. The sponsor's policy of maintaining a drug-free workplace;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Any available drug counseling, rehabilitation, and employee assistance programs; and			
d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.			
3. Each employee to be engaged in the performance of the work has been (will be) given a copy of the statement required within item 1 above.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Employees have been (will be) notified in the statement required by item 1 above that, as a condition employment under the grant, the employee will:			
a. Abide by the terms of the statement; and	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. 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.			

	Yes	No	N/A
5. The FAA will be notified in writing within ten calendar days after receiving notice under item 4b above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of the employee, to the FAA. Notices shall include the project number of each affected grant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. One of the following actions will be taken within 30 calendar days of receiving a notice under item 4b above with respect to any employee who is so convicted:			
a. Take 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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Require 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.			
7. A good faith effort will be made to continue to maintain a drug-free workplace through implementation of items 1 through 6 above.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I have prepared documentation attached hereto with site(s) for performance of work (street address, city, county, state, zip code). There are no such workplaces that are not identified in the attachment. I have prepared additional documentation for any above items marked "no" and attached it hereto. I certify that, for the project identified herein, responses to the forgoing items are accurate as marked and attachments are correct and complete.

City of Flagstaff, Arizona

(Name of Sponsor)

(Signature of Sponsor's Designated Official Representative)

(Typed Name of Sponsor's Designated Official Representative)

(Typed Title of Sponsor's Designated Official Representative)

(Date)

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Shannon Anderson, Human Resources Manager
Date: 08/26/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Adoption of Ordinance No. 2015-14: Amending the Employee Handbook of Regulations and Flagstaff City Code by adopting amendments relating to Retiree Insurance eligibility.

RECOMMENDED ACTION:

- 1) Remove Ordinance No. 2015-14 from the table
- 2) Read Ordinance No. 2015-14 for the final time
- 3) City Clerk reads Ordinance No. 2015-14 for the final time (if approved above)
- 4) Adopt Ordinance No. 2015-14

Executive Summary:

During the first and initial final read the City was proposing to adopt changes to the Employee Handbook and Flagstaff City Code to match retiree insurance eligibility adopted by the Northern Arizona Public Employees Benefits Trust (NAPEBT).

NAPEBT Trustees determined it was in the best interest of the Trust to adopt a retiree insurance eligibility policy that was equal for all NAPEBT employers. Initially some NAPEBT employers had 10 years of service required to be eligible for retiree insurance and others had 0 years of service in addition to being eligible to retire under a State or Alternate Retirement System. NAPEBT adopted a new policy that required employees to work for five consecutive years for a NAPEBT employer and be eligible to retire under the State or Alternate Retirement Systems in order to be eligible for retiree insurance.

City Council discussed the Ordinance and proposed changes during the July 21, 2015 Council meeting. As a result of that discussion, the Ordinance was tabled. Staff, in consultation with the City Attorney's Office determined that the simplest and most clear way to handle the change in policy is to amend the Employee Handbook and Flagstaff City Code to point to the NAPEBT policy adopted in the NAPEBT Administrative Manual.

Ordinance 2015-14 has been updated to refer employees to the NAPEBT Administrative Manual for information on retiree insurance eligibility.

Financial Impact:

Limited financial impact. The retiree pays 100% of the premium minus any subsidy the employee receives from ASRS or PSPRS. There is no direct cost to the City. However, the retiree contributions do not fully support the claims exposure and this generates a GASB liability for each of the NAPEBT employers and it is noted on the City's CAFR's.

Connection to Council Goal and/or Regional Plan:

3) Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics

Has There Been Previous Council Decision on This:

Discussion and first reading of this ordinance occurred on July 7, 2015. The Ordinance was read again during the July 21, 2015 meeting and tabled.

Options and Alternatives:

Option 1: Choose to not have a policy in relation to retiree insurance eligibility

Option 2: Choose different wording or format to link the City's policy to the NAPEBT Administrative Manual

Background/History:

An employee of Coconino Community College presented information to the Northern Arizona Public Employee Benefit Trust (NAPEBT) during the NAPEBT meeting on January 24, 2014. This employee expressed he was negatively impacted by the difference in retiree insurance language between two different NAPEBT employers. As a result of this conversation there was another action item later in the same meeting where the NAPEBT Trustees voted on a recommendation to change retiree insurance eligibility to "five consecutive years of service with a single NAPEBT employer in order to be eligible for retiree health care under NAPEBT." (Note: Coconino Community College and Coconino County both required an employee to work for them for 10 years in order to be eligible for retirement. The City and FUSD both had no years of service requirement for employees to be eligible for retirement. The Board's discussion was to meet in the middle, so the Trustees agreed to 5 years of service.)

This information was presented to the City's Employee Advisory Committee (EAC) on April 9, 2014 and the EAC suggested the five years of service may be served with any NAPEBT employers. The information was presented to the City's Leadership Team on May 7, 2014 and Leadership suggested the exclusion of employees who medically retired. Leadership's suggestion was shared with the EAC on May 14, 2014 and it was approved.

This information was taken back to the NAPEBT board in July 2014 and the NAPEBT Trustees approved the five years of service with any NAPEBT employer rather than the single employee initially recommended in January 2014.

Human Resources created a redline version of the Retiree Insurance policy included in the Employee Handbook of Regulations and visited with the EAC on May 27, 2015 and the Leadership Team on July 3, 2015 and both groups unanimously approved the policy changes.

Several questions were brought up by the City Council after the first reading of Ordinance 2014-15 on July 7, 2015 and Human Resources made additional revisions to the policy to clarify what exceptions apply to the five years of continuous service. The City Council continued discussion on July 21, 2015, as described in the Executive Summary.

Key Considerations:

City Retiree Data

There are currently 88 City retirees on the NAPEBT Retiree Insurance and out of these 88 employees 3 of them appear to have less than 5 years of service. These retiree's date of retirement were between 1997 and 2006.

NAPEBT IGA

NAPEBT has authority to decide insurance plan eligibility on behalf of its members, including the City. The City-NAPEBT Intergovernmental Agreement ("IGA") and Declaration of Trust (Amendment No. 2), dated 2006, was adopted for the purpose of jointly purchasing health insurance, among other things. The IGA provides that the Trustees shall:

- “use the premiums, contributions, or other amounts received by the Trust to purchase and maintain in force such policy or policies of insurance as the Trustees in their sole discretion shall determine to be in the best interest of the Participants and the Employees...” 5.8.1
- “apply for any insurance in its name as policyholder or in the names of the Participants and to use the Trust Funds to pay for and accept and hold as part of the Fund the policy or policies so acquired.” * * * Trustees may enter into agreements with any insurer of any policy or policies concerning waiting periods, eligibility of Employees, definition of full-time employment “ 5.8.2

NAPEBT has established a uniform policy for eligibility for retirees to continue receiving insurance through their former NAPEBT employer, effective July 1. NAPEBT may change or clarify its policy in the NAPEBT Administrative Manual from time to time. The proposed ordinance will simply direct City employees to that Manual.

State Retirement

Ordinance 2014-15 on Retiree Insurance does not impact or affect an employee's retirement benefits under the Arizona State Retirement or Public Safety Personnel Retirement systems. Below is information about the eligibility for State retirement:

ASRS Eligibility:

Normal Retirement for members who began contributing to ASRS prior to July 1, 2011 is the earliest date of one of the following: Age 65 with any amount of credited service, Age 62 with 10 or more years of credited service or 80 points which is a combination of age and years of credited service (e.g. age 49 + years of credited service 31 = 80 points)

Normal Retirement for members who began contributing to ASRS on or after July 1, 2011 is the earliest date of one of the following: Age 65 with any amount of credit service, Age 62 with 10 or more years of credited service, Age 60 with 25 or more years of credited service, or Age 55 with 30 or more years or credited service.

Early retirement applies to members at Age 50 with at least 5 years of credited service and the member will receive a reduced monthly benefit.

PSPRS Eligibility:

Tier 1: Employees who became members of PSPRS prior to January 1, 2012. Members are eligible to apply for normal pension benefits at 20 years of service or have 15 years of service and be at least age 62.

Tier 2: Employees who became members of PSPRS on or after January 1, 2012. Members are eligible to apply for normal pension benefits at 25 years of service and be at least age 52.5.

Community Involvement:

Inform.

Attachments: Ord. 2015-14

ORDINANCE NO. 2015-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF RELATING TO RETIREE INSURANCE, AMENDING THE EMPLOYEE HANDBOOK OF REGULATIONS AND FLAGSTAFF CITY CODE, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City desires to provide retirees insurance consistent with policy established by the Northern Arizona Public Employees Benefit Trust ("NAPEBT").

ENACTMENTS:

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code, Title 1, *Administrative*, Chapter 14, *Personnel System*, Section 1-14-001-0001 *Personnel System Adopted*, is hereby amended by adopting those changes to the Employee Handbook of Regulations, herein referred to as "2015 Addendum 7 of the Flagstaff Employee Handbook of Regulations," as follows (additions shown in underlined capitalized text, deletions shown as stricken, and paragraphs E and F renumbered as B.2 and B.3 respectively):

1-70-030. RETIREE INSURANCE

The City ~~will~~ MAY provide medical and dental insurance for eligible City retirees under certain terms and conditions, all of which are subject to change in part or in whole depending on policy changes made by the Northern Arizona Public Employees Benefit Trust (NAPEBT) ~~or the City policy.~~ REFER TO THE RETIREE INSURANCE CHAPTER OF THE NAPEBT ADMINISTRATIVE MANUAL.

Link: NAPEBT Administrative Manual

- A. ~~To be eligible, an employee must retire from City service, and apply for and receive retirement benefits from either the Arizona State Retirement System or the Public Safety Personnel Retirement System.~~
- B. ~~The retirees will pay the entire premium amount; there will be no City contribution. The premium rates will be reviewed annually.~~
- C. ~~Those eligible employees retiring will have thirty (30) days after their last working day to enroll in the insurance program. If they fail to do so within this thirty (30) day period they will be unable to join at a later date.~~
- D. ~~Payments will be made directly to the City of Flagstaff through its Finance Section on a monthly basis by the due date of the statement, which is approximately the 20th of each month. It is the responsibility of the retirees to make the payments. Participants who fail to pay are subject to cancellation.~~

- ~~E. Retirees can maintain their coverage under the provisions of this program until the retiree reaches age sixty-five (65) and/or becomes entitled to Medicare.~~
- ~~F. Dependent coverage is available subject to the limitations outlined in the City's group health insurance policy. Dependents cannot continue in this insurance program when the retiree is no longer eligible, but will be eligible to continue benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The domestic partner will not be eligible to continue benefits under COBRA unless the employee elects continuation for himself/herself or the domestic partner is a qualified tax code dependent.~~

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. Clerical Corrections.

The Human Resources Director is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary, related to the City of Flagstaff Employee Handbook of Regulations as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency.

SECTION 6. Effective Date.

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 1st day of September, 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

ATTORNEY

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Elizabeth A. Burke, City Clerk
Date: 08/26/2015
Meeting Date: 09/01/2015



TITLE:

Consideration and Adoption of Ordinance No. 2015-16: An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title I, Administrative, by adding a new Chapter 12, Consideration of Petition, thereto. ***(Citizen Petition Submittal Form)***

RECOMMENDED ACTION:

- 1) Read Ordinance No. 2015-16 by title only for the final time
- 2) City Clerk reads Ordinance No. 2015-16 by title only for the final time (if approved above)
- 3) Adopt Ordinance No. 2015-16

Executive Summary:

During the recent discussions regarding proposed Charter amendments, it was requested that an ordinance be adopted that would outline the process for submittal of citizen petitions. While there is a question on the upcoming ballot to require 25 citizens to sign such a petition, the current Charter states that any citizen may submit a petition. Therefore, the proposed wording has been changed from the draft internal packet to indicate that the petition form itself will indicate the number of signatures required by referencing the City Charter. This way, there will be no need to bring this item back in the future if that number changes during the upcoming, or any future, charter amendment elections.

Financial Impact:

None

Connection to Council Goal and/or Regional Plan:

COUNCIL GOAL:

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:

This issue was discussed in general during various meetings where the proposed Charter amendments were discussed. Additionally, the proposed ordinance was read for the first time at the August 25, 2015, meeting at which a few amendments were requested and have been included in the attached ordinance.

Options and Alternatives:

- 1) Adopt the ordinance as written
- 2) Amend the ordinance
- 3) Wait until after the election results are determined
- 4) Take no action

Community Involvement:

Inform

Attachments: Ord. 2015-16

ORDINANCE NO. 2015-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE TITLE I, ADMINISTRATIVE, BY ADDING A NEW CHAPTER 12, CONSIDERATION OF PETITION, RELATED TO CITIZEN PETITIONS AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City Council desires to establish a process to facilitate the submission of a citizen petition consistent with the City Charter.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code Title I, *Administrative*, is hereby amended by adding a new Chapter 12, *Consideration of Petition*, as follows:

TITLE I, CHAPTER 12 CONSIDERATION OF PETITION

1-12-001-0001 DEFINITIONS:

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Citizen” shall mean any resident of the City.

1-12-001-0002 PETITION FORM:

Any citizen of the City of Flagstaff who desires to submit a petition to the City Manager, for consideration by the City Council, shall use the petition form provided by the City Clerk's Office, which form shall include the printed name and contact information (e.g. address, phone number and/or e-mail address), title of the issue and specific action being requested, along with the following information of each citizen signing said petition:

1. Printed Name
2. Residence Address
3. Signature
4. Date signed

The form of petition shall set forth the number of citizens who are required to submit the petition, consistent with the Flagstaff City Charter, Article II, Section 17, as may be amended from time to time.

1-12-001-0003 PETITION PROCESS:

Once completed, the petition shall be filed with the City Manager in person or by postal delivery. The City Manager will date stamp the original and return a copy to the petitioner. The City Manager will cause the date stamped, original petition to be filed in the office of the City Clerk. Thereafter the petition shall be presented to the Council at its next regular meeting. The City Clerk will endeavor to notify the petitioner of such regular meeting date by email to the address noted on the petition form.

SECTION 2. Effective Date.

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 1st day of September, 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY