FINAL AGENDA

REGULAR COUNCIL MEETING
TUESDAY
SEPTEMBER 15, 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 Special Meeting of September 1, 2015, and the Regular Meeting of September 1, 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

A. **Consideration and Action on Liquor License Application:** Frederic Wojtkielewicz, “FLG Terroir", 17 N. San Francisco, Series 07 (beer and wine bar), PersonTransfer.

RECOMMENDED ACTION:

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

B. **Consideration and Action on Liquor License Application:** Cecily Clift-Maniaci, "The Toasted Owl Cafe", 12 S. Mikes Pike, Series 12 (restaurant), New License.

RECOMMENDED ACTION:

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

9. CONSENT ITEMS

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

A. **Consideration and Approval of Amendments to Intergovernmental Agreements:** With Coconino County, Navajo County, the City of Holbrook, and the City of Winslow regarding Arizona Route 66 Coalition Communities U.S. Environmental Protection Agency 2012 Brownfields Community-wide Assessment Grant ***(Approve time extension amendments to IGA's)***.

RECOMMENDED ACTION:

Authorize the City Manager to execute amendments to Intergovernmental Agreements (IGAs) with Coconino County, Navajo County, the City of Holbrook, and the City of Winslow.

B. **Consideration and Approval of Cooperative Contract:** To lease purchase 9 Zoll X-series Manual Monitor/Defibrillators through a cooperative contract with Zoll Medical Corporation through National Purchasing Partners, Contract No. 052312 ***(Approve contract with Zoll Medical Corporation in the amount of $223,383.50)***.

RECOMMENDED ACTION:

Approve the lease purchase of 9 manual Monitor/Defibrillators from Zoll Medical Corporation for the cost of $223,383.50 through 5 equal annual payments of $44,676.70 per year.

10. ROUTINE ITEMS

A. Consideration and Approval of Contract: Approval of an Intergovernmental Agreement between the City of Flagstaff and the Summit Fire District for dispatch services.

RECOMMENDED ACTION:

Approve this Intergovernmental Agreement between the City of Flagstaff and Summit Fire District to provide dispatch services for Summit Fire District.

B. Consideration and Approval of Construction Manager at Risk (CMAR) Contract: Leroux Street Water and Sewer Improvements ***(Approve contract with Eagle Mountain Construction in the amount of $2,119,350.00).***

RECOMMENDED ACTION:

1) Approve the Construction Manager at Risk (CMAR) contract with Eagle Mountain Construction in the Guaranteed Maximum Price (GMP) of $2,119,350.00 and a contract time of 350 calendar days.
2) Approve Change Order Authority to the City Manager in the amount of $198,740 (10% of the contract amount, less Owner's contingency).
3) Authorize the City Manager to execute the necessary documents.

C. Consideration and Adoption of Resolution No. 2015-32: A resolution of the Council of the City of Flagstaff, Arizona authorizing the appointment of a City Treasurer.

RECOMMENDED ACTION:

1) Read Resolution No. 2015-32 by title only
2) City Clerk reads Resolution No. 2015-32 by title only (if approved above)
3) Adopt Resolution No. 2015-32

D. Consideration and Adoption of Resolution No. 2015-33: A resolution of the City Council of the City of Flagstaff authorizing signatures for checks and payment vouchers ***(Authority to Sign Checks)***

RECOMMENDED ACTION:

1) Read Resolution No. 2015-33 by title only
2) City Clerk reads Resolution No. 2015-33 by title only (if approved above)
3) Adopt Resolution No. 2015-33

E. Consideration and Adoption of Ordinance No. 2015-18: An ordinance to enter into a second Amendment to Development Agreement (DA) with Nestle-Purina Petcare Company to extend the agreement and underlying lease for up to six months ***(Possible extension of development agreement with Nestle-Purina).***

RECOMMENDED ACTION:

1) Read Ordinance No. 2015-18 by title only for the final time
2) City Clerk reads Ordinance No. 2015-18 by title only (if approved above)
3) Adopt Ordinance No. 2015-18

RECESS

6:00 P.M. MEETING

RECONVENE

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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

11. ROLL CALL

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

MAYOR NABOURS
VICE MAYOR 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

A. Consideration and Adoption of Ordinance No. 2015-17: An ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, by deleting Title 6, Police Regulations, Chapter 6-03, Animals, in its entirety and adopting revised Chapter 6-03, Animal Keeping; providing for severability, authority for clerical corrections, and establishing an effective date.

RECOMMENDED ACTION:

At the September 15, 2015, Council Meeting:
1) Read Ordinance No. 2015-17 by title only for the first time
2) City Clerk reads Ordinance No. 2015-17 by title only (if approval above)
At the October 6, 2015, Council Meeting:
3) Read Ordinance No. 2015-17 by title only for the final time
4) City Clerk reads Ordinance No. 2015-17 by title only (if approved above)
5) Adopt Ordinance No. 2015-17

B. **Consideration and Approval of Contract:** Street Lighting in Support of Dark Skies RFP 2015-69 ***(Approve contract with Monrad Engineering, Inc. for the development of an installation and light management plan in the amount of $100,000).***

RECOMMENDED ACTION:

Award the contract for Street Lighting In Support of Dark Skies RFP 2015-69 to Monrad Engineering, Inc. of Tucson, AZ in the amount of $100,000.

16. DISCUSSION ITEMS

A. Policy discussion on proposed amendments to Chapters 10-10 and 10-20 of the Flagstaff Zoning Code.

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 (F.A.I.R.):** A request by Councilmember Putzova to place on a future agenda a resolution replacing Columbus Day with Indigenous People's Day to celebrate the contributions and culture of Native Americans and the indigenous community.

B. **Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Putzova to place on a future agenda a discussion of the Council Travel Policy and Use of Travel Funds.

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:	09/11/2015
Meeting Date:	09/15/2015

TITLE

Consideration and Approval of Minutes: City Council Special Meeting of September 1, 2015, and the Regular Meeting of September 1, 2015.

RECOMMENDED ACTION:

Amend/approve the minutes of the City Council Special Meeting of September 1, 2015, and the Regular Meeting of September 1, 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: 09.01.2015.CCSM.Minutes
09.01.2015.CCRM.Minutes

CITY COUNCIL SPECIAL MEETING
TUESDAY, SEPTEMBER 1, 2015
STAFF CONFERENCE ROOM - SECOND FLOOR
211 WEST ASPEN
3:00 P.M.

MINUTES

1. Call to Order

Mayor Nabours called the Special Meeting of September 1, 2015, to order at 3:01 p.m.

2. Roll Call

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

PRESENT: ABSENT:

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

Others present: City Manager Josh Copley and City Attorney Michelle D'Andrea; U.S. Senator Jeff Flake.

3. Meeting with U.S. Senator Jeff Flake to discuss matters of interest to the City of Flagstaff.

Mayor Nabours welcomed Senator Flake, who then said that he wanted to talk with them about issues important to rural Arizona.

FOREST HEALTH - Senator Flake said that it was great to see a new sawmill being built to assist with these efforts, realizing that they have all been concerned with the slow movement. He said that after the Rodeo-Chedeski Fire they saw a lot of industry come into eastern Arizona through stewardship contracts, but it was a continual struggle to get the USFS to move things along.

He said that 4FRI is a big deal, not just for northern Arizona communities, but for the West and the entire country. He said that if this model works, it can really help in the public/private partnerships to manage forests. The hurdles with the USFS and government have now been jumped, and now the delay has been with the contractor. They were supposed to see 50,000 acres treated annually, but in the last three years they have seen a total of 4,000 acres.

Senator Flake said that he appreciated the work done by the City and other levels of government with resolutions and being able to free up some of their own acreage for the new contractor, and with freeing up money themselves. That idea of contributing City funds is novel; it has not happened anywhere else.

He said that it is important for economic development and the watershed; they need a healthy watershed which would provide 20-25% more water. It will be vital for the survival of the state in terms of water.

POWER GENERATION - Senator Flake said that they think they have a way to move forward with the Navajo Generating Station, which affects power rates and water as well. He said that it goes to the Central Arizona Project, the biggest power user in the State. If that project is not able to pump water cost effectively, it has big impacts as well.

He said that Arizona has planned well over the past decades with the Groundwater Management Code, but others have not, such as with California. He said that he and Senator McCain have made efforts to meet with the Governor and ast Senator Kyl to encourage the Governor to bring together all of the water users so they speak as one voice. The consensus item that they have agreed on to be asked is to expedite treatment for the watershed which could have impacts here in the north as well.

BUDGET - Senator Flake said that they hope to not have a government shutdown again; he thinks it is unlikely as it does not serve any ends. He said that last time Arizona stepped up and helped the Park Service reopen the Grand Canyon, but they never got paid. He said that they introduced legislation that in the case of that happening again, the federal government would enter into an agreement with the State to keep the parks open. He said that there has been good bipartisan cooperation on that legislation.

At this time Senator Flake opened it up for questions. Mayor Nabours asked about the federal government not passing federal transportation bills, which has had an impact on the ability for the City to receive assistance with a bridge overpass. He asked Senator Flake what was going on with that issue. Senator Flake said that they typically reauthorize highway bills every five years. Since the last one expired, they have been doing it every three months at a time, which is no way to run a government. He said that the problem is the long-term funding source and cars being more energy efficient. Those tax funds are not sufficient to maintain the highway fund and they have had to dip into the general revenues. He said that there are good ideas to give a huge jolt to infrastructure such as the re-creation of assets, designating all or most to infrastructure spending. He said that it would provide a jolt, but it is not a long-term solution.

He said that he has to question whether the answer is to raise the federal gas tax, because Arizona would not get dollar for dollar on return. He said that once the money goes from Arizona to Washington it carries a lot of mandates and stipulations which make that dollar spend less. He said that it makes more sense to levy a state tax and some states have moved ahead in that direction such as Utah. He said that there is no appetite to increase the federal gas tax because so many representatives of states are asking why they would do that.

Councilmember Evans thanked Senator Flake for being there and said that two issues she was concerned with were the Rio de Flag and the Veterans Home in Flagstaff. She said that they still need assistance to get the LLR signed by October 31 for the Rio de Flag. She said that this has been ongoing and funding has been hit and miss, and she was hoping they could get his support. Also, she said that the City has located property for the Veterans Home in Flagstaff and has done a resolution supporting it. They have talked with the Arizona Department of Veteran Services. They are hoping Governor Ducey will approve the budget, and they are looking to the federal government to get that started. She said that Representative Kirkpatrick's office supports those efforts and she asked if Senator Flake would support them as well.

Senator Flake said that they would check in and see if that is formula funding on the Rio de Flag. Clint Chandler with Senator Flake's Office said that they will inquire into the funding and try to get it expedited. Bob Holmes (attending telephonically) said that they need to get the LLR done in order to qualify for funding. He talked with the Corps regional office and district office and as of yesterday it had not been transmitted. He said that the regional office has 30 days to review, although they thought it could be done in two weeks, but that puts them on the cusp. He said that he would be happy to work with Clint to make sure this gets out. He said that the City has been waiting too long for this funding.

Councilmember Oravits said that with the last government shutdown and the temporary closing of the park service, it had a huge impact on the local hotels. He asked Senator Flake to further explain the mechanism he mentioned in the beginning of the meeting. Senator Flake said that they introduced two

pieces of legislation. The first went to the Interior. As soon as they reopened the parks they backfilled the funding as of that date and since the state paid out, they should be refunded. They said that Congress needed to authorize them to refund the state. That bill is out of committee and is waiting in the House. He said that second bill is if there is another shutdown the federal government is required to work with the state and if the state has a plan and wants to keep them open they will be refunded. He said that did get bipartisan support and is also out of committee and waiting for action in the House. He does think that a shutdown is unlikely.

Councilmember Putzova said that she was glad that Senator Flake started talking about the forest health and environmental health. She said that there is a large concern with the Grand Canyon and protection of that area and the Grand Canyon Watershed Monument. She asked what his thoughts were on that issue and if he could be their champion on it. Also, she asked about the issue of putting a price on carbon. She asked if there was a different way to champion putting a price on carbon that goes back to changing people's behavior.

Senator Flake said that he would not favor the Grand Canyon Watershed Monument. He thinks they have to take every measure and make sure it is protected, but having these types of designations on federal land that already have protections under the law make it more difficult for land exchanges, etc. Also, they have a huge shortfall in terms of monies available to keep their parks and protected areas protected. He does not want to add to that inventory when they are not funding some of the priority items.

Senator Flake said that in order for him to support a carbon tax, it would have to be revenue neutral, taking into account the other costs that are borne with such a tax. He said that in the future there is going to be some kind of price on carbon, but he does not see that coming any time soon.

Mayor Nabours said the City had moved its railroad tracks some time back and the land underneath the previous tracks reverts back to the federal government if not used as railroad. He said that he knew that Senator Flake had done work on that with Bob Holmes, and as he understood it the government will often waive that reversionary right. Mr. Chandler replied that they are bundling those types of issues into a bill with such things that they do not believe will result in much opposition. Mr. Holmes said that they appreciated all of their good work on that and asked when they plan on introducing that bill. He said that his greatest fear is that as they move into 2016 the legislative days become few and all days become politicized. Mr. Chandler said that they are assembling items across Arizona and they will bring in Representative Kirkpatrick as well.

Councilmember Overton said that this year Arizona was able to dodge a lot of fire risk, although California, Washington and Oregon have not been as lucky. He said that a few years ago Senator Flake worked on legislation regarding suppressing and treatment of fire and asked if he saw in the immediate future a push back again to look at those formulas. Senator Flake said that there are a few pieces of legislation being considered. He and Senator McCain worked on the Flame Act amendments which would separate funding for suppression and management of the forests. He said that it would force the USFS to spend on the management side as well. He said that they think their bill is likely to pass the House as there is more support on a bipartisan basis. He said that they have also had better cooperation from the environmental side. He said that when driving through the Alpine area it is visible where treatment had and had not taken place after their fire.

Councilmember Overton asked if there was anything that could be leveraged or any way to press the process now with the contractor. Senator Flake said that in the past the progress was always blamed on the USFS. He discussed this with Good Earth and asked for those mileposts. He said that when the task orders come out it is his understanding that if fines are not accrued they can make changes to the contracts. He said that they will be putting pressure on the USFS to take action outside of the contract and also working with the Governor's Office.

Ann Marie Zeller addressed the issue of uranium mining and asked how Senator Flake felt about foreign companies mining for uranium in Arizona. Senator Flake said that they have the Grand Canyon and the envelope around it that is protected. They also have economic development, including mining, that can take place outside of that area. He said that there is economic development that can be supported, whether foreign or not, and it has to be done in a sensitive manner, recognizing the boundaries that they have.

Ms. Zeller continued that the Department of Energy shows that the United States has a 50 year surplus of uranium. She asked what was in it for the US, letting them mine so close to the Grand Canyon if there is no need. Senator Flake said that he was not sure of the surplus figures, but if those were the case it would appear that the market would not bear it, and they will not see any mining.

4. Adjournment

Mayor Nabours thanked Senator Flake and his staff for joining them and adjourned the Special Meeting of September 1, 2015, at 3:30 p.m.

_____
Mayor

ATTEST:

_____
City Clerk

CITY COUNCIL REGULAR MEETING
TUESDAY, SEPTEMBER 1, 2015
COUNCIL CHAMBERS
211 WEST ASPEN
4:00 P.M.

MINUTES

1. CALL TO ORDER

Mayor Nabours called the meeting of September 1, 2015, to order at 4:00 p.m. and noted there was no 6:00 p.m. portion of the meeting.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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

2. ROLL CALL

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

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

Others present: City Manager Josh Copley 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 Regular Meeting of August 25, 2015, and the Special Meeting (Executive Session) of August 25, 2015.

Moved by Councilmember Scott Overton, **seconded by** Councilmember Jeff Oravits to approve the minutes of the Regular Council Meeting of August 25, 2015, and the Special Council Meeting (Executive Session) of August 25, 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 addressed the Council:

Robert Vane, member of Flagstaff Water Group, encouraged amendments to the proposed Water Study to include tiered water rates for commercial users.

Ann Marie Zeller, Flagstaff, distributed a handout and stated that the proposed water rates need to be brought closer to actual costs.

Erin Young, Flagstaff Water Resources Manager, showed the plaques created by the winners of the fourth grade competition on Water Conservation, noting that they are being installed in many restrooms around the area. She also reported that the Water Festival is going to be held on September 17, 2015, where they will have over 1,000 fourth graders. She commended Robin Harrington for her work on this project and she thanked the Council for their support with these efforts.

Mayor Nabours recognized Stacey Brechler-Knaggs as Chairman of the City's Climb to Conquer Cancer team, noting that there were 52 participants for the City's team and they raised over $3,000.

Mayor Nabours also recognized Finance Director Rick Tadder and his team for their recent award of the Certificate of Achievement for Excellence in preparation of the City's Annual Financial Statements.

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

Councilmember Oravits asked for clarification on what these expenses would provide. Mr. Vagen responded that it would provide continuous updates of the software and whenever staff experienced a problem they can call for support.

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Eva Putzova to 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. ADSPO11-007500), 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.

Vote: 7 - 0 - Unanimously

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).*** .

Water Production Manager Thomas Bolyen gave a brief PowerPoint presentation which addressed:

WHAT IS OUR TOLERANCE FOR RISK?
WHY BE PREPARED?
EMERGENCY BACK-UP WATER
CONTINUITY OF OPERATIONS
UTILITIES DIVISION CONTINUITY OF OPERATION STRATEGY

Mr. Bolyen clarified that currently they would have water for 1.8 days without power and with this purchase they would have enough for 5 days. Discussion was held on whether they could keep the used generator that is currently on the trailer mobile, rather than installing it at the East shop. Utilities Director Brad Hill explained that they could keep it mobile but they would need a truck and would need to purchase a lot of extra material to hardwire across the ground. They are trying to eliminate that type of hazard. Mr. Hill said that they understood that it was a big request, but it is a huge protection to the community as they currently have no back up. He said that the 5 days is assuming that their facilities are full; if they are not, it would be less. He added that if the Fire Department had to fight a fire at the same time they would not have the 1.8 days.

Vice Mayor Barotz asked Mr. Bolyen if it was his understanding that, based on best practices, many municipalities across the country have backup. Mr. Bolyen said that was his experience and best practices and communities have backup. He said that these precautions have come from evaluating the weather, storms, etc. An example is when Sandy hit; most were caught off guard and had no backup and had no water.

Councilmember Putzova said that she assumes that they have an emergency plan that kicks in some time during this period. Mr. Bolyen said that they will be doing their best. Mr. Hill said that if they lost power they would be ramping up notification, but once notification starts, people have a tendency to fill up their bathtubs and protect themselves. He said that the City has an operations plan, but this is not included. If this equipment is purchased, the plan will be modified to include this. Councilmember Putzova said that she would like to see the emergency plan.

Mayor Nabours said that their questions are in no way a criticism of staff, it is just a lot of money, and they are trying to weigh whether this is the best way to spend it. He asked if they are missing information from Arizona Public Service (APS). Mr. Hill explained that this request came from a prior meeting between APS, Mr. Copley and himself wherein APS brought up the fact that they have one single feed into the City. They are now building a second facility; however, they were clear that the City should be looking at a better way to protect its water supply.

Councilmember Evans adeed that there was a power outage in the Sunnyside area and they did not have power for a week and there have been issues before.

Councilmember Overton said that it was a fair level of risk and completely respected staff's request; however, he would request it be value engineered. He said that the cause is noble and he is confident knowing that they have one backup generator to use at the Shop site. He asked what the rental market looked like.

Mr. Bolyen said that there are no generators of this size in Flagstaff. There are some in Phoenix which would take five hours to get, if they could get a truck quickly. They

are rented for $6,000 a month if not used and $27,000 a month if they are used.

Discussion was held on the probability of different occurrences where they may be without power. Mr. Hill referenced the recent tornado in Bellemont and wildfires. He said that if either of those types of events took out the line, they could easily be without power.

Councilmember Brewster noted that Phoenix has had terrible problems this year with storms and power outages.

Mayor Nabours said that he is not convinced that the City could be without power entirely. He would like to hear from APS. Councilmember Oravits said that he would like to hear from them as well. He would also like to hear more on the rental market.

Mr. Bolyen said that there is a fleet of 14 generators in Phoenix, 8 of which are available. They charge by the month and whether they are used. He said that contracts can be put into place, but they cannot guarantee rental delivery unless the City pays each month. He said that it would be $82,000 to rent for a year if they did not use it.

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to postpone this item for two weeks.

Vice Mayor Barotz said that she would not support the motion. They should be mindful that the weather patterns of the past should not guide this decision. Just because they have not seen a situation happen, they can look around the world and use that as a guide.

Councilmember Putzova said that she was prepared to vote in support of the purchase. It worries her more that they are not prepared for extreme weather. She does not think that $500,000 over ten years which is the lifespan of the generator, or $50,000 a year, is that big of a price tag. Today there are only eight available in Phoenix. She believes that staff has provided the necessary information and expertise, and it was enough for her. She sees no reason to postpone the action.

Vote: 6 - 1

NAY: Councilmember Coral Evans

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).

Business Attraction Manager Gail Jackson briefly reviewed the amendments to the contracts and service agreements. Mayor Nabours said that it appeared that the changes were in favor of the City. He asked staff if they saw anything in the way of changes that would be a detriment to the City. Ms. Jackson replied that she did not. She said that now the space is built at the Accelerator, it provides NACET the flexibility to tweak charges, with the City's approval.

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Eva Putzova to 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.

Vote: 7 - 0 - Unanimously

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).***

Fire Chief Mark Gaillard said that this is continuation of a service relationship they have had since 1997. Mayor Nabours asked how many of these agreements the City has. Chief Gaillard said that they have two fire district agreements--this one and Lockett Ranch, but they have hundreds of parcel contracts within the City planning area and adjacent.

Mayor Nabours asked if the two fire districts agreements were similar. Chief Gaillard said that this one is a relatively small subdivision, while Lockett Ranch is larger and greater assessed valuation, which is why their rate is more.

Mayor Nabours asked if these work out to be a fair deal for the City. Chief Gaillard said he believed they did, specifically since the contractual arrangement does not cause the City to take on more capital infrastructure, with the minor risk involved, and it helps lower the costs for Flagstaff citizens.

Moved by Councilmember Jeff Oravits, **seconded by** Councilmember Coral Evans to approve the IGA between the City of Flagstaff and the Westwood Estates Fire District.

Vote: 7 - 0 - Unanimously

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).***

FMPO Manager Dave Wessel said that the Executive Board of the FMPO has provided the funding for this contract to look at the best practices in operations and management opportunities, for higher levels of cooperation between the City and County and modernization of their processes. He said that LA Consulting is a highly qualified firm and he spoke directly with some of their clients, including Prescott and Reno-Sparks, both of which were very satisfied with their performance.

Mr. Wessel said that they will come in and work with leadership and management of the Public Works departments at the City and County. They will review their current maintenance practices for roads/streets operations, compare those to a very robust database that has been developed by them, looking for opportunities in the management structure to find efficiencies. He said that it will focus on street repair, not traffic signal operations.

Public Works Director Erik Solberg said that what they are looking to get from this study is whether their street sweeping, snow plowing, streets maintenance, etc. are up

to the best practices, or if there is something they should be doing differently.

Mr. Wessel noted that these are funds through a federal grant to the FMPO which come from the surface transportation program. He said that there is a match on the part of the City, but that will be provided in-kind with the public works staff at the City and County.

Moved by Vice Mayor Celia Barotz, **seconded by** Councilmember Coral Evans to 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.

Councilmember Oravits said that he would hesitantly support this and he really wants to see some savings from the study. Mr. Wessel said that the second phase of the study would be implementation, so if they do not see the savings there, they could terminate at that time.

Vote: 7 - 0 - Unanimously

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).***

Airport Manager Barney Helmick said that before the Council summer break staff did a presentation about key items on this project, and this is coming back asking for the FAA grant to start the Master Plan. He said that it is funded by the federal government at 91.06%, by the Arizona Department of Transportation (ADOT) at 4.47% and the City's share is 4.47%, or $24,545.

Councilmember Overton credited the Airport and FAA, noting that if things are in the study they have usually followed through. He asked if any of this money would be used to look at those parcels that could be marketed or sold for economic efforts. Mr. Helmick said that this is a big picture document and does not drill down into that specific use, but it could give them an outline. He said that they are working with APS regarding their substation which will support development of the airpark as well as the south campus area.

Mayor Nabours asked if it would get into future parking. Mr. Helmick said that this looks into that issue further and will come back with options, some of which may be extreme.

Mayor Nabours asked if it would get into the possibility of expansion on the east side of the runway. Mr. Helmick said that he did believe this will get into that, now that they have the option of looking at the east side parcels.

Mr. Helmick said that this is part of the largest capital program, most of the funds come from user fees or some form of property tax for aviation businesses. It goes into the federal program and provides about $3.6 billion. That amount changes annually and is divided up across the country.

Moved by Councilmember Scott Overton, **seconded by** Councilmember Coral Evans to 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; and authorize the City Manager to execute the necessary documents.

Vote: 7 - 0 - Unanimously

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.

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to remove this item from the table.

Vote: 7 - 0 - Unanimously

Human Resources Director Shannon Anderson said that this is the revised document, as directed by Council, that directs employees to the NAPEBT documentation with regard to retiree insurance.

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Scott Overton to read Ordinance No. 2015-14 by title only for the final time.

Vote: 7 - 0 - Unanimously

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

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Eva Putzova to adopt Ordinance No. 2015-14.

Vote: 7 - 0 - Unanimously

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)***

City Clerk Elizabeth Burke briefly reviewed the proposed ordinance, noting the changes that had been made at the last meeting.

Brief discussion was held on whether the wording should be changed to clarify that citizens would need to sign, not submit, the petition, and staff was directed to look at this further and amend as needed.

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Jeff Oravits to read Ordinance No. 2015-16 by title only for the final time.

Vote: 7 - 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

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Coral Evans
to adopt Ordinance No. 2015-16.

Vote: 7 - 0 - Unanimously

~~**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**~~

~~*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**

Councilmember Evans asked for an update on the temporary crossings on Fourth Street and when they will be permanent. Additionally, she voiced concern with the pedestrian crossing on Butler by NAU, noting that pedestrians are not pushing the button which lights the caution and residents are concerned that someone is going to get hurt. She asked if there was a way to ticket the pedestrians that are not following the traffic laws.

She has also received complaints about bikes traveling the wrong direction on one-way streets, and asked if they could be ticketed as well.

Councilmember Evans said that some time back she requested a legal opinion on panhandling and whether they could be required to obtain a business license. Ms. D'Andrea replied that it would be coming.

Councilmember Oravits commended staff for the good job done at the Frances Short Pond.

Mr. Copley reminded everyone of the Fourth Street Gateway dedication at 4:30 p.m. tomorrow and said they should have all received a "save the date" for the renaming ceremony for the Hal Jensen Recreation Center.

He also also commended Adam Miele on wrapping up the street safety repairs of over $9 million, improving 126 lane miles, with $3.6 million coming from the recently-passed tax. It was noted that this was just year one and it would pick back up next year.

Vice Mayor Barotz agreed with Councilmember Evans' concerns regarding the pedestrian crossing on Butler. She said that residents in that area are very confused about why the problem cannot be solved, and said that it was not a question of *if* , but *when* , some gets killed.

19. **ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held September 1, 2015, adjourned at 5:23 p.m.

_____

MAYOR

ATTEST:

_____
CITY CLERK

CERTIFICATION

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 September 1, 2015. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 15th day of September, 2015.

_____
CITY CLERK

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Saltzburg, Deputy City Clerk
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE:

Consideration and Action on Liquor License Application: Frederic Wojtkielewicz, “FLG Terroir", 17 N. San Francisco, Series 07 (beer and wine bar), PersonTransfer.

RECOMMENDED ACTION:

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

Executive Summary:

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. Series 07 licenses must be obtained through the person transfer of an existing license from another business. The Wine Loft was sold and the license is being transferred from Mitchell Walzer with Wine Loft, located in Flagstaff. The property has been posted as required, and the Police, Community Development and Sales Tax divisions have reviewed the application with no concerns noted.

Financial Impact:

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

Connection to Council Goal and/or Regional Plan:

Liquor licenses are a regulatory action and there is no Council goal that applies.

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

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

Key Considerations:

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

A Series 07 beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

The deadline for issuing a recommendation on this application is September 28, 2015.

Community Benefits and Considerations:

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

Community Involvement:

The application was properly posted on August 13, 2015. No written protests have been received to date.

Attachments:

- FLG Terroir - Letter to Applicant
- Hearing Procedures
- Series 07 Description
- FLG Terroir - PD Memo
- FLG Terroir - Code Memo
- FLG Terroir - Tax Memo

OFFICE OF THE CITY CLERK

September 2, 2015

FLG Terroir
Attn: Frederic Wojkielewicz
17 N. San Francisco St. #2A
Flagstaff, AZ 86001

Dear Mr. Wojkielewicz:

Your application for a person transfer Series 07 liquor license for FLG Terroir at 17 N. San Francisco St. #2A, was posted on August 13, 2015. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, September 15, 2015 which begins at 4:00 p.m.**

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application is set to expire on September 2, 2015 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure

City of Flagstaff

Liquor License Application
Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.

2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.

3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.

4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.

5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.

6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.

7. The presiding officer will then close the public hearing.

8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

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

A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;

2. Number and types of licenses within one mile of the proposed premises;

3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;

4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;

5. Residential and commercial population density within one mile of the proposed premises;

6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;

7. Effect on vehicular traffic within one mile of the proposed premises;

8. Compatibility of the proposed business with other activity within one mile of the proposed premises;

9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;

10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;

11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and

12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

B. This Section is authorized by A.R.S. § 4-201(I).

License Types: Series 07 Beer and Wine Bar License

Transferable (From person to person and/or location to location within the same county only)
On & off-sale retail privileges
Note: Terms in **BOLD CAPITALS** are defined in the glossary.

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

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

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

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

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

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

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

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

MEMORANDUM **15-082-01**

TO **Chief Kevin Treadway**

FROM **Sgt. Matt Wright**

DATE **August 13, 2015**

REF **Series 7 Liquor License Application for a Person to Person Transfer for FLG Terroir**

On May 5, 2015, I initiated an investigation into an Application for a Person to Person Transfer on an existing liquor license for FLG Terroir. FLG Terroir is located at 17 N. San Francisco St., Suite #2A. The license number is 07030089. The new owners of the liquor license purchased this license from Mitchell Walzer the previous owner of The Wine Loft.

I spoke with Frederic Wojtkielewicz the listed agent on the application. Frederic said he does not have any ownership in the business. Frederic said Pamela Hyde and Doug Brozovosky have purchased the business and license and hired him to manage the day to day operations. Frederic confirmed he has completed the mandatory liquor law training courses.

I conducted a query through our local systems and public access on Frederic Wojtkielewicz, Pamela Hyde and Doug Brozovosky. I found Frederic was issued a criminal citation for misdemeanor trespassing in 2008 of which all court requirements have been met. No derogatory records were found on Pamela Hyde or Doug Brozovosky. I did not locate any liquor violations against any of the applicants.

Based on this investigation I recommend approval of the Application for the Person to Person Transfer of this license.

Planning and Development Services Memorandum

August 13, 2015

TO: Stacy Saltzburg, Deputy City Clerk

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

CC: Tom Boughner, Code Compliance Mgr.

RE: Application for Liquor License #07030089
17 N. San Francisco Street, Suite 2A, Flagstaff, Arizona 86001
Assessor's Parcel Number 100-20-016
Mr. Frederick Andrew Wojtkielewicz on behalf of The Wine Pair, LLC

This application is a request for a Person Transfer, Series 07 Beer and Wine Bar, liquor license, by Mr. Patrick Frederick Andrew Wojtkielewicz on behalf of The Wine Pair, LLC. This beer and wine bar is located within the Commercial Business (CB) Zone, which allows for this use.

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

This liquor license is recommended for approval.

Liquor License Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Andy Wagemaker, Revenue Director

Date: August 17, 2015

Re: Series 07 Liquor License – FLG Terroir

I have reviewed our records for The Wine Pair, LLC, and I have no objection to approval of this liquor license.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Saltzburg, Deputy City Clerk
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE:

Consideration and Action on Liquor License Application: Cecily Clift-Maniaci, "The Toasted Owl Cafe", 12 S. Mikes Pike, Series 12 (restaurant), New License.

RECOMMENDED ACTION:

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

Executive Summary:

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. The property has been posted as required, and the Police, Community Development, and Sales Tax divisions have reviewed the application with no concerns noted.

Financial Impact:

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

Connection to Council Goal and/or Regional Plan:

Liquor licenses are a regulatory action and there is no Council goal that applies.

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

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

Background/History:

An application for a new Series 12 liquor license was received from Cecily Clift-Maniaci for The Toasted Owl Cafe.

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

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

A sales tax and licensing information review by Andy Wagemaker, Revenue Director, resulted in no objection to approval.

Key Considerations:

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

A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

The deadline for issuing a recommendation on this application is October 10, 2015.

The applicant is not required to provide the distance between the applicant’s business and the nearest church or school for government; and the State does not require a geological map or list of licenses in the vicinity for any license series.

Expanded Financial Considerations:

This business will contribute to the tax base of the community.

Community Involvement:

The application was properly posted on August 20, 2015. No written protests have been received to date.

Attachments:

- Toasted Owl - Letter to Applicant
- Hearing Procedures
- Series 12 Description
- Toasted Owl - Tax Memo
- Toasted Owl - PD Memo
- Toasted Owl - CD Memo

OFFICE OF THE CITY CLERK

September 2, 2015

The Toasted Owl Cafe
Attn: Cecily Clift-Maniaci
PO Box 1808
Grand Canyon, AZ 86023

Dear Ms. Clift-Maniaci:

Your application for a new Series 12 liquor license for The Toasted Owl Cafe at 12 S. Mikes Pike, was posted on August 20, 2015. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, September 15, 2015 which begins at 4:00 p.m.**

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application is set to expire on September 9, 2015 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure

City of Flagstaff

Liquor License Application
Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.

2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.

3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.

4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.

5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.

6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.

7. The presiding officer will then close the public hearing.

8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

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

A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;

2. Number and types of licenses within one mile of the proposed premises;

3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;

4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;

5. Residential and commercial population density within one mile of the proposed premises;

6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;

7. Effect on vehicular traffic within one mile of the proposed premises;

8. Compatibility of the proposed business with other activity within one mile of the proposed premises;

9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;

10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;

11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and

12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

B. This Section is authorized by A.R.S. § 4-201(I).

License Types: Series 12 Restaurant License

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

PURPOSE:
Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:
An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

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

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

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

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

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

Liquor License Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Andy Wagemaker, Revenue Director

Date: August 19, 2015

Re: Series 12 Liquor License – The Toasted Owl Cafe

I have reviewed our records for Toasted Owl Inc and I have no objection to approval of this liquor license.

MEMORANDUM

Memo #15-089-01

TO: **Chief Kevin Treadway**

FROM: **Sgt. Matt Wright**

DATE: **August 28, 2015**

RE: **LIQUOR LICENSE APPLICATION – SERIES 12- FOR "The Toasted Owl"**

On August 28, 2015, I initiated an investigation into an application for a series 12 (restaurant) liquor license filed by Cecily Maniaci the owner of The Toasted Owl. Cecily Maniaci is the only listed owner and operator on the license. Cecily will run the day to day operations. The restaurant was once located at 121 E. Birch Avenue in downtown Flagstaff. The business has recently moved locations to 12 S. Mikes Pike in Flagstaff and due to the move a new series 12 application and license is required. This application is for a series 12 license #12033384.

I conducted a query through local systems and public access on Cecily Maniaci. No derogatory records were found. Cecily has attended the mandatory liquor law training course and provided proof. I spoke with Cecily who stated she had never been arrested, and has ownership of three other liquor licenses. Cecily stated she had received three administrative violations for delinquent taxes in the past. All of the violations have since been cleared through the payment of fines. Cecily said the business model, and menu will stay the same and the only thing that is changing is the location. The new location of the restaurant is currently under renovation.

As a result of this investigation the recommendation to Council is for approval of the series 12 license.

Planning and Development Services Memorandum

August 31, 2015

TO: Stacy Saltzburg, Deputy City Clerk

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

CC: Tom Boughner, Code Compliance Mgr.

RE: Application for Liquor License #12033384
12 S. Mike's Pike, Flagstaff, Arizona 86001
Assessor's Parcel Number 100-40-009
Ms. Cecily Olivia Clift-Maniaci

This application is a request for a new Series 12 restaurant liquor license by Ms. Cecily Olivia Clift-Maniaci for The Toasted Owl. This new restaurant is located within the Commercial Services (CS) Zone, which allows for this use.

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

This liquor license is recommended for approval.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Karl Eberhard, Comm Design & Redevelopment Mgr
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE:

Consideration and Approval of Amendments to Intergovernmental Agreements: With Coconino County, Navajo County, the City of Holbrook, and the City of Winslow regarding Arizona Route 66 Coalition Communities U.S. Environmental Protection Agency 2012 Brownfields Community-wide Assessment Grant ***(Approve time extension amendments to IGA's)***.

RECOMMENDED ACTION:

Authorize the City Manager to execute amendments to Intergovernmental Agreements (IGAs) with Coconino County, Navajo County, the City of Holbrook, and the City of Winslow.

Executive Summary:

On November 6, 2012, the City Council accepted a grant in the amount of $700,000 from United States Environmental Protection Agency(USEPA) to be used for community involvement, property inventory, performing environmental assessments (approximately sixty sites), and for cleanup or redevelopment planning, addressing real or perceived contamination from petroleum products and/or hazardous substances on public or private properties along Route 66. This grant was submitted in the name of the City of Flagstaff representing a coalition that includes the cities of Flagstaff, Winslow, and Holbrook and the counties of Coconino and Navajo. To date, the grant has been very successful in building stronger relationships with our partners and in assessing potential environmental circumstances in our communities. The grant was scheduled to end October 31, 2015 but has been extended by the USEPA to October 31, 2017. These amendments to the existing intergovernmental agreements correspondingly extend the agreements to October 31, 2017.

Financial Impact:

There is minimal city cost associated with this grant. There are no matching funds required, in addition grant funds include funding to reimburse the city for any direct staff time expended, as well as for contract management of the grant. Indirect costs, overhead costs, are not eligible for reimbursement.

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS:

9) Foster relationships and maintain economic development commitment to partners

REGIONAL PLAN:

The Flagstaff Regional Plan 2030 includes a series of goals and policies that support community reinvestment as an objective and course of action to achieve the goals and policies of the

Plan. Brownfield work, incentives such as grants, are a tool for redevelopment

Has There Been Previous Council Decision on This:

On November 6, 2012, the City Council accepted a grant in the amount of $700,000 from United States Environmental Protection Agency.

Options and Alternatives:

1) Authorize City Manager's Office to execute amendments - This option has the advantage of continuing this program for our use and use by our partner communities. The disadvantage is that there is minimal city cost associated with this grant.
2) Do not authorize City Manager's Office to execute amendments - This option ends city the minimal expenditures but also ends the program.

Background/History:

Attached for your reference is the Staff Summary from November 6, 2012 when the City Council accepted the grant. It contains significant general background information.

<u>The grant progress so far can be summarized as follows:</u>

Grant work completed or in progress (through July 2015):

Work	Coconino	Holbrook	Winslow	Flagstaff	Total
Asbestos Testing	2	3	8	4	17
Lead-based Paint		3	8	4	15
Phase I ESAs	1		7	7	15
Phase II ESAs				1	1
Brownfield Inventory	1	1		1	3

Note that Navajo County has not been included because they have yet to take advantage of the opportunity.

Estimated Grant funds usage:

Grant Work:	$266,442.89
Grant Management:	$79,107.06
City of Flagstaff Salary Reimbursement:	$5,433.41
Remaining Funds:	$349,016.64

For the City of Flagstaff, as an example, the funds have been used for four private development projects, three City land acquisitions, two city buildings, and one affordable housing project. Both Coconino County and the city or Winslow have leveraged the grant funded assessments to obtain additional grants from the Arizona Department of Environmental Quality (ADEQ) for site clean-up work.

Key Considerations:

See also the attached Staff Summary from November 6, 2012 when the City Council accepted the grant and the Staff Summary from 11-6-2012 approving the IGA's.

The City of Flagstaff will also amend the contract for grant management. Like the IGA amendments, this amendment will be a "time only" change and thus will be approved through the staff change order process and will not be presented to the City Council.

The grant management contractor, Alwin Environmental, has sold portions of their business to NV5, another similar company. Since our service contract was one of the portions sold, in addition to the change order, we will making certain changes to the purchase orders and other documents to reflect this new contractor with the staff serving us remains the same.

Community Benefits and Considerations:

See the attached Staff Summary from November 6, 2012 when the City Council accepted the grant.

Community Involvement:

See also the attached Staff Summary from November 6, 2012 when the City Council accepted the grant.

Inform
Collaborate
Empower

During the course of the grant, the coalition members have been meeting quarterly, rotating the meeting location from community to community. We also communicate regularly via email as to who is doing what and "voting" to approve the efforts of the others. We have also, as a group, hosted visits from the USEPA and ADEQ to review work completed, pending, and anticipated.

We have published newspaper advertisements, had announcements made to the Realtor's Association, made presentations to groups such as the Rotary Clubs and the Greater Arizona Mayor's Association, and we have had personal contact with many community members. ADEQ representatives and one of the consultants have been particularly helpful in reaching out to the community regarding these funds and uses.

Attachments:

Nov 6, 2012 Staff Summary
Sample Photos
City of Holbrook-IGA Amendment #1
City of Winslow-IGA Amendment #1
Coconino County-IGA Amendment #1
Navajo County-IGA Amendment #1
11-6-12 Staff Summary Brownfield Assessment IGA Approval

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Karl Eberhard, Comm Design & Redevelopment Mgr
Date:	10/02/2012
Meeting Date:	11/06/2012

TITLE:

Consideration of Acceptance of Grant Funding: Arizona Route 66 Coalition Communities U.S. Environmental Protection Agency 2012 Brownfields Community-wide Assessment Grant.

RECOMMENDED ACTION:

Authorize acceptance or direct staff to decline grant funding.

Policy Decision or Reason for Action:

Funds from this grant in the amount of $700,000 from United States Environmental Protection Agency (USEPA) will be used for community involvement, property inventory, performing environmental assessments (approximately sixty sites), and for cleanup or redevelopment planning, addressing real or perceived contamination from petroleum products and/or hazardous substances on public or private properties along Route 66. In the case of contaminated properties, it will advance clean-up activities. Contaminated or not, having environmental determinations prepared helps to advance redevelopment opportunities. The partnerships established advance collaborative economic development in Northern Arizona. The knowledge of existing conditions advances city and regional planning efforts. As the City works with its own real estate holdings, these funds can provide the required assessment documentation.

Financial Impact:

There is minimal City cost associated with this grant. There are no matching funds required, in addition grant funds include funding to reimburse the City for any direct staff time expended, as well as for contract management of the grant. Indirect costs, overhead costs, are not eligible for reimbursement. The grant is budgeted in FY 2013 in the amount of $1,000,000 under the Community Investment Section in account number 001-1863-550.

Connection to Council Goal:

A sustainable community through economic vitality, environmental protection and social inclusion.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives

1) Accept the grant; 2) Decline the grant.

Background/History:

Brownfield Definition

The EPA originally defined a Brownfield as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. It was later expanded to include "abandoned or under-utilized" properties and mine scarred properties, as well as clarifications to include more contaminants such as petroleum and controlled substances.

Route 66 Brownfields

Established in 1928, historic Route 66, known as the “Mother Road,” became the country’s main east-west artery connecting communities from Chicago to Los Angeles with over 2,400 miles of continuously paved roadway. A rich history is tied into Route 66 beyond the road itself. It served as an agent of social transformation and represents a remnant of America’s past. Cities and towns along Route 66 reaped the benefits of the highway with motels, diners, and gasoline and service stations springing up along the way as the country increasingly became a mobile society. Northern Arizona communities flourished and grew from this western movement, first driven by those seeking the prospects of a new beginning during the Great Depression, later by traffic headed west to support the defense industry in the 1940s, and then by the new American phenomenon of the 1950s, the family vacation.

By 1966, the interstate highway system replaced Route 66, bypassing over 200 miles of Route 66 roadway in Northern Arizona. This change coincided with other powerful forces that consolidated highway services, including the advent of traffic interchanges and the creation of national chains of gasoline stations, motels, and restaurants. The abandonment of Route 66 resulted in economic, environmental, and cultural resource implications that continue to plague Northern Arizona communities to this day. National chains that sprang up at the interchanges supplanted the locally-owned businesses along the highway. Route 66 businesses became less viable, even closed, and many properties remain underutilized or abandoned.

The environmental legacy includes over 1,100 known underground storage tanks in our area, about 40% of which have leaked. While a number of these have been properly removed and closed, concerns and suspicions of the potentially-contaminated sites remain. Combined with other sources, such as railroad facilities, timber production sites, and other commercial and industrial operations, we estimate that over 150 Brownfields sites may exist in the project area. The contaminants likely to be encountered at the sites are a host of petroleum hydrocarbons, as well as volatile organic compounds, heavy metals, and asbestos.

Using Flagstaff as an example, 27 motels along Route 66 are eligible for, or are listed on, the National Register of Historic Places. The other highway supporting facilities, such as the diners and service stations, have not been evaluated, but are likely also eligible. The National Park Service, during the course of their recent study of all of Route 66, identified Route 66 in Flagstaff as the most intact segment in the country. Setting aside the intrinsic benefits of preserving our heritage, these properties have the potential to be exploited for heritage tourism. Heritage tourists stay longer, do more, and spend more than other tourists - approximately 50% more. Albuquerque has successfully converted blighted Route 66 motels into viable businesses catering to heritage tourists.

There is great economic potential for these areas, including redevelopment, infill, tourism, heritage tourism, and more; however, the specter of unknown environmental hazards has hindered

redevelopment.

Community-wide Assessment Grants

EPA assessment grants provide funding to the community to inventory, characterize, assess, and conduct planning related to Brownfields sites. Eligible applicants include only governments and certain quasi-governmental agencies. An eligible entity may apply for up to $200,000 to assess sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to $200,000 to address sites contaminated by petroleum. A coalition of three or more eligible applicants can submit one grant proposal under the name of one of the coalition members for up to $1,000,000. The performance period for these grants is three years. Assessment grants do not provide resources to conduct cleanup or building demolition activities.

Prior Experience

The City of Flagstaff individually received this same Community-wide Assessment Grant in 2006. The subject area of that grant was much smaller, focused on south Downtown and a portion of Route 66. However, with those funds, the City performed significant community outreach and involvement, inventoried area properties, prepared a redevelopment plan for City owned properties on Phoenix Avenue, and prepared a GIS based Brownfield Sensitivity (planning) Map. Importantly, 20 Phase I and four (4) Phase II Environmental Site Assessments (ESAs) were prepared for various public and private properties. Approximately $120,000 was directly disseminated into the Flagstaff community in the form of contract awards and Environmental Site Assessments reports. Grant compliance was exemplary and included the preparation of a Quality Assurance Project Plan (QAPP) and a Health and Safety Plan (HASP), quarterly reports, MBE/WBE reports, and ACRES database reporting, as well as presentations given at three national conferences and three Western Brownfield Workshops.

Key Considerations:

Arizona Route 66 Coalition - IGAs

This grant has been submitted in the name of the City of Flagstaff representing the cities of Flagstaff, Winslow, and Holbrook and the counties of Coconino and Navajo. The City of Flagstaff has a track record of very successful grant management that is headed by the Grants Management Team (GMT) composed of the Grants Manager, Financial Officer/Accountant, and Project Representative and is currently managing $29,776,130 (FY 2013 budgeted grant revenue) in Federal and State grant funding. As a result of this general expertise, and due to our specific experience with EPA Community-wide Assessment grants, the City of Flagstaff is the logical agency to lead the current effort. By including our neighbors as partners, we will need to enter into an Intergovernmental Agreement [IGA - referred to as "Memorandum of Agreement (MOA)" in the grant documents] with each partner. The agreements will memorialize the procedures between the various agencies, already conceptually drafted, and will pass along the rights and responsibilities of the grant terms from the City of Flagstaff to the partner communities.

Consultant Services

As with the 2006 Community-wide Assessment Grant, the majority of these funds will be expended for a number of consultants that perform services such as preparing ESAs and planning documents. Additionally, for this grant, the City of Flagstaff anticipates engaging a consultant for overall project administration and coordination, community outreach, and project specific assistance. Project administration would include establishing project protocols and preparing various required documents (QAPP and HASP), planning and managing the distribution of funds, managing the project selection process, and preparing and reporting to the EPA via the City, as well as the boards or councils of the Coalition. Project coordination includes coordination with the City of Flagstaff Project Manager and other staff, coordinating the interactions and efforts of the Coalition partners, scheduling and conducting

individual and/or group meetings, and coordinating grant activities with local, state, and federal agencies. This consultant would also be responsible for comprehensive community outreach including press releases and newsletters, meetings, and other strategies as well as assisting and advising all of the coalition partners in technical and procedural matters, evaluation of proposed projects, and on-site representation.

Community Benefits and Considerations:

Whole Community

For the broader community, this work will foster redevelopment and environmental clean-up, and it will aid with community planning.

Redevelopment directly reduces blight, sprawl, and the cost of city infrastructure, maintenance, and services, provides affordable space for businesses and employment, converts unproductive properties to tax generating properties, improves districts and neighborhoods, increases property values, improves the citizen's quality of life, supports commercial activities and tourism, and preserves heritage resources. Surrounding business and properties indirectly enjoy many of these same benefits.

There is a general public health benefit, and also a general ecosystem benefit for the community if contamination is cleaned up. This is especially true for sensitive sub-populations, such as children, pregnant women and the elderly, who can be disproportionately affected. And, while cleaning up a contaminated site reduces exposure on a particular site, it also reduces exposure off-site by halting the migration of contamination into nearby air, soil and water.

Understanding the extent of contamination of a property aids community and redevelopment planning, and economic development planning, by providing information to prospects early in the process, making more predictable the work needed to be done, allowing for a more accurate determination of profitability.

Setting aside the previously noted economic benefits of heritage preservation, redevelopment through heritage preservation preserves the City’s unique sense of place, fosters a strong local identity based upon a sound understanding of our unique history, provides opportunities for public service and volunteerism, enhances local cultural life, and is a critical component of being a sustainable community by reducing reliance on new materials, environmentally unfriendly building materials, and energy intensive production and transport of new building materials.

Property Owners

Direct benefits to specific property owners include many of the community benefits. More simply, having ESAs on hand makes the property inherently more valuable, particularly when they document that a property is not contaminated. This is the case for both private and public property owners, but private property owners also benefit from tax benefits associated with Brownfield redevelopment. The City of Flagstaff has utilized ESAs prepared with these funds as the basis of several land transactions, and for projects, reducing the draw down of other fund sources.

Community Involvement:

Preparing the Grant

In preparing the grant, all of the communities along Route 66 in Arizona in all cities and all counties, were invited to participate. Due to time constraints and other considerations, not all were able to do so. Multiple meetings of the interested communities were hosted by the City of Flagstaff to work out particulars, a draft IGA, and to prepare and review the grant application. Each participating community conducted two public meetings in their community to seek review and input on the application. These

meetings were noticed on websites, advertised in local newspapers, and were further publicized with handbills and flyers. Numerous agencies and associations were also consulted in the preparation of the application. We received 14 letters of support from these organizations including the Economic Collaborative of Northern Arizona (ECoNA), the Sustainable Economic Development Initiative (SEDI), the Historic Route 66 Association of Arizona, the Rotary Clubs of Winslow and Flagstaff, the Holbrook Painted Desert Kiwanis Club, and the Standin' on the Corner Foundation, Inc. Additionally, the Arizona Department of Environmental Quality was a vital partner in the development of this application.

During the Grant Term

The work of this grant is divided into four tasks and Task 2 is titled "Community Involvement." The Coalition members will continue to keep the public, business, and regulatory community involved throughout the life of this grant (through mailings, website postings, City Council reports, newsletters, as well as public and one-on-one meetings) regarding the activities planned by the Coalition, schedule information, and utilize means by which individuals and interested organizations can stay informed and involved. Each of the application-supporting agencies and organizations have also committed to assisting with community involvement.

Date of Council Approval:

Attachments: Grant Agreement #00T97401 EPA Brownfield Assessment

Form Review

Inbox	Reviewed By	Date
Grants Manager	Stacey Brechler-Knaggs	10/08/2012 02:56 PM
Finance Director	Rick Tadder	10/08/2012 03:12 PM
Economic Vitality Director	Stacey Button	10/09/2012 05:11 PM
Legal Assistant	Vicki Baker	10/09/2012 05:44 PM
Senior Assistant City Attorney DW	David Womochil	10/11/2012 12:02 PM
DCM - Jerene Watson	Jerene Watson	10/11/2012 03:32 PM
Comm Design & Redevelopment Mgr (Originator)	Karl Eberhard	10/30/2012 10:07 AM
Economic Vitality Director	Stacey Button	11/01/2012 11:17 AM
DCM - Jerene Watson	Jerene Watson	11/01/2012 03:28 PM
Form Started By: Karl Eberhard		Started On: 10/02/2012 07:54 AM

Final Approval Date: 11/01/2012

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 00T97401 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 09/14/2012
TYPE OF ACTION New	MAILING DATE 09/21/2012
PAYMENT METHOD: Advance	ACH# 90541

RECIPIENT TYPE:
Municipal

Send Payment Request to:
Las Vegas Finance Center, Fax (702) 798-2423

RECIPIENT:
City of Flagstaff
211 West Aspen Ave.
Flagstaff, AZ 86001
EIN: 86-6000244

PAYEE:
City of Flagstaff
211 West Aspen Ave.
Flagstaff, AZ 86001

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Stacey Brechler-Knaggs 211 West Aspen Ave. Flagstaff, AZ 86001 **E-Mail:** sknaggs@flagstaffaz.gov **Phone:** 928-213-2227	Diane Strassmaier 75 Hawthorne Street, SFD-6 San Francisco, CA 94105 **E-Mail:** Strassmaier.Diane@epa.gov **Phone:** 415-972-3247	Alba Espitia Grants Management Office, MTS-7 **E-Mail:** Espitiâ.Alba@epa.gov **Phone:** 415-972-3667

PROJECT TITLE AND DESCRIPTION
BROWNFIELDS ASSESSMENT COOPERATIVE AGREEMENT
This cooperative agreement will be used to conduct community wide assessments at potential Brownfields sites contaminated with Petroleum or Hazardous Substances. Activities include conducting site prioritization and Phase I and Phase II Assessments at selected sites. Funds will also be used for public outreach and community involvement/public participation processes. This Assistance Agreement provides full Federal funding in the amount of $700,000.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2012 - 10/31/2015	10/01/2012 - 10/31/2015	$700,000.00	$700,000.00

NOTICE OF AWARD

Based on your application dated 07/11/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards $700,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $700,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	ORGANIZATION / ADDRESS
U.S. EPA, Region 9 Grants Management Office, MTS-7 75 Hawthorne Street San Francisco, CA 94105	U.S. EPA, Region 9 Superfund Division, SFD-1 75 Hawthorne Street San Francisco, CA 94105

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Denise Zvanovec - Grants Management Officer	DATE 09/14/2012

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Kevin Burke, City Manager	

Grant Agency: U.S Department of Environemental Protection Agency
Project Title: 2012 Brownfields Assessment Cooperative Agreement
Grant Number: 00T97401

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 700,000	$ 700,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$	$ 0
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 700,000	$ 700,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1209K0B020	12	E4	09K1AG7	301D79	4114	G9B3NY00	-	400,000
-	1209K0B020	12	E4	09K1AG7	301D79XBP	4114	G9B3OR00	-	300,000
									700,000

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$17,100
2. Fringe Benefits	$0
3. Travel	$25,900
4. Equipment	$0
5. Supplies	$23,760
6. Contractual	$633,240
7. Construction	$0
8. Other	$0
9. Total Direct Charges	$700,000
10. Indirect Costs: % Base N/A	$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	$700,000
12. Total Approved Assistance Amount	$700,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$700,000
15. Total EPA Amount Awarded To Date	$700,000

Administrative Conditions

1. Federal Financial Report (SF 425)

The final Federal Financial Report (FFR) covering the entire project period shall be submitted within 90 days after the end of the project period according to 40 CFR Part 31.23(b) and 31.41(b). The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

For awards with cumulative project and budget periods greater than 12 months, an interim FFR covering the period from "project/budget period start date" to **September 30** of each calendar year shall be submitted to the U.S. EPA Las Vegas Finance Center, 4220 South Maryland Parkway, Bldg. C, Room 503, Las Vegas, NV 89193-8515, no later than **December 30** of the same calendar year.

2. Single Audit Act

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. The recipient **MUST** submit the SF-SAC and a Single Audit Report Package using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: http://harvester.census.gov/fac/.

3. Central Contractor Registration/System for Award Management and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site http://www.sam.gov.

2. 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 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
   a. A Governmental organization, which is a State, local government, or Indian tribe;
   b. A foreign public entity;
   c. A domestic or foreign nonprofit organization;
   d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:
   a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
   c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:
   a. Receives a subaward from you under this award; and
   b. Is accountable to you for the use of the Federal funds provided by the subaward.

4. Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –

i. The total Federal funding authorized to date under this award is $25,000 or more;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. subawards, and

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus .

ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified* .

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

5. Trafficking in Persons

a. *Provisions applicable to a recipient that is a private entity*

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
   i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
   ii. Procure a commercial sex act during the period of time that the award is in effect; or
   iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
   i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
   ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
      A. Associated with performance under this award; or
      B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. *Provision applicable to a recipient other than a private entity* . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
   i. Associated with performance under this award; or
   ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

c. *Provisions applicable to any recipient* .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
   i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
   ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. *Definitions* . For purposes of this award term:

1. "Employee" means either:
   i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under
   this award; or
   ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
   i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
   ii. Includes:
   A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or

tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

6. Recycled Paper

In accordance with Executive Order 13423 (Strengthening Federal Environmental, Energy and Transportation Management dated January 24, 2007), EPA Order 1000.25 and 40 CFR Part 30.16 (as applicable), the recipient shall use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. The recipient shall give preference in its procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines, as applicable.

Any State agency or agency of a political subdivision of a State shall also comply with the requirements set forth in the Resource Conservation and Recovery Act (RCRA), Section 6002 (42 U.S.C. 6962), which requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA under 40 CFR Part 247. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more.

7. Hotel and Motel Fire Safety

The recipient agrees to ensure that all conference, meeting, convention, or training funded in whole or in part with Federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at http://www.usfa.dhs.gov/applications/hotel/ to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act. (Refer to 40 CFR Part 30.18 and 15 U.S.C. 2225a, as applicable.)

8. Drug-Free Workplace

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2.

9. Debarment, Suspension and Other Responsibility Matters

The recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

11. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

12. Lobbying and Litigation Prohibition

The recipient shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by 2 CFR 225 (OMB Circular A-87), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying* . The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

13. Utilization of Disadvantaged Business Enterprises

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements as set forth in 40 CFR Part 33. The EPA DBE rule can be accessed at http://www.epa.gov/osbp. In addition, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply with 40 CFR Section 33.301. Records documenting compliance with the six good faith efforts shall be retained.

The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Arizona Department of Environmental Quality,** as follows:

	MBE	WBE
Construction	15%	7%
Equipment	14%	20%
Services	15%	32%
Supplies	15%	31%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Arizona Department of Environmental Quality**.

Pursuant to 40 CFR Section 33.404, the recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study to Tiffanie Pang, MTS-1, the Regional MBE/WBE Coordinator, within 120 days of acceptance of the financial assistance award. EPA will respond to the proposed fair share objectives/goals within 30 days of receiving the submission. If proposed fair share objectives/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objectives/goals are submitted.

A recipient of a Continuing Environmental Program Grant or other annual grant agrees to create and maintain a bidders list. A recipient of an EPA financial assistance agreement to capitalize a revolving loan

fund also agrees to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Refer to 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

14. MBE/WBE Utilization Report

The recipient agrees to complete and submit to the Grants Management Office, MTS-7, a MBE/WBE Utilization Report (EPA Form 5700-52A), within 30 days after the end of the Federal fiscal year; i.e., by October 30 of each calendar year. Negative reports are required. Only procurements with certified MBE/WBEs are counted towards a recipient's MBE/WBE accomplishments. A final MBE/WBE report must be submitted within 90 days after the end of the project period. Your grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the internet at www.epa.gov/osbp.

15. Indirect Costs

The cost principles of 2 CFR 225 (OMB Circular A-87) are applicable to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

16. Payment to Consultants

Per 40 CFR Part 31.36(j), EPA's participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. The Federal Executive Schedule (i.e., Salary Table) is located at: **http://www.opm.gov/oca/**
This limit applies to consultation services of designated individuals with specialized skills and if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. This rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms or individuals for services which are awarded using the procurement requirements in 40 CFR Part 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR Part 31.36(j)(2).

17. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with EPA regulations under 40 CFR Part 30.43, 31.36 or 35.6555, as applicable. In accordance with 40 CFR Part 30.45, 31.36(f) or 35.6585, as applicable, the grantee and subgrantee(s) must perform a cost or price analysis in connection with every procurement action, including contract modifications.

18. Subawards

a. The recipient agrees to:
   (1) Establish all subaward agreements in writing;
   (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
   (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
   (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
   (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
   (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
   (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
   (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf. Guidance for distinguishing

between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf and http://www.whitehouse.gov/omb/financial_fin_single_audit

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

Programmatic Conditions

I. GENERAL FEDERAL REQUIREMENTS

NOTE: For the purposes of these Terms and Conditions the term "assessment" includes, eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA approved work plan.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2012 competition for Brownfields assessment cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.

   b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.

   c. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333) the Anti Kickback Act (40 USC § 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

   d. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration and repair contracts and subcontracts awarded with funds provided under this agreement. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.

   b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways,

undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated September 2011 for discussion of this element) documenting that:

(1) a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
(2) the State determines there is "no viable responsible party" for the site;
(3) the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
(4) the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

b. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.

2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA PO or EPA may terminate this agreement for material non-compliance with its terms. For purposes of assessment grants, the recipient demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants "sufficient progress" is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement is in place.

3. Assessment funding for an eligible brownfield site may not exceed $200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed $350,000 at the site.

B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

a. Substantial involvement by EPA generally includes administrative activities such as

monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.

b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under § 107 of CERCLA. (See Section II.C.3 for more information on subgrants.)

c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.

b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.

c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.

2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors comply with the terms and conditions of this agreement.

3. Subgrants are defined at 40 CFR 31.3. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the $200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding $200,000. In no case may EPA funding exceed $350,000 on a site receiving a waiver.

5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.

D. Quarterly Progress Reports- Note: Report to be combined with Cleanup Grant Progress Report

1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:

a. Summary of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of

problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.

b. An update on project schedules and milestones.

c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.

d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.

3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, cleanup required, contaminants, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:

a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k);

b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);

c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.

d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

2. **Local Governments only.** No more than 10% of the funds awarded by this agreement may be

used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the EPA approved work plan. The CAR must maintain records on funds that will be used to carry the EPA approved work plan to ensure compliance with this requirement.

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

   a. Cleanup activities;
   b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
   c. Job training unrelated to performing a specific assessment at a site covered by the grant;
   d. To pay for a penalty or fine;
   e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
   f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA § 107;
   g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
   h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.

   a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.

   b. Ineligible grant administration costs include direct costs for:

      (1) Preparation of applications for brownfields grants;
      (2) Record retention required under 40 CFR 31.42;
      (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
      (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
      (5) Maintaining and operating financial management systems required under 40 CFR 31;
      (6) Preparing payment requests and handling payments under 40 CFR 31.21;
      (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
      (8) Close out under 40 CFR 31.50.

3. Cooperative agreement funds may not be used for any of the following properties:

   a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
   b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
   c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
   d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.

2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.

   a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
   b. Interest earned on program income is considered additional program income.
   c. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 40 CFR 31.21(f).

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

2. The CAR should comply with the following QA requirements:

   a. This grant includes the performance of environmental measurements, therefore, a QA Plan, a Sampling and Analysis Plan, or other comparable document covering QA activities, must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient should consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation would be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e.: sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.

   b. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption and the recipient contacts the Quality Assurance Manager to obtain approval prior to beginning the sampling work. Contact the QA Office at 415-972-3411. In the event an unforeseen site condition arises during the cleanup work, changes or deviations to the type of contaminant sampled, methodology, or sample spacing, the recipient must contact the Quality Assurance Manager to determine if the Sampling and Analysis Plan must be amended before new work is initiated. If the change is such that a site hazard is created by a delay in the work, the recipient shall contact the Quality Assurance Manager to obtain approval prior to

formally revising the document. Minor field deviations (i.e: slight location changes) should be noted in the final cleanup report, but do not require EPA approval.

c. Under the Assessment program, area-wide projects or multi-site projects will require the preparation of a Quality Assurance Project Plan (QAPP) in addition to site specific Sampling and Analysis Plans.

d. Under the Assessment, Cleanup, and Revolving Loan Fund programs, a one-site project may use the one-site Region 9 Sampling and Analysis Plan which incorporates the QAPP.

e. If the review and approval of the QAPP was completed five years ago, it must be resubmitted to EPA for review and approval to ensure it remains a useful and valid document for the site.

f. In general, a QAPP or Sampling and Analysis Plan will require approximately two to four weeks for the EPA Quality Assurance Manager to review and return comments. Documents generally require one revision and re-submittal. The re-submittal review time is typically two weeks.

C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-05 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content", (Publication Number: EPA 560-F-06-244). This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.

2. All Appropriate Inquiries (AAI) final reports produced with funding from this agreement must comply with 40 C.F.R. Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed "Reporting Requirements Checklist" that EPA's Project Officer will provide to the recipient. The checklist also is available to grantees on the EPA website at www.epa.gov/brownfields.

a. An ***opinion*** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.

b. An identification of ***"significant" data gaps*** (as defined in 40 C.F.R. 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.

c. ***Qualifications* and *signature*** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part."

"[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."

Note: Please use either "I" or "We."

d. In compliance with §312.31(b), the environmental professional must include in the final report an ***opinion regarding additional appropriate investigation*** , if the environmental professional has such an opinion.

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-05). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 40 CFR 31.43(a)(2). If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 40 CFR 31.43 and 2 CFR Part 180.

V. Conflict of interest: Appearance of lack of Impartiality

A. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

(i) The affected party,
(ii) Any member of his immediate family,
(iii) His or her partner, or
(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c).

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.

2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

U.S. EPA Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld. C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
http://www.epa.gov/ocfo/finservices/payinfo.html

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.

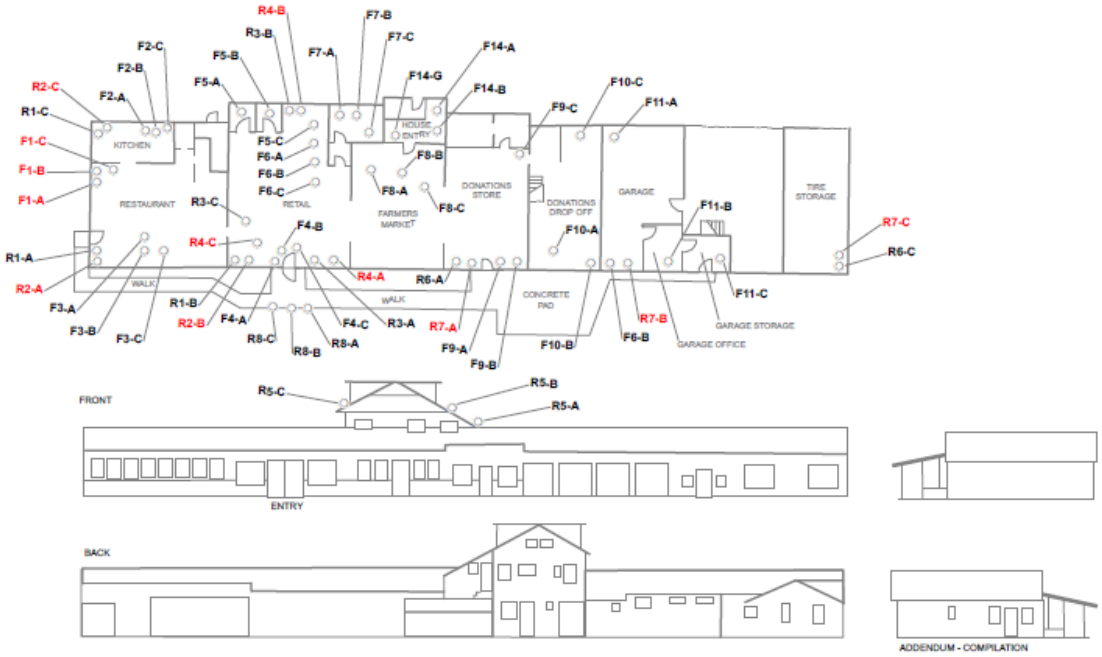
c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

END-OF-DOCUMENT

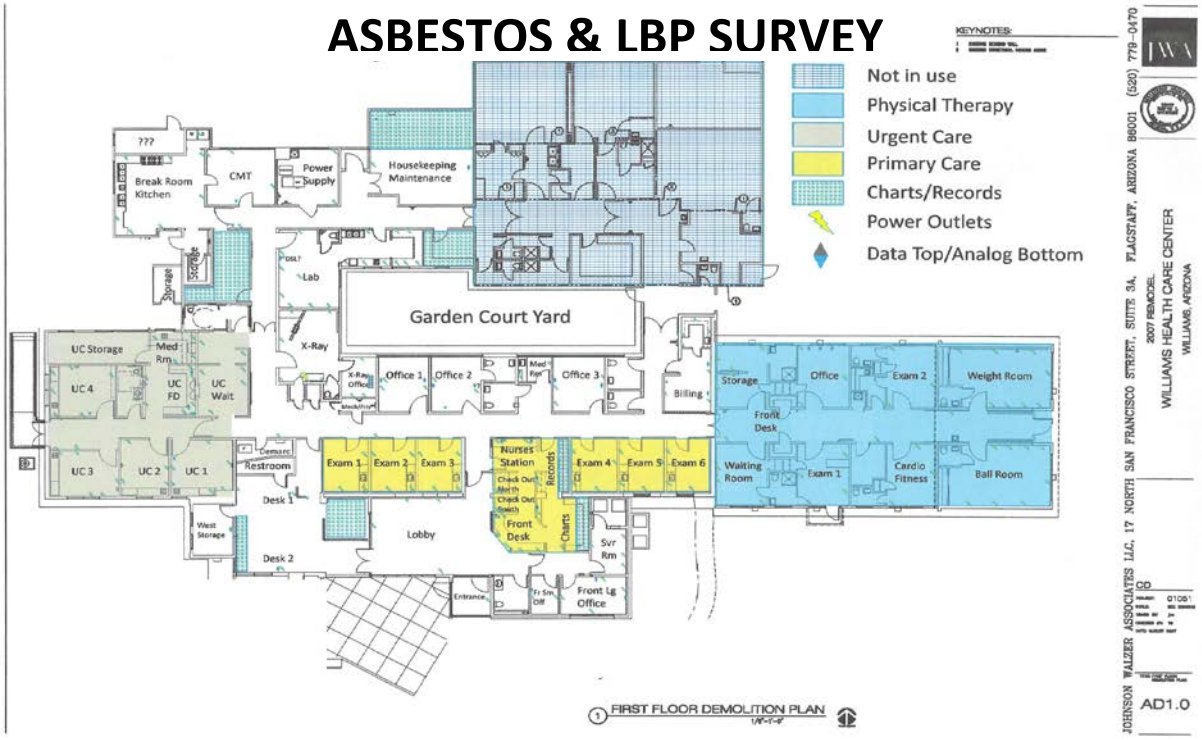
AMES FORD AUTOMOBILE DEALERSHIP, SHOWROOM, AND SERVICE FACILITY
WINSLOW
NO WORK DONE AS OF 7/23/15

LZ BUDGET MOTEL
WINSLOW
PHASE I ESA & ASBESTOS SURVEY

CANYON TRADING POST
WILLIAMS
PHASE I ESA, ASBESTOS & LBP SURVEY
ASBESTOS ABATEMENT



NORTH COUNTRY HEALTHCARE CLINIC WILLIAMS ASBESTOS & LBP SURVEY



SOLBERG COTTAGES
FLAGSTAFF
ASBESTOS & LBP SURVEY

USGS BUILDING #6 (ASTROGEOLOGY) FLAGSTAFF ASBESTOS & LBP SURVEY

1965 EAST MOUNTAIN VIEW AVENUE
FLAGSTAFF
PHASE I ESA

TIME EXTENSION AMENDMENT #1

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND CITY OF HOLBROOK

The following Amendment #1 is incorporated into and made a part of the Agreement between the City of Flagstaff ("City") and City of Holbrook ("Coalition Member") dated October 16, 2012 (the "Agreement"). This Amendment, effective _____ _____, is for the purpose of amending the grant period termination date under the Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition ("Coalition") include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement ("IGA") documents the roles and responsibilities of the City of Flagstaff and Coconino County with regard to Environmental Protection Agency ("EPA") Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members ("Coalition Members").

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.

THEREFORE, for the reasons recited above, and in consideration of the mutual covenants contained in this Amendment, the City and Coalition Member agree as follows:

TERM

The term of the Agreement shall be extended from October 31, 2015 to **October 31, 2017 (new term date)**.

PROVISIONS

All other provisions of the Brownfields Assessment Coalition Intergovernmental Agreement dated October 16, 2012 shall remain in effect for the length of the term stated in this Amendment.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

The City of Holbrook, Coalition Member

_____ Date_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

TIME EXTENSION AMENDMENT #1

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND CITY OF WINSLOW

The following Amendment #1 is incorporated into and made a part of the Agreement between the City of Flagstaff ("City") and City of Winslow ("Coalition Member") dated October 16, 2012 (the "Agreement"). This Amendment, effective _____ _____, is for the purpose of amending the grant period termination date under the Agreement.

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TERM

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PROVISIONS

All other provisions of the Brownfields Assessment Coalition Intergovernmental Agreement dated October 16, 2012 shall remain in effect for the length of the term stated in this Amendment.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

The City of Winslow, Coalition Member

_____ Date_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

TIME EXTENSION AMENDMENT #1

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND COCONINO COUNTY

The following Amendment #1 is incorporated into and made a part of the Agreement between the City of Flagstaff ("City") and Coconino County ("Coalition Member") dated October 16, 2012 (the "Agreement"). This Amendment, effective _____ _____, is for the purpose of amending the grant period termination date under the Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition ("Coalition") include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement ("IGA") documents the roles and responsibilities of the City of Flagstaff and Coconino County with regard to Environmental Protection Agency ("EPA") Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members ("Coalition Members").

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.

THEREFORE, for the reasons recited above, and in consideration of the mutual covenants contained in this Amendment, the City and Coalition Member agree as follows:

TERM

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PROVISIONS

All other provisions of the Brownfields Assessment Coalition Intergovernmental Agreement dated October 16, 2012 shall remain in effect for the length of the term stated in this Amendment.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

Coconino County, Coalition Member

_____ Date_____
Art Babbott, Chair
Coconino County Public Health Services District
Board of Directors

ATTEST:

_____
Clerk of the Board of the Board of Directors

Approved as to form:

_____
Deputy County Attorney

_____
Kimbal Babcock, Interim Chief Health Officer
Public Health Services District

TIME EXTENSION AMENDMENT #1

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND NAVAJO COUNTY

The following Amendment #1 is incorporated into and made a part of the Agreement between the City of Flagstaff ("City") and Navajo County ("Coalition Member") dated October 16, 2012 (the "Agreement"). This Amendment, effective _____ _____, is for the purpose of amending the grant period termination date under the Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition ("Coalition") include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement ("IGA") documents the roles and responsibilities of the City of Flagstaff and Coconino County with regard to Environmental Protection Agency ("EPA") Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members ("Coalition Members").

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.

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TERM

The term of the Agreement shall be extended from October 31, 2015 to **October 31, 2017 (new term date)**.

PROVISIONS

All other provisions of the Brownfields Assessment Coalition Intergovernmental Agreement dated October 16, 2012 shall remain in effect for the length of the term stated in this Amendment.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

The Navajo County, Coalition Member

_____ Date_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Karl Eberhard, Comm Design & Redevelopment Mgr
Date:	10/05/2012
Meeting Date:	11/06/2012

TITLE:

Consideration of Intergovernmental Agreement(s): Arizona Route 66 Coalition Communities U.S. Environmental Protection Agency 2012 Brownfields Community-wide Assessment Grant.

RECOMMENDED ACTION:

If the City Council has accepted the grant funding, approve four Intergovernmental Agreements between the City of Flagstaff and the City of Winslow, the City of Holbrook, Coconino County, and Navajo County.

Policy Decision or Reason for Action:

These Intergovernmental Agreements (IGAs), formally establish the coalition of Arizona Route 66 Communities that will be participating in the grant.

Subsidiary Decisions Points: Acceptance of Grant Funding: Arizona Route 66 Coalition Communities U.S. Environmental Protection Agency (EPA) 2012 Brownfields Community-wide Assessment Grant.

Financial Impact:

None.

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives

1. Approve the Intergovernmental Agreements.

2. Do not approve the Intergovernmental Agreements.

Background/History:

Prior to this item, the City Council considered the acceptance of grant funding in the amount of $700,000 from United States Environmental Protection Agency (EPA) known as the Arizona Route 66 Coalition Communities EPA 2012 Brownfields Community-wide Assessment Grant. Please see the associated Staff Report for details. The Arizona Route 66 Community Coalition, consisting of three cities and two counties in northern Arizona, was established to face this challenge:

> Our communities were built up with gasoline stations, restaurants, and motels that played an important part of the Route 66 culture,but that are now abandoned or underutilized, as a result of environmental hazards and impediments to redevelopment. While there is great economic, cultural, and recreational potential within these affected areas, the specter of unknown environmental hazards has hindered redevelopment of the properties. Instead of Brownfields redevelopment, populations are sprawling into the surrounding desert and forest lands.

Key Considerations:

If the City Council chooses to accept the grant, then the execution of these IGAs are required per the EPA Brownfields Assessment Grant Terms and Conditions for Coalition Members.

Community Benefits and Considerations:

Collaborating with neighboring communities benefits all of the communities through shared knowledge and coordination of efforts.

Community Involvement:

COLLABORATE - In preparing the grant, all of the communities along Route 66 in Arizona in all cities and all counties, were invited to participate. Due to time constraints and other considerations, not all were able to do so. Multiple meetings of the interested communities were hosted by the City of Flagstaff to work out particulars, a draft IGA, and to prepare and review the grant application.

Expanded Options and Alternatives:

If the City Council chooses not to enter into these IGAs, the grant terms cannot be met and the City will need to decline the grant.

Date of Council Approval:

Attachments:

Brownfield Assessment Coalition IGA - Winslow
Brownfield Assessment Coalition IGA - Holbrook
Brownfield Assessment Coalition IGA - Coconino County
Brownfield Assessment Coalition IGA - Navajo County
Brownfield Assessment Coalition IGA - Exhibit A-Work Plan
Brownfield Assessment Coalition IGA - Exhibit B-Cooperative Agreement

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Form Review

Inbox	Reviewed By	Date
Grants Manager	Stacey Brechler-Knaggs	10/09/2012 10:13 AM
Purchasing Director	Rick Compau	10/09/2012 11:44 AM
Finance Director	Rick Tadder	10/09/2012 01:53 PM
Legal Assistant	Vicki Baker	10/09/2012 02:28 PM

Senior Assistant City Attorney DW	David Womochil	10/11/2012 12:09 PM
Economic Vitality Director	Stacey Button	10/11/2012 04:06 PM
Legal Assistant	Vicki Baker	10/12/2012 08:49 AM
Senior Assistant City Attorney DW	David Womochil	10/12/2012 09:04 AM
DCM - Jerene Watson	Jerene Watson	10/12/2012 11:44 AM
Economic Vitality Director	Stacey Button	10/12/2012 12:08 PM
Comm Design & Redevelopment Mgr (Originator)	Karl Eberhard	10/12/2012 12:19 PM
Economic Vitality Director	Stacey Button	10/12/2012 12:30 PM
Comm Design & Redevelopment Mgr (Originator)	Karl Eberhard	10/12/2012 12:33 PM
Legal Assistant	Vicki Baker	10/12/2012 01:47 PM
Senior Assistant City Attorney DW	David Womochil	10/15/2012 11:10 AM
Senior Assistant City Attorney DW	David Womochil	10/15/2012 11:14 AM
DCM - Jerene Watson	Jerene Watson	10/19/2012 06:12 PM
Comm Design & Redevelopment Mgr (Originator)	Karl Eberhard	10/30/2012 10:07 AM
Economic Vitality Director	Stacey Button	11/01/2012 11:17 AM
Economic Vitality Director	Stacey Button	11/01/2012 11:17 AM
DCM - Jerene Watson	Jerene Watson	11/01/2012 03:28 PM

Form Started By: Karl Eberhard Started On: 10/05/2012 08:52 AM

Final Approval Date: 11/01/2012

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND THE CITY OF WINSLOW

This Agreement ("Agreement") is entered into this _____day of _____, 2012, by and between the City of Flagstaff ("City"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and the City of Winslow ("Coalition Member"), 21 Williamson Avenue, Winslow, Arizona. The City and Coalition Member may also be referred to as "Party" or "Parties" in this Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition ("Coalition") include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement ("IGA") documents the roles and responsibilities of the City of Flagstaff and the City of Winslow with regard to Environmental Protection Agency ("EPA") Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members ("Coalition Members").

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.

2. It is the responsibility of the City of Flagstaff to provide timely information to the Coalition Member regarding the management of the Cooperative Agreement and any changes that may be made to the Cooperative Agreement over the period of performance.

3. The contact information for the City of Flagstaff is as follows:

City of Flagstaff
Karl Eberhard (Principal Investigator)
Community Design and Redevelopment Manager
211 West Aspen
Flagstaff, Arizona 86001
(928) 213-2969
keberhard@flagstaffaz.gov

City of Flagstaff
Stacey Brechler-Knaggs (Administrative Contact)
Grants Manager
211 West Aspen
Flagstaff, Arizona 86001
(928) 213-2227
sknaggs@flagstaffaz.gov

The contact information for the other Coalition Members is as follows:

Coconino County
Randy Phillips
2500 N. Fort Valley Road, Building 1
Flagstaff, AZ 86001
(928) 679-8758
rphillips@coconino.az.gov

City of Winslow
Ahmed Abdullah
21 Williamson Avenue
Winslow, Arizona 86047
(928) 289-3204
ahmed.abdullah@ci.winslow.az.us

Navajo County
Trent Larson
P.O. Box 668
Holbrook, Arizona 86025
(928) 524-4271
tiffany.ashworth@navajocountyaz.gov

City of Holbrook
Cher Reyes
465 1st Avenue
Holbrook, Arizona 86025
(928) 524-6225 x 30
cher@ci.holbrook.az.us

4. Activities funded through the Cooperative Agreement may include, but are not limited to, inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, outreach materials and implementation, and other eligible activities. The Coalition Member will retain and manage its own consultants and contractors under 40 CFR 30.36 to undertake various activities funded through the Cooperative Agreement.

5. The Coalition Member will procure consultants and contractors in compliance with 40 CFR 31.36 requirements. The Coalition Member will issue Requests for Proposals or Requests for Qualifications and will be the entity responsible for receipt of the submitted proposals and selection and award of contracts. The City of Flagstaff will cooperate with the Coalition Member in making selections of consultants and contractors and negotiating the terms of agreements. Consultant and contractor invoices for work conducted through the Cooperative Agreement will be issued to the City of Flagstaff for approval. Funds will be provided to the City of Flagstaff from the EPA via wire-transfer and the City of Flagstaff will pay invoices through established accounts payable mechanisms.

6. A portion of the grant funds will be retained by the City of Flagstaff from the initial grant amount to cover management and oversight of the contract for the duration of the contract term. The remainder of the funds will be available to any Coalition Member, including the City of Flagstaff, on a "first-come-first-served" basis, limited as follows:

   A Coalition Member seeking funds during the course of the grant period will be required to submit an application to the Assessment Coalition describing the project, necessary tasks, estimated costs, and other pertinent information. The Coalition will meet monthly (or more often, if needed) to review applications and approve or deny funding by a simple majority vote. Quorum is defined as attending parties, regardless of other factors. The City of Flagstaff will have authority to delay and bring back to the Coalition any application that does not, or cannot, meet the terms of the grant requirements. In the case of unresolvable disagreement, the City of Flagstaff has ultimate authority (as fiscal agent/grant management). No single community will receive more than twenty-five percent (25%) of the total available funds without a super majority vote of Coalition Members with the City of Flagstaff having the deciding vote (if necessary). The site selection process must ensure that a minimum of five (5)

sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted to the EPA for prior approval to ensure eligibility. (Note: The City of Flagstaff and each of the Coalition Members may agree upon a minimum number of sites assessed per member at the start of the Cooperative Agreement to ensure equitable distribution of funds across all members' jurisdictions.) The City of Flagstaff shall develop procedures for implementing the requirements of this Section 6.

7. Upon designation of the specific sites, it will be the responsibility of the City of Flagstaff to work with the Coalition Member in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of the Coalition Member to obtain all required permits, easements, and/or access agreements, as may be necessary, to undertake assessments at the selected site. If the Coalition Member does not have the capacity to perform these activities, the City of Flagstaff may assist in securing necessary site access agreements and permits.

8. A Work Plan (Exhibit A) has been prepared and submitted to the EPA as required by the Application for Grant Award. The work plan contains the specific details relating to community outreach and involvement, Coalition Member compliance, site selection, distribution of funds, schedule, etc. The City of Flagstaff is responsible for ensuring that activities as negotiated in the Work Plan are implemented in accordance with a schedule agreed upon by the Coalition Member in whose geographic area the site to be assessed is located.

9. **Disbursements to Coalition Member**. The City will disburse funds to the Coalition Member on a reimbursement basis only, conditioned upon receipt of proof of payment and applicable, accurate, and complete reimbursement documents, as deemed necessary by the City, to be submitted by the Coalition Member. Payments will be contingent upon receipt of all reporting requirements of the Coalition Member under this Agreement.

10. **Fiscal Responsibility**. The funds disbursed by the City under this Agreement shall be used only for the project as described in the City's grant application, grant agreement, and in the Work Plan. Any modification to quantity or scope of work must be approved in writing by the City. If any expenditure by the Coalition Member under this Agreement is disallowed by an audit exemption or by the City or the State, the Coalition Member shall reimburse funds for the disallowed expenditure directly to the City immediately upon demand by the City. The Coalition Member shall also abide by the General Provisions in the Grant Agreement between the Environmental Protection Agency and the City of Flagstaff, Grant No. BF 00T97401, a copy of which is attached as Exhibit B and incorporated into this Agreement by reference. The Coalition Member is required to comply with all provisions of Exhibit B and shall be accountable to the City for the use of federal funds provided under this IGA.

11. **Financial Audit: Programmatic Monitoring**. The Coalition Member agrees to the terms specified in A.R.S. § 35-214 and § 35-215.

    During the term of this Agreement, the Coalition Member must have an annual audit conducted in accordance with OMB Circular A-133 ("Audits of States, Local Governments, and Non-profit Organizations"), if the Coalition Member expends more than five hundred thousand dollars ($500,000) from Federal awards, in compliance with the

Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156). If the Coalition Member has expended more than five hundred thousand dollars ($500,000) in Federal funds, a copy of the Coalition Member's audit report for the previous fiscal year must be submitted to the City for review within thirty (30) days of signing this Agreement.

During the term of this Agreement, the Coalition Member shall be monitored periodically by the City of Flagstaff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the City and the Coalition Member.

12. **Debarment Certification.** The Coalition Member agrees to comply with the Federal debarment and suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."

13. **Funds Management.** The Coalition Member must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The Coalition Member must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits. Coalition Members must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Management, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).

14. **Reporting Requirements.** Regular reports by the Coalition Member shall include:

14.1. **Progress Reports**. The Coalition Member shall provide quarterly programmatic reports to the City within five (5) working days of the last day of the month in which services are provided. The Coalition Member shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed. Notwithstanding anything to the contrary in this Section 14, the City shall not request, and Coalition Member shall not be required to provide, any of Coalition Member's confidential or proprietary information in reports provided to the City, including, without

limitation, any information regarding research collaborators, research plans, or any data, results or other information resulting from Coalition Member's performance of research or any other activities relating thereto.

14.2. **Financial Reimbursements.** The Coalition Member shall provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by City staff. The Coalition Member shall submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked "FINAL." All reports shall be submitted to the contact person as described in Section 37, Notices, of this Agreement.

15. **Assignment and Delegation.** The Coalition Member may not assign any rights under this Agreement without the express, prior written consent of the City.

16. **Amendments.** Any change in this Agreement including but not limited to the Description of Services and budget, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by the duly authorized representatives of the Coalition Member and the City. Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the Coalition Member's compensation, if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. The Coalition Member understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

17. A**greement Renewal.** This Agreement shall not bind nor purport to bind the City for any contractual commitment in excess of the original Agreement period.

18. **Right to Assurance.** If the City in good faith has reason to believe that the Coalition Member does not intend to, or is unable to perform or continue performing under this Agreement, the City may demand in writing that the Coalition Member give a written assurance of intent to perform. If the Coalition Member fails to provide written assurance within the number of days specified in the demand, the City, at its option, may terminate this Agreement.

19. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is an employee or agent of the other party in any capacity or a consultant to the other party to the Agreement with respect to the subject matter of the Agreement, this Agreement may be canceled for conflict of interest.

20. **Availability of Funds.** Every payment obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this

Agreement, the City may terminate this Agreement at the end of the period for which funds are available. The City will provide thirty (30) days written notice and shall pay the Coalition Member for termination costs as allowable under Cost Principles (OMB Circular A-122).

21. **Force Majeure.** If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

22. **Partial Invalidity.** Any term or provision of this Agreement that may be declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

23. **Mediation and Venue**

23.1. **Mediation**. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within forty-five (45) days of notification of the dispute, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted in Flagstaff, Arizona, under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, unless other procedures are agreed upon by the parties. The parties shall select one or more trained mediators acceptable to all parties. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Agreement does not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona or Federal Rules of Civil Procedure.

23.2. **Venue**. For purposes of any form of dispute resolution, venue shall be in Coconino County, State of Arizona, or in the District of Arizona, if litigation under diversity jurisdiction is involved.

24. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.

25. **Entire Agreement.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document. This Agreement and its Exhibits constitute the entire agreement between the parties and may not be changed or added to except in writing signed by the parties, provided, however, that the City shall have the right to immediately amend this Agreement so that it complies with any new

legislation, laws, ordinances, or rules affecting this Agreement. The Coalition Member agrees to execute any such amendment within ten (10) business days of its receipt.

26. **Non Waiver.** Neither party's failure to insist on strict performance of any term or condition of the Agreement shall be deemed a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

27. **Restrictions on Lobbying.** The Coalition Member shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of any governmental entity.

28. **Licensing.** The Coalition Member, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

29. **Non-Discrimination.** The Coalition Member shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. Title 41, Chapter 9, Article 4 and Executive Order 2009-09.

30. **Sectarian Requests.** Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction, in violation of the United States or Arizona Constitutions.

31. **Advertising and Promotion of Agreement.** The Coalition Member shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the City.

32. **Ownership of Information, Printed and Published Material.** The Funding Agency and the City shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all reports provided to the City under this Agreement in accordance with Section 14 above.

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

34. **Termination.** Either party reserves the right to terminate the Agreement in whole or in part due to the failure of the other party to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The staff of either

party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.

If the Coalition Member chooses to terminate the Agreement before the grant purposes have been met, then the City reserves the right to collect all reimbursements distributed to the Coalition Member that have not been spent, and the Coalition Member is not contractually obligated to pay to any third party as of the date Coalition Member receives notice of said termination.

The Coalition Member shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

35. **Paragraph Headings.** The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

36. **Special Conditions.** The Coalition Member agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: **"Purchased with funds provided by the Environmental Protection Agency, 2012 Brownfield Assessment Grant."**

    The Coalition Member agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.

37. **Notices.** Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement, shall be in writing and delivered in person or shall be sent to the respective parties at the following addresses:

To City:

Grants Manager
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

To Coalition Member:

The City of Winslow
21 Williamson Avenue
Winslow, Arizona 86047

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

The City of Winslow, Coalition Member

_____ Date_____

Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND THE CITY OF HOLBROOK

This Agreement ("Agreement") is entered into this _____day of _____, 2012, by and between the City of Flagstaff ("City"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and the City of Holbrook ("Coalition Member"), 465 1st Avenue, Holbrook, Arizona. The City and Coalition Member may also be referred to as "Party" or "Parties" in this Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition ("Coalition") include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement ("IGA") documents the roles and responsibilities of the City of Flagstaff and the City of Holbrook with regard to Environmental Protection Agency ("EPA") Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members ("Coalition Members").

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.

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3. The contact information for the City of Flagstaff is as follows:

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Community Design and Redevelopment Manager
211 West Aspen
Flagstaff, Arizona 86001
(928) 213-2969
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Grants Manager
211 West Aspen
Flagstaff, Arizona 86001
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Coconino County
Randy Phillips
2500 N. Fort Valley Road, Building 1
Flagstaff, AZ 86001
(928) 679-8758
rphillips@coconino.az.gov

City of Winslow
Ahmed Abdullah
21 Williamson Avenue
Winslow, Arizona 86047
(928) 289-3204
ahmed.abdullah@ci.winslow.az.us

Navajo County
Trent Larson
P.O. Box 668
Holbrook, Arizona 86025
(928) 524-4271
tiffany.ashworth@navajocountyaz.gov

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sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted to the EPA for prior approval to ensure eligibility. (Note: The City of Flagstaff and each of the Coalition Members may agree upon a minimum number of sites assessed per member at the start of the Cooperative Agreement to ensure equitable distribution of funds across all members' jurisdictions.) The City of Flagstaff shall develop procedures for implementing the requirements of this Section 6.

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14.1. **Progress Reports**. The Coalition Member shall provide quarterly programmatic reports to the City within five (5) working days of the last day of the month in which services are provided. The Coalition Member shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed. Notwithstanding anything to the contrary in this Section 14, the City shall not request, and Coalition Member shall not be required to provide, any of Coalition Member's confidential or proprietary information in reports provided to the City, including, without

limitation, any information regarding research collaborators, research plans, or any data, results or other information resulting from Coalition Member's performance of research or any other activities relating thereto.

14.2. **Financial Reimbursements.** The Coalition Member shall provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by City staff. The Coalition Member shall submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked "FINAL." All reports shall be submitted to the contact person as described in Section 37, Notices, of this Agreement.

15. **Assignment and Delegation.** The Coalition Member may not assign any rights under this Agreement without the express, prior written consent of the City.

16. **Amendments.** Any change in this Agreement including but not limited to the Description of Services and budget, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by the duly authorized representatives of the Coalition Member and the City. Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the Coalition Member's compensation, if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. The Coalition Member understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

17. A**greement Renewal.** This Agreement shall not bind nor purport to bind the City for any contractual commitment in excess of the original Agreement period.

18. **Right to Assurance.** If the City in good faith has reason to believe that the Coalition Member does not intend to, or is unable to perform or continue performing under this Agreement, the City may demand in writing that the Coalition Member give a written assurance of intent to perform. If the Coalition Member fails to provide written assurance within the number of days specified in the demand, the City, at its option, may terminate this Agreement.

19. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is an employee or agent of the other party in any capacity or a consultant to the other party to the Agreement with respect to the subject matter of the Agreement, this Agreement may be canceled for conflict of interest.

20. **Availability of Funds.** Every payment obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this

Agreement, the City may terminate this Agreement at the end of the period for which funds are available. The City will provide thirty (30) days written notice and shall pay the Coalition Member for termination costs as allowable under Cost Principles (OMB Circular A-122).

21. **Force Majeure.** If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

22. **Partial Invalidity.** Any term or provision of this Agreement that may be declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

23. **Mediation and Venue**

23.1. **Mediation**. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within forty-five (45) days of notification of the dispute, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted in Flagstaff, Arizona, under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, unless other procedures are agreed upon by the parties. The parties shall select one or more trained mediators acceptable to all parties. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Agreement does not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona or Federal Rules of Civil Procedure.

23.2. **Venue**. For purposes of any form of dispute resolution, venue shall be in Coconino County, State of Arizona, or in the District of Arizona, if litigation under diversity jurisdiction is involved.

24. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.

25. **Entire Agreement.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document. This Agreement and its Exhibits constitute the entire agreement between the parties and may not be changed or added to except in writing signed by the parties, provided, however, that the City shall have the right to immediately amend this Agreement so that it complies with any new

legislation, laws, ordinances, or rules affecting this Agreement. The Coalition Member agrees to execute any such amendment within ten (10) business days of its receipt.

26. **Non Waiver.** Neither party's failure to insist on strict performance of any term or condition of the Agreement shall be deemed a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

27. **Restrictions on Lobbying.** The Coalition Member shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of any governmental entity.

28. **Licensing.** The Coalition Member, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

29. **Non-Discrimination.** The Coalition Member shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. Title 41, Chapter 9, Article 4 and Executive Order 2009-09.

30. **Sectarian Requests.** Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction, in violation of the United States or Arizona Constitutions.

31. **Advertising and Promotion of Agreement.** The Coalition Member shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the City.

32. **Ownership of Information, Printed and Published Material.** The Funding Agency and the City shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all reports provided to the City under this Agreement in accordance with Section 14 above.

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

34. **Termination.** Either party reserves the right to terminate the Agreement in whole or in part due to the failure of the other party to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The staff of either

party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.

If the Coalition Member chooses to terminate the Agreement before the grant purposes have been met, then the City reserves the right to collect all reimbursements distributed to the Coalition Member that have not been spent, and the Coalition Member is not contractually obligated to pay to any third party as of the date Coalition Member receives notice of said termination.

The Coalition Member shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

35. **Paragraph Headings.** The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

36. **Special Conditions.** The Coalition Member agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: **"Purchased with funds provided by the Environmental Protection Agency, 2012 Brownfield Assessment Grant."**

    The Coalition Member agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.

37. **Notices.** Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement, shall be in writing and delivered in person or shall be sent to the respective parties at the following addresses:

To City:

Grants Manager
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

To Coalition Member:

The City of Holbrook
21 Williamson Avenue
Winslow, Arizona 86047

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

The City of Holbrook, Coalition Member

_____ Date_____

Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND COCONINO COUNTY

This Agreement ("Agreement") is entered into this _____day of _____, 2012, by and between the City of Flagstaff ("City"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and Coconino County ("Coalition Member"), 2500 N. Fort Valley Road, Building 1, Flagstaff, Arizona. The City and Coalition Member may also be referred to as "Party" or "Parties" in this Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition ("Coalition") include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement ("IGA") documents the roles and responsibilities of the City of Flagstaff and Coconino County with regard to Environmental Protection Agency ("EPA") Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members ("Coalition Members").

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.

2. It is the responsibility of the City of Flagstaff to provide timely information to the Coalition Member regarding the management of the Cooperative Agreement and any changes that may be made to the Cooperative Agreement over the period of performance.

3. The contact information for the City of Flagstaff is as follows:

City of Flagstaff	City of Flagstaff
Karl Eberhard (Principal Investigator)	Stacey Brechler-Knaggs (Administrative Contact)
Community Design and Redevelopment Manager	Grants Manager
211 West Aspen	211 West Aspen
Flagstaff, Arizona 86001	Flagstaff, Arizona 86001
(928) 213-2969	(928) 213-2227
keberhard@flagstaffaz.gov	sknaggs@flagstaffaz.gov

The contact information for the other Coalition Members is as follows:

Coconino County
Randy Phillips
2500 N. Fort Valley Road, Building 1
Flagstaff, AZ 86001
(928) 679-8758
rphillips@coconino.az.gov

City of Winslow
Ahmed Abdullah
21 Williamson Avenue
Winslow, Arizona 86047
(928) 289-3204
ahmed.abdullah@ci.winslow.az.us

Navajo County
Trent Larson
P.O. Box 668
Holbrook, Arizona 86025
(928) 524-4271
tiffany.ashworth@navajocountyaz.gov

City of Holbrook
Cher Reyes
465 1st Avenue
Holbrook, Arizona 86025
(928) 524-6225 x 30
cher@ci.holbrook.az.us

4. Activities funded through the Cooperative Agreement may include, but are not limited to, inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, outreach materials and implementation, and other eligible activities. The Coalition Member will retain and manage its own consultants and contractors under 40 CFR 30.36 to undertake various activities funded through the Cooperative Agreement.

5. The Coalition Member will procure consultants and contractors in compliance with 40 CFR 31.36 requirements. The Coalition Member will issue Requests for Proposals or Requests for Qualifications and will be the entity responsible for receipt of the submitted proposals and selection and award of contracts. The City of Flagstaff will cooperate with the Coalition Member in making selections of consultants and contractors and negotiating the terms of agreements. Consultant and contractor invoices for work conducted through the Cooperative Agreement will be issued to the City of Flagstaff for approval. Funds will be provided to the City of Flagstaff from the EPA via wire-transfer and the City of Flagstaff will pay invoices through established accounts payable mechanisms.

6. A portion of the grant funds will be retained by the City of Flagstaff from the initial grant amount to cover management and oversight of the contract for the duration of the contract term. The remainder of the funds will be available to any Coalition Member, including the City of Flagstaff, on a "first-come-first-served" basis, limited as follows:

   A Coalition Member seeking funds during the course of the grant period will be required to submit an application to the Assessment Coalition describing the project, necessary tasks, estimated costs, and other pertinent information. The Coalition will meet monthly (or more often, if needed) to review applications and approve or deny funding by a simple majority vote. Quorum is defined as attending parties, regardless of other factors. The City of Flagstaff will have authority to delay and bring back to the Coalition any application that does not, or cannot, meet the terms of the grant requirements. In the case of unresolvable disagreement, the City of Flagstaff has ultimate authority (as fiscal agent/grant management). No single community will receive more than twenty-five percent (25%) of the total available funds without a super majority vote of Coalition Members with the City of Flagstaff having the deciding vote (if necessary). The site selection process must ensure that a minimum of five (5)

sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted to the EPA for prior approval to ensure eligibility. (Note: The City of Flagstaff and each of the Coalition Members may agree upon a minimum number of sites assessed per member at the start of the Cooperative Agreement to ensure equitable distribution of funds across all members' jurisdictions.) The City of Flagstaff shall develop procedures for implementing the requirements of this Section 6.

7. Upon designation of the specific sites, it will be the responsibility of the City of Flagstaff to work with the Coalition Member in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of the Coalition Member to obtain all required permits, easements, and/or access agreements, as may be necessary, to undertake assessments at the selected site. If the Coalition Member does not have the capacity to perform these activities, the City of Flagstaff may assist in securing necessary site access agreements and permits.

8. A Work Plan (Exhibit A) has been prepared and submitted to the EPA as required by the Application for Grant Award. The work plan contains the specific details relating to community outreach and involvement, Coalition Member compliance, site selection, distribution of funds, schedule, etc. The City of Flagstaff is responsible for ensuring that activities as negotiated in the Work Plan are implemented in accordance with a schedule agreed upon by the Coalition Member in whose geographic area the site to be assessed is located.

9. **Disbursements to Coalition Member**. The City will disburse funds to the Coalition Member on a reimbursement basis only, conditioned upon receipt of proof of payment and applicable, accurate, and complete reimbursement documents, as deemed necessary by the City, to be submitted by the Coalition Member. Payments will be contingent upon receipt of all reporting requirements of the Coalition Member under this Agreement.

10. **Fiscal Responsibility**. The funds disbursed by the City under this Agreement shall be used only for the project as described in the City's grant application, grant agreement, and in the Work Plan. Any modification to quantity or scope of work must be approved in writing by the City. If any expenditure by the Coalition Member under this Agreement is disallowed by an audit exemption or by the City or the State, the Coalition Member shall reimburse funds for the disallowed expenditure directly to the City immediately upon demand by the City. The Coalition Member shall also abide by the General Provisions in the Grant Agreement between the Environmental Protection Agency and the City of Flagstaff, Grant No. BF 00T97401, a copy of which is attached as Exhibit B and incorporated into this Agreement by reference. The Coalition Member is required to comply with all provisions of Exhibit B and shall be accountable to the City for the use of federal funds provided under this IGA.

11. **Financial Audit: Programmatic Monitoring**. The Coalition Member agrees to the terms specified in A.R.S. § 35-214 and § 35-215.

    During the term of this Agreement, the Coalition Member must have an annual audit conducted in accordance with OMB Circular A-133 ("Audits of States, Local Governments, and Non-profit Organizations"), if the Coalition Member expends more than five hundred thousand dollars ($500,000) from Federal awards, in compliance with the

Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156). If the Coalition Member has expended more than five hundred thousand dollars ($500,000) in Federal funds, a copy of the Coalition Member's audit report for the previous fiscal year must be submitted to the City for review within thirty (30) days of signing this Agreement.

During the term of this Agreement, the Coalition Member shall be monitored periodically by the City of Flagstaff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the City and the Coalition Member.

12. **Debarment Certification.** The Coalition Member agrees to comply with the Federal debarment and suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."

13. **Funds Management.** The Coalition Member must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The Coalition Member must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits. Coalition Members must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Management, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).

14. **Reporting Requirements.** Regular reports by the Coalition Member shall include:

14.1. **Progress Reports**. The Coalition Member shall provide quarterly programmatic reports to the City within five (5) working days of the last day of the month in which services are provided. The Coalition Member shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed. Notwithstanding anything to the contrary in this Section 14, the City shall not request, and Coalition Member shall not be required to provide, any of Coalition Member's confidential or proprietary information in reports provided to the City, including, without

limitation, any information regarding research collaborators, research plans, or any data, results or other information resulting from Coalition Member's performance of research or any other activities relating thereto.

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Agreement, the City may terminate this Agreement at the end of the period for which funds are available. The City will provide thirty (30) days written notice and shall pay the Coalition Member for termination costs as allowable under Cost Principles (OMB Circular A-122).

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34. **Termination.** Either party reserves the right to terminate the Agreement in whole or in part due to the failure of the other party to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The staff of either

party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.

If the Coalition Member chooses to terminate the Agreement before the grant purposes have been met, then the City reserves the right to collect all reimbursements distributed to the Coalition Member that have not been spent, and the Coalition Member is not contractually obligated to pay to any third party as of the date Coalition Member receives notice of said termination.

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    The Coalition Member agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.

37. **Notices.** Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement, shall be in writing and delivered in person or shall be sent to the respective parties at the following addresses:

To City:

Grants Manager
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

To Coalition Member:

Coconino County
2500 N. Fort Valley Road, Building 1
Flagstaff, Arizona 86001

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

Coconino County, Coalition Member

_____ Date_____

Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND NAVAJO COUNTY

This Agreement ("Agreement") is entered into this _____day of _____, 2012, by and between the City of Flagstaff ("City"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and Navajo County ("Coalition Member"), P.O. Box 668, Holbrook, Arizona. The City and Coalition Member may also be referred to as "Party" or "Parties" in this Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition ("Coalition") include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement ("IGA") documents the roles and responsibilities of the City of Flagstaff and Navajo County with regard to Environmental Protection Agency ("EPA") Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members ("Coalition Members").

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.

2. It is the responsibility of the City of Flagstaff to provide timely information to the Coalition Member regarding the management of the Cooperative Agreement and any changes that may be made to the Cooperative Agreement over the period of performance.

3. The contact information for the City of Flagstaff is as follows:

City of Flagstaff	City of Flagstaff
Karl Eberhard (Principal Investigator)	Stacey Brechler-Knaggs (Administrative Contact)
Community Design and Redevelopment Manager	Grants Manager
211 West Aspen	211 West Aspen
Flagstaff, Arizona 86001	Flagstaff, Arizona 86001
(928) 213-2969	(928) 213-2227
keberhard@flagstaffaz.gov	sknaggs@flagstaffaz.gov

The contact information for the other Coalition Members is as follows:

Coconino County
Randy Phillips
2500 N. Fort Valley Road, Building 1
Flagstaff, AZ 86001
(928) 679-8758
rphillips@coconino.az.gov

City of Winslow
Ahmed Abdullah
21 Williamson Avenue
Winslow, Arizona 86047
(928) 289-3204
ahmed.abdullah@ci.winslow.az.us

Navajo County
Trent Larson
P.O. Box 668
Holbrook, Arizona 86025
(928) 524-4271
tiffany.ashworth@navajocountyaz.gov

City of Holbrook
Cher Reyes
465 1st Avenue
Holbrook, Arizona 86025
(928) 524-6225 x 30
cher@ci.holbrook.az.us

4. Activities funded through the Cooperative Agreement may include, but are not limited to, inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, outreach materials and implementation, and other eligible activities. The Coalition Member will retain and manage its own consultants and contractors under 40 CFR 30.36 to undertake various activities funded through the Cooperative Agreement.

5. The Coalition Member will procure consultants and contractors in compliance with 40 CFR 31.36 requirements. The Coalition Member will issue Requests for Proposals or Requests for Qualifications and will be the entity responsible for receipt of the submitted proposals and selection and award of contracts. The City of Flagstaff will cooperate with the Coalition Member in making selections of consultants and contractors and negotiating the terms of agreements. Consultant and contractor invoices for work conducted through the Cooperative Agreement will be issued to the City of Flagstaff for approval. Funds will be provided to the City of Flagstaff from the EPA via wire-transfer and the City of Flagstaff will pay invoices through established accounts payable mechanisms.

6. A portion of the grant funds will be retained by the City of Flagstaff from the initial grant amount to cover management and oversight of the contract for the duration of the contract term. The remainder of the funds will be available to any Coalition Member, including the City of Flagstaff, on a "first-come-first-served" basis, limited as follows:

   A Coalition Member seeking funds during the course of the grant period will be required to submit an application to the Assessment Coalition describing the project, necessary tasks, estimated costs, and other pertinent information. The Coalition will meet monthly (or more often, if needed) to review applications and approve or deny funding by a simple majority vote. Quorum is defined as attending parties, regardless of other factors. The City of Flagstaff will have authority to delay and bring back to the Coalition any application that does not, or cannot, meet the terms of the grant requirements. In the case of unresolvable disagreement, the City of Flagstaff has ultimate authority (as fiscal agent/grant management). No single community will receive more than twenty-five percent (25%) of the total available funds without a super majority vote of Coalition Members with the City of Flagstaff having the deciding vote (if necessary). The site selection process must ensure that a minimum of five (5) sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted

to the EPA for prior approval to ensure eligibility. (Note: The City of Flagstaff and each of the Coalition Members may agree upon a minimum number of sites assessed per member at the start of the Cooperative Agreement to ensure equitable distribution of funds across all members' jurisdictions.) The City of Flagstaff shall develop procedures for implementing the requirements of this Section 6.

7. Upon designation of the specific sites, it will be the responsibility of the City of Flagstaff to work with the Coalition Member in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of the Coalition Member to obtain all required permits, easements, and/or access agreements, as may be necessary, to undertake assessments at the selected site. If the Coalition Member does not have the capacity to perform these activities, the City of Flagstaff may assist in securing necessary site access agreements and permits.

8. A Work Plan (Exhibit A) has been prepared and submitted to the EPA as required by the Application for Grant Award. The work plan contains the specific details relating to community outreach and involvement, Coalition Member compliance, site selection, distribution of funds, schedule, etc. The City of Flagstaff is responsible for ensuring that activities as negotiated in the Work Plan are implemented in accordance with a schedule agreed upon by the Coalition Member in whose geographic area the site to be assessed is located.

9. **Disbursements to Coalition Member**. The City will disburse funds to the Coalition Member on a reimbursement basis only, conditioned upon receipt of proof of payment and applicable, accurate, and complete reimbursement documents, as deemed necessary by the City, to be submitted by the Coalition Member. Payments will be contingent upon receipt of all reporting requirements of the Coalition Member under this Agreement.

10. **Fiscal Responsibility**. The funds disbursed by the City under this Agreement shall be used only for the project as described in the City's grant application, grant agreement, and in the Work Plan. Any modification to quantity or scope of work must be approved in writing by the City. If any expenditure by the Coalition Member under this Agreement is disallowed by an audit exemption or by the City or the State, the Coalition Member shall reimburse funds for the disallowed expenditure directly to the City immediately upon demand by the City. The Coalition Member shall also abide by the General Provisions in the Grant Agreement between the Environmental Protection Agency and the City of Flagstaff, Grant No. BF 00T97401, a copy of which is attached as Exhibit B and incorporated into this Agreement by reference. The Coalition Member is required to comply with all provisions of Exhibit B and shall be accountable to the City for the use of federal funds provided under this IGA.

11. **Financial Audit: Programmatic Monitoring**. The Coalition Member agrees to the terms specified in A.R.S. § 35-214 and § 35-215.

    During the term of this Agreement, the Coalition Member must have an annual audit conducted in accordance with OMB Circular A-133 ("Audits of States, Local Governments, and Non-profit Organizations"), if the Coalition Member expends more than five hundred thousand dollars ($500,000) from Federal awards, in compliance with the Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act

Amendments of 1996 (P.L. 104 to 156). If the Coalition Member has expended more than five hundred thousand dollars ($500,000) in Federal funds, a copy of the Coalition Member's audit report for the previous fiscal year must be submitted to the City for review within thirty (30) days of signing this Agreement.

During the term of this Agreement, the Coalition Member shall be monitored periodically by the City of Flagstaff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the City and the Coalition Member.

12. **Debarment Certification.** The Coalition Member agrees to comply with the Federal debarment and suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."

13. **Funds Management.** The Coalition Member must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The Coalition Member must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits. Coalition Members must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Management, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).

14. **Reporting Requirements.** Regular reports by the Coalition Member shall include:

14.1. **Progress Reports**. The Coalition Member shall provide quarterly programmatic reports to the City within five (5) working days of the last day of the month in which services are provided. The Coalition Member shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed. Notwithstanding anything to the contrary in this Section 14, the City shall not request, and Coalition Member shall not be required to provide, any of Coalition Member's confidential or proprietary information in reports provided to the City, including, without limitation, any information regarding research collaborators, research plans, or any data,

results or other information resulting from Coalition Member's performance of research or any other activities relating thereto.

14.2. **Financial Reimbursements.** The Coalition Member shall provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by City staff. The Coalition Member shall submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked "FINAL." All reports shall be submitted to the contact person as described in Section 37, Notices, of this Agreement.

15. **Assignment and Delegation.** The Coalition Member may not assign any rights under this Agreement without the express, prior written consent of the City.

16. **Amendments.** Any change in this Agreement including but not limited to the Description of Services and budget, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by the duly authorized representatives of the Coalition Member and the City. Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the Coalition Member's compensation, if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. The Coalition Member understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

17. A**greement Renewal.** This Agreement shall not bind nor purport to bind the City for any contractual commitment in excess of the original Agreement period.

18. **Right to Assurance.** If the City in good faith has reason to believe that the Coalition Member does not intend to, or is unable to perform or continue performing under this Agreement, the City may demand in writing that the Coalition Member give a written assurance of intent to perform. If the Coalition Member fails to provide written assurance within the number of days specified in the demand, the City, at its option, may terminate this Agreement.

19. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is an employee or agent of the other party in any capacity or a consultant to the other party to the Agreement with respect to the subject matter of the Agreement, this Agreement may be canceled for conflict of interest.

20. **Availability of Funds.** Every payment obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this Agreement, the City may terminate this Agreement at the end of the period for which funds

are available. The City will provide thirty (30) days written notice and shall pay the Coalition Member for termination costs as allowable under Cost Principles (OMB Circular A-122).

21. **Force Majeure.** If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

22. **Partial Invalidity.** Any term or provision of this Agreement that may be declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

23. **Mediation and Venue**

23.1. **Mediation**. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within forty-five (45) days of notification of the dispute, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted in Flagstaff, Arizona, under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, unless other procedures are agreed upon by the parties. The parties shall select one or more trained mediators acceptable to all parties. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Agreement does not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona or Federal Rules of Civil Procedure.

23.2. **Venue**. For purposes of any form of dispute resolution, venue shall be in Coconino County, State of Arizona, or in the District of Arizona, if litigation under diversity jurisdiction is involved.

24. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.

25. **Entire Agreement.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document. This Agreement and its Exhibits constitute the entire agreement between the parties and may not be changed or added to except in writing signed by the parties, provided, however, that the City shall have the right to immediately amend this Agreement so that it complies with any new legislation, laws, ordinances, or rules affecting this Agreement. The Coalition Member agrees to execute any such amendment within ten (10) business days of its receipt.

26. **Non Waiver.** Neither party's failure to insist on strict performance of any term or condition of the Agreement shall be deemed a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

27. **Restrictions on Lobbying.** The Coalition Member shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of any governmental entity.

28. **Licensing.** The Coalition Member, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

29. **Non-Discrimination.** The Coalition Member shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. Title 41, Chapter 9, Article 4 and Executive Order 2009-09.

30. **Sectarian Requests.** Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction, in violation of the United States or Arizona Constitutions.

31. **Advertising and Promotion of Agreement.** The Coalition Member shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the City.

32. **Ownership of Information, Printed and Published Material.** The Funding Agency and the City shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all reports provided to the City under this Agreement in accordance with Section 14 above.

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

34. **Termination.** Either party reserves the right to terminate the Agreement in whole or in part due to the failure of the other party to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The staff of either party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.

If the Coalition Member chooses to terminate the Agreement before the grant purposes have been met, then the City reserves the right to collect all reimbursements distributed to the Coalition Member that have not been spent, and the Coalition Member is not contractually obligated to pay to any third party as of the date Coalition Member receives notice of said termination.

The Coalition Member shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

35. **Paragraph Headings.** The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

36. **Special Conditions.** The Coalition Member agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: **"Purchased with funds provided by the Environmental Protection Agency, 2012 Brownfield Assessment Grant."**

    The Coalition Member agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.

37. **Notices.** Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement, shall be in writing and delivered in person or shall be sent to the respective parties at the following addresses:

To City:

Grants Manager
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

To Coalition Member:

Navajo County
P.O. Box 668
Holbrook, Arizona 86025

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

The City of Flagstaff, Lead Coalition Member

_____ Date_____

Navajo County, Coalition Member

_____ Date_____

Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney

A. Recipient Title

City of Flagstaff, Arizona (Grantee/Fiscal Agent/Coalition Leader)

B. Background

As the interstate highway system led to the obsolescence of Route 66 as a viable cross-country transportation corridor, it also resulted in environmental, historical, and economic implications that continue to plague many northern Arizona communities. Our communities were built up with gasoline stations, restaurants, and motels that played an important part of the Route 66 culture, but that are now abandoned or underutilized, as a result of environmental hazards and impediments to redevelopment. While there is great economic, cultural, and recreational potential within these affected areas, the specter of unknown environmental hazards has hindered redevelopment of the properties. Instead of Brownfields redevelopment, populations are sprawling into the surrounding desert and forest lands.

The Arizona Route 66 Community Coalition, consisting of three cities and two counties in northern Arizona, was formed to face this challenge. These communities have suffered significant economic and environmental hardship during the economic downturn of the past 4 years. Furthermore, as small rural communities and counties, we do not have the financial or personnel resources to apply and administer a Brownfields Assessment grant on our own. So the ability to team with the City of Flagstaff and to take advantage of its past knowledge and expertise gained through past performance with Brownfields grants provides us with an opportunity to complete important assessment projects that we would have otherwise been unable to do. Our Coalition has a shared vision for this program and we have worked in an extremely cooperative manner to develop this application. We are certain that this high level of cooperation will continue and, to help assure the success of this program, we have prepared a draft Memorandum of Agreement (MOA) that has been reviewed and approved by all entities.

The Coalition is in a unique position to preserve cultural and natural resources, while benefiting its minority and economically challenged citizens. To facilitate this, the Coalition will use the Brownfields Coalition grant to perform a comprehensive Community-Wide Assessment for approximately 60 sites impacted by Petroleum Products and Hazardous Substances along the Historic Route 66. Grant funds will be used to develop an inventory of candidate properties, perform environmental assessments and property cleanup planning, and build upon an existing Geographic Information System (GIS) database that will define the environmental, historical, and cultural parameters associated with the properties to support sustainable and appropriate redevelopment opportunities. This information will be used to communicate Brownfields issues and opportunities to governmental agencies, private investors, and the community.

C. Goals and Objectives

a. EPA Strategic Plan

This project supports EPA's Strategic Plan and GPRA Goal 4: Healthy Communities and Ecosystems, Objective 4.2 Communities – Sustain, Clean Up, and Restore Communities and the Ecological Systems that Support Them, Sub-objective 4.2.3 Assess, Clean Up and Redevelop Brownfields.

Outputs:
- Complete 58 Phase I ESAs (28 Petroleum Products and 30 Hazardous Substances)
- Complete 12 Phase II ESAs (6 Petroleum Products and 6 Petroleum Products)
- Conduct 16 public meetings or outreaches
- Submit Quarterly and Financial Reports to EPA within 10 days following the end of the Federal fiscal quarter
- Submit complete and accurate project data via ACRES within 5 working days of project activity

Outcomes:
- Redevelop 16 properties and return to beneficial use
- Create 100 new jobs
- Increase tax base in target area by $100,000
- Redevelop three properties for greenspace and/or non-profit use

b. Project Goals

Significant planning efforts have been conducted by the local governments and community-based organizations throughout northern Arizona to address economic development, historical and cultural preservation, environmental protection, and citizen involvement in the targeted areas. To briefly summarize, our Coalition communities envision the following redevelopment activities:

- Promote historic and cultural community attributes, especially with regard to Route 66, railroads, and unique natural and scenic resources (many of which are units of the National Park Service)
- Rehabilitation and/or construction of low-to-moderate housing, primarily through in-fill development
- Employment diversification – currently too dependent on public sector
- Dedicated renewable energy-generating sites (primarily solar) and the use of renewable energy in commercial and industrial operations

D. Tasks

Task 1 - Project Oversight

a. Task Description

Through current staff and additional resources (staff or contract staff), the City of Flagstaff will coordinate outreach events, coordinate with Coalition partners, assist with property visits, travel to conferences, and conduct project-related duties and meetings. Direct personnel costs are associated with programmatic management of the grant (performance monitoring, training at conferences, and environmental oversight). Travel costs are associated with National Brownfields Conference and EPA-Sponsored Regional Workshops (at least one member from each Coalition community will attend). Travel costs include possible meetings with the Arizona Department of Environmental Quality Voluntary Remediation Program staff to discuss project-specific issues.

b. Task Budget

Brownfields Grant: $12,850 (Petroleum Products) and $22,050 (Hazardous Substances)
Cost Share: $0
Total: $12,850 (Petroleum Products) and $22,050 (Hazardous Substances)

c. Schedule

Task Start Date: October 2012
Task Completion Date: October 2015

d. Deliverables

- Community Relations Plan
- Copies of fact sheets and other outreach materials
- Sign-in sheets and notes from outreach meetings
- Hard copies of web pages developed as part of the outreach process.

Task 2 - Community Involvement

a. Task Description

The City of Flagstaff will inform the public of the grant award (through mailings, website postings, City Council reports, two updated Brownfield Program newsletters and meetings in the target areas) regarding the activities planned by the Coalition, a tentative schedule, and means by which individuals and interested organizations can stay informed and involved in the assessment process. The City will be available at various events (stakeholder meetings, community events)

throughout the life of the grant to discuss the grant project and outreach to property owners. A contractor may assist the City with community involvement efforts.

The Coalition members will continue to keep the public, business, and regulatory community involved throughout the life of this grant. Prior to beginning the Environmental Site Assessment work, the Coalition members will work collaboratively with property owners through focused informational meetings and one-on-one meetings. The Coalition members will communicate with the community within the project area in the following ways:

- A webpage on the City of Flagstaff website with a link to the grant activities, including the grant application, Work Plan, QAPP, announcements, Quarterly Reports to EPA, access agreement template, and project status
- Coalition members will post information on their own websites with information specific to their community and a link to the City of Flagstaff's webpage
- A press release informing the community of the grant award
- A Fact Sheet describing the project in English and Spanish
- We will leverage the support from community groups by presenting at meetings, posting information in newsletters, attending public events and utilizing mailing lists to send notices.

b. Task Budget

Brownfields Grant: $19,650 (Petroleum Products) and $28,310 (Hazardous Substances)
Cost Share: $0
Total: $19,650 (Petroleum Products) and $28,310 (Hazardous Substances)

c. Schedule

Task Start Date: October 2012
Task Completion Date: July 2015

d. Deliverables

- Community Relations Plan
- Copies of fact sheets and other outreach materials
- Sign-in sheets and notes from outreach meetings
- Hard copies of web pages developed as part of the outreach process.

Task 3 - Site Assessment

a. Task Description

The City of Flagstaff will prepare a Quality Assurance Project Plan (QAPP) and Health and Safety Plan (HASP) to be used as guidance for all Phase II work under the grant. Fifty-eight

Phase I Environmental Site Assessments (ESAs) (28 petroleum products and 30 hazardous substances) will be conducted on these properties using ASTM E1527-05, which complies with All Appropriate Inquiry requirements found in 40 CFR 312. Twelve Phase II ESAs (6 petroleum products and 6 hazardous substances) will be conducted on the sites that have been identified through the Phase I ESA process.

b. Task Budget

Brownfields Grant: $248,800 (Petroleum Products) and $327,200 (Hazardous Substances)
Cost Share: $0
Total: $248,800 (Petroleum Products) and $327,200 (Hazardous Substances)

c. Schedule

Task Start Date: October 2012
Task Completion Date: June 2015

d. Deliverables

- Quality Assurance Project Plan - for project
- Health and Safety Plans
- Sampling and Analysis Plans - for individual projects
- Phase I Environmental Site Assessments
- Phase II Environmental Site Assessments
- Cleanup Plans

Task 4 - Reporting

a. Task Description

The City will input project information into EPA's Assessment, Cleanup, and Redevelopment Exchange System (ACRES) within 15 days following completion of a Phase I ESA or Phase II ESA. Information submitted into ACRES will be complete and accurate, and will include all requested information (as available) including property attributes, assessment activities, contaminants and media, institutional and engineering controls, cleanup requirements and activities, and redevelopment and leveraged accomplishments.

Project output, outcomes, and schedule will be tracked by the City on a quarterly basis and reported to EPA as part of the Quarterly Report. The report will include a list of goals accomplished and expected goals for the next quarterly reporting period. Should either the goals or schedule not be met, the City will provide a reason and proposed corrective actions. We will communicate frequently with EPA throughout the course of the grant. In addition to Quarterly

Reports, we will discuss project status at National Brownfields meetings, regional EPA conferences, and during trips made by EPA to review the project status.

b. Task Budget

Brownfields Grant: $18,700 (Petroleum Products) and $22,440 (Hazardous Substances)
Cost Share: $0
Total: $18,700 (Petroleum Products) and $22,440 (Hazardous Substances)

c. Schedule

Task Start Date: October 2012
Task Completion Date: October 2015

d. Deliverables

- Final Cleanup Report
- Timely and accurate entry of project data into ACRES
- Quarterly Progress Reports
- DBE and MBE/WBE Reports - as required under Cooperative Agreement terms and conditions
- Annual Financial Status Reports
- Federal Cash Transaction Report
- Final Project Report and Close Out Paperwork

E. Schedule of Milestones & Deliverables

Fiscal Year	Quarter	Quarterly Report Due	Milestones and Deliverables Due with Quarterly Report
2012	4th	January 30, 2013	▪ Grant announced to Community ▪ Enter property information into ACRES ▪ Begin Community Relations Plan and outreach ▪ Prepare Quality Assurance Project Plan (QAPP) ▪ Quarterly Report to EPA ▪ Attend Region 9 Brownfields Conference - Oakland
2013	1st	April 30th, 2013	▪ Finalize Community Relations Plan and outreach ▪ Complete 2 Phase I ESAs (1 Petroleum/1 Hazardous) ▪ Quarterly Report to EPA

Fiscal Year	Quarter	Quarterly Report Due	Milestones and Deliverables Due with Quarterly Report
2013	2nd	July 30, 2013	▪ Finalize Community Relations Plan and public comment period ▪ Complete 4 Phase I ESAs(2 Petroleum/2 Hazardous) ▪ Quarterly Report to EPA ▪ Attend Brownfields 2013 Conference - Atlanta
2013	3rd	October 30, 2013	▪ Complete 6 Phase I ESAs (3 Petroleum/3 Hazardous) ▪ Quarterly Report to EPA
2013	4th	January 30, 2014	▪ Complete 6 Phase I ESAs (3 Petroleum/3 Hazardous) ▪ Complete 2 Phase II ESAs (1 Petroleum/1 Hazardous) ▪ Quarterly Report to EPA
2014	1st	April 30, 2014	▪ Complete 8 Phase I ESAs (3 Petroleum/5 Hazardous) ▪ Complete 2 Phase II ESAs (1 Petroleum/1 Hazardous) ▪ Quarterly Report to EPA
2014	2nd	July 30, 2014	▪ Complete 8 Phase I ESAs (3 Petroleum/5 Hazardous) ▪ Complete 2 Phase II ESAs (1 Petroleum/1 Hazardous) ▪ Quarterly Report to EPA
2014	3rd	October 30, 2014	▪ Complete 8 Phase I ESAs (3 Petroleum/5 Hazardous) ▪ Complete 2 Phase II ESAs (1 Petroleum/1 Hazardous) ▪ Quarterly Report to EPA
2014	4th	January 30, 2015	▪ Complete 6 Phase I ESAs (3 Petroleum/3 Hazardous) ▪ Quarterly Report to EPA
2015	1st	April 30, 2015	▪ Complete 6 Phase I ESAs (3 Petroleum/3 Hazardous) ▪ Complete 2 Phase II ESAs (1 Petroleum/1 Hazardous) ▪ Quarterly Report to EPA
2015	2nd	July 30, 2015	▪ Complete 7 Phase I ESAs (4 Petroleum/3 Hazardous) ▪ Complete 2 Phase II ESAs (1 Petroleum/1 Hazardous) ▪ Quarterly Report to EPA
2015	3rd	October 30, 2015	▪ Grant Closeout ▪ Final FSR ▪ MBE/WBE Utilization Report

F. Budget Summary

PETROLEUM PRODUCTS					
Category	**Task 1 – Project Oversight**	**Task 2 - Community Involvement**	**Task 3 – Site Assessment**	**Task 4 – Database Management**	**Total**
Personnel	$3,600	$3,600			$7,200
Fringe Benefits					
Travel	$9,250				$9,250
Equipment					
Supplies		$7,410		$2,500	$9,910
Contractual		$8,640	$248,800	$16,200	$273,640
Other (specify)					
Total	$12,850	$19,650	$248,800	$18,700	$300,000

HAZARDOUS SUBSTANCES					
Category	**Task 1 – Project Oversight**	**Task 2 - Community Involvement**	**Task 3 – Site Assessment**	**Task 4 – Database Management**	**Total**
Personnel	$5,400	$4,500			$9,900
Fringe Benefits					
Travel	$16,650				$16,650
Equipment					
Supplies		$10,850		$3,000	$13,850
Contractual		$12,960	$327,200	$19,440	$359,600
Other (specify)					
Total	$22,050	$28,310	$327,200	$22,440	$400,000

EXHIBIT B

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 00T97401 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 09/14/2012
TYPE OF ACTION New	MAILING DATE 09/21/2012
PAYMENT METHOD: Advance	ACH# 90541

RECIPIENT TYPE:
Municipal

Send Payment Request to:
Las Vegas Finance Center, Fax (702) 798-2423

RECIPIENT:
City of Flagstaff
211 West Aspen Ave.
Flagstaff, AZ 86001
EIN: 86-6000244

PAYEE:
City of Flagstaff
211 West Aspen Ave.
Flagstaff, AZ 86001

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Stacey Brechler-Knaggs 211 West Aspen Ave. Flagstaff, AZ 86001 **E-Mail:** sknaggs@flagstaffaz.gov **Phone:** 928-213-2227	Diane Strassmaier 75 Hawthorne Street, SFD-6 San Francisco, CA 94105 **E-Mail:** Strassmaier.Diane@epa.gov **Phone:** 415-972-3247	Alba Espitia Grants Management Office, MTS-7 **E-Mail:** Espitiâ.Alba@epa.gov **Phone:** 415-972-3667

PROJECT TITLE AND DESCRIPTION
BROWNFIELDS ASSESSMENT COOPERATIVE AGREEMENT
This cooperative agreement will be used to conduct community wide assessments at potential Brownfields sites contaminated with Petroleum or Hazardous Substances. Activities include conducting site prioritization and Phase I and Phase II Assessments at selected sites. Funds will also be used for public outreach and community involvement/public participation processes. This Assistance Agreement provides full Federal funding in the amount of $700,000.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2012 - 10/31/2015	10/01/2012 - 10/31/2015	$700,000.00	$700,000.00

NOTICE OF AWARD

Based on your application dated 07/11/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards $700,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $700,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	ORGANIZATION / ADDRESS
U.S. EPA, Region 9 Grants Management Office, MTS-7 75 Hawthorne Street San Francisco, CA 94105	U.S. EPA, Region 9 Superfund Division, SFD-1 75 Hawthorne Street San Francisco, CA 94105

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Denise Zvanovec - Grants Management Officer	DATE 09/14/2012

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Kevin Burke, City Manager	

Grant Agency: U.S Department of Environemental Protection Agency
Project Title: 2012 Brownfields Assessment Cooperative Agreement
Grant Number: 00T97401

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 700,000	$ 700,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$	$ 0
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 700,000	$ 700,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1209K0B020	12	E4	09K1AG7	301D79	4114	G9B3NY00	-	400,000
-	1209K0B020	12	E4	09K1AG7	301D79XBP	4114	G9B3OR00	-	300,000
									700,000

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$17,100
2. Fringe Benefits	$0
3. Travel	$25,900
4. Equipment	$0
5. Supplies	$23,760
6. Contractual	$633,240
7. Construction	$0
8. Other	$0
9. Total Direct Charges	$700,000
10. Indirect Costs: % Base N/A	$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	$700,000
12. Total Approved Assistance Amount	$700,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$700,000
15. Total EPA Amount Awarded To Date	$700,000

Administrative Conditions

1. Federal Financial Report (SF 425)

The final Federal Financial Report (FFR) covering the entire project period shall be submitted within 90 days after the end of the project period according to 40 CFR Part 31.23(b) and 31.41(b). The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

For awards with cumulative project and budget periods greater than 12 months, an interim FFR covering the period from "project/budget period start date" to **September 30** of each calendar year shall be submitted to the U.S. EPA Las Vegas Finance Center, 4220 South Maryland Parkway, Bldg. C, Room 503, Las Vegas, NV 89193-8515, no later than **December 30** of the same calendar year.

2. Single Audit Act

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. The recipient **MUST** submit the SF-SAC and a Single Audit Report Package using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: http://harvester.census.gov/fac/.

3. Central Contractor Registration/System for Award Management and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site http://www.sam.gov.

2. 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 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
   a. A Governmental organization, which is a State, local government, or Indian tribe;
   b. A foreign public entity;
   c. A domestic or foreign nonprofit organization;
   d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:
   a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
   c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:
   a. Receives a subaward from you under this award; and
   b. Is accountable to you for the use of the Federal funds provided by the subaward.

4. Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –

i. The total Federal funding authorized to date under this award is $25,000 or more;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. subawards, and

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus .

ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified* .

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

5. Trafficking in Persons

a. *Provisions applicable to a recipient that is a private entity*

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
   i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
   ii. Procure a commercial sex act during the period of time that the award is in effect; or
   iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
   i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
   ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
      A. Associated with performance under this award; or
      B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. *Provision applicable to a recipient other than a private entity* . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
   i. Associated with performance under this award; or
   ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

c. *Provisions applicable to any recipient* .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
   i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
   ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. *Definitions* . For purposes of this award term:

1. "Employee" means either:
   i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under
   this award; or
   ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
   i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
   ii. Includes:
   A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or

tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

6. Recycled Paper

In accordance with Executive Order 13423 (Strengthening Federal Environmental, Energy and Transportation Management dated January 24, 2007), EPA Order 1000.25 and 40 CFR Part 30.16 (as applicable), the recipient shall use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. The recipient shall give preference in its procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines, as applicable.

Any State agency or agency of a political subdivision of a State shall also comply with the requirements set forth in the Resource Conservation and Recovery Act (RCRA), Section 6002 (42 U.S.C. 6962), which requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA under 40 CFR Part 247. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more.

7. Hotel and Motel Fire Safety

The recipient agrees to ensure that all conference, meeting, convention, or training funded in whole or in part with Federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at http://www.usfa.dhs.gov/applications/hotel/ to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act. (Refer to 40 CFR Part 30.18 and 15 U.S.C. 2225a, as applicable.)

8. Drug-Free Workplace

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2.

9. Debarment, Suspension and Other Responsibility Matters

The recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

11. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

12. Lobbying and Litigation Prohibition

The recipient shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by 2 CFR 225 (OMB Circular A-87), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying* . The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

13. Utilization of Disadvantaged Business Enterprises

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements as set forth in 40 CFR Part 33. The EPA DBE rule can be accessed at http://www.epa.gov/osbp. In addition, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply with 40 CFR Section 33.301. Records documenting compliance with the six good faith efforts shall be retained.

The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Arizona Department of Environmental Quality,** as follows:

	MBE	WBE
Construction	15%	7%
Equipment	14%	20%
Services	15%	32%
Supplies	15%	31%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Arizona Department of Environmental Quality**.

Pursuant to 40 CFR Section 33.404, the recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study to Tiffanie Pang, MTS-1, the Regional MBE/WBE Coordinator, within 120 days of acceptance of the financial assistance award. EPA will respond to the proposed fair share objectives/goals within 30 days of receiving the submission. If proposed fair share objectives/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objectives/goals are submitted.

A recipient of a Continuing Environmental Program Grant or other annual grant agrees to create and maintain a bidders list. A recipient of an EPA financial assistance agreement to capitalize a revolving loan

fund also agrees to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Refer to 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

14. MBE/WBE Utilization Report

The recipient agrees to complete and submit to the Grants Management Office, MTS-7, a MBE/WBE Utilization Report (EPA Form 5700-52A), within 30 days after the end of the Federal fiscal year; i.e., by October 30 of each calendar year. Negative reports are required. Only procurements with certified MBE/WBEs are counted towards a recipient's MBE/WBE accomplishments. A final MBE/WBE report must be submitted within 90 days after the end of the project period. Your grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the internet at www.epa.gov/osbp.

15. Indirect Costs

The cost principles of 2 CFR 225 (OMB Circular A-87) are applicable to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

16. Payment to Consultants

Per 40 CFR Part 31.36(j), EPA's participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. The Federal Executive Schedule (i.e., Salary Table) is located at: **http://www.opm.gov/oca/**
This limit applies to consultation services of designated individuals with specialized skills and if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. This rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms or individuals for services which are awarded using the procurement requirements in 40 CFR Part 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR Part 31.36(j)(2).

17. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with EPA regulations under 40 CFR Part 30.43, 31.36 or 35.6555, as applicable. In accordance with 40 CFR Part 30.45, 31.36(f) or 35.6585, as applicable, the grantee and subgrantee(s) must perform a cost or price analysis in connection with every procurement action, including contract modifications.

18. Subawards

a. The recipient agrees to:
   (1) Establish all subaward agreements in writing;
   (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
   (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
   (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
   (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
   (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
   (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
   (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf. Guidance for distinguishing

between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf and http://www.whitehouse.gov/omb/financial_fin_single_audit

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

Programmatic Conditions

I. GENERAL FEDERAL REQUIREMENTS

NOTE: For the purposes of these Terms and Conditions the term "assessment" includes, eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA approved work plan.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2012 competition for Brownfields assessment cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.

   b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.

   c. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333) the Anti Kickback Act (40 USC § 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

   d. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration and repair contracts and subcontracts awarded with funds provided under this agreement. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.

   b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways,

undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated September 2011 for discussion of this element) documenting that:

(1) a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
(2) the State determines there is "no viable responsible party" for the site;
(3) the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
(4) the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

b. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.

2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA PO or EPA may terminate this agreement for material non-compliance with its terms. For purposes of assessment grants, the recipient demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants "sufficient progress" is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement is in place.

3. Assessment funding for an eligible brownfield site may not exceed $200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed $350,000 at the site.

B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

a. Substantial involvement by EPA generally includes administrative activities such as

monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.

b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under § 107 of CERCLA. (See Section II.C.3 for more information on subgrants.)

c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.

b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.

c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.

2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors comply with the terms and conditions of this agreement.

3. Subgrants are defined at 40 CFR 31.3. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the $200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding $200,000. In no case may EPA funding exceed $350,000 on a site receiving a waiver.

5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.

D. Quarterly Progress Reports- Note: Report to be combined with Cleanup Grant Progress Report

1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:

a. Summary of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of

problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.

b. An update on project schedules and milestones.

c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.

d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.

3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, cleanup required, contaminants, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:

a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k);

b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);

c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.

d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

2. **Local Governments only.** No more than 10% of the funds awarded by this agreement may be

used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the EPA approved work plan. The CAR must maintain records on funds that will be used to carry the EPA approved work plan to ensure compliance with this requirement.

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

   a. Cleanup activities;
   b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
   c. Job training unrelated to performing a specific assessment at a site covered by the grant;
   d. To pay for a penalty or fine;
   e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
   f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA § 107;
   g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
   h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.

   a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.

   b. Ineligible grant administration costs include direct costs for:

      (1) Preparation of applications for brownfields grants;
      (2) Record retention required under 40 CFR 31.42;
      (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
      (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
      (5) Maintaining and operating financial management systems required under 40 CFR 31;
      (6) Preparing payment requests and handling payments under 40 CFR 31.21;
      (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
      (8) Close out under 40 CFR 31.50.

3. Cooperative agreement funds may not be used for any of the following properties:

   a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
   b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
   c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
   d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.

2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.

   a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
   b. Interest earned on program income is considered additional program income.
   c. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 40 CFR 31.21(f).

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

2. The CAR should comply with the following QA requirements:

   a. This grant includes the performance of environmental measurements, therefore, a QA Plan, a Sampling and Analysis Plan, or other comparable document covering QA activities, must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient should consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation would be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e.: sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.

   b. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption and the recipient contacts the Quality Assurance Manager to obtain approval prior to beginning the sampling work. Contact the QA Office at 415-972-3411. In the event an unforeseen site condition arises during the cleanup work, changes or deviations to the type of contaminant sampled, methodology, or sample spacing, the recipient must contact the Quality Assurance Manager to determine if the Sampling and Analysis Plan must be amended before new work is initiated. If the change is such that a site hazard is created by a delay in the work, the recipient shall contact the Quality Assurance Manager to obtain approval prior to

formally revising the document. Minor field deviations (i.e: slight location changes) should be noted in the final cleanup report, but do not require EPA approval.

c. Under the Assessment program, area-wide projects or multi-site projects will require the preparation of a Quality Assurance Project Plan (QAPP) in addition to site specific Sampling and Analysis Plans.

d. Under the Assessment, Cleanup, and Revolving Loan Fund programs, a one-site project may use the one-site Region 9 Sampling and Analysis Plan which incorporates the QAPP.

e. If the review and approval of the QAPP was completed five years ago, it must be resubmitted to EPA for review and approval to ensure it remains a useful and valid document for the site.

f. In general, a QAPP or Sampling and Analysis Plan will require approximately two to four weeks for the EPA Quality Assurance Manager to review and return comments. Documents generally require one revision and re-submittal. The re-submittal review time is typically two weeks.

C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-05 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content", (Publication Number: EPA 560-F-06-244). This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.

2. All Appropriate Inquiries (AAI) final reports produced with funding from this agreement must comply with 40 C.F.R. Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed "Reporting Requirements Checklist" that EPA's Project Officer will provide to the recipient. The checklist also is available to grantees on the EPA website at www.epa.gov/brownfields.

a. An ***opinion*** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.

b. An identification of ***"significant" data gaps*** (as defined in 40 C.F.R. 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.

c. ***Qualifications* and *signature*** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part."

"[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."

Note: Please use either "I" or "We."

d. In compliance with §312.31(b), the environmental professional must include in the final report an ***opinion regarding additional appropriate investigation*** , if the environmental professional has such an opinion.

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-05). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 40 CFR 31.43(a)(2). If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 40 CFR 31.43 and 2 CFR Part 180.

V. Conflict of interest: Appearance of lack of Impartiality

A. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

(i) The affected party,
(ii) Any member of his immediate family,
(iii) His or her partner, or
(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c).

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.

2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

U.S. EPA Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld. C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
http://www.epa.gov/ocfo/finservices/payinfo.html

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.

c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

END-OF-DOCUMENT

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Jerry Bills, Deputy Fire Chief
Co-Submitter:	Rick Compau, Purchasing Director
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE:

Consideration and Approval of Cooperative Contract: To lease purchase 9 Zoll X-series Manual Monitor/Defibrillators through a cooperative contract with Zoll Medical Corporation through National Purchasing Partners, Contract No. 052312 ***(Approve contract with Zoll Medical Corporation in the amount of $223,383.50)***.

RECOMMENDED ACTION:

Approve the lease purchase of 9 manual Monitor/Defibrillators from Zoll Medical Corporation for the cost of $223,383.50 through 5 equal annual payments of $44,676.70 per year.

Executive Summary:

The Flagstaff Fire department is requesting to lease purchase 9 Zoll Monitor/Defibrillators to replace our current monitor/defibrillators. The department's current Monitors are 10 years old and are 2 years past their service life. The department has had extensive repair and maintenance cost over the past few years averaging $10,000 a year and 130 days of out of service time. Without monitor/defibrillators paramedics are not up to the standards our medical direction requires and therefore reducing our EMS level of response from advanced life support to only a basic life support level.

Financial Impact:

The total cost of this purchase is $223,383.50 The lease purchase agreement is for 5 equal annual payments of $44,676.70 starting after approval. The City has budgeted $290,000 for the purchase and lease payment of the equipment in the FY 2015 budget. The City also has future debt payment reserved in the general fund five-year plan.

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
5) Develop and implement guiding principles that address public safety service levels through appropriate staffing levels

Has There Been Previous Council Decision on This:

The purchase of Monitor/Defibrillators was approved in the 2016 Budget and these items were discussed in the budget formation processes.

Options and Alternatives:

1) Approve the lease purchase. This will provide new equipment to Paramedics and reduce our repair and maintenance costs. Reduces the number of days we are without Advance life support services as new equipment will not require extensive repairs.
The lease payment process will cost $18,000 dollars or 2% in interest over the lease purchase term. The budget will require a $44,676.70 payment be made for FY 2016 and an equal payment of $44,676.70 for the next 4 consecutive years.
2) Do not approve the lease purchase. This option will force the City to continue to reduce EMS service levels as equipment continues to breakdown. Cost of repairs will increase as parts for the current monitors become obsolete.
3) Have the City conduct their own formal solicitation process. It is likely that the City will not receive the competitive pricing that is available through the National Purchasing Partners cooperative Contract.

Background/History:

The Fire Department's cardiac monitors are used on a daily basis for a myriad of tasks. Most frequently they are used to assess baseline vital signs on every patient that we encounter as the first on scene EMS provider. This includes pulse rates, blood pressures, oxygen saturation of a patient's blood, and typically an EKG (tracing of the electrical activity of the heart). They are also used for defibrillation or synchronized cardioversion (shocking) of a patient's hearts, measurement of end-tidal CO2 readings (to indicate potential life threatening respiratory conditions or to confirm correct placement of an advanced airway placed in a patient's trachea), and for transcutaneous pacing (delivering electrical impulses to keep a patient's heart beating appropriately until an implanted pacemaker can be put in surgically).

As the primary EMS care providers for the Flagstaff community, the Flagstaff Fire Department provides emergency response to any request that is received. In order to provide these services, the personnel must have a plethora of tools at our disposal, some are multi-purpose and others are specific to the job at hand. No matter the tool, it must be maintained, serviced, repaired and if needed replaced so that it can be in a ready to use state.

Key Considerations:

The current cardiac monitors are at a state of deterioration that it is not only no longer fiscally responsible to maintain them, but puts the Flagstaff Community at risk of responders not having a functional cardiac monitor while responding to requests for service. For the Flagstaff Fire Department to continue to provide the highest quality of patient care possible, the purchase of new cardiac monitors is of the highest importance. This will defer repair costs, decrease the OOS time and more importantly, decrease the likelihood of a malfunction or failure while ensuring the highest level of advanced life support care.

Community Benefits and Considerations:

The community will continue to be provided advanced life support care with the purchase of this replacement equipment and will experience a decrease in the amount if time when this service is not available. this new monitor would also allow our paramedics to transmit Critical Care EKG's from the field to the base hospital allowing the hospital to plan for the incoming patient.

Community Involvement:
Inform

Attachments: Monitor quote

ZOLL Medical Corporation
Worldwide HeadQuarters
269 Mill Rd
Chelmsford, Massachusetts 01824-4105
(978) 421-9655 Main
(800) 348-9011
(978) 421-0015 Customer Support
FEDERAL ID#: 04-2711626

TO: Flagstaff Fire Department

211 West Aspen Avenue
Flagstaff, AZ 86001
Attn: **Wesley Forbach**

email: wforbach@flagstaffaz.gov
Tel: 928-600-2910

QUOTATION 196562 V:1

DATE: August 10, 2015

TERMS: SPECIAL

FOB: Shipping Point

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	**X Series ® Manual Monitor/Defibrillator $14,995** with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5"(16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display. **Accessories Included:** • Six (6) foot 3- Lead ECG cable • MFC cable • MFC CPR connector • A/C power adapter/ battery charger • A/C power cord • One (1) roll printer paper • 6.6 Ah Li-ion battery • Carry case • Declaration of Conformity • Operator's Manual • Quick Reference Guide • **One (1)-year EMS warranty** **Advanced Options:** **Real CPR Help Expansion Pack $ 995** CPR Dashboard quantitive depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) • See - Thru CPR artifact filtering **ZOLL Noninvasive Pacing Technology: $2,550**	9	$37,275.00	$28,701.75	$258,315.75 **

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Page 1 Subtotal **$258,315.75**

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4. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTABLE BY ZOLL.
5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO ESALES@ZOLL.COM.
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING www.zollwebstore.com.

Rachel Schramka
EMS Territory Manager
800-242-9150, x5457

TO: Flagstaff Fire Department

211 West Aspen Avenue
Flagstaff, AZ 86001
Attn: **Wesley Forbach**

email: wforbach@flagstaffaz.gov
Tel: 928-600-2910

ZOLL Medical Corporation
Worldwide HeadQuarters
269 Mill Rd
Chelmsford, Massachusetts 01824-4105
(978) 421-9655 Main
(800) 348-9011
(978) 421-0015 Customer Support
FEDERAL ID#: 04-2711626

QUOTATION 196562 V:1

DATE: August 10, 2015

TERMS: SPECIAL

FOB: Shipping Point

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
		Masimo Pulse Oximetry **SP02** **$1,795** • Signal Extraction Technology (SET) • Rainbow SET **NIBP Welch Allyn includes:** **$3,495** • Smartcuff 10 foot Dual Lumen hose • SureBP Reusable Adult Medium Cuff **End Tidal Carbon Dioxide monitoring (ETCO2)** **Oridion Microstream Technology:** **$4,995** Order required Microstream tubing sets separately **Interpretative 12- Lead ECG:** **$8,450** • 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set					
2	8000-0330	**SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors** (4 ft)	9	$295.00	$221.25	$1,991.25	*
3	8000-0294	**SpO2 LNCS Adult Reusable Sensor** (1 each)	9	$295.00	$221.25	$1,991.25	*
4	8000-0580-01	**Six hour rechargeable Smart battery**	18	$495.00	$420.75	$7,573.50	*

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Page 2 Subtotal **$269,871.75**

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TO: Flagstaff Fire Department

211 West Aspen Avenue
Flagstaff, AZ 86001
Attn: **Wesley Forbach**

email: wforbach@flagstaffaz.gov
Tel: 928-600-2910

QUOTATION 196562 V:1

DATE: August 10, 2015

TERMS: SPECIAL

FOB: Shipping Point

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
5	8200-000100-01	Single Bay Charger for tthe SurePower and SurePower II batteries	9	$945.00	$708.75	$6,378.75	*
6	REUSE-09-2MQ	Welch Allyn Cuff, Child, 2-Tube, Twist lock connector	9	$52.50	$44.63	$401.67	*
7	REUSE-10-2MQ	Welch Allyn REUSE-10-2MQ Cuff, Small Adult, 2-Tube, Twist lock connector	9	$52.50	$44.63	$401.67	*
8	REUSE-12-2MQ	Welch Allyn REUSE-12-2MQ Cuff, Lg Adult, 2-Tube, Twist lock connector	9	$52.50	$44.63	$401.67	*
9	DISC	Clinical Affairs Discount	1		($40,000.00)	($40,000.00)	***
10	7800-0310	LifePak 12 Biphasic w/Pacing, 12 lead + 2 parameters Trade-In	5		($6,500.00)	($32,500.00)	**
.		Interest to be applied.....				$18,427.99	

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Page 3 Subtotal **$223,383.50**

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QUOTATION 196562 V:1

DATE: August 10, 2015

TERMS: SPECIAL

FOB: Shipping Point

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		Payment Terms; 20% due Net 30, balance due in 4 equal annual payments on 8/21/2016, 8/21/2017, 8/21/2018, and 8/21/2019. **By placing a purchase order in response to this quotation, Flagstaff Fire Department agrees that it thereby grants to ZOLL a purchase money security interest in all the goods referenced by such purchase order and acknowledges that ZOLL may file a UCC Financing Statement ordering such purchase money security interest. Customer further agrees to execute a Security Agreement to be provided by ZOLL within 7 days of shipment pursuant to such purchase order.** **"Trade-In values are guaranteed only through September 30, 2015 and Clinical Affairs Discount is valid with an agreement to participate with ZOLL and use these units as part of a TBI study"** ***Trade-In Value valid if all units purchased are in good operational and cosmetic condition, and include all standard accessories such as paddles, cables, etc. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis. ***Reflects National Purchasing Partners (NPP) Contract Pricing.** ****Reflects Discount Pricing.**				

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TOTAL **$223,383.50**

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Rachel Schramka
EMS Territory Manager
800-242-9150, x5457

ZOLL QUOTATION GENERAL TERMS & CONDITIONS

1. ACCEPTANCE. This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgement by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract" the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

2. DELIVERY AND RISK OF LOSS. Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

3. TERMS OF PAYMENT. Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

4. CREDIT APPROVAL. All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

5. TAXES & FEES. The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

6. WARRANTY. (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect failure of the Equipment to perform any specified function, or any other nonconformance of the Equipment caused by or attributable to (i) any modification of the Equipment by the Customer, unless such modification is made with the prior written approval of ZOLL Medical Corporation: (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (iii) any misuse or abuse of the Equipment: (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. SOFTWARE LICENSE. (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth, (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein, (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation, (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Medical Corporation Software.

8. DELAYS IN DELIVERY. ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

9. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATIONS PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

10. PATENT INDEMNITY. ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

11. CLAIMS FOR SHORTAGE. Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

12. RETURNS AND CANCELLATION. (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than $50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

13. APPLICABLE LAW. This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

14. COMPLIANCE WITH LAWS. (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

15. NON-WAIVER OF DEFAULT. In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

16. ASSIGNMENT. This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

17. TITLE TO PRODUCTS. Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

VETERAN'S EMPLOYMENT - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

EMPLOYMENT OF HANDICAPPED - if this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

EQUAL OPPORTUNITY EMPLOYMENT - if this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth as 41 CFR 60-1.40.

19. VALIDITY OF QUOTATION. This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

20. GENERAL. Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Irene Hunkler, Support Services Supervisor

Date: 09/09/2015

Meeting Date: 09/15/2015

TITLE:

Consideration and Approval of Contract: Approval of an Intergovernmental Agreement between the City of Flagstaff and the Summit Fire District for dispatch services.

RECOMMENDED ACTION:

Approve this Intergovernmental Agreement between the City of Flagstaff and Summit Fire District to provide dispatch services for Summit Fire District.

Executive Summary:

The City of Flagstaff, acting through the Flagstaff Police Department, finds a mutual benefit to provide dispatching services to the Summit Fire District. This agreement provides for a five year contract during which dispatch services will be provided to the Summit Fire District.

Financial Impact:

This agreement will allow the Police Department 9-1-1 Communications Center to provide the same dispatch services to the Summit Fire District as it did in the past. Summit fire District will be billed according to the total budgetary cost of operating the 9-1-1 Communications Center. This is calculated at a cost per call rate and billed as such. These funds will be utilized to offset the cost to operate the 9-1-1 Communications Center. This agreement represents revenue of approximately $45,000 annually.

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
8) Improve effectiveness of notification, communication, and engagement with residents, neighborhoods and businesses and about City services, programs, policies, projects and developments
11) Ensure that we are as prepared as possible for extreme weather events

Has There Been Previous Council Decision on This:

Yes, A similar one was originally approved April 16, 2002 and was in place thereafter until Summit Fire Department terminated their original agreement on July 1, 2012.

Options and Alternatives:

Approve or disapprove the Intergovernmental Agreement for Flagstaff 9-1-1 Communications to provide emergency dispatch services to Summit Fire District.

Background/History:

In 1991 the Flagstaff Police Department entered into an agreement with Summit Fire Department for dispatch services. On July 1, 2012, Summit Fire Department terminated the agreement due to budgetary issues. The Flagstaff 9-1-1 Communications Center currently dispatches for the Flagstaff Fire Department as well as 3 rural fire departments High Country Fire and Rescue, Highlands Fire Department and Blue Ridge Fire Department.

Key Considerations:

By approving this Intergovernmental Agreement extension, the Flagstaff Police Department 9-1-1 Communications Center can provide dispatch services to Summit Fire District.

Expanded Financial Considerations:

Summit Fire Department will be invoiced quarterly for the dispatch services based on the number of calls at the calculated cost per call.

Community Benefits and Considerations:

The combined 9-1-1 Communications Center provides law enforcement and fire dispatch services from a single point of contact which enables the most comprehensive responses to our citizens and users. There is a distinct advantage to providing dispatching services to public safety agencies surrounding the city of Flagstaff. This fosters consistency, and enhances communications when first responders work together in the field to address a crisis.

Community Involvement:

Inform: Summit Fire Department Chief Howard, has taken this before his fire board and obtained their approval to return to the Flagstaff Police Department 9-1-1 Communications Center for emergency dispatching services.

Expanded Options and Alternatives:

Approve or disapprove the Intergovernmental Agreement for Flagstaff 9-1-1 Communications to provide emergency dispatch services to Summit Fire District.

Attachments: Summit IGA

When recorded, mail to:
Clerk's Office
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

INTERGOVERNMENTAL AGREEMENT FOR DISPATCH SERVICES

Between

City of Flagstaff
And
Summit Fire District

This intergovernmental agreement for dispatch services ("Agreement") is entered into this 1st of October 1, 2015, between the City of Flagstaff ("City"), an Arizona municipal corporation, with offices at 211 W. Aspen Avenue, Flagstaff, Arizona, on behalf of the Flagstaff Police Department ("FPD") and the Summit Fire District (the "District"), a political subdivision of the State of Arizona, created pursuant to A.R.S. § 48-261, with offices at 8905 North Koch Field Road, Doney Park, Arizona.

RECITALS

A. The City, through the FPD, operates, manages and maintains a dispatching facility which includes an automated computer-aided dispatching system, telephones, recording equipment and dispatch personnel for the operation of a dispatch center located at the Law Enforcement Administrative Facility (LEAF). The FPD is the primary Public Safety Answering Point (PSAP) for all 9-1-1 calls within its area of responsibility. The FPD provides emergency dispatching for police and fire agencies within the City of Flagstaff and contracts to provide dispatch services to other agencies and organizations.

B. The District, desires that the City, through the FPD, provide emergency dispatching for all calls for service occurring within the response area of the Summit Fire District. The City agrees to provide such services to the District, in accordance with the terms of this Agreement.

NOW, THEREFORE, pursuant to Arizona Revised Statutes Section 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. **Term**

This Agreement shall become effective on October 1, 2015 at 0001 hours, and, subject to early termination or renewal as provided below in Section 4, shall continue until September 30, 2020 at 2359 hours.

2. Scope of City Services

The City, through the FPD, agrees to provide emergency dispatching services to the District, twenty-four (24) hours a day, seven (7) days a week as follows:

2.1 The FPD will provide automated dispatching utilizing computer-aided dispatching. The capabilities the FPD will make available to the District include: location of events utilizing cross streets; addresses and varied map coordinates as may be available; maintenance of status time, including time received, time dispatched, time first unit on scene and time last unit cleared scene and other fire service benchmark times as available.

2.2 If requested by the District, the FPD will provide summary listings to the District of call data by month, quarter or year as generated by the CAD system.

2.3 The FPD will record all District radio transmissions from the primary dispatch channel as received at the dispatch center, and all telephone transmissions on emergency lines present in the FPD dispatch center. The FPD will maintain all recordings for a period not to exceed three hundred sixty-five (365) calendar days, after which such records shall be destroyed. When requested in writing, the FPD will provide recordings of incidents to the District in a timely manner on standard compact disc.

2.4 The City maintains two redundant on-line servers for the CAD operation and will regularly backup these servers. Every effort will be made to maintain a 100% up- time and will schedule required downtime maintenance with users whenever possible. The City cannot be responsible for unexpected downtime and maintains a manual backup for such eventuality

2.5 All supervision, hiring and discipline of communications personnel will remain the sole responsibility and under the authority of the FPD.

3. Summit Fire District Obligations

3.1 The District, agrees to supply and maintain all equipment required to provide voice radio dispatching up to a demarcation point established as the connection to the FPD dispatch center console interface patch panel. Additionally, the District, agrees to pay for the installation and cost of any radio equipment or telecommunications circuits beyond the demarcation point, which are added to the FPD dispatch console equipment in order to provide basic dispatch service. The FPD agrees to maintain all equipment beyond the demarcation point following installation and any warranty period expiration.

3.2 The District agrees to work within any existing procedures used by the FPD for dispatching. However, procedures for specific requirements of fire dispatching for the District, if agreed upon by both parties, shall be documented in the Flagstaff Police Department Communications Manual and thereafter shall be utilized for dispatching services for the District.

3.3 The District agrees to pay the City fees for services in quarterly payments within thirty (30) days following invoicing at the end of each quarter. Fees and costs associated with the City's provision of dispatch services to the District will be based upon the District's dispatched calls for service as a percentage of the dispatch center's total calls for service plus a calculation for capital replacement and indirect costs. That percentage will be used to calculate fees based upon the total cost to the City for operating the dispatch center. Fees will be based upon the prior fiscal year budget and actual calls for service for the period being billed.

3.3.1 A call for service shall be defined as any call where a field unit is sent to a location of an incident or to assist a citizen, or any time a field unit initiates activity that would, otherwise, have resulted in the dispatch of a field unit.

4. Termination

4.1 Either party may terminate this Agreement by providing written notice to the other no less than ninety (90) days before the anniversary date of this Agreement.

4.2 In the event of termination of this Agreement by the District, or by the City under Section 4.3, the District shall be responsible for all costs associated with the disconnecting and removal of all radio and telecommunications circuits which were installed in accordance with Section 3.1 and which are exclusive to the District.

4.3 The City shall also have the right to terminate this Agreement upon written notice to the District in the event the District fails to make any payment due the City under this agreement within thirty (30) calendar days of the due date.

5. Liability and Indemnification

5.1 The City, the FPD and their officials, employees and agents, shall not be liable for damages to the District or third parties as a result of any failure by the FPD to perform any of the FPD's obligations set forth in Section 2 of this Agreement if such failure, in whole or in part, arises out of or results from the failure of the District to submit correct and complete data to the FPD or the failure of the District to provide or maintain equipment as set forth in Section 3.1.

5.2 The City, the FPD 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, other than those imposed by the City, 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.

5.3 The District agrees to indemnify, hold harmless and defend the City, the FPD and their agents, officials and employees, from and against any and all claims, demands, costs, actions, suits, liabilities, losses and expenses, of whatever kind and nature whatsoever, that may arise out of or result from any act, action or omission of the District, their

employees, agents or contractors under this Agreement, including, but not limited to, the District's failure to submit correct and complete data to the FPD or the failure of the District to provide and maintain equipment as set forth in Section 3.1. The District's obligations under this indemnity provision shall survive any termination of this Agreement.

6. Dispute Resolution

6.1 If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to arbitration, if required under A.R.S. § 12-1518, to litigation or to some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions. The parties shall select one or more mediators acceptable to each party. Each party agrees to bear its own costs in mediation.

6.2 The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of a party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

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:

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

If to Summit Fire District:

Don Howard, Chief
Summit Fire District
8905 N. Koch Field Road
Flagstaff, Arizona 86004

Copy to:

Chief of Police
Flagstaff Police Department
911 E. Sawmill Road
Flagstaff, Arizona 86001

8. General Provisions

8.1 Maintenance. Maintenance of the FPD dispatch center and all on-premise Public Safety Answering Point (PSAP) and radio equipment shall be the sole responsibility of the FPD.

8.2 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.

8.3 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.

8.4 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. Except as to modifications to Attachment A to this Agreement as set forth in Section 3.3, this Agreement may be modified or amended only by written agreement signed by both parties and recorded by the County Recorder, and any modification or amendment will become effective on the date so specified.

8.5 Cancellation for Conflict of Interest. Pursuant to Arizona Revised Statutes Section 38-511, either the City or the 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.

8.6 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.

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

City of Flagstaff	**Summit Fire District**
Gerald Nabours, Mayor	Don Howard, Chief

Attest:

City Clerk

Approved as to form:

City Attorney

Attest:

Approved as to form:

Attorney for District

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Randall Groth, Project Manager
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE:

Consideration and Approval of Construction Manager at Risk (CMAR) Contract: Leroux Street Water and Sewer Improvements ***(Approve contract with Eagle Mountain Construction in the amount of $2,119,350.00).***

RECOMMENDED ACTION:

1) Approve the Construction Manager at Risk (CMAR) contract with Eagle Mountain Construction in the Guaranteed Maximum Price (GMP) of $2,119,350.00 and a contract time of 350 calendar days.
2) Approve Change Order Authority to the City Manager in the amount of $198,740 (10% of the contract amount, less Owner's contingency).
3) Authorize the City Manager to execute the necessary documents.

Executive Summary:

Award of the contract will authorize the construction of the Leroux Street Water and Sewer Improvements in accordance with the approved public improvement plans prepared by the WLB Group, Inc. and dated March 2015. The project will replace an 8" water main that was built in 1900, replace sewer and water service lines, replace select sections of city sidewalk, handicap ramps, curb, gutter and driveway approaches. A new road pavement will be built. Resetting of tree grates and select sidewalk brick in downtown area are included.

The project is scheduled in the Capital 5-year plan. The work is funded by the annual waterline replacement fund and transportation tax funding.

Financial Impact:

The project has a FY 16 budget appropriation of $1,877,191 in account 201-08-370-3289-0 (waterline replacement fund) and up to $400,000 from 040-05-112-3056-6 (transportation tax). The $400,000 is budget savings from the second phase of the Industrial Dr. Improvements project.

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:

The Council adopted the FY 16 budget and this appropriation was included in that budget adoption.

Options and Alternatives:

1) Approve the award as recommended. Approval will allow the work to move forward in calendar 2015.
2) Reject approval of the award. This would delay the project. If rejected, possible options include;
    a. Terminate the CMAR procurement and solicit conventional bids
    b. Suspend or cancel the project
3) Modify the project scope and restart the process as either a new RSOQ solicitation or a conventional design/bid/build solicitation. This would delay the project at least one calendar year.

Background/History:

Project History
The replacement of water mains is based upon the analysis of variables, which include the age of the existing lines, frequency of repairs and the need to bring municipal underground utilities up to current engineering standards. The analysis is performed by the City's Utilities section. The project was identified for replacement because the existing water main is cast iron and the majority of the 3,100 LF was built in 1900. Replacement of the main will bring it up to current engineering standards and minimize the chance of a catastrophic failure.

CMAR Background
The CMAR Request for a Statement of Qualifications solicitation was advertised on September 11, 2014. In response, five firms submitted Statements of Qualifications (SOQ's) on October 13, 2014. The City's Evaluation Committee reviewed and scored the SOQ's and top three firms (Achen-Gardner Construction, Hunter Contracting and Eagle Mountain Construction) were interviewed on January 28, 2015. Cost negotiations for a Guaranteed Maximum Price with Achen-Gardner and Hunter Contracting were unsuccessful.

Preconstruction phase services were performed by Achen-Gardner prior to the beginning of the construction phase negotiations. Services provided were plan review for constructability, value engineering and coordination with franchise utilities. The results of their work were provided to Hunter Contracting and Eagle Mountain in subsequent Guaranteed Maximum Price negotiations. Preconstruction phase services were via purchase order in March 2015.

Key Considerations:

The project is primarily on North Leroux Street, from Rte. 66 to Hunt Avenue. There are three additional legs, Elm Avenue and Dale Avenue form Leroux St. to Beaver St. and Hunt Avenue from Leroux St. to San Francisco Street. The proposed improvements include;

- Water main replacement, water service line replacement and fire hydrant replacement
- Sewer service line replacement
- Full width asphalt replacement
- Replacement of select sections of sidewalk, handicap ramps, driveway approaches, alley approaches and curb/gutter work
- Downtown streetscape restoration of tree grates and brick sidewalks along Leroux St.

The Construction Manager at Risk (CMAR) process is a collaborative effort, which allows for open dialog between the City, the design consultant, and the contractor on critical design and construction issues in order to minimize impacts to the neighborhood and the community. The contractor will be intimately involved with the coordination of construction activities and keeping the stakeholders informed on schedule, sequence and impacts.

CMAR is an effective tool for a complex project in an established neighborhood and in the downtown district. Substantial due diligence is performed prior to development of the Guaranteed Maximum Price(GMP). Involving the CMAR during the design phase reduces the risk of additional cost and contract disputes. Any realized savings are returned to the City.

Expanded Financial Considerations:

The Leroux Street Water and Sewer Improvements project is funded for $1,877,191 in FY 16. The funds are from the Annual Waterline Replacement fund. Transportation Tax will provide $400,000 from the second phase of the Industrial Drive Improvement project budget savings.

Guaranteed Maximum Price (GMP)

Direct Cost of Work	1,526,042.00
General Conditions	172,700.00
Bonds & Insurance	35,020.00
Sales Tax	109,275.00
Sub Total	1,987,430.00
Owner's Contingency	131,920.00
Total GMP	2,119,350.00

Community Benefits and Considerations:

The community benefits include;

- The replacement of old water and sewer infrastructure to meet current engineering standards
- New road pavement to address deteriorating conditions and to mitigate impacts of frequent trench patching as a result of underground work
- Sidewalk improvements and ADA compliant ramps to provide a safe place for pedestrian travel
- Restoration of downtown streetscape items (tree grates, bike racks, brick sidewalk) along Leroux St.
- Reduced infrastructure maintenance
- Minimize the risk of catastrophic water main failure

Community Involvement:

Inform

Property owners adjacent to the project have been contacted and requested to provide temporary rights-of-entry to allow utility connections. Residents will receive a mailer providing a working schedule for the project and a brief description of what they may expect.

A public information meeting will be held so interested parties can come and ask questions, be introduced to the City project manager, meet the contractor's representatives and discuss any concerns they may have. As part of the project scope, a Public Information Specialist has been retained to assist in the liaison efforts. The City's Public Information Officer will notify emergency responders and other local entities.

Consult

Staff has had multiple meetings with the Downtown Business Alliance (DBA) and will have an ongoing dialog with the DBA throughout the project's duration. Staff has conferred with the Flagstaff Recreation Department and the Flagstaff Convention & Visitor's Bureau. Notification was sent to the Chamber of Commerce. Staff has spoken with representatives from Northern Arizona University.

Involve

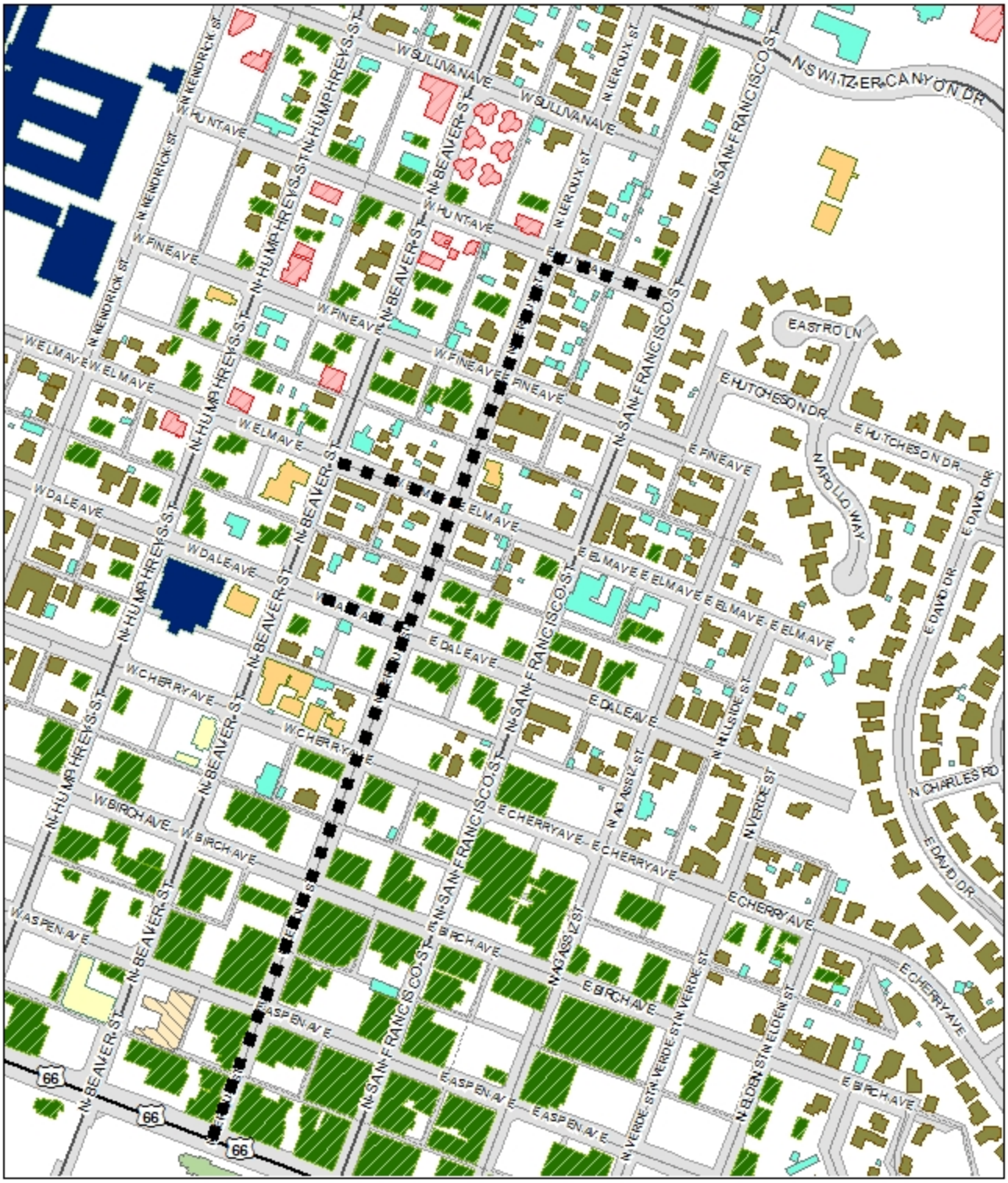
Staff is working with the DBA to help identify possible impacts to businesses along Leroux St. and to implement strategies that will help minimize impacts. Conversations about the project have been held with representatives of the National Bank, the Department of Economic Security and the Flagstaff Recreation Department.

Collaborate
Staff has agreed to substantially refrain from project work in the downtown between Memorial Day and Labor to minimize impacts during peak business and visitor months. We will accommodate other special events, businesses and residents as much as possible during the construction activities.

Expanded Options and Alternatives:

1) Approve the award as recommended. Approval will allow the work to move forward in calendar 2015.
2) Reject approval of the award. This would delay the project. If rejected, possible options include;
    a. Terminate the CMAR procurement process and solicit conventional bids.
    b. Suspend or cancel the project.
3) Modify the scope and restart the process as either a new RSOQ solicitation or a conventional design/bid/build solicitation. This would delay the project at least one calendar year.

Attachments: Vicinity Map
CMAR Construction Contract



Leroux St. Improvements VicinityMap

IMPROVEMENTS

N
W E
S

1 inch = 400 feet

City of Flagstaff, Arizona

Leroux Street Water & Sewer Improvements

CONSTRUCTION MANAGER AT RISK

CONSTRUCTION SERVICES

PROJECT NO. 03-13011

Agreement No. 2015-15

MAYOR
GERALD NABOURS

CITY COUNCIL

KARLA BREWSTER
SCOTT OVERTON
CORAL EVANS
CELIA BAROTZ
JEFF ORAVITS
EVA PUTZOVA

CITY MANAGEMENT

City Manager
Josh Copley

Utilities Director
Brad Hill

Community Development Director
Mark Landsiedel

Public Works Director
Erik Solberg

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CITY OF FLAGSTAFF, ARIZONA

Leroux Street Water & Sewer Improvements
CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES AGREEMENT

PROJECT No. 03-13011; Agreement No. 2015-15

This Construction Services Agreement ("Agreement"), is made and entered into by and between the City of Flagstaff, an Arizona municipal corporation ("City"), and Eagle Mountain Construction, an Arizona company ("Construction Manager at Risk" or CMAR") on this ___ day of _____, 20__.

RECITALS

A. The City is authorized and empowered by provisions of the City Charter to execute agreements for construction services.

B. The City intends to construct water and sewer improvements as more fully described in Exhibit "A" attached ("Project").

C. To undertake the construction administration of the Project the City has entered into a separate agreement with The WLB Group ("Design Professional.")

D. CMAR has represented to the City that it has the ability to provide construction services for the Project, and based on this representation, the City hereby engages CMAR to provide these services and construct the Project.

E. Agreement # 2015-15 has been executed previously between the City and CMAR to perform design phase services for the Project. Those services may continue during the duration of this Agreement.

***NOW THEREFORE*,** for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and CMAR as follows:

Article 1 - Definitions

"Agreement" - This written document signed by the City and CMAR covering the construction phase of the Project, and including other documents itemized and referenced in, or attached to, and made part of this Agreement.

"Change Directive" - A written order prepared and signed by the City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

"Change Order" - A type of Contract amendment issued after execution of the Contract Documents or future GMP Amendments signed by the City and CMAR, agreeing to changes to a GMP, for substantial unanticipated alterations in the character of Work. The Change Order shall state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Agreement terms.

"The City ("Owner" or "OWNER") - The City of Flagstaff, a municipal corporation, with whom CMAR has entered into this Agreement and for whom the services are to be provided pursuant to said Contact. Regulatory activities handled by the City of Flagstaff Community Development, Fire and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

"City's Representative" - The person designated in Subsection 8.3.1.2.

"City's Senior Representative" - The person designated in Subsection 8.3.1.1.

"CMAR" - The firm selected by the City to provide construction services as detailed in this Agreement.

"CMAR's Contingency" - A fund to cover cost growth during the Project used at the discretion of CMAR usually for costs that result from Project circumstances. The amount of CMAR's Contingency shall be negotiated as a separate line item in each GMP package. Use and management of CMAR's Contingency is described in Subsection 5.3.1.

"CMAR's Representative" - The person designated in Subsection 8.3.2.2.

"CMAR's Senior Representative" - The person designated in Subsection 8.3.2.1.

"Construction Documents" - Certain plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements or dated plans and specifications specifically identified as the "Construction Documents" herein or in an Exhibit or Addendum which is attached hereto.

"Construction Fee" - CMAR's administrative costs, home office overhead, and profit as applicable to this Project whether at CMAR's principal or branch offices.

"Contract Documents" - The following items and documents in descending order of precedence executed by the City and CMAR: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

"Contract Price" - The amount or amounts set forth in Article 5.

"Contract Time" - The days, as set forth in Article 4, the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work, subject to Winter Shutdown.

"Cost of the Work" - The direct costs necessarily incurred by CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include CMAR's Construction Fee, General Conditions Costs, and taxes.

"Critical Path Method" - A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities which represent the longest total time required to complete the Project. Delay in completion of the identified activities shall cause a delay in achieving Substantial Completion.

"Day(s)" - Calendar days unless otherwise specifically noted in the Contract Documents.

"Design Phase Contract" - The agreement between the City and CMAR for Services provided by CMAR during the design phase which may include the following: design recommendations, Project scheduling, constructability reviews, alternate systems evaluation, cost estimate, Minority Business Enterprise/Woman's Business Enterprise/Small Business Enterprise **("MBE/WBE/SBE")** utilization, subcontractor bid phase services, GMP preparation and other services set forth in this Agreement or reasonably inferable therefrom.

"Design Professional" - A qualified, licensed design professional who furnishes, design, construction documents, and/or construction administration services required for the Project.

"Differing Site Conditions" - Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Completion" - 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

"Float" - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"General Conditions Costs" - Includes, but is not limited to the following types of costs for CMAR during the construction phase: (i) payroll costs for Project manager or CMAR for work conducted at the Site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the Site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities setup solely for this Project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the Site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of CMAR or Subcontractors.

"Guaranteed Maximum Price" or "GMP" - The sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CMAR's Contingency.

"GMP Plans and Specifications" - The plans and specifications upon which the Guaranteed Maximum Price proposal is based.

"Legal Requirements" - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Notice to Proceed" or "NTP" - The directive issued by the City, authorizing CMAR to start Work.

"Opening Physical Conditions" – The current physical conditions present on the Site as jointly documented by an inspection of the Site by City and CMAR at the Pre-construction Conference.

"Owner's Contingency" - A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen Site conditions. The amount of the Owner's contingency shall be set solely by the Owner and shall be in addition to the Project costs included in CMAR's GMP packages. Use and management of the Owner's contingency is described in Section 5.3.2.

"Performance Period" - The period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Master Schedule.

"Payment Request" - The City form used by CMAR to request progress payments for Work in accordance with Article 7.

"Pre-construction Conference" – A Conference held between City and CMAR prior to the commencement of any Work, as scheduled by the City's Representative or designee.
"Product Data" - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CMAR to illustrate materials or equipment for some portion of the Work.

"Project" - The work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit "A" attached.

"Project Record Documents" - The documents created pursuant to Section 2.10.

"Samples" - Physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work shall be evaluated.

"Schedule of Values" - A statement furnished by CMAR to the City's Representative for approval, reflecting the portions of the GMP allotted for the various parts of the work and used as the basis for evaluating CMAR's applications for progress payments.

"Shop Drawings" - Drawings, diagrams, schedules and other data specially prepared for the Work by CMAR or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Site" - Land or premises on which the Project is located.

"Specifications" - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

"Subcontractor" - An individual or firm having a direct Agreement with CMAR or any other individual or firm having an Agreement with the aforesaid Contractors at any tier, who undertakes to perform a part of the construction phase Work for which CMAR is responsible.

"Submittals" - Documents and/or things that may be produced or presented by one party for consideration review or such other actions as may be required by this Agreement by another party, entity or person. Examples of Submittals include, but are not limited to, preliminary or evolving drafts, product data samples, etc.

"Substantial Completion" - The established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or it's representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review.

"Supplier" - A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct agreement with CMAR or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CMAR or any Subcontractor.

"Winter Shutdown" – 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 CMAR) on the Project and CMAR 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.

"Work" - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Article 2 - CMAR's Services and Responsibilities

2.0 CMAR shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work shall be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CMAR in Flagstaff, Arizona. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents. It is not required that the services be performed in the sequence in which they are described.

2.1 General Services

2.1.1. CMAR's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Work. CMAR's Representative shall communicate regularly with the City but not less than once a week and shall be vested with the authority to act on behalf of CMAR. CMAR's Representative may be replaced only with the written consent of the City.

2.2 Government Approvals and Permits

2.2.1 Unless otherwise provided, CMAR shall obtain all applicable and/or necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. CMAR is specifically reminded of the need to obtain the applicable and/or necessary environmental permits or file the applicable and/or necessary environmental notices.

2.2.2 Copies of the permits and notices listed in Subsection 2.2.1 above must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

2.2.3 City shall be responsible for City of Flagstaff review and permit(s) fees for building and demolition permits. City shall also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.

2.2.4 CMAR shall be responsible for all other permits and review fees not specifically listed in Subsection 2.2.3 above.

2.2.5 CMAR is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are CMAR's responsibility.

2.3 Pre-construction Conference

2.3.1 Prior to the commencement of any Work, the City's Representative or designee shall schedule and conduct a Preconstruction Conference.

At the Pre-construction Conference, City and CMAR shall document the Opening Physical Conditions of the Site as jointly documented by an inspection of the Site by City and CMAR at the Pre-Construction.

2.3.2 The purpose of this conference is to establish a working relationship between CMAR, utility firms, and various City agencies. The agenda shall include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved in the course of construction.

2.3.3 The Notice to Proceed date shall be concurred with by the parties or set by the City at the Preconstruction Conference. After the meeting and upon receipt of a signed Agreement and delivery of the required bonds and insurance in a City approved format, a Notice to Proceed letter shall be issued confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion shall be listed and/or as set forth in Article 1 herein. Failure by CMAR to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it shall not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

2.3.4 CMAR shall provide a Schedule of Values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying CMAR's Contingency. The Schedule of Values shall subdivide the Work into all items comprising the Work. The Schedule of Values shall contain sufficient detail to identify each individual element of the Work and shall relate to the approved GMP Schedule. The Schedule of Values shall be subject to approval by the City's representative.

2.3.5 Minimum attendance by CMAR shall be CMAR's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and CMAR's safety officer.

2.4 Control of the Work

2.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate Contractor, CMAR shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CMAR to complete the Work consistent with the Contract Documents.

2.4.2 CMAR shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.4.3 CMAR's Representative or CMAR's Superintendent shall be present at the Site at all times that construction activities are taking place.

2.4.3.1 All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.

2.4.3.2 In the event of noncompliance with this Section, the City may require CMAR to stop or suspend the Work in whole or in part.

2.4.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is CMAR's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

2.4.5 Before ordering materials or doing work, CMAR and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation shall be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences which may be found shall be submitted to the City for resolution before proceeding with the Work.

2.4.6 CMAR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to CMAR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City at once.

2.4.7 CMAR shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.

2.4.8 Any person employed by CMAR or any Subcontractor who, in the opinion of the City, does not perform his or her work in a proper, skillful, and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CMAR or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. CMAR or Subcontractor shall hold the City harmless from damages or claims which may occur in the enforcement of this Section.

2.4.9 CMAR assumes responsibility to the City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.4.10 CMAR shall coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, CMAR agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.5 Control of the Work Site

2.5.1 Throughout all phases of construction, including suspension of Work, CMAR shall keep the Site reasonably free from debris, trash and construction wastes to permit CMAR to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CMAR shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit the City to occupy the Project or a portion of the Project for its intended use.

2.5.2 CMAR shall take whatever steps, procedures or means to prevent any dust nuisance due to

construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Arizona Department of Environmental Quality rules and regulations.

2.5.3 CMAR shall maintain ADA, ADAAG and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA, ADAAG and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CMAR shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

2.5.4 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by CMAR. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of CMAR.

2.6 Shop Drawings, Product Data and Samples

2.6.1 Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which Submittals are required, the way CMAR proposes to conform to the information given and the design concept expressed in the Contract Documents.

2.6.2 CMAR shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar Submittals required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit “B” as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by CMAR, which are not required by the Contract Documents, may be returned without action.

2.6.3 CMAR shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective submittal has been approved by the City or City’s designee. Such Work shall be in accordance with approved Submittals.

2.6.4 By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar Submittals, CMAR represents that CMAR has determined and verified materials, field measurements and field construction criteria related thereto, or shall do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

2.6.5 CMAR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City 's approval of Shop Drawings, Product Data, Samples or similar Submittals unless CMAR has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. CMAR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar Submittals by the City’s approval thereof.

2.6.6 CMAR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions other than those requested by the City on previous Submittals.

2.6.7 Informational Submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

2.6.8 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.7 Quality Control, Testing and Inspection

2.7.1 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.7.2 All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

2.7.3 The procedures and methods used to sample and test material shall be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with the most recently adopted edition of the City of Flagstaff Engineering Division Design and Construction Standards and Specifications.

2.7.4 The City shall select a City or Independent Testing Laboratory and shall pay for initial City Acceptance Testing.

2.7.4.1 When the first and/or subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and the cost of all tests, except the first test, shall be paid for by CMAR. CMAR's Contingency cannot be utilized for the cost of re-testing.

2.7.4.2 When the first and/or subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.7.5 CMAR shall cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

2.7.6 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.7.7 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by CMAR, unless otherwise provided in the Contract Documents.

2.7.8 CMAR's convenience and quality control testing and inspections shall be the sole responsibility of CMAR and paid by CMAR.

2.8 Trade Names and Substitutions

2.8.1 Unless indicated that no substitutions are permitted, CMAR may request a substitution or alternative to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, subject to the following:

2.8.2 The substitution shall be submitted by CMAR in writing to the City.

2.8.3 CMAR shall certify that the substitution shall perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.8.4 The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.

2.8.5 The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time

created by the substitution.

2.8.6 CMAR if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.8.7 The City shall make the final decision and shall notify CMAR in writing as to whether the substitution has been accepted or rejected.

2.8.8 If the City does not respond in a timely manner, CMAR shall continue to perform the Work in accordance with the Contract Documents and the substitution shall be considered rejected.

2.9 Project Record Documents

2.9.1 During the construction period, CMAR shall maintain at the Site a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

2.9.1.1 CMAR shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. CMAR shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order, Change Order Directive, Field Order, Record of Field Change, ASI's and RFI's.
- Addenda and other details not on original Agreement Drawings.

2.9.1.2 CMAR shall mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

2.9.1.3 CMAR shall mark Project Record Drawings sets with red erasable colored pencil.

2.9.1.4 CMAR shall note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

2.9.1.5 CMAR shall, as a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.

2.9.2 Upon receipt of the reviewed Project Record Drawings from the City, CMAR shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

2.9.2.1 CMAR shall provide a complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with City of Flagstaff CADD technology. The Design Professional shall provide files of the original Construction Documents to CMAR for the use of preparing these final Project Record Drawings or CMAR may contract with the Design Professional to

revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

2.9.2.2 CMAR shall provide a complete set of reproducible mylars from the final AutoCAD drawings.

2.9.2.3 CMAR shall provide the original copy of the Project Record Drawings (redline mark-ups).

2.10 Project Safety

2.10.1 CMAR recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

2.10.2 CMAR assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

2.10.3 CMAR shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CMAR's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

2.10.4 The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CMAR's personnel, Subcontractors and others as applicable.

2.10.5 CMAR and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

2.10.6 CMAR shall immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.10.7 CMAR's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.11 **Warranty**

2.11.1 CMAR warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

2.11.2 CMAR's warranty obligation shall be for one (1) year, except for such greater period as may be required by the technical specifications.

2.11.3 Nothing in this warranty is intended to limit any manufacturer's warranty which provides The City with greater warranty rights than set forth in this Section or the Contract Documents. CMAR shall provide City with all manufacturers' warranties upon Substantial Completion.

2.11.4 Nothing in this warranty is intended to limit any other remedy at law that may be available to the City.

2.12 Correction of Defective Work

2.13 .1 CMAR agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents, or as may be available to the City by law. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

2.12.2 During the performance of the Work, CMAR shall take meaningful steps to commence correction of such nonconforming Work as notified by the City or as discovered by CMAR. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps during the performance of the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CMAR with written notice that City shall commence correction of such nonconforming Work with its own forces.

2.12.3 CMAR shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 and/or Section 2.13.1 above, within seven (7) days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps within such seven-day period, City, in addition to any other remedies provided under the Contract Documents, may provide CMAR with written notice that City shall commence correction of such nonconforming Work with its own forces. 2.12.4 If City does perform such corrective Work, CMAR shall be responsible for all reasonable costs incurred by City in performing such correction.

2.12.4 For nonconforming Work that creates an emergency requiring an immediate response, CMAR shall respond and initiate corrections within twenty-four hours.

2.12.5 The one year period referenced in Subsection 2.13.1 above applies only to CMAR's obligation to correct nonconforming Work relative to the warranty set forth in that section and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding CMAR's other obligations under the Contract Documents or as may be allowed by law.

Article 3 - The City's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 City shall, throughout the performance of the Work, cooperate with CMAR and perform its responsibilities, obligations and services in a timely manner to facilitate CMAR's timely and efficient performance of the Work and so as not to delay or interfere with CMAR's performance of its obligations under the Contract Documents.

3.1.2 City shall furnish at CMAR's request, at no cost to CMAR, a CADD file of the Construction Documents in AutoCAD format compatible with the City of Flagstaff CADD technology.

3.2 The City's Representative

3.2.1 City's Representative shall be responsible for providing City (as defined in Article I) supplied information and approvals in a timely manner to permit CMAR to fulfill its obligations under the Contract Documents.

3.2.2 City's Representative shall also provide CMAR with prompt notice if City's Representative observes any failure on the part of CMAR to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

3.2.3 The City may utilize field inspectors to assist the City's Representative during construction in observing performance of CMAR. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory department.

3.2.3.1 The field inspector shall be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

3.2.3.2 The field inspector shall not be authorized to issue instructions contrary to the Construction Documents or to act as foreman for CMAR.

3.2.3.3 The field inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

3.2.3.4 The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for CMAR's failure to perform the work in accordance with Contract Documents.

3.3 Design Professional Services

3.3.1 The City may contract separately with one or more Design Professionals to provide construction administration of the Project. The Design Professional's Agreement as well as other firms hired by the City shall be available for review by CMAR. CMAR shall not have any right however, to limit or restrict any contract provisions and/or modifications that are mutually acceptable to the City and Design Professional.

3.3.2 The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.

3.3.2.1 Provide oversight of the Work. The City and CMAR shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.

3.3.2.2 Conduct Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional shall keep the City informed of progress of the Work and any noted defects and deficiencies of the Work, and shall endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction, which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.7.

3.3.2.3 Review and recommend approval of Payment Requests.

3.3.2.4 Review and approve or take other appropriate action upon CMAR's Submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.6.

3.3.2.5 Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CMAR. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

3.3.2.6 Prepare Change Orders, and may authorize minor changes in the Work as provided in Section 6.6.1.

3.3.2.7 Conduct inspections to determine Substantial Completion and Final Acceptance.

3.3.2.8 Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by CMAR.

3.4 **City's Separate Contractors**. City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with CMAR in order to enable CMAR to timely complete the Work consistent with the Contract Documents.

3.5 **Permit Review and Inspections**

3.5.1 If requested by CMAR, the City's Representative shall provide assistance and guidance in obtaining necessary reviews, permits and inspections, however, the responsibility for obtaining the necessary reviews, permits and inspections remains with CMAR.

3.5.2 Regulating agencies of the City, such as Community Development, Fire, Planning, Building Inspection, Environmental Services, and Engineering Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

Article 4 - Contract Time

4.0 **Contract Time.**

4.0.1 Contract Time shall start with the Notice to Proceed ("NTP") with construction services and shall end with Substantial Completion.

4.0.2 Where there is more than one GMP, each GMP shall establish a separate NTP date and a Performance Period. The Performance Periods for individual GMPs may be sequential or concurrent as established in the individual Notices to Proceed. The Performance Period for the GMP under this Agreement shall be **three hundred fifty (350)** calendar days starting with the NTP.

4.0.3 CMAR agrees that it shall commence timely performance of the Work and shall achieve substantial completion within the Performance Periods and Contract Time.

4.0.4 All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.

4.0.5 Time is of the essence, for times and time matters set forth in Article 4 and the rest of this Agreement.

Pursuant to Section 9.3 below, if, in the sole discretion of the Capital Improvements Department of the City of Flagstaff, the Project is not at Substantial Completion prior to the advent of adverse weather conditions, a Winter Shutdown shall occur during which no Work will be performed by any person or entity (including but not limited to the CMAR) on the Project and CMAR 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.

4.1 Substantial Completion

4.1.1 Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter or as may be mutually agreed by the parties in writing. Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed.

4.1.2 Prior to notifying the City in accordance to Section 4.1.3 below, CMAR shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. CMAR shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of CMAR to complete all Work in accorda*nce with the Co*ntract Documents**.**

4.1.3 CMAR shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

4.1.4 Within five (5) days of City's receipt of CMAR's notice, the City and CMAR shall jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.

4.1.5 If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that shall set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CMAR's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

4.1.6 City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 4.1.5 above, (ii) CMAR and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CMAR agree that City's use or occupancy shall not interfere with CMAR's completion of the remaining Work.

4.2 **Final Completion**. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CMAR shall jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 4.1.5. The City shall issue a Final Completion Letter and payment pursuant to Section 7.5.

4.3 Liquidated Damages

4.3.1 CMAR understands that if Substantial Completion is not attained within the Contract Time as adjusted, the City shall suffer damages, which are difficult to determine and accurately specify.

CMAR agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CMAR shall pay the City liquidated damages per day, pursuant to current Maricopa Association of Governments (MAG) Specifications, for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

4.4 Project Master Schedule

4.4.1 The Project Master Schedule approved as part of a GMP shall be updated and maintained throughout the Work by CMAR.

4.4.2 The Project Master Schedule shall be revised by CMAR as required by conditions and progress of the Work, but such revisions shall not relieve CMAR of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

4.4.3 Updated Project Master Schedules shall be submitted monthly by CMAR to the City as part of the Payment Request.

4.4.3.1 CMAR shall provide City with a monthly status report with each Project Master Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP and within the Contract Time.

4.4.3.2 With each schedule submittal CMAR shall include a transmittal letter including the following:

- Description of problem tasks (referenced to field instructions, requests for information ("RFI's"), as appropriate.
- Current and anticipated delays including:
  - Cause of the delay
  - Corrective action and schedule adjustments to correct the delay
  - Known or potential impact of the delay on other activities, milestones, and/or the date of Substantial Completion
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
  - Time Extension requests
  - Other items
- Substantial Completion date status:
  - If ahead of schedule, the number of calendar days ahead
  - If behind schedule, the number of calendar days behind
- Other project or scheduling concerns

4.4.4 City's review of and response to the Project Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve CMAR from compliance with the requirements of the Contract Documents or be construed as relieving CMAR of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

4.4.5 The Project Master Schedule shall include a Critical Path Method ("CPM") diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

4.4.5.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities.

The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

4.4.5.2 The CPM diagram schedule shall indicate all relationships between activities.

4.4.5.3 The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

4.4.5.4 The CPM diagram schedule shall be based upon activities, which would coincide with the Schedule of Values.

4.4.5.5 The CPM diagram schedule shall show all Submittals associated with each work activity and the review time for each submittal.

4.4.5.6 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with CMAR activities.

4.4.5.7 The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

4.4.6 The Project Master Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

4.4.7 Float time shall be as prescribed below:

4.4.7.1 The total Float within the overall schedule, is not for the exclusive use of either the City or CMAR, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.

4.4.7.2 CMAR shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions shall be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date and then only if any such extensions or damages are shown to be justified under the Contract Documents.

4.4.7.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path Submittals returned in less time than allowed by the Agreement, approval of substitution requests and credit changes which result in savings of time to CMAR, etc.). In such an event, CMAR shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Article 5- Contract Price

5.0.1 CMAR agrees at his own cost and expense, to completely construct and install all Work and materials as called for by this Agreement, free and clear of all claims, liens and charges whatsoever, in the manner and under the conditions specified in the Contract Documents, within the time or times stated in the approved GMP.

5.1 Contract Price

5.1.1 The Contract Price shall be as approved in the Guaranteed Maximum Price Proposal attached as Exhibit "B" and an amount of **$2,119,350.00** with an additional **$131,920.00** allowed for Owner's Contingency.

5.1.2 The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

5.1.3 The General Conditions Costs and the Construction Fee are firm fixed lump sums delineated in the GMP.

5.1.4 Taxes are deemed to include all sales, use consumer and other taxes, which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective, or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

5.2 Guaranteed Maximum Price

5.2.1 The Guaranteed Maximum Price is composed of the maximum Cost of the Work; the Construction Fee; General Conditions Costs; taxes; and, CMAR's contingency all of which are not-to-exceed cost reimbursable or lump sum amounts defined in Articles 5.1 and 5.3. CMAR is at risk to cover any additional Project costs. If the Cost of Work amount, set forth in the GMP, is in excess of the actual Cost of Work and/or CMAR's Contingency, said amount by which the Cost of Work set forth in the GMP is in excess of the actual Cost of Work and/or CMAR's Contingency, shall revert to the City.

5.2.2 The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.

5.2.3 GMP amendments are cumulative except for CMAR's Contingency. The amount of CMAR's Contingency for each GMP shall be negotiated separately.

5.2.4 If the GMP requires an adjustment due to changes in the scope of the Work the cost of such changes is determined subject to Article 6. The markups that may be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

5.3 Contingencies

5.3.1 CMAR's Contingency is an amount CMAR may use at its sole discretion for, an increase in the Cost of Work, and may use for increases in General Conditions Costs with written approval of the City. CMAR's Contingency is assumed to be a direct Project cost and all applicable markups shall be applied at the time of GMP submission.

5.3.2 When CMAR utilizes CMAR's Contingency funds, CMAR shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CMAR shall deduct the amount of CMAR's Contingency funds used from CMAR's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If CMAR's contingency funds are used for a new line item that was not given with the original Schedule of Values, these shall be so indicated.

5.3.3 Owner's Contingency are funds to be used at the sole discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen Site conditions. Owner's Contingency shall be added to the GMP amount provided by CMAR, the sum of which shall be the full Contract Price for construction. At the time that Owner's Contingency is used the appropriate markups shall be applied.

5.4 **Open Book.** CMAR shall submit to the City upon request all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this Section shall be included in all Agreements between CMAR and its Subcontractors and Consultants. The City may exercise its rights under this Section as often as reasonably necessary in the City's sole judgment to assure the City has a complete and accurate understanding of all Project costs.

Article 6 - Changes to the Contract Price and Time

6.0 Delays to the Work

6.0.1 If CMAR is delayed in the performance of the Work that shall cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own, or, those for whom CMAR is responsible, the Contract Times for performance shall be reasonably extended by Change Order. However, the City and the CM@R must agree on the determination of whether acts, omissions, conditions, events, or circumstances are actually beyond the CM@Rs control and/or whether they are due to no fault of the CM@R, or those for whom CMAR is responsible; if the City and the CM@R do not agree, then an independent third party, selected by both parties, shall make the determination of whether acts, omissions, conditions, events, or circumstances are actually beyond the CM@Rs control and/or whether they are due to no fault of the CM@R, or those for whom CMAR is responsible.

6.0.2 CMAR shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work within three (3) days of the occurrence of the delay. In the case of a continuing delay only one request is necessary.

6.0.3 By way of example, events that shall entitle CMAR to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate Contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

6.0.4 If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion. All terms, conditions and definitions necessary for the application of this paragraph shall be as set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

6.0.5 It is understood, however, that permitting CMAR to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

6.0.6 In addition to CMAR's right to a time extension for those events set forth in this Section, CMAR shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CMAR and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God and shall not be adjusted absent a showing of actual damage.

6.1 Differing Site Conditions

6.1.1 If CMAR encounters a Differing Site Condition, CMAR shall be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CMAR's cost and/or time of performance are actually adversely impacted by the Differing Site Condition.

6.1.2 Upon encountering a Differing Site Condition, CMAR shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CMAR shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.2 Errors, Discrepancies and Omissions

6.2.1 If CMAR observes errors, discrepancies or omissions in the Contract Documents, CMAR shall promptly notify the Design Professional and request clarification.

6.2.2 If CMAR proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, CMAR does so at its own risk. Adjustments involving such circumstances made by CMAR prior to clarification by the Design Professional shall be at CMAR's risk.

6.3 The City Requested Change in Work

6.3.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

6.3.2 Such alterations and changes shall not invalidate this Agreement nor release the surety and CMAR agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

6.3.3 The City shall request a proposal for a change in Work from CMAR, and an adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

6.4 **Legal Requirements**. The Contract Price and/or Contract Times shall be adjusted to compensate CMAR for the effects of any changes in the Legal Requirements enacted after the date of their Agreement or the date of the GMP, affecting the performance of the Work

6.5 Change Directives and Change Orders

6.5.1 City and CMAR shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive if any adjustments are appropriate. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.5.2 All changes in Work authorized by Change Directives and/or Change Orders shall be performed under the conditions of the Contract Documents.

6.6 Minor Changes in the Work

6.6.1 The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CMAR. CMAR shall carry out such written orders promptly.

6.6.2 CMAR may make minor changes in Work, provided, however that CMAR shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CMAR.

6.6.3 Minor changes in Work shall not involve an adjustment in the Contract Price and/or Contract Times.

6.7 Contract Price Adjustments

6.7.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

6.7.1.1 Unit prices set forth in this Agreement or as subsequently agreed to between the parties;

6.7.1.2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; and

6.7.1.3 Costs, fees and any other markups.

6.7.2 The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit “B”.

6.7.3 If an increase or decrease cannot be agreed to as set forth in Sections 6.7.1.1 through 6.7.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in their Agreement. CMAR shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

6.7.4 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices shall cause substantial inequity to City or CMAR because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

6.7.5 If City and CMAR disagree upon whether CMAR is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CMAR shall resolve the disagreement pursuant to Article 8 hereof.

6.7.5.1 As part of the negotiation process, CMAR shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.

6.7.5.2 If the parties are unable to agree and City expects CMAR to perform the services in accordance with City's interpretations, CMAR shall proceed to perform the disputed services, conditioned upon City issuing a written order to CMAR (i) directing CMAR to proceed and (ii) specifying City's interpretation of the services that are to be performed.

6.7.6 **Emergencies**. In any emergency affecting the safety of persons and/or property, CMAR shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract

Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

Article 7- Procedure for Payment

7.0 For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to the City's satisfaction, the City agrees to pay CMAR the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and CMAR's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific Work under this Agreement shall be made in accordance with payment provisions detailed below.

7.1 GMP Payment Request

7.1.1 At the pre-construction conference prescribed in Section 2.4, CMAR shall submit for City's review and approval a Schedule of Values. The Schedule of Values shall serve as the basis for monthly progress payments made to CMAR throughout the Work.

7.1.2 At least five (5) working days prior to the date established for a Payment Request, CMAR shall submit an updated Project Master Schedule and meet with the City's Representative to review the progress of the Work as it shall be reflected on the Payment Request.

7.1.3 The Payment Request shall constitute CMAR's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that title to all Work shall pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

7.1.4 The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.

7.1.4.1 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

7.1.4.2 For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Coconino County or other Sites as may be approved and be accessible for City's inspection. CMAR must establish City title to such materials and equipment or otherwise protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

7.1.4.3 All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

7.1.5 CMAR shall submit to City on a monthly basis either on the first of the month for payment on the 15th or on the 19th of the month for payment on the 30th or 31st. If the payment date is on a Saturday, payment shall be on Friday. If the payment date is on a Sunday, payment shall be on Monday.

7.2 Payment of GMP

7.2.1 City shall make payment in accordance with A.R.S. §34-607. Payment shall be made no later than fourteen (14) days after the Payment Request is certified and approved, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

7.2.2 City shall pay CMAR all amounts properly due. If City determines that CMAR is not entitled to all or part of a Payment Request, it shall notify CMAR in writing within (7) days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CMAR shall take to rectify City's concerns. CMAR and City shall attempt to resolve City's concerns. If the parties cannot resolve such concerns, CMAR may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.3 Retention of GMP

7.3.1 City shall retain ten percent (10%) of each Payment Request amount provided. When fifty percent (50%) of the Work has been completed by CMAR, upon request of CMAR, City may reduce the amount retained to five percent (5%) from CMAR's subsequent Payment Requests if CMAR's performance of Work has been satisfactory.

7.3.2 In lieu of retention, CMAR may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by the State of Arizona, securities of or guaranteed by the United States of America, securities of counties, municipalities and school districts within the State of Arizona or shares of savings and loan institutions authorized to transact business in Arizona.

7.3.2.1 CDs assigned to the City must be maintained at the City's single servicing bank, in the form of time deposit receipt accounts.

7.3.2.2 Securities deposited in lieu of retention must be deposited into a separate account with a bank within the State of Arizona.

7.3.2.3 CDs and Securities shall be assigned exclusively for the benefit of the City of Flagstaff pursuant to the City's form of Escrow Agreement. Escrow Agreement forms may be obtained from the Purchasing Department by contacting Patrick Brown, Senior Procurement Specialist.

7.4 **Substantial Completion**. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CMAR all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one-half (2.5) times the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.5

7.6 Final Payment

7.6.1 After receipt of a final Payment Request, City shall make final payment within sixty (60) days after receipt by the City, provided that CMAR has completed all of the Work in conformance with the Contract Documents and a Final Completion Letter has been issued by the City.

7.6.2 At the time of submission of its final Payment Request, CMAR shall provide the following information:

7.6.2.1 An affidavit affirming that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which shall in any way affect City's interests;

7.6.2.2 A general release executed by CMAR waiving, upon receipt of final payment by CMAR, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

7.6.2.3 Consent of CMAR's surety, if any, to final payment.

7.7 Payments To Subcontractors or Suppliers

7.7.1 CMAR shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. CMAR shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to CMAR shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CMAR shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to CMAR. No agreement between CMAR and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

7.7.2 If CMAR fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CMAR agrees that the City may take such actions:

7.7.2.1 Hold CMAR in default under this Agreement;

7.7.2.2 Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

7.7.2.3 Reject all future offers to perform work for the City from CMAR for a period not to exceed one (1) year from Substantial Completion date of this Project; or

7.7.2.4 Terminate this Agreement.

7.7.3 If CMAR's payment to a Subcontractor or supplier is in dispute, it shall act in compliance with A.R.S. § 32-1129.02(D) and related statutes as amended, and shall further hold the City harmless from any ensuing damages, claims or costs.

7.7.4 Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

7.7.5 CMAR shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.8 Record Keeping and Finance Controls

7.8.1 Records of CMAR's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CMAR shall be kept on a generally recognized accounting basis and shall be available for three (3) years after Final Completion of the Project.

7.8.2 The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

7.8.3 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of CMAR's records, the audit discloses CMAR has provided false, misleading, or inaccurate cost and pricing data.

7.8.4 CMAR shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

7.8.5 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's Agreements, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

7.8.6 Records and Retention Requirements: The City and its employees, agents, and authorized representatives shall have the right at all reasonable times and during all business hours to inspect and examine CMAR's records related to this Agreement. CMAR shall comply with the City of Flagstaff's records retention policy. This record retention requirement shall remain in effect following expiration of the Agreement or termination of the Agreement by either Party.

Article 8- Claims and Disputes

8.0 Requests for Agreement Adjustments and Relief.

8.0.1 If either CMAR or City believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.

8.0.2 Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.

8.0.3 In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

8.0.4 Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.1 Dispute Avoidance and Resolution

8.1.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CMAR and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

8.1.2 CMAR and City shall first attempt to resolve disputes or disagreements at the field level through discussions between CMAR's Representative and City's Representative.

8.1.3 If a dispute or disagreement cannot be resolved through CMAR's Representative and City's Representative, CMAR's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that shall assist the parties in resolving their dispute or disagreement.

8.1.4 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement shall be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event any action at law or in

equity is instituted between the parties in connection with this Agreement, the prevailing party in the action shall be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

8.2 **Duty to Continue Performance**. Unless provided to the contrary in the Contract Documents, CMAR shall continue to perform the Work and City shall continue to satisfy its payment obligations to CMAR, pending the final resolution of any dispute or disagreement between CMAR and City.

8.3 Representatives of the Parties

8.3.1 The City's Representatives

8.3.1.1 City designates the individual listed below or his designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

Rick Barrett, City Engineer
Division/Department Head
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2675

8.3.1.2 City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

Randy Groth, Project Manager
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2683

8.3.2 CMAR's Representatives

8.3.2.1 CMAR designates the individual listed below as its Senior Representative ("CMAR's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

Marco Spagnuolo, CEO/Owner
3100 N. Cadent Ct.
Flagstaff, AZ 86004
(928) 526-2587

8.3.2.2 CMAR designates the individual listed below as its CMAR's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

Jason Woods, Project Manager
3100 N. Cadent Ct.
Flagstaff, AZ 86004
(928) 526-2587

Article 9 – Suspension and Termination

9.0 City's Right to Stop Work

9.0.1 City may, at its discretion and without cause, order CMAR in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.

9.0.2 CMAR may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

9.1 Termination for Convenience

9.1.1 The City may terminate this Agreement at any time for any reason by giving at least thirty (30) days written notice to the CMAR. In such event, City shall pay CMAR only the direct value of its completed Work and materials supplied as of the date of termination. CMAR shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.

9.1.2 If the City suspends the Work for one hundred eighty-one (181) consecutive days or more, such suspension shall be deemed a termination for convenience.

9.1.3 Upon such notice of termination for convenience, CMAR shall proceed with the following obligations:

9.1.3.1 Stop Work as specified in the notice.

9.1.3.2 Place no further subcontracts or orders.

9.1.3.3 Terminate all subcontracts to the extent they relate to the Work terminated. CMAR shall ensure that all subcontracts contain this same termination for convenience provision set forth in Section 9.1 et seq.

9.1.3.4 At the City's sole discretion and if requested in writing by the City, assign to the City all rights, title and interest of CMAR under the subcontracts subject to termination.

9.1.3.5 Take any action that may be necessary for the protection and preservation of the property related to this Agreement that is in the possession of CMAR and in which the City has or may acquire an interest.

9.1.4 CMAR shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the date of the notice of termination.

9.1.5 The City shall pay CMAR the following:

9.1.5.1 The direct value of its completed Work and materials supplied as of the date of termination.

9.1.5.2 The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit, anticipated overhead, or costs arising from CMAR's failure to perform as required under this Agreement.

9.1.5.3 CMAR shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it is determined that CMAR would have sustained a loss on the entire Work had they been completed, CMAR shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

9.1.6 CMAR shall maintain all records and documents for three (3) years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.7.

9.2 The City's Right to Perform and Terminate for Cause

9.2.1 If the City provides CMAR with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and CMAR fails to comply in a time frame specified, the City may have work accomplished by other sources at CMAR's sole expense.

9.2.2 If CMAR persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.

9.2.3 Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CMAR that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CMAR's receipt of such notice.

9.2.3.1 If CMAR fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CMAR of its intent to terminate within an additional seven (7) day period.

9.2.3.2 If CMAR, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then City may declare this Agreement terminated for default by providing written notice to CMAR of such declaration.

9.2.4 Upon declaring this Agreement terminated pursuant to Subsection 9.2.3.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CMAR hereby transfers, assigns and conveys to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

9.2.5 In the event of such termination, CMAR shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, CMAR shall only be entitled to be paid for Work performed and accepted by the City prior to its default.

9.2.6 If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CMAR shall be obligated to pay the difference to City. Such costs and expenses shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the reprocurement and defense of claims arising from CMAR's default.

9.2.7 If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

9.3 Maintenance During Winter Shutdown of Work; Snow Removal

9.3.1 The Capital Improvement Department of the City of Flagstaff retains the right to declare a Winter Shutdown when, in the opinion of the City, it would be unreasonable to continue Work due to

adverse weather conditions. The Winter Shutdown determination is at the sole discretion of the City. If Work has been suspended due to winter weather, the CMAR 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 CMAR 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 repairs and/or maintenance and deduct the cost from monies due or become due to the CMAR.

9.3.2 The City shall provide snow removal operations on active traffic lanes only. All other snow removal and maintenance operations shall be the responsibility of the Contractor. 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.

9.3.3 Upon termination of the Winter Shutdown by the City, the CMAR shall have the right to complete the Work and the Project.

9.3.4 The CMAR shall be solely responsible for any and all costs incurred either as a direct or indirect result of a Winter Shutdown, and shall hold the City harmless from the same.

Article 10 - Insurance and Bonds

10.0 Insurance Requirements

10.0.1 CMAR and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by CMAR, its agents, representatives, employees or Subcontractors.

10.0.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.0.3 The City in no way warrants that the minimum limits contained herein are sufficient to protect CMAR from liabilities that might arise out of the performance of the work under this Agreement by CMAR, its agents, representatives, employees, or subcontractors. CMAR is free to purchase such additional insurance as may be determined necessary.

10.1 **Minimum Scope and Limits of Insurance**. CMAR shall provide coverage with limits of liability not less than those stated below:

10.1.1 Commercial General Liability – Occurrence Form

• General Aggregate/for this Project	$2,000,000/$1,000,000
• Products – Completed Operations Aggregate	$1,000,000
• Each Occurrence	$1,000,000

The policy shall be endorsed to include the following additional insured language: **"The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CMAR."**

Additional Insured Status. The insurance coverage, except Workers' Compensation, required by this Agreement, shall name the CITY, its agents, representatives, directors,

officials, employees, and officers, as additional insured AND be accompanied by the required endorsement. Such evidence of additional insured status shall be subject to the approval of the Risk Management Department of the City of Flagstaff. The absence of acceptable insurance and endorsement shall be deemed a breach of this agreement.

10.1.2 Automobile Liability **-** Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.
Combined Single Limit ("CSL") $1,000,000

The policy shall be endorsed to include the following additional insured language: **"The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CMAR, including automobiles owned, leased, hired or borrowed by CMAR."**

10.1.3 Worker's Compensation: The CMAR shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes.

10.1.4 **Builders' Risk Insurance or Installation Floater** $_____
In an amount equal to the initial Contract Amount plus additional coverage equal to Contract Amount for all subsequent change orders.

10.1.4.1 The City of Flagstaff, CMAR, Subcontractors, Design Professional and Design Professional's consultant and any others with an insurable interest in the Work shall be **Named Insureds** on the policy**.**

10.1.4.2 Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement**.

10.1.4.3 Coverage shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Flagstaff, has an insurable interest in the property required to be covered.

10.1.4.4 Coverage shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

10.1.4.5 CMAR shall provide coverage from the time any covered property becomes the responsibility of CMAR, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation Site, or awaiting installation, whether on or off Site.

10.1.4.6 Coverage shall contain a **waiver of subrogation** against the City of Flagstaff.

10.1.4.7 CMAR is responsible for the payment of all policy deductibles.

10.1.5 Umbrella/Excess Liability Insurance not less than $2,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability as required above.

10.2 **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

10.2.1 The City, its officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by CMAR even if those limits of liability are in excess of those required by this Agreement.

10.2.2 CMAR's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

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

10.2.4 The policies shall contain a Waiver of Subrogation_against the City, its officers, officials, agents, and employees for losses arising from work performed by the CMAR for the City.

10.3 **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to the City Purchasing Department, attention Patrick Brown, Senior Procurement Specialist, and shall be sent by certified mail, return receipt requested.

10.4 **Acceptability of Insurers.** Insurance is to be placed with insurers who are duly licensed companies in the State of Arizona with an "A.M. Best" rating of A-7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect CMAR from potential insurer insolvency.

10.5 Verification Of Coverage

10.5.1 CMAR shall furnish the City with Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

10.5.2 All Certificates of Insurance and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

10.5.3 All Certificates of Insurance required by this Agreement shall be sent directly to City's Purchasing Department, attention Patrick Brown, Senior Procurement Specialist. The City project/contract number and project description shall be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

10.5.4 **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CMAR must:**

- **Submit a current Certificate of Insurance (dated within fifteen (15) days of the payment request submittal) with each payment request form. The payment request shall be rejected if the Certificate of Insurance is not submitted with the payment request.**

10.6 **Subcontractors.** CMAR's Certificate(s) of Insurance shall include all Subcontractors as additional insureds under its policies. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

10.7 **Approval.** Any modification or variation from the insurance requirements in this Agreement shall be made by the City Attorney's Office, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

10.8 Bonds and Other Performance Security.

10.8.1 Prior to execution of this Agreement, CMAR shall provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP.

10.8.2 Each such bond shall be executed by a surety company, or companies, holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement.

10.8.3 The bonds shall be made payable and acceptable to the City of Flagstaff.

10.8.4 The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in Arizona, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

10.8.4.1 If one Power of Attorney is submitted, it shall be for twice the total GMP amount.

10.8.4.2 If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.

10.8.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, CMAR shall promptly furnish a copy of the bonds or shall permit a copy to be made.

10.8.6 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A-,7, or better for the prior four quarters" by the A.M. Best Company.

Article 11 - Indemnification

11.1 CMAR's Liability and Indemnification.

11.1.1 To the fullest extent permitted by law, CMAR shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent, reckless, or intentional acts, errors, mistakes, omissions, work or services of CMAR, its employees, agents, or any tier of subcontractors in the performance of this Agreement. CMAR's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of CMAR or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services CMAR may be legally liable.

The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnity in this paragraph.

Article 12 – General Provisions

12.1 Contract Documents

12.1.1 Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda #s 1, 2 and 3 dated 9/25/2014, 10/1/2014 and 10/7/2014 and used as the basis for the Guaranteed Maximum Price Proposal and Guaranteed Maximum Price Proposal, as accepted by the Mayor and Council per Council Minutes 15th day of September, 2015, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

12.1.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

12.1.3.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.

12.1.3.2 Specifications take precedence over Plans.

12.1.3.3 In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Agreement, the Contract Documents take precedence over the Design Phase Agreement

12.1.4 The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.1.5 The Contract Documents form the entire agreement between City and CMAR and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

12.2 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.3 **Time is of the Essence.** City and CMAR mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

12.4 **Mutual Obligations.** City and CMAR commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

12.5 **Cooperation and Further Documentation.** CMAR agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.

12.6 **Assignment.** CMAR shall not, without the written consent of the City, assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents. Notwithstanding the City's consent to assignment, CMAR as Assignor, and the Assignee shall both remain liable under all rights, obligations, terms, and conditions of this Agreement.

12.7 **Successorship.** CMAR and City intend that the provisions of the Contract Documents are

binding upon the parties, their employees, agents, heirs, successors and assigns.

12.8 **Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and CMAR, and all duties and responsibilities undertaken pursuant to the Contract Documents shall be for the sole and exclusive benefit of City and CMAR and not for the benefit of any other party.

12.9 **Governing Law.** This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed, in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

12.10 **Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

12.11 **Compliance with All Laws.** CMAR will comply with all applicable Federal, State, County and City laws, regulations and policies, including but not limited to the mandatory statutory provisions in Exhibit __, attached and made a part of this Agreement. CMAR understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. CMAR agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.

12.12 **Legal Requirements.** CMAR shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

12.13 **Construction Documents.** It is not CMAR's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if CMAR recognizes that portions of the Construction Documents are at variance therewith, CMAR shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

12.14 **Independent Contractor.** CMAR is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct CMAR as to the details of accomplishing the Work or to exercise a measure of control over the Work means that CMAR shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.

12.15 **The City's Right of Cancellation.** All parties hereto acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

12.16 **Survival.** All warranties, representations and indemnifications by CMAR shall survive the completion or termination of this Agreement.

12.17 **Covenant against Contingent Fees**. CMAR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of City has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12.18 **No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

12.19 **Notice.**

12.19.1 Many notices or demands required to be given, pursuant to the terms of this Agreement, 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.

to CMAR:

Marco Spagnuolo, CEO/Owner
3100 N. Cadent Ct.
Flagstaff, AZ 86004
(928) 526-2587

to City:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Patrick Brown, C.P.M.
Senior Procurement Specialist
Phone: (928) 213-2277
Fax: (928) 213-2209

With a copy to:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Randy Groth, Project Manager
Phone: (928) 213-2683
Fax: (928) 213-2609

Design Professional:

The WLB Group
500 North Beaver Street
Flagstaff, AZ 86001
Attn: Dan Burke, P.E.
Director of Operations
(928) 779-1500

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.19.2 Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor:

Marco Spagnuolo, CEO/Owner
3100 N. Cadent Ct.
Flagstaff, AZ 86004
(928) 526-2587

to City:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Patrick Brown, C.P.M.
Senior Procurement Specialist
Phone: (928) 213-2277
Fax: (928) 213-2209

With copies to:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Randy Groth, City Representative (Project Manager)
Phone: (928) 213-2683
Fax: (928) 213-2609

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.20 Confidentiality of Plans and Specifications

12.20.1 Any plans or specifications regarding this Project shall be for official use only. CMAR shall not share them with others except as required to fulfill the obligations of this Agreement with the City.

12.20.2 All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by CMAR shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of the Street Maintenance Program 2011 Project Agreement with the City of Flagstaff."

12.21 CMAR and Subcontractor Employee Security Inquiries. The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CMAR shall take such other measures, as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

12.21.1 Security Inquiries. CMAR acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CMAR shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquires are made by City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CMAR for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CMAR for other work not involving the City. An employee rejected for work under this Agreement shall not be proposed to perform work under other City Agreements or engagements without City's prior approval.

12.21.2 Criteria for Evaluating Security Inquiries. Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CMAR and used by CMAR as a factor in making its decision. Prior to such adoption, CMAR shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the Project, and standards used by City in evaluating its own personnel.

12.21.3 Additional City Rights Regarding Security Inquiries. In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CMAR be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CMAR 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CMAR performing work (including supervision and oversight) under this Agreement.

12.21.4 Background and Security-Contracts and Subcontracts. CMAR shall include the security inquiry terms of this Section for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.

12.21.5 Materiality of Security Inquiry Provisions. The security inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by CMAR may, at City's sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CMAR to liability for its breach of this Agreement.

12.22 Hazardous Materials

12.22.1 Unless included in the Work, if CMAR encounters material on the Site which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by applicable law, it shall immediately stop work and report the condition to the City.

12.22.2 If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by applicable law, CMAR shall not resume work in the affected area until the material has been abated or rendered harmless. CMAR and the City may agree, in writing, to continue work in non-affected areas on the Site.

12.22.3 An extension of Contract Time may be granted in accordance with Article 6.

12.22.4 CMAR shall comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

12.23 Computer Systems. CMAR shall warrant fault-free performance in the processing of date and

date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault-free performance shall include the manipulation of data when dates are in the 20th or 21st centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of this Agreement.

12.24 **Traffic Control.** CMAR shall comply with all provisions of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.

THE CITY OF FLAGSTAFF, ARIZONA

Leroux Street Water & Sewer Improvements

Project No. 03-13011, Agreement No. 2015-15

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

CMAR agrees that this Agreement, as awarded, is for the stated Work and understands that payment for the total Work shall be made on the basis of the indicated amount(s), per the terms and conditions of this Agreement.

Guaranteed Maximum Price

Two million, one hundred nineteen thousand, three hundred fifty dollars

$2,119,350.00

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

THE CITY OF FLAGSTAFF, ARIZONA

By: _____
Josh Copley, City Manager

EAGLE MOUNTAIN CONSTRUCTION

By:_____

Title:_____

(Corporate Seal)

ATTEST:

_____
City Clerk

_____
ATTEST: (Signature and Title)

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A - PROJECT DESCRIPTION

EXHIBIT B – APPROVED GMP PROPOSAL

PROJECT #: **DATE:**
LEROUX STREET WATER & SEWER IMPROVEMENTS:

EXHIBIT C – TECHNICAL SPECIFICATIONS

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Barbara Goodrich, Deputy City Manager

Date: 09/09/2015

Meeting Date: 09/15/2015

TITLE:

Consideration and Adoption of Resolution No. 2015-32: A resolution of the Council of the City of Flagstaff, Arizona authorizing the appointment of a City Treasurer.

RECOMMENDED ACTION:

1) Read Resolution No. 2015-32 by title only
2) City Clerk reads Resolution No. 2015-32 by title only (if approved above)
3) Adopt Resolution No. 2015-32

Executive Summary:

The City Charter requires the Treasurer be appointed to receive and have custody of all money of the City. As Rick Tadder has assumed the Acting Management Services Director position, this responsibility now falls to him on a daily basis and it's requested he be appointed City Treasurer. Barbara Goodrich, Deputy City Manager, currently holds this office.

Financial Impact:

There is no financial impact to this appointment.

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS:

1) Invest in our employees and implement retention and attraction strategies
3) Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics
5) Develop and implement guiding principles that address public safety service levels through appropriate staffing levels
7) Address key issues and processes related to the implementation of the Regional Plan
9) Foster relationships and maintain economic development commitment to partners
11) Ensure that we are as prepared as possible for extreme weather events

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

Appoint Rick Tadder as the City Treasurer. Pros: Mr. Tadder is best positioned to oversee the City's financial activity on a daily basis.
Keep Barbara Goodrich as the City Treasurer Pros: No action is needed.

Background/History:

FLAGSTAFF CITY CHARTER: Article IV, Administrative Departments, Offices, and Employees, Section 3 - states that the City Manager shall, with approval of the Council, appoint an officer of the City, who shall have the title of City Treasurer, and who shall receive and have custody of all the money of the City, and shall keep and save said money, and dispense the same only as provided by ordinance, and who shall always be bound by the Constitution, laws of the State, Charter of the City, and ordinances, and upon whom legal garnishments may be service. The City Treasurer will serve at the pleasure of the City Manager.

The Flagstaff City Code also provides for additional duties of the City Treasurer including:
Receive and disburse monies (Chapter 1-10)
Receive and invest city court funds (Chapter 1-15)
Pay warrants, checks, and vouchers (Chapter 1-17)
Deposit active deposit funds of the City (Chapter 1-17)
Annual report on investments to Council (Chapter 1-17)
Invitation for bids or interest to be paid on inactive deposits by financial institutions (Chapter 1-17)
Receive business license taxes (Chapter 3-01)
Transfer transaction privilege taxes to correct account (Chapter 3-05)
Receive dog impoundment fees (Chapter 6-02)
Issue dog licenses and dog tags (Chapter 6-02)
Receive water connection fees, water account payments (Chapter 7-03)
Receive funds for repair of sidewalk or to redeem property (Chapter 8-01)
Receive and invest funds for the Cemetery Perpetual Care Fund (Chapter 8-07)
Receive and deposit parking meter fees. (Chapter 9-01)

Barbara Goodrich, the current City Treasurer, has recently accepted the position of Deputy City Manager vacating her prior position of Management Services Director. Rick Tadder is serving as the Acting Management Services Director until such time a successful recruitment is completed to fill the Management Services Director position. Mr. Tadder is best positioned to provide the necessary oversight of the City's daily financial activity so it is requested he receive this appointment. The sections that Mr. Tadder supervises that have a direct link to the duties noted above include:

Finance - accounting, budgeting, payroll, accounts payable, and grants
Sales Tax and Revenue - sales tax administration, customer service, miscellaneous revenues, collections, investments, meters
Purchasing - all City procurement

Key Considerations:

The individual that serves as Treasurer needs to have regular involvement in the financial activity of the City. As Acting Management Services Director, Mr. Tadder is responsible for the oversight of the City sections that have a direct impact on the City's financial health on a daily basis as shown above.

Expanded Financial Considerations:

None.

Community Benefits and Considerations:

The Charter requires the Council appoint a City Treasurer. The City is best served by someone in this role that is involved in a regular basis on the daily financial activity.

Community Involvement:

Inform

Expanded Options and Alternatives:

No additional options/alternatives.

Attachments: Res. 2015-32

RESOLUTION NO. 2015-32

A RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA APPROVING THE APPOINTMENT OF A CITY TREASURER

RECITALS:

WHEREAS, the Flagstaff City Charter, **Article IV, Section 3 – The City Treasurer** designates that the City Manager shall, with approval of the Council, appoint an officer of the City, who shall have the title of City Treasurer;

WHEREAS, the current City Treasurer, Barbara Goodrich, has a new calling and responsibilities as Deputy City Manager.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Flagstaff as follows:

SECTION 1. In General.

The City Manager's appointment of Rick Tadder as the City Treasurer is hereby approved, and he will serve as City Treasurer from and after September 1, 2015.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 15th day of September, 2015.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Rick Tadder, Acting Management Services Director
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE:

Consideration and Adoption of Resolution No. 2015-33: A resolution of the City Council of the City of Flagstaff authorizing signatures for checks and payment vouchers ***(Authority to Sign Checks)***

RECOMMENDED ACTION:

1) Read Resolution No. 2015-33 by title only
2) City Clerk reads Resolution No. 2015-33 by title only (if approved above)
3) Adopt Resolution No. 2015-33

Executive Summary:

When the City experiences a change in staff related to current authorized signers for checks and payment vouchers, the City's bank requires a resolution to update the authorized signers.

Financial Impact:

None.

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS: None
REGIONAL PLAN: None.

Has There Been Previous Council Decision on This:

The last change to the authorize signers was Resolution 2014-41 at the December 16, 2014 meeting.

Options and Alternatives:

- Adopt Resolution 2015-33 as submitted.
- Amend the Resolution with consideration of internal controls,
    - Change, expand or limit the authorized signatories.
    - Raise or lower the dollar threshold for two signatures.

Background/History:

Recently we experienced a change to three positions that are authorized to sign checks and payment vouchers on behalf of the City. This resolution give appropriate authority for our commercial banks to process revised signatory cards. The first change is for hiring Josh Copley as City Manager. The second change is for hiring Barbara Goodrich as Deputy City Manager. The third change comes with moving Rick Tadder in to the Acting Management Services Director positions and appointing him the City Treasurer.

The Mayor, Vice-Mayor, City Manager, Deputy City Managers, and the Management Services Director are authorized signatories for the City of Flagstaff. Any one member of these designated positions is authorized to sign checks up to $100,000 and any check over $100,000 requires two signatures.

For the Court, the Presiding Magistrate has the authority to sign and appoint additional signers. Historically this has included the Magistrates, the Court Administrator, and the Deputy Court Administrators. Any one member of these designated positions is authorized to sign checks up to $10,000 and any check over $10,000 requires two signatures. The Court's authority is to issue bond refund checks.

For the Flagstaff Housing Authority, the Executive Director, Maintenance Director, Director of Section 8, and Finance Director are authorized signatories for the Flagstaff Housing Authority bank accounts. All checks require two signatures.

Key Considerations:

Authority for signing checks must be in place with those in the organization that have the depth of understanding needed to understand the payment being processed, however they are far enough removed from the accounts payable/purchasing process to maintain adequate internal control.

Community Benefits and Considerations:

The community is best served through the application of internal controls that dictate the separation of duties to minimize the possibility of any fund misappropriation.

Community Involvement:

Inform

Attachments: Resolution

RESOLUTION NO. 2015-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF AUTHORIZING SIGNATURES FOR CHECKS AND PAYMENT VOUCHERS, AND REPEALING PRIOR RESOLUTION

RECITALS:

WHEREAS, the Wells Fargo Bank (Flagstaff Branch) has been designated the depository for the City of Flagstaff; and

WHEREAS, the bank requires a corporate resolution naming those persons authorized by the municipal corporation to sign checks drawn upon the account as may be used by the City of Flagstaff.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Gerald W. Nabours, Celia Barotz, G. Jerene Watson, Josh Copley, Barbara Goodrich, and Rick Tadder each be hereby authorized to sign checks drawn upon the general and payroll accounts of the above named bank for amounts up to $100,000.00 and that any combination of two of the authorized signatures be required for checks in excess of $100,000.00.

SECTION 2. That Thomas Chotena, Michael Araujo, Donald Jacobson, Jessica Cortes, and Cathy Harrison each be hereby authorized to sign checks drawn upon the Court account of the above mentioned bank for amounts up to $10,000.00 and that any combination of two of the authorized signatures be required for checks in excess of $10,000.00.

SECTION 3. That Michael A. Gouhin, Sarah Darr, Jose J. Dominguez, Ellen Ishii, and Deborah S. Beals each be hereby authorized to sign checks drawn upon the Flagstaff Housing Authority account of the above mentioned bank and that any combination of two of the authorized signatures be required for all checks issued.

SECTION 4. That the City Clerk of the City of Flagstaff is hereby authorized to certify the signatures of the above named individuals.

SECTION 5. That Resolution No. 2014-41 providing for authorized signatures is hereby repealed.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 15th day of September, 2015.

_____

MAYOR

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: John Saltonstall, Business Retention & Expansion Manager

Co-Submitter: David McIntire, Asst to CM for RE/Acting Com. Inv. Mgr.

Date: 09/09/2015

Meeting Date: 09/15/2015

TITLE:

Consideration and Adoption of Ordinance No. 2015-18: An ordinance to enter into a second Amendment to Development Agreement (DA) with Nestle-Purina Petcare Company to extend the agreement and underlying lease for up to six months ***(Possible extension of development agreement with Nestle-Purina).***

RECOMMENDED ACTION:

1) Read Ordinance No. 2015-18 by title only for the final time
2) City Clerk reads Ordinance No. 2015-18 by title only (if approved above)
3) Adopt Ordinance No. 2015-18

Executive Summary:

Nestle-Purina and the City of Flagstaff request a six month extension of the existing development agreement and underlying lease which are scheduled to expire October 14, 2015. This extension is to achieve original purposes and to explore feasibility of voluntary installation of equipment to achieve measurable odor mitigation related to expanded production.

If, within the six month extension period, Nestle-Purina has not identified a means agreeable to the City to substantially mitigate odor related to production the Development Agreement and underlying lease will expire in April 2016.

If Nestle-Purina has identified a means to objectively and substantially mitigate odor related to production, Nestle-Purina and City staff will return to council requesting further extension not to exceed three years to achieve the original purpose and will include specific measurable outcomes to be met.

In the not too distant future, a new rule from the Governmental Accounting Standards Board (GASB) will require cities to disclose tax abatements such as the one entailed in this amendment. The new GASB rule will impact Flagstaff in our financial statements for the year ending June 30, 2017. The first year of implementation will be for any budget adopted after December 15, 2015.

Financial Impact:

The intention is there will be no financial impacts to the parties or other governmental agencies, unless a third amendment or longer term agreement (beyond April 2016) is achieved and approved. Should the City and Nestle-Purina not reach a longer term agreement, Nestle Purina would be responsible for the taxes owed for 2016. If an agreement is reached, there will be a reduction in taxes received that will impact a number of community partners (including Flagstaff Unified School District, Coconino Community College, County, and the city). Specifics of that number would be provided as a part of any action extending the lease beyond the six month period. Currently, the net reduction in taxes is approximately $400,000 annually, which tax loss is shared by the community partners and the City.

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS:

#7) Address key issues and processes related to the implementation of the Regional Plan
#9) Foster relationships and maintain economic development commitment to partners
10) Decrease the number of working poor

REGIONAL PLAN:

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

Has There Been Previous Council Decision on This:

Council approved the Development Agreement and underlying lease with Nestle-Purina in 2003. The agreement and lease were amended in 2008. First reading of the ordinance takes place at the Combined Special Meeting/Work Session of September 8, 2015.

Options and Alternatives:

1. Approve the six month extension of the Development Agreement and underlying lease in order to explore options to further the original purpose and mitigate odor related to production.
Pro: This will provide the two parties with the opportunity to determine if an effective and measurable option can be agreed to.
Con: it defers, but does not forgive, property taxes.
2. Approve an extension of the Development Agreement and underlying lease for a period not to exceed three years from the original expiration date of October 14, 2015.
Pro: This provides the time and financial capacity to achieve the original purposes and for the installation of equipment to reduce odor.
Cons: It would reduce tax revenues and there is not a specific measurable goal determined at this time. The community partners also have not had time for consideration.
3. Reject the request to extend the Development Agreement and underlying lease for six months.
Pros: This will result in tax revenues returning to the normal level (add $400,000 per year to the community partners and the city).
Cons: This action will not support achieving the original purposes (projected tax savings) or reducing the odor impacting the community associated with the Purina expansion and increased production.

Background/History:

Nestle-Purina has been expanding operations in Flagstaff ever since Purina was acquired by Nestle, S.A. in December of 2001. In 2003, Nestle-Purina entered into a development agreement with the City of Flagstaff and underlying lease. Performance requirements of that agreement included 100,000 square foot addition, hiring additional employees, and continuing operations. In 2008, the development agreement was amended to accomplish a number of other development related items including: selling the City two acres of land for a fire station, dedicating right of way to realign Industrial Drive, while Nestle-Purina constructs another 94,000 square feet and provides parking for 292 vehicles, and use all commercially reasonable efforts to add another 50 full time employees. Details of both agreements are included in this packet.

Under the Development Agreement, the City has accepted title to Purina property. This enables the property to be constitutionally exempt from property tax (about $490,000 per year savings). The City leases the property back to Purina, and Purina pays a Government Property Lease Excise Tax (GPLET) (about $90,000) per year. Thus, currently the net tax savings for Purina is about $400,000 per year.

Nestle-Purina has met all requirements thus far while, due to the market correction and reduced property values, falling short of the DA projected tax savings by at least $600,000 and possibly as high as $1 million (City staff is still determining the actual number). During this period, production has increased greatly which means Purina's operations are running more frequently, in turn creating more instances when there is the related odor of production. As Nestle-Purina seeks to be a great community partner, they have already been exploring ways to mitigate the related odor from production and are currently studying the issue. To be clear, although the smell is evident, Nestle-Purina continues to meet all air quality and odor requirements at the state and federal levels. Part of being a great community partner inspires Nestle-Purina to explore the often costly measures to mitigate odor.

Key Considerations:

Nestle-Purina is currently exploring methods to objectively and substantially mitigate the odor from production; however, there is currently no funding budgeted to do so. Extending the DA to allow time to develop a plan and measurement strategy provides the time necessary to explore this option. Potentially the extension could result in using the DA for the original purposes (achieve closer to projected tax savings) and apply funds towards odor mitigation efforts to achieve measurable reductions in odor from production. As a large employer, the image of manufacturing is critical to the workforce pipeline for the entire industry. Supporting the expeditious mitigation of the odor contributes to a more appealing workforce option. Additionally, it would have the benefit of assisting economic development in the east and reduce a nuisance to residents.

Expanded Financial Considerations:

The DA and underlying lease allow a business to turn over title of real property to a municipality, which in turn leases the land back to the owner in order to experience relief from property tax for a limited amount of time. This is intended to support business expansion and other public benefits. The city and community partners understand that their revenues are diminished as the business is not paying property taxes; in this case since 2003, Nestle-Purina has experienced a total tax savings of approximately $2.5 to 3 million while at the same time investing greatly in their operations and now employing approximately 250.

As odor may be off-putting to a workforce pipeline, so too may the odor negatively impact other uses in the area. Increased housing in the area supports many neighborhoods that are impacted by the odor. Business around the Flagstaff Mall are also impacted by the odor. Supporting the effort to mitigate the odor supports the populations and industry that are also in the area.

Community Benefits and Considerations:

The east side of Flagstaff and the Flagstaff Mall could potentially benefit greatly through a reduced nuisance odor. The Mall contributes almost 17% of the total sales tax revenues for the City of Flagstaff. One item that has been mentioned is that businesses are impacted by the odor. Additionally, residents in the area have unfavorably commented about the odor. Nestle-Purina supports numerous families through their hiring and their increased shifts have been a benefit to the community, but the increased production has also increased the odor.

Community Involvement:

Involve - To support the extension of the DA and underlying lease will respond to a diverse population with a unified voice regarding their interest in odor mitigation.

City staff will be contacting community partners to see if there is support for a longer agreement with Purina-Nestle.

Expanded Options and Alternatives:

Another option would be to explore an entirely new DA and lease. Due to changes in state laws, Purina would need to provide direct consideration for any property tax savings, and would need to pay much higher government property lease excise tax (GPLET). Therefore, a new development agreement may not be an effective financial tool.

Attachments: Ord. 2015-18
Second Amendment to Development Agreement
Second Amendment to Lease

ORDINANCE NO. 2015-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AUTHORIZING THE CITY OF FLAGSTAFF TO ENTER INTO A SECOND AMENDMENT TO DEVELOPMENT AGREEMENT AMENDING THE DEVELOPMENT AGREEMENT WITH NESTLE PURINA PETCARE COMPANY TO ALLOW TEMPORARY EXTENSION OF AGREEMENT AND UNDERLYING LEASE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff desires to enter into a Second Amendment to Development Agreement with Nestle Purina Petcare Company and to temporarily extend the underlying lease of property for the reasons set forth therein.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Second Amendment to the Development Agreement between the City of Flagstaff and Nestle Purina Petcare Company attached hereto is hereby approved. The Mayor of the City of Flagstaff is hereby authorized to execute the Second Amendment of the Development Agreement on behalf of the City and all other associated documents.

SECTION 2. 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 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Effective Date.

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 15th day of September, 2015.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Attachment: Second Amendment to Development Agreement, with attached Exhibit 1 Second Amendment to Lease and related legal descriptions (Exhibits A, B, C, D)

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WHEN RECORDED, RETURN TO:
Elizabeth Burke, City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

DRAFT

SECOND AMENDMENT
TO
DEVELOPMENT AGREEMENT

The City of Flagstaff, a political subdivision of the state of Arizona ("City") and Nestle Purina Petcare Company, a Missouri corporation ("Purina") enter into this Second Amendment to the Development Agreement effective this 15th day of September, 2015.

RECITALS:

A. In 2003 the City of Flagstaff ("City") and Nestle Purina Petcare Company ("Purina") entered into a Development Agreement recorded on June 25, 2003 as Instrument No. 3207666, Official Records of Coconino County, Arizona ("Development Agreement") in connection with Purina's expansion of its pet food manufacturing and warehousing facility located in the City of Flagstaff on that real property legally described in Exhibit A ("Original Property").

B. Pursuant to the Development Agreement, title to the Original Property and Purina's manufacturing facility located thereon (the "Facility") were conveyed to the City and leased back by the City to Purina under the terms and conditions of a Government Property Lease entered into pursuant the provisions of A.R.S. § 42-6201, *et seq.* (the "Lease"). The form of Lease was recorded along with the original Development Agreement in Instrument No. 3207666, Official Records of the Coconino County, Arizona ("Lease").

C. In 2008 as approved in Ordinance No. 2008-16 the City and Purina entered into a First Amendment to Development Agreement recorded on June 26, 2008 as Instrument No. 3491226, Official Records of the Coconino County, Arizona ("First Amendment") in connection with approximately 34.28 net acres of additional real property legally described in Exhibit B attached hereto ("Additional Property") for the purpose constructing a 94,000 square foot warehouse space addition, and parking facilities for employees and trailers, all as part of a further expansion of the Facility.

D. Pursuant to the First Amendment, title to the Additional Property and the expanded Facility ("Expanded Facility") were conveyed to the City and leased back by the City to Purina under the terms and conditions of the Lease (which was also amended). The First Amendment to the Lease was recorded on January 16, 2009, Instrument No.

3510882, Official Records of the Coconino County, Arizona ("First Amendment to Lease").

E. In 2009 pursuant to the First Amendment, the City purchased approximately two (2) acres of the Additional Property from Purina as legally described in Exhibit C attached to this Ordinance ("Fire Station Parcel"), and as conveyed by Special Warranty Deed recorded on June 16, 2009 as Instrument No. 351083 in the Official Records of the Coconino County, Arizona.

F. In 2015 pursuant to the Development Agreement, Purina conveyed real property to the City for Industrial Drive by Quit Claim deed as recorded on January 1, 2015 as Instrument No. 3711317, Official Records of the Coconino County, Arizona, and as legally described in Exhibit D attached hereto ("Industrial Drive Parcel").

G. The original purposes of the Development Agreement as amended by the First Amendment were to help fund expansions of the Purina facilities ("Expansions") so as to provide new stable, good-paying employment opportunities for Flagstaff residents; provide for purchase of the Fire Station Parcel, and conveyance of the Industrial Drive Parcel; and provide certain other benefits (collectively "Benefits") via Purina's projected total tax savings of $3,929,608.00.

H. The Development Agreement (as amended) and underlying Lease (as amended) are scheduled to expire on or about October 14, 2015.

I. Although the parties have been performing the terms and conditions of the Development Agreement (as amended) and underlying Lease (as amended), Purina's actual tax savings have been far less than projected.

J. The Purina Expansions have enabled a substantial increase in production of pet food at the Facility, and there are associated emissions to the atmosphere and odor.

K. Purina has a Clean Air Act permit from the Arizona Department of Environmental Quality and currently is in compliance with applicable laws, rules and regulations regarding emissions to the atmosphere and odor.

L. Pursuant to A.R.S. § 42-6203.A.4 the City and Purina desire to temporarily extend the Agreement and underlying Lease for a period commencing on October 14, 2015 and continuing for up to six (6) months to further the original purposes of the Development Agreement and to explore the feasibility of voluntary installation of equipment at the Purina Facility to achieve measurable odor mitigation.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Extension Period. The Development Agreement (as amended) is hereby extended from October 14, 2015 to April 15, 2016, unless sooner terminated ("Extension Period.") Either party may terminate this Second Amendment upon giving at least five (5) days written notice to the other party.

2. Second Amendment to Lease. The term of the Lease (as amended) shall be extended to be coterminous with the Development Agreement Extension Period. To accomplish this, the parties shall execute a Second Amendment to Lease in the form attached hereto as Exhibit 1. The City of Flagstaff will record the Second Amendment to Lease within ten (10) days from execution.

3. Research. During the Extension Period, at its own expense, Purina will explore whether it is financially and technically feasible to purchase and install equipment at the Purina facility in Flagstaff to minimize odor from the Purina Facility ("Research"). Upon completion of the Research, the parties will explore whether it is appropriate to extend the Development Agreement for a longer period of time.

4. Contingency. If the parties do not reach a longer term agreement beyond the Extension Period, it is the intention of the parties that the Development Agreement (as amended) and Lease (as amended) shall be deemed to have expired as of October 14, 2015 and that title to property currently leased by the City to Purina shall have automatically reverted to Purina as of October 15, 2015 and/or that Purina will be placed in same the financial position for purposes of property tax and the government property lease excise tax as if such transfer had occurred. The parties will make good faith efforts to achieve that financial equilibrium.

5. Effect. All other terms and conditions of the Development Agreement (as amended) shall remain in effect.

NESTLE PURINA PETCARE COMPANY

_____

By:_____

Its:_____

CITY OF FLAGSTAFF

_____
By: Mayor Nabours
Attest:

_____
By: Elizabeth Burke, City Clerk
Approved as to form:

_____
By:_____
City Attorney's Office

Attachments: Exhibit 1, with attached Exhibits A, B, C, D

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WHEN RECORDED, RETURN TO:
Elizabeth Burke, City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

DRAFT

SECOND AMENDMENT TO LEASE

The City of Flagstaff, a political subdivision of the state of Arizona ("City" or "Landlord") and Nestle Purina Petcare Company, a Missouri corporation ("Purina" or "Tenant") enter into this Second Amendment to Lease effective 15Th day of September, 2015.

RECITALS:

M. Landlord and Tenant entered into a Lease in 2003, and First Amendment to Lease in 2008. The form of Lease is set forth in the recorded Development Agreement referenced below, and the First Amendment to Lease is recorded in Instrument No. 3491226, Official Records of the Coconino County, Arizona (collectively "Lease").

N. The Leased Property consists of the land legally described in Exhibit A ("Original Property"), and Exhibit B ("Additional Property") and Purina facilities located on such land, but excludes certain parcels subsequently conveyed to the City and legally described as Exhibit C ("Fire Station Parcel") and Exhibit D ("Industrial Drive Parcel"). The Fire Station Parcel was conveyed to the City by Special Warranty Deed and recorded on January 16, 2009 in Instrument No. 3510883 in the Official Records of the Coconino County, Arizona. The Industrial Drive Parcel was conveyed to the City by Quit Claim Deed and recorded on January 12, 2015 Instrument No. 3711317 in the Official Records of the Coconino County, Arizona.

O. City/Landlord and Purina/Tenant entered into a Development Agreement in 2003, and First Amendment to Lease in 2008. Those documents are recorded in Instrument Nos. 3207666 and 3491226, Official Records of the Coconino County, Arizona ("Development Agreement").

P. Pursuant to A.R.S. § 42-6203.A.4 the City and Purina have approved a Second Amendment to Development Agreement to temporarily extend the Development Agreement and underlying Lease for a period commencing October 14, 2015 and continuing for up to six (6) months to further the original purposes of the Development Agreement and to explore the feasibility of voluntary installation of equipment at the Purina Facility to achieve measurable odor mitigation.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

6. Extension Period. The Lease is hereby extended from October 14, 2015 to April 15, 2016, unless sooner terminated ("Extension Period.") Either party may terminate the Second Amendment upon giving at least five (5) days written notice to the other party. The Development Agreement and Lease term shall be coterminous.

7. Effect. All other terms and conditions of the Lease shall remain in effect.

TENANT: NESTLE PURINA PETCARE COMPANY

_____
By:_____
Its:_____

LANDLORD: CITY OF FLAGSTAFF

_____
By: Mayor Nabours
Attest:

_____
By: Elizabeth Burke, City Clerk
Approved as to form:

_____
By:_____
City Attorney's Office

Attachments: Exhibits A, B, C, D

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WHEN RECORDED, RETURN TO:
Elizabeth Burke, City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

SECOND AMENDMENT
TO
DEVELOPMENT AGREEMENT

The City of Flagstaff, a political subdivision of the state of Arizona ("City") and Nestle Purina Petcare Company, a Missouri corporation ("Purina") enter into this Second Amendment to the Development Agreement effective this 15th day of September, 2015.

RECITALS:

A. In 2003 the City of Flagstaff ("City") and Nestle Purina Petcare Company ("Purina") entered into a Development Agreement recorded on June 25, 2003 as Instrument No. 3207666, Official Records of Coconino County, Arizona ("Development Agreement") in connection with Purina's expansion of its pet food manufacturing and warehousing facility located in the City of Flagstaff on that real property legally described in Exhibit A ("Original Property").

B. Pursuant to the Development Agreement, title to the Original Property and Purina's manufacturing facility located thereon (the "Facility") were conveyed to the City and leased back by the City to Purina under the terms and conditions of a Government Property Lease entered into pursuant the provisions of A.R.S. § 42-6201, *et seq.* (the "Lease"). The form of Lease was recorded along with the original Development Agreement in Instrument No. 3207666, Official Records of the Coconino County, Arizona ("Lease").

C. In 2008 as approved in Ordinance No. 2008-16 the City and Purina entered into a First Amendment to Development Agreement recorded on June 26, 2008 as Instrument No. 3491226, Official Records of the Coconino County, Arizona ("First Amendment") in connection with approximately 34.28 net acres of additional real property legally described in Exhibit B attached hereto ("Additional Property") for the purpose constructing a 94,000 square foot warehouse space addition, and parking facilities for employees and trailers, all as part of a further expansion of the Facility.

D. Pursuant to the First Amendment, title to the Additional Property and the expanded Facility ("Expanded Facility") were conveyed to the City and leased back by the City to Purina under the terms and conditions of the Lease (which was also amended). The First Amendment to the Lease was recorded on January 16, 2009, Instrument No.

3510882, Official Records of the Coconino County, Arizona ("First Amendment to Lease").

E. In 2009 pursuant to the First Amendment, the City purchased approximately two (2) acres of the Additional Property from Purina as legally described in Exhibit C attached to this Ordinance ("Fire Station Parcel"), and as conveyed by Special Warranty Deed recorded on June 16, 2009 as Instrument No. 351083 in the Official Records of the Coconino County, Arizona.

F. In 2015 pursuant to the Development Agreement, Purina conveyed real property to the City for Industrial Drive by Quit Claim deed as recorded on January 1, 2015 as Instrument No. 3711317, Official Records of the Coconino County, Arizona, and as legally described in Exhibit D attached hereto ("Industrial Drive Parcel").

G. The original purposes of the Development Agreement as amended by the First Amendment were to help fund expansions of the Purina facilities ("Expansions") so as to provide new stable, good-paying employment opportunities for Flagstaff residents; provide for purchase of the Fire Station Parcel, and conveyance of the Industrial Drive Parcel; and provide certain other benefits (collectively "Benefits") via Purina's projected total tax savings of $3,929,608.00.

H. The Development Agreement (as amended) and underlying Lease (as amended) are scheduled to expire on or about October 14, 2015.

I. Although the parties have been performing the terms and conditions of the Development Agreement (as amended) and underlying Lease (as amended), Purina's actual tax savings have been far less than projected.

J. The Purina Expansions have enabled a substantial increase in production of pet food at the Facility, and there are associated emissions to the atmosphere and odor.

K. Purina has a Clean Air Act permit from the Arizona Department of Environmental Quality and currently is in compliance with applicable laws, rules and regulations regarding emissions to the atmosphere and odor.

L. Pursuant to A.R.S. § 42-6203.A.4 the City and Purina desire to temporarily extend the Agreement and underlying Lease for a period commencing on October 14, 2015 and continuing for up to six (6) months to further the original purposes of the Development Agreement and to explore the feasibility of voluntary installation of equipment at the Purina Facility to achieve measurable odor mitigation.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Extension Period. The Development Agreement (as amended) is hereby extended from October 14, 2015 to April 15, 2016, unless sooner terminated ("Extension Period.") Either party may terminate this Second Amendment upon giving at least five (5) days written notice to the other party.

2. Second Amendment to Lease. The term of the Lease (as amended) shall be extended to be coterminous with the Development Agreement Extension Period. To accomplish this, the parties shall execute a Second Amendment to Lease in the form attached hereto as Exhibit 1. The City of Flagstaff will record the Second Amendment to Lease within ten (10) days from execution.

3. Research. During the Extension Period, at its own expense, Purina will explore whether it is financially and technically feasible to purchase and install equipment at the Purina facility in Flagstaff to minimize odor from the Purina Facility ("Research"). Upon completion of the Research, the parties will explore whether it is appropriate to extend the Development Agreement for a longer period of time.

4. Contingency. If the parties do not reach a longer term agreement beyond the Extension Period, it is the intention of the parties that the Development Agreement (as amended) and Lease (as amended) shall be deemed to have expired as of October 14, 2015 and that title to property currently leased by the City to Purina shall have automatically reverted to Purina as of October 15, 2015 and/or that Purina will be placed in same the financial position for purposes of property tax and the government property lease excise tax as if such transfer had occurred. The parties will make good faith efforts to achieve that financial equilibrium.

5. Effect. All other terms and conditions of the Development Agreement (as amended) shall remain in effect.

NESTLE PURINA PETCARE COMPANY

_____

By:_____

Its:_____

CITY OF FLAGSTAFF

_____

By: Mayor Nabours

Attest:

_____

By: Elizabeth Burke, City Clerk

Approved as to form:

_____

By:_____

City Attorney's Office

Attachments: Exhibit 1, with attached Exhibits A, B, C, D

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EXHIBIT "A" [redacted]

Legal Description of Property

Landmark Engineering & Surveying, Inc.
sedona ❖ FOUNDED 1979 ❖ flagstaff

David Dow, R.L.S.
ddow@landmarkes.com

Martin Etcheverry, R.L.S.
metcheverry@landmarkes.com

Barry Giles, R.L.S. (California)
bgiles@landmarkes.com

William McHenry L.S.I.T.
wmchenry@landmarkes.com

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(928) 282-7104 voice
(928) 282-7171 fax
www.landmarkes.com
tgraham@landmarkes.com
Wm.Tod Graham I,R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA WEST PARCEL

A parcel of land being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said parcel being more particularly described as follows:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;

Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;

Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;

Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E - 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract" which is the POINT OF BEGINNING;

Thence N 01°10'00" W (rec. same) a distance of 533.05 (527.54 rec.) feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to a ½" re-bar with plastic cap stamped "LS 14184" set at an angle point in said West boundary;

Thence N 26°36'03" W (rec. same) a distance of 535.54 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said West line of the North half of Section 8 with the South right-of-way line of the Burlington Northern and Santa Fe Railway (BNSF) (formerly Atchison, Topeka and Santa Fe Railway);

Thence N 84°23'13" E (N 84°23'24" E rec.) a distance of 177.33 (198.30 rec.) feet along said South right-of-way line of the BNSF Railway to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

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Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 1,332.69 (rec. same) and central angle of 12°00'00", an arc distance of 279.12 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Tangency;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 510.00 feet along said South right-of-way line of the BNSF Railway to a point that lies 100.0 feet southerly of the centerline of the South Main (Westbound) rails of said BNSF Railway;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 413.49 feet along said South right-of-way line of the BNSF Railway, which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said South right-of-way line with the Northerly projection of the centerline of steel columns aligned along the East wall of the Purina building as it existed in November of the year 2002;

Thence S 10°22'23" W a distance of 364.83 feet along said centerline projection and said centerline of steel columns to an angle point in said East wall;

Thence N 79°37'37" W a distance of 115.06 feet along said centerline of steel columns to an angle point in said East wall;

Thence S 10°22'23" W a distance of 331.18 feet along said centerline of steel columns and the southerly projection of said centerline to a ½" re-bar with plastic cap stamped "LS 14184" set on said North right-of-way line of I-40;

Thence Westerly along said North right-of-way line of I-40, being a non-tangent curve to the left and concave to the South having a chord bearing and length of S 80°27'22" W – 1,080.42 feet, radius of 14,523.95 (rec. same) feet and central angle of 4°15'47", an arc distance of 1,080.67 feet to the POINT OF BEGINNING.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I
Date Signed 1-6-03
APPLICANT

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Landmark Engineering & Surveying, Inc.
sedona flagstaff
FOUNDED 1979
David Dow, R.L.S. ddow@landmarkes.com
Martin Echeverry, R.L.S. mechevery@landmarkes.com
Barry Giles, R.L.S. (California) bgiles@landmarkes.com
William McHenry L.S.I.T. wmchenry@landmarkes.com

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tgraham@landmarkes.com
Wm.Tod Graham I.R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA EAST PARCEL

A parcel of land being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said parcel being more particularly described as follows:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;

Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;

Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;

Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E – 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract";

Thence N 01°10'00" W (rec. same) a distance of 533.05 (527.54 rec.) feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to a ½" re-bar with plastic cap stamped "LS 14184" set at an angle point in said West boundary;

Thence N 26°36'03" W (rec. same) a distance of 535.54 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said West line of the North half of Section 8 with the South right-of-way line of the Burlington Northern and Santa Fe Railway (BNSF) (formerly Atchison, Topeka and Santa Fe Railway);

Thence N 84°23'13" E (N 84°23'24" E rec.) a distance of 177.33 (198.30 rec.) feet along said South right-of-way line of the BNSF Railway to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 1,332.69 (rec.

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same) and central angle of 12°00'00", an arc distance of 279.12 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Tangency;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 510.00 feet along said South right-of-way line of the BNSF Railway to a point that lies 100.0 feet southerly of the centerline of the South Main (Westbound) rails of said BNSF Railway;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 413.49 feet along said South right-of-way line of the BNSF Railway, which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said South right-of-way line with the Northerly projection of the centerline of steel columns aligned along the East wall of the Purina building as it existed in November of the year 2002, said intersection being the POINT OF BEGINNING ;

Thence S 10°22'23" W a distance of 364.83 feet along said centerline projection and said centerline of steel columns to an angle point in said East wall;

Thence N 79°37'37" W a distance of 115.06 feet along said centerline of steel columns to an angle point in said East wall;

Thence S 10°22'23" W a distance of 331.18 feet along said centerline of steel columns and the southerly projection of said centerline to a ½" re-bar with plastic cap stamped "LS 14184" set on said North right-of-way line of I-40;

Thence Easterly along said North right-of-way line of I-40, being a non-tangent curve to the right and concave to the South having a chord bearing and length of S 89°31'08" E – 3,989.06 feet, radius of 14,523.95 (rec. same) feet and central angle of 15°47'11", an arc distance of 4,001.70 feet to a point on the East line of said North half of Section 8, from which an A.H.D. brass cap right-of-way monument found in concrete lies S 81°37'31" E a distance of 0.19 foot;

Thence N 00°21'19" E a distance of 9.94 feet along said East line of the North half of Section 8 to a ½" re-bar with plastic cap stamped "LS 14184" set on said South right-of-way line of the BNSF Railway which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, and from said set re-bar, an A.H.D. brass cap right-of-way monument found in concrete lies N 01°35'58" E a distance of 2.48 feet;

Thence N 79°36'47" W (N 79°40'09" W & N 79°43'03" W rec.) a distance of 3,812.96 feet along said South right-of-way line of the BNSF Railway to the POINT OF BEGINNING.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I
Date Signed 1-6-03
ARIZONA, U.S.A.

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Landmark Engineering & Surveying, Inc.
sedona ❖ FOUNDED 1979 ❖ flagstaff

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tgraham@landmarkes.com
Wm.Tod Graham I,R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA EASEMENT

A strip of land 50.00 feet wide being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said strip of land being more particularly defined as lying 25.00 feet on each side of the following described centerline:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;
Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;
Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;
Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E – 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract";
Thence N 01°10'00" W (rec. same) a distance of 35.42 feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to the POINT OF BEGINNING of centerline (side lines of strip begin on said West boundary of the "Purina Tract");
Thence N 75°42'07" E a distance of 237.77 feet;
Thence N 80°14'11" E a distance of 384.51 feet;
Thence N 82°03'30" E a distance of 469.59 feet to the point of terminus of centerline on the East boundary of the "Purina West Parcel", said point lies N 80°27'22" E a distance of 1,080.42 feet, thence N 10°22'23" E a distance of 45.84 feet from said Southwest corner of the "Purina Tract" (side lines of strip end on said East boundary of the "Purina West Parcel").

REGISTERED LAND SURVEYOR CERTIFICATE NO. 14184 WM. TOD GRAHAM, I.R.L.S. Date Signed 1-6 ARIZONA, U.S.A.

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LANDMARK ENGINEERING & SURVEYING, INC.

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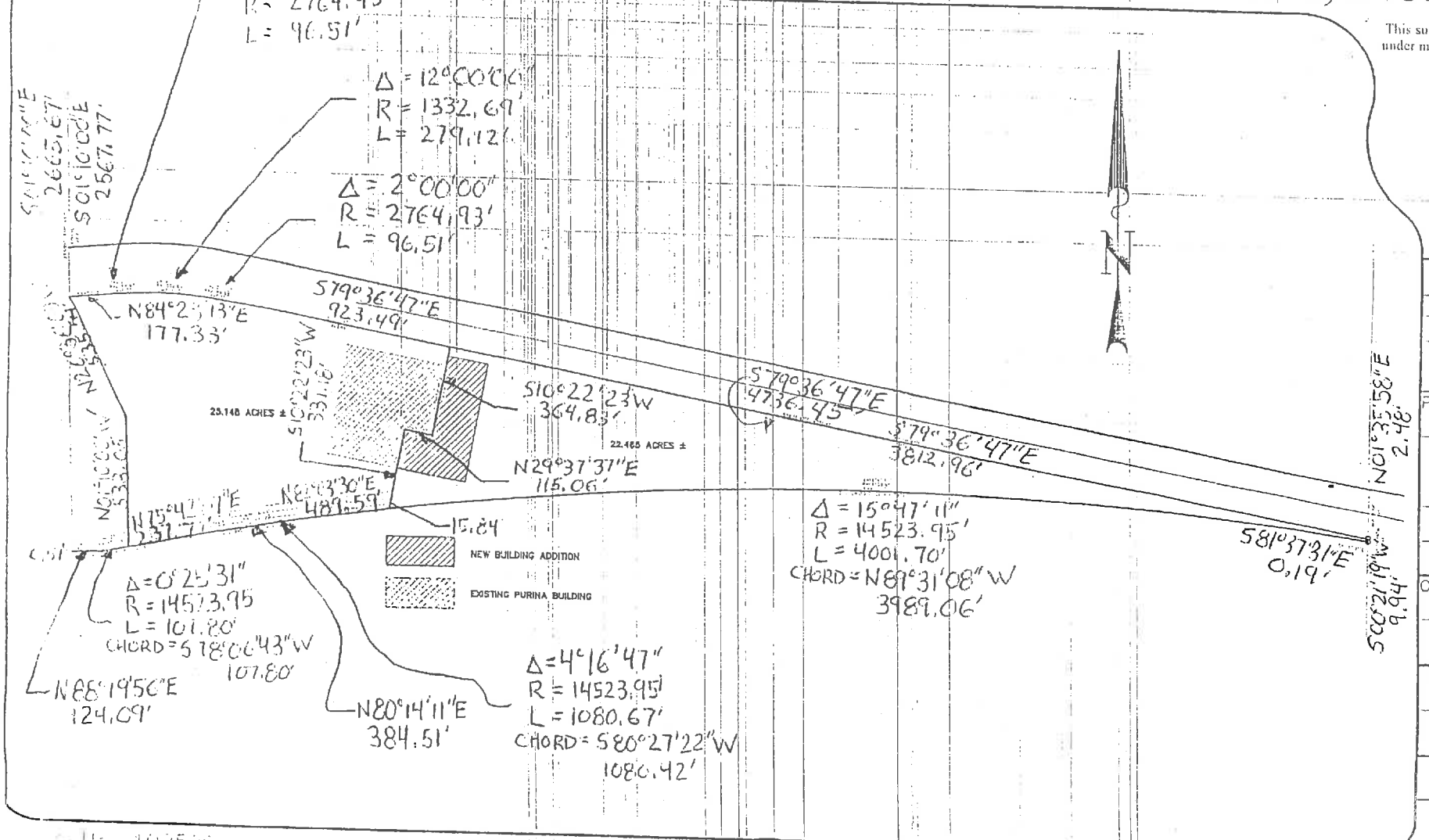
This survey was performed under my direct supervision



Date:	January 07, 2007
Revisions:	
Project Manager	
Survey Crew	
C.A.D. by:	J. Rogers
Checked by:	T. Graham
Contour Interval	N. A.
Scale:	1" = 400'
Project Name	102509
File Name:	boundary.dwg
Sheet:	1 of 1
Job No.:	102509

Job No. 102509

EXHIBIT "B"

PARCEL 1 AS DESCRIBED IN DOCKET 662, PAGE 74 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF THE BNSF/ATSF RAILROAD AND NORTHERLY OF THE INTERSTATE 40 RIGHT OF WAY AND OFF RAMP AS SHOWN ON THE ADOT RIGHT-OF-WAY MAP PROJECT #1-40-4-701, SHEET 5 OF 5 DATED 1973 (HEREINAFTER REFERRED TO AS R2) AND EAST OF U.S. HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS, AND EXCEPT THAT CERTAIN PARCEL OF LAND SET FORTH IN A SPECIAL WARRANTY DEED TO ADOT AND RECORDED IN INSTRUMENT 3390420 (HEREINAFTER REFERRED TO AS R6) MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 7, A POINT FROM WHICH THE NORTHEAST CORNER OF SECTION 7 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2,662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SECTION 7 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE EAST LINE OF SECTION 7 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 486.55 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A";

THENCE CONTINUING SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 286.32 FEET TO A POINT WHICH LIES ALONG THE EAST-WEST MID-SECTION LINE OF SECTION 7;

THENCE SOUTH 89 DEGREES 50 MINUTES 25 SECONDS WEST ALONG SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 24.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 236.69 FEET, THROUGH A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 28 SECONDS, THE RADIUS OF WHICH IS 1,095.92 FEET, WITH A CHORD BEARING OF NORTH 71 DEGREES 22 MINUTES 37 SECONDS WEST, AND WITH A CHORD LENGTH OF 236.23 FEET;

THENCE NORTH 66 DEGREES 35 MINUTES 27 SECONDS WEST A DISTANCE OF 150.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 428.93 FEET, THROUGH A CENTRAL ANGLE OF 35 DEGREES 47 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 686.63 FEET, WITH A CHORD BEARING OF NORTH 84 DEGREES 31 MINUTES 14 SECONDS WEST, AND WITH A CHORD LENGTH OF 421.99 FEET, TO THE SOUTHEASTERLY CORNER OF SAID R6;

THENCE NORTH 44 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 423.39 FEET TO THE NORTHEASTERLY CORNER OF R6;

THENCE SOUTH 45 DEGREES 11 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT WHICH LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 44 DEGREES 04 MINUTES 37 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 220.05 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3263227;

THENCE NORTH 57 DEGREES 11 MINUTES 14 SECONDS EAST, A DISTANCE OF 227.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE THE ARC LENGTH OF WHICH IS 185.05 FEET, THROUGH A CENTRAL ANGLE OF 24 DEGREES 24 MINUTES 32 SECONDS, THE RADIUS OF WHICH IS 434.37 FEET, WITH A CHORD BEARING OF NORTH 69 DEGREES 24 MINUTES 18 SECONDS EAST, AND WITH A CHORD LENGTH OF 183.65 FEET, TO THE SOUTHEASTERLY CORNER OF SAID INSTRUMENT 3263227;

THENCE NORTH 01 DEGREES 04 MINUTES 11 SECONDS WEST A DISTANCE OF 109.74 FEET TO THE NORTHEASTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 324.48 FEET, THROUGH A CENTRAL ANGLE OF 07 DEGREES 23 MINUTES 37 SECONDS, THE RADIUS OF WHICH IS 2,514.51 FEET, WITH A CHORD BEARING OF SOUTH 72 DEGREES 50 MINUTES 29 SECONDS WEST, AND WITH A CHORD LENGTH OF 324.25 FEET;

THENCE SOUTH 69 DEGREES 08 MINUTES 29 SECONDS WEST A DISTANCE OF 191.45 FEET, TO THE NORTHWESTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 43 DEGREES 46 MINUTES 26 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 54.29 FEET TO A POINT WHICH LIES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY;

THENCE NORTH 69 DEGREES 09 MINUTES 46 SECONDS EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 561.60 FEET TO AN ANGLE POINT;

THENCE NORTH 84 DEGREES 23 MINUTES 34 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1,679.81 FEET TO A POINT WHICH LIES ALONG THE EAST LINE OF SECTION 7;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 1,037.83 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3417898 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE ABOVE REFERENCED "POINT A";

THENCE NORTH 07 DEGREES 46 MINUTES 52 SECONDS WEST A DISTANCE OF 50.59 FEET TO A FOUND 1/2 INCH REBAR AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 82 DEGREES 28 MINUTES 39 SECONDS WEST, A DISTANCE OF 147.62 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 330.15 FEET, THROUGH A CENTRAL ANGLE OF 27 DEGREES 57 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 676.58 FEET, WITH A CHORD BEARING OF NORTH 83 DEGREES 32 MINUTES 02 SECONDS WEST, AND WITH A CHORD LENGTH OF 326.88 FEET;

THENCE NORTH 07 DEGREES 32 MINUTES 26 SECONDS WEST A DISTANCE OF 422.82 FEET;

THENCE NORTH 82 DEGREES 31 MINUTES 11 SECONDS EAST A DISTANCE OF 464.96 FEET;

THENCE SOUTH 07 DEGREES 31 MINUTES 15 SECONDS EAST A DISTANCE OF 501.49 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN SPECIAL WARRANTY DEED AS 2008-3491528 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE FOLLOWING IS A DESCRIPTION OF A PARCEL OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 652, PAGE 74, COCONINO COUNTY RECORDS (CCR), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR);

THENCE SOUTH 07 DEGREES 32 MINUTES 25 SECONDS EAST (BASIS OF BEARINGS) ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 420.55 FEET TO A POINT WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 28 MINUTES 30 SECONDS WEST;

THENCE NORTHWESTERLY 33.78 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 52 MINUTES 08 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 273.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 25 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET;

THENCE NORTHERLY 110.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 74.91 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 255.98 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT 153.03 FEET THROUGH A CENTRAL ANGLE OF 34 DEGREES 15 MINUTES 08 SECONDS;

THENCE SOUTH 07 DEGREES 32 MINUTES 26 SECONDS EAST A DISTANCE OF 97.27 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THE FOLLOWING IS A DESCRIPTION OF A 2.00 FOOT WIDE STRIP OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 662, PAGE 74, COCONINO COUNTY RECORDS (CCR) (BASIS OF BEARINGS IS THE NORTH LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND

MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR); WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 676.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 21 MINUTES 37 SECONDS WEST;

THENCE NORTHWESTERLY 35.27 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 59 MINUTES 11 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 275.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 48 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 318.49 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 22 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 397.77 FEET;

THENCE NORTHERLY 109.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 49 MINUTES 59 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE ON A NON-TANGENT LINE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 73 DEGREES 50 MINUTES 31 SECONDS EAST;

THENCE SOUTHERLY 110.67 FEET THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 273.00 FEET;

THENCE SOUTHEASTERLY AND SOUTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS;

THENCE ON A NON-TANGENT LINE SOUTH 64 DEGREES 56 MINUTES 15 SECONDS EAST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 39 SECONDS WEST;

THENCE SOUTHEASTERLY 34.07 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 53 MINUTES 38 SECONDS;

THENCE SOUTH 07 DEGREES 34 MINUTES 32 SECONDS EAST ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 2.26 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2 AS DESCRIBED IN DOCKET 662, PAGE 75 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40, SOUTH OF THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY AND WEST OF THAT CERTAIN PARCEL OF LAND KNOWN AS THE RALSTON PURINA PROPERTY AS RECORDED IN INSTRUMENT 3242297, HEREINAFTER REFERRED TO AS R5, SAID PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 8, A POINT FROM WHICH THE NORTHWEST CORNER OF SECTION 8 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE WEST LINE OF SECTION 8 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 1,037.83 FEET TO THE NORTHWEST CORNER OF SAID RALSTON PURINA PROPERTY;

THENCE SOUTH 26 DEGREES 36 MINUTES 03 SECONDS EAST A DISTANCE OF 535.54 FEET TO AN ANGLE POINT ALONG THE WEST LINE OF THE RALSTON PURINA PARCEL;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST A DISTANCE OF 533.05 FEET TO THE SOUTHWEST CORNER OF SAID RALSTON PURINA PARCEL, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 107.47 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 25 MINUTES 26 SECONDS, THE RADIUS OF WHICH IS 14,523.95 FEET, WITH A CHORD BEARING OF SOUTH 78 DEGREES 03 MINUTES 40 SECONDS WEST, AND WITH A CHORD LENGTH OF 107.47 FEET;

THENCE SOUTH 88 DEGREES 20 MINUTES 38 SECONDS WEST A DISTANCE OF 124.43 FEET TO THE POINT OF BEGINNING.

EXHIBIT [redacted] "C"

PARCEL 1 AS DESCRIBED IN DOCKET 662, PAGE 74 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF THE BNSF/ATSF RAILROAD AND NORTHERLY OF THE INTERSTATE 40 RIGHT OF WAY AND OFF RAMP AS SHOWN ON THE ADOT RIGHT-OF-WAY MAP PROJECT #1-40-4-701, SHEET 5 OF 5 DATED 1973 (HEREINAFTER REFERRED TO AS R2) AND EAST OF U.S. HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS, AND EXCEPT THAT CERTAIN PARCEL OF LAND SET FORTH IN A SPECIAL WARRANTY DEED TO ADOT AND RECORDED IN INSTRUMENT 3390420 (HEREINAFTER REFERRED TO AS R6) MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 7, A POINT FROM WHICH THE NORTHEAST CORNER OF SECTION 7 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2,662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SECTION 7 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE EAST LINE OF SECTION 7 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 486.55 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A";

THENCE CONTINUING SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 286.32 FEET TO A POINT WHICH LIES ALONG THE EAST-WEST MID-SECTION LINE OF SECTION 7;

THENCE SOUTH 89 DEGREES 50 MINUTES 25 SECONDS WEST ALONG SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 24.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 236.69 FEET, THROUGH A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 28 SECONDS, THE RADIUS OF WHICH IS 1,095.92 FEET, WITH A CHORD BEARING OF NORTH 71 DEGREES 22 MINUTES 37 SECONDS WEST, AND WITH A CHORD LENGTH OF 236.23 FEET;

THENCE NORTH 66 DEGREES 35 MINUTES 27 SECONDS WEST A DISTANCE OF 150.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 428.93 FEET, THROUGH A CENTRAL ANGLE OF 35 DEGREES 47 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 686.63 FEET, WITH A CHORD BEARING OF NORTH 84 DEGREES 31 MINUTES 14 SECONDS WEST, AND WITH A CHORD LENGTH OF 421.99 FEET, TO THE SOUTHEASTERLY CORNER OF SAID R6;

THENCE NORTH 44 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 423.39 FEET TO THE NORTHEASTERLY CORNER OF R6;

THENCE SOUTH 45 DEGREES 11 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT WHICH LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 44 DEGREES 04 MINUTES 37 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 220.05 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3263227;

THENCE NORTH 57 DEGREES 11 MINUTES 14 SECONDS EAST, A DISTANCE OF 227.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE THE ARC LENGTH OF WHICH IS 185.05 FEET, THROUGH A CENTRAL ANGLE OF 24 DEGREES 24 MINUTES 32 SECONDS, THE RADIUS OF WHICH IS 434.37 FEET, WITH A CHORD BEARING OF NORTH 69 DEGREES 24 MINUTES 18 SECONDS EAST, AND WITH A CHORD LENGTH OF 183.65 FEET, TO THE SOUTHEASTERLY CORNER OF SAID INSTRUMENT 3263227;

THENCE NORTH 01 DEGREES 04 MINUTES 11 SECONDS WEST A DISTANCE OF 109.74 FEET TO THE NORTHEASTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 324.48 FEET, THROUGH A CENTRAL ANGLE OF 07 DEGREES 23 MINUTES 37 SECONDS, THE RADIUS OF WHICH IS 2,514.51 FEET, WITH A CHORD BEARING OF SOUTH 72 DEGREES 50 MINUTES 29 SECONDS WEST, AND WITH A CHORD LENGTH OF 324.25 FEET;

THENCE SOUTH 69 DEGREES 08 MINUTES 29 SECONDS WEST A DISTANCE OF 191.45 FEET, TO THE NORTHWESTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 43 DEGREES 46 MINUTES 26 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 54.29 FEET TO A POINT WHICH LIES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY;

THENCE NORTH 69 DEGREES 09 MINUTES 46 SECONDS EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 561.60 FEET TO AN ANGLE POINT;

THENCE NORTH 84 DEGREES 23 MINUTES 34 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1,679.81 FEET TO A POINT WHICH LIES ALONG THE EAST LINE OF SECTION 7;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 1,037.83 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3417898 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE ABOVE REFERENCED "POINT A";

THENCE NORTH 07 DEGREES 46 MINUTES 52 SECONDS WEST A DISTANCE OF 50.59 FEET TO A FOUND 1/2 INCH REBAR AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 82 DEGREES 28 MINUTES 39 SECONDS WEST, A DISTANCE OF 147.62 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 330.15 FEET, THROUGH A CENTRAL ANGLE OF 27 DEGREES 57 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 676.58 FEET, WITH A CHORD BEARING OF NORTH 83 DEGREES 32 MINUTES 02 SECONDS WEST, AND WITH A CHORD LENGTH OF 326.88 FEET;

THENCE NORTH 07 DEGREES 32 MINUTES 26 SECONDS WEST A DISTANCE OF 422.82 FEET;

THENCE NORTH 82 DEGREES 31 MINUTES 11 SECONDS EAST A DISTANCE OF 464.96 FEET;

THENCE SOUTH 07 DEGREES 31 MINUTES 15 SECONDS EAST A DISTANCE OF 501.49 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN SPECIAL WARRANTY DEED AS 2008-3491528 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE FOLLOWING IS A DESCRIPTION OF A PARCEL OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 652, PAGE 74, COCONINO COUNTY RECORDS (CCR), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR);

THENCE SOUTH 07 DEGREES 32 MINUTES 25 SECONDS EAST (BASIS OF BEARINGS) ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 420.55 FEET TO A POINT WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 28 MINUTES 30 SECONDS WEST;

THENCE NORTHWESTERLY 33.78 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 52 MINUTES 08 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 273.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 25 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET;

THENCE NORTHERLY 110.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 74.91 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 255.98 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT 153.03 FEET THROUGH A CENTRAL ANGLE OF 34 DEGREES 15 MINUTES 08 SECONDS;

THENCE SOUTH 07 DEGREES 32 MINUTES 26 SECONDS EAST A DISTANCE OF 97.27 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THE FOLLOWING IS A DESCRIPTION OF A 2.00 FOOT WIDE STRIP OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 662, PAGE 74, COCONINO COUNTY RECORDS (CCR) (BASIS OF BEARINGS IS THE NORTH LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND

MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR); WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 676.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 21 MINUTES 37 SECONDS WEST;

THENCE NORTHWESTERLY 35.27 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 59 MINUTES 11 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 275.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 48 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 318.49 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 22 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 397.77 FEET;

THENCE NORTHERLY 109.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 49 MINUTES 59 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE ON A NON-TANGENT LINE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 73 DEGREES 50 MINUTES 31 SECONDS EAST;

THENCE SOUTHERLY 110.67 FEET THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 273.00 FEET;

THENCE SOUTHEASTERLY AND SOUTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS;

THENCE ON A NON-TANGENT LINE SOUTH 64 DEGREES 56 MINUTES 15 SECONDS EAST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 39 SECONDS WEST;

THENCE SOUTHEASTERLY 34.07 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 53 MINUTES 38 SECONDS;

THENCE SOUTH 07 DEGREES 34 MINUTES 32 SECONDS EAST ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 2.26 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2 AS DESCRIBED IN DOCKET 662, PAGE 75 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40, SOUTH OF THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY AND WEST OF THAT CERTAIN PARCEL OF LAND KNOWN AS THE RALSTON PURINA PROPERTY AS RECORDED IN INSTRUMENT 3242297, HEREINAFTER REFERRED TO AS R5, SAID PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 8, A POINT FROM WHICH THE NORTHWEST CORNER OF SECTION 8 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE WEST LINE OF SECTION 8 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 1,037.83 FEET TO THE NORTHWEST CORNER OF SAID RALSTON PURINA PROPERTY;

THENCE SOUTH 26 DEGREES 36 MINUTES 03 SECONDS EAST A DISTANCE OF 535.54 FEET TO AN ANGLE POINT ALONG THE WEST LINE OF THE RALSTON PURINA PARCEL;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST A DISTANCE OF 533.05 FEET TO THE SOUTHWEST CORNER OF SAID RALSTON PURINA PARCEL, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 107.47 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 25 MINUTES 26 SECONDS, THE RADIUS OF WHICH IS 14,523.95 FEET, WITH A CHORD BEARING OF SOUTH 78 DEGREES 03 MINUTES 40 SECONDS WEST, AND WITH A CHORD LENGTH OF 107.47 FEET;

THENCE SOUTH 88 DEGREES 20 MINUTES 38 SECONDS WEST A DISTANCE OF 124.43 FEET TO THE POINT OF BEGINNING.

Northland Exploration Surveys, Inc.

EXHIBIT [redacted] "D"

LEGAL DESCRIPTION (Industrial Drive):

A parcel of land, said parcel being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said parcel of land being more particularly described as follows:

BEGINNING at the point described as "The Northwesterly corner of said Instrument 3263227, said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547, Page 696;

thence Northerly along said Easterly Easement line, along a curve to the left, having a central angle of 13° 42' 57" and a radius of 397.90 feet, for a distance of 95.25 feet, the chord of said curve bears N 22° 48' 03" W for 95.02 feet, to a nontangent point;

thence S 69° 51' 20" E for a distance of 22.56 feet to a point;

thence N 68° 28' 31" E for a distance of 62.26 feet to a point of curvature;

P.O. Box 1401 / Flagstaff, Arizona 86002 / (928) 774-5058 / FAX (928) 774-3089

thence Northeasterly and Northerly along a curve to the left, having a central angle of 73° 53' 55" and a radius of 175.98 feet, for a distance of 226.97 feet, the chord of said curve bears N 31° 31' 33" E for 211.57 feet, to a point of compound curve;

thence Northerly and Northwesterly along a curve to the left, having a central angle of 90° 00' 00" and a radius of 175.92 feet, for a distance of 276.33 feet, the chord of said curve bears N 50° 25' 24" W for 248.79 feet, to a point of tangency;

thence S 84° 34' 36" W for a distance of 377.23 feet to a point of curvature;

thence Southwesterly along a curve to the left, having a central angle of 06° 02' 13" and a radius of 558.50, for a distance of 58.85 feet, the chord of said curve bears S 81° 33' 29" W for 58.82 feet, to a nontangent point on the East parcel line of a parcel of land described in Instrument No. 3263227 (R1);

thence N 00° 51' 02" W, along said East parcel line, for a distance of 8.27 feet to the Northeast parcel corner of said Parcel (R1), said point being a nontangent point of curvature;

thence Southwesterly along the North parcel line of said Parcel (R1), along a curve to the left, having a central angle of 03° 26' 05" and a radius of 2514.58 feet, for a distance of 150.74 feet, the chord of said curve bears S 74° 59' 38" W for 150.72 feet, to a point;

thence continue Southwesterly along said North parcel line, along said curve to the left, having a central angle of 03° 57' 32" and a radius of 2514.58 feet, for a distance of 173.74 feet, the chord of said curve bears S 71° 17' 50" W for 173.71 feet, to a point of tangency;

thence S 69° 19' 04" W, along said North parcel line, for a distance of 191.45 feet to the **POINT OF BEGINNING,**

said parcel contains 2.7458 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL 1** on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Drive

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 08/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC 10/08/13
INIT DATE

RIGHT-OF-WAY
Descriptive Title

City File No. 03-09008

Northland Exploration Surveys, Inc.

EXHIBIT "A"

LEGAL DESCRIPTION (Parcel 2):

A strip of land, 10 feet in width, said strip of land being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said strip of land being Northerly, Easterly and Southerly of the following described line:

FROM the point described as "The Northwesterly corner of said Instrument 3263227, 'said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature, said point being the **TRUE POINT OF BEGINNING**;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547. Page 696, said point being the **END OF SAID STRIP OF LAND**;

the Easterly easement line being extended or shortened to intersect with the Southerly Railroad Right-of-Way line at the North end and the Easterly easement line at the South end.

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said parcel contains 0.1808 acres of land, more or less, including any easements of record over the above described parcel, as shown as PARCEL 2 on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Parcel 2

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 08/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC
INT
10/08/13
DATE

SLOPE EASEMENT
Descriptive Title

City File No. 03-09008

Northland Exploration Surveys, Inc.

EXHIBIT "A"

LEGAL DESCRIPTION (Parcel 3):

A strip of land, 8 feet in width, said strip of land being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said strip of land being Northerly, Easterly and Southerly of the following described line:

FROM the point described as "The Northwesterly corner of said Instrument 3263227, said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547. Page 696;

thence Northerly along said Easterly Easement line, along a curve to the left, having a central angle of 13° 42' 57" and a radius of 397.90 feet, for a distance of 95.25 feet, the chord of said curve bears N 22° 48' 03" W for 95.02 feet, to a nontangent point, said point being the **TRUE POINT OF BEGINNING**;

thence S 69° 51' 20" E for a distance of 22.56 feet to a point;

P.O. Box 1401 / Flagstaff, Arizona 86002 / (928) 774-5058 / FAX (928) 774-3089

thence N 68° 28' 31" E for a distance of 62.26 feet to a point of curvature;

thence Northeasterly and Northerly along a curve to the left, having a central angle of 73° 53' 55" and a radius of 175.98 feet, for a distance of 226.97 feet, the chord of said curve bears N 31° 31' 33" E for 211.57 feet, to a point of compound curve;

thence Northerly and Northwesterly along a curve to the left, having a central angle of 90° 00' 00" and a radius of 175.92 feet, for a distance of 276.33 feet, the chord of said curve bears N 50° 25' 24" W for 248.79 feet, to a point of tangency;

thence S 84° 34' 36" W for a distance of 377.23 feet to a point of curvature;

thence Southwesterly along a curve to the left, having a central angle of 06° 02' 13" and a radius of 558.50, for a distance of 58.85 feet, the chord of said curve bears S 81° 33' 29" W for 58.82 feet, to a nontangent point on the East parcel line of a parcel of land described in Instrument No. 3263227 (R1), said point being the **END OF SAID STRIP OF LAND**;

the Westerly easement line being extended or shortened to intersect with the Easterly parcel line of said Parcel (R1) at the North end and the Easterly easement line at the South end,

said strip of land contains 0.1864 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL 3** on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Parcel 3

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC 10/08/13
INT DATE

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 09/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

SLOPE EASEMENT
Descriptive Title

City File No. 03-09008

EHXIBIT "1"

WHEN RECORDED, RETURN TO:
Elizabeth Burke, City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

SECOND AMENDMENT TO LEASE

The City of Flagstaff, a political subdivision of the state of Arizona ("City" or "Landlord") and Nestle Purina Petcare Company, a Missouri corporation ("Purina" or "Tenant") enter into this Second Amendment to Lease effective 15Th day of September, 2015.

RECITALS:

A. Landlord and Tenant entered into a Lease in 2003, and First Amendment to Lease in 2008. The form of Lease is set forth in the recorded Development Agreement referenced below, and the First Amendment to Lease is recorded in Instrument No. 3491226, Official Records of the Coconino County, Arizona (collectively "Lease").

B. The Leased Property consists of the land legally described in Exhibit A ("Original Property"), and Exhibit B ("Additional Property") and Purina facilities located on such land, but excludes certain parcels subsequently conveyed to the City and legally described as Exhibit C ("Fire Station Parcel") and Exhibit D ("Industrial Drive Parcel"). The Fire Station Parcel was conveyed to the City by Special Warranty Deed and recorded on January 16, 2009 in Instrument No. 3510883 in the Official Records of the Coconino County, Arizona. The Industrial Drive Parcel was conveyed to the City by Quit Claim Deed and recorded on January 12, 2015 Instrument No. 3711317 in the Official Records of the Coconino County, Arizona.

C. City/Landlord and Purina/Tenant entered into a Development Agreement in 2003, and First Amendment to Lease in 2008. Those documents are recorded in Instrument Nos. 3207666 and 3491226, Official Records of the Coconino County, Arizona ("Development Agreement").

D. Pursuant to A.R.S. § 42-6203.A.4 the City and Purina have approved a Second Amendment to Development Agreement to temporarily extend the Development Agreement and underlying Lease for a period commencing October 14, 2015 and continuing for up to six (6) months to further the original purposes of the Development Agreement and to explore the feasibility of voluntary installation of equipment at the Purina Facility to achieve measurable odor mitigation.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Extension Period. The Lease is hereby extended from October 14, 2015 to April 15, 2016, unless sooner terminated ("Extension Period.") Either party may terminate the Second Amendment upon giving at least five (5) days written notice to the other party. The Development Agreement and Lease term shall be coterminous.

2. Effect. All other terms and conditions of the Lease shall remain in effect.

TENANT: NESTLE PURINA PETCARE COMPANY

_____

By:_____

Its:_____

LANDLORD: CITY OF FLAGSTAFF

_____

By: Mayor Nabours

Attest:

_____

By: Elizabeth Burke, City Clerk

Approved as to form:

_____

By:_____

City Attorney's Office

Attachments: Exhibits A, B, C, D

EXHIBIT "A" [redacted]

Legal Description of Property

Landmark Engineering & Surveying, Inc.
sedona flagstaff
FOUNDED 1979
David Dow, R.L.S. ddow@landmarkes.com
Martin Etcheverry, R.L.S. metcheverry@landmarkes.com
Barry Giles, R.L.S. (California) bgiles@landmarkes.com
William McHenry L.S.I.T. wmchenry@landmarkes.com

p.o. box 1907
sedona, az 86339
(928) 282-7104 voice
(928) 282-7171 fax
www.landmarkes.com
tgraham@landmarkes.com
Wm.Tod Graham I,R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA WEST PARCEL

A parcel of land being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said parcel being more particularly described as follows:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;

Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;

Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;

Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E – 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract" which is the POINT OF BEGINNING;

Thence N 01°10'00" W (rec. same) a distance of 533.05 (527.54 rec.) feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to a ½" re-bar with plastic cap stamped "LS 14184" set at an angle point in said West boundary;

Thence N 26°36'03" W (rec. same) a distance of 535.54 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said West line of the North half of Section 8 with the South right-of-way line of the Burlington Northern and Santa Fe Railway (BNSF) (formerly Atchison, Topeka and Santa Fe Railway);

Thence N 84°23'13" E (N 84°23'24" E rec.) a distance of 177.33 (198.30 rec.) feet along said South right-of-way line of the BNSF Railway to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

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Page: 45 of 56
AM

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 1,332.69 (rec. same) and central angle of 12°00'00", an arc distance of 279.12 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Tangency;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 510.00 feet along said South right-of-way line of the BNSF Railway to a point that lies 100.0 feet southerly of the centerline of the South Main (Westbound) rails of said BNSF Railway;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 413.49 feet along said South right-of-way line of the BNSF Railway, which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said South right-of-way line with the Northerly projection of the centerline of steel columns aligned along the East wall of the Purina building as it existed in November of the year 2002;

Thence S 10°22'23" W a distance of 364.83 feet along said centerline projection and said centerline of steel columns to an angle point in said East wall;

Thence N 79°37'37" W a distance of 115.06 feet along said centerline of steel columns to an angle point in said East wall;

Thence S 10°22'23" W a distance of 331.18 feet along said centerline of steel columns and the southerly projection of said centerline to a ½" re-bar with plastic cap stamped "LS 14184" set on said North right-of-way line of I-40;

Thence Westerly along said North right-of-way line of I-40, being a non-tangent curve to the left and concave to the South having a chord bearing and length of S 80°27'22" W – 1,080.42 feet, radius of 14,523.95 (rec. same) feet and central angle of 4°15'47", an arc distance of 1,080.67 feet to the POINT OF BEGINNING.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I
Date Signed 1-6-03
APPROVED

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Landmark Engineering & Surveying, Inc.
flagstaff
FOUNDED 1979
sedona
William McHenry L.S.I.T. wmchenry@landmarkes.com
Barry Giles, R.L.S. (California) bgiles@landmarkes.com
Martin Etchevery, R.L.S. metchevery@landmarkes.com
David Dow, R.L.S. ddow@landmarkes.com
p.o. box 1907
sedona, az 86339
(928) 282-7104 voice
(928) 282-7171 fax
www.landmarkes.com
tgraham@landmarkes.com
Wm.Tod Graham I,R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA EAST PARCEL

A parcel of land being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said parcel being more particularly described as follows:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;

Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;

Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;

Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E – 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract";

Thence N 01°10'00" W (rec. same) a distance of 533.05 (527.54 rec.) feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to a ½" re-bar with plastic cap stamped "LS 14184" set at an angle point in said West boundary;

Thence N 26°36'03" W (rec. same) a distance of 535.54 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said West line of the North half of Section 8 with the South right-of-way line of the Burlington Northern and Santa Fe Railway (BNSF) (formerly Atchison, Topeka and Santa Fe Railway);

Thence N 84°23'13" E (N 84°23'24" E rec.) a distance of 177.33 (198.30 rec.) feet along said South right-of-way line of the BNSF Railway to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 1,332.69 (rec.

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Page: 47 of 56
AM

same) and central angle of 12°00'00", an arc distance of 279.12 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Tangency;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 510.00 feet along said South right-of-way line of the BNSF Railway to a point that lies 100.0 feet southerly of the centerline of the South Main (Westbound) rails of said BNSF Railway;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 413.49 feet along said South right-of-way line of the BNSF Railway, which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said South right-of-way line with the Northerly projection of the centerline of steel columns aligned along the East wall of the Purina building as it existed in November of the year 2002, said intersection being the POINT OF BEGINNING ;

Thence S 10°22'23" W a distance of 364.83 feet along said centerline projection and said centerline of steel columns to an angle point in said East wall;

Thence N 79°37'37" W a distance of 115.06 feet along said centerline of steel columns to an angle point in said East wall;

Thence S 10°22'23" W a distance of 331.18 feet along said centerline of steel columns and the southerly projection of said centerline to a ½" re-bar with plastic cap stamped "LS 14184" set on said North right-of-way line of I-40;

Thence Easterly along said North right-of-way line of I-40, being a non-tangent curve to the right and concave to the South having a chord bearing and length of S 89°31'08" E – 3,989.06 feet, radius of 14,523.95 (rec. same) feet and central angle of 15°47'11", an arc distance of 4,001.70 feet to a point on the East line of said North half of Section 8, from which an A.H.D. brass cap right-of-way monument found in concrete lies S 81°37'31" E a distance of 0.19 foot;

Thence N 00°21'19" E a distance of 9.94 feet along said East line of the North half of Section 8 to a ½" re-bar with plastic cap stamped "LS 14184" set on said South right-of-way line of the BNSF Railway which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, and from said set re-bar, an A.H.D. brass cap right-of-way monument found in concrete lies N 01°35'58" E a distance of 2.48 feet;

Thence N 79°36'47" W (N 79°40'09" W & N 79°43'03" W rec.) a distance of 3,812.96 feet along said South right-of-way line of the BNSF Railway to the POINT OF BEGINNING.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I.D.
Date Signed
ARIZONA

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Landmark Engineering & Surveying, Inc.
sedona ❖ FOUNDED 1979 ❖ flagstaff

David Dow, R.L.S. ddow@landmarkes.com
Martin Etcheverry, R.L.S. metcheverry@landmarkes.com
Barry Giles, R.L.S. (California) bgiles@landmarkes.com
William McHenry L.S.I.T. wmchenry@landmarkes.com

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(928) 282-7104 voice
(928) 282-7171 fax
www.landmarkes.com
tgraham@landmarkes.com
Wm.Tod Graham I,R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA EASEMENT

A strip of land 50.00 feet wide being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said strip of land being more particularly defined as lying 25.00 feet on each side of the following described centerline:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;
Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;
Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;
Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E – 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract";
Thence N 01°10'00" W (rec. same) a distance of 35.42 feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to the POINT OF BEGINNING of centerline (side lines of strip begin on said West boundary of the "Purina Tract");
Thence N 75°42'07" E a distance of 237.77 feet;
Thence N 80°14'11" E a distance of 384.51 feet;
Thence N 82°03'30" E a distance of 469.59 feet to the point of terminus of centerline on the East boundary of the "Purina West Parcel", said point lies N 80°27'22" E a distance of 1,080.42 feet, thence N 10°22'23" E a distance of 45.84 feet from said Southwest corner of the "Purina Tract" (side lines of strip end on said East boundary of the "Purina West Parcel").

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I.
Date Signed 1-6
ARIZONA, U.S.A.

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LANDMARK ENGINEERING & SURVEYING, INC.

SEDONA
P.O. BOX 1907
SEDONA, AZ 86339
(928) 282-7101

FLAGSTAFF
1515 E. MAIN STREET
FLAGSTAFF, AZ 86001
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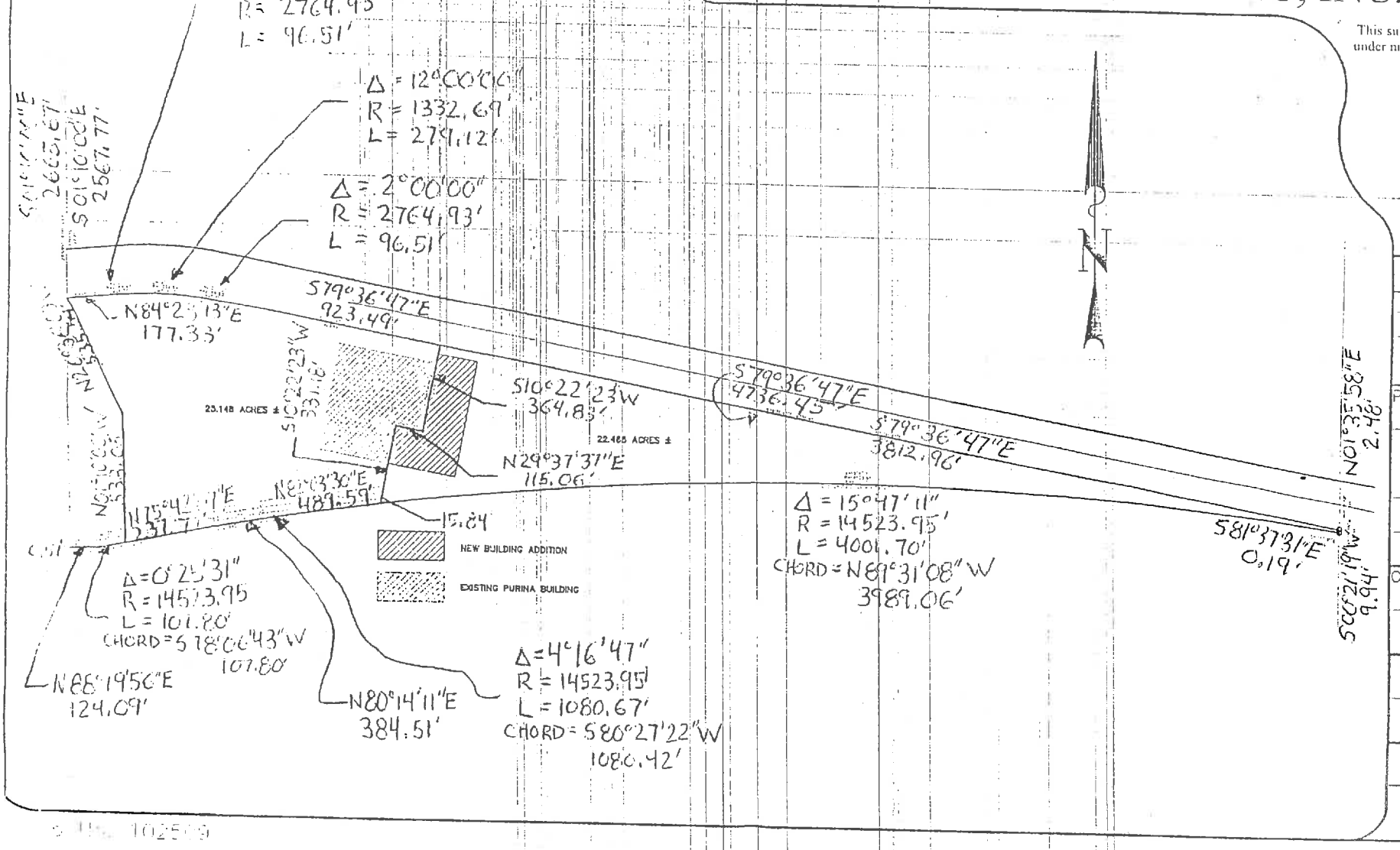
This survey was performed under my direct supervision



Date:	January 07, 2003
Revisions:	
Project Manager	
Survey Crew	
C.A.D. by:	J. Rogers
Checked by:	T. Graham
Contour Interval	N. A.
Scale:	1" = 400'
Project Name	102509
File Name:	boundary.dwg
Sheet:	1 of 1
Job No.:	102509

102509

EXHIBIT "B"

PARCEL 1 AS DESCRIBED IN DOCKET 662, PAGE 74 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF THE BNSF/ATSF RAILROAD AND NORTHERLY OF THE INTERSTATE 40 RIGHT OF WAY AND OFF RAMP AS SHOWN ON THE ADOT RIGHT-OF-WAY MAP PROJECT #1-40-4-701, SHEET 5 OF 5 DATED 1973 (HEREINAFTER REFERRED TO AS R2) AND EAST OF U.S. HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS, AND EXCEPT THAT CERTAIN PARCEL OF LAND SET FORTH IN A SPECIAL WARRANTY DEED TO ADOT AND RECORDED IN INSTRUMENT 3390420 (HEREINAFTER REFERRED TO AS R6) MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 7, A POINT FROM WHICH THE NORTHEAST CORNER OF SECTION 7 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2,662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SECTION 7 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE EAST LINE OF SECTION 7 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 486.55 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A";

THENCE CONTINUING SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 286.32 FEET TO A POINT WHICH LIES ALONG THE EAST-WEST MID-SECTION LINE OF SECTION 7;

THENCE SOUTH 89 DEGREES 50 MINUTES 25 SECONDS WEST ALONG SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 24.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 236.69 FEET, THROUGH A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 28 SECONDS, THE RADIUS OF WHICH IS 1,095.92 FEET, WITH A CHORD BEARING OF NORTH 71 DEGREES 22 MINUTES 37 SECONDS WEST, AND WITH A CHORD LENGTH OF 236.23 FEET;

THENCE NORTH 66 DEGREES 35 MINUTES 27 SECONDS WEST A DISTANCE OF 150.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 428.93 FEET, THROUGH A CENTRAL ANGLE OF 35 DEGREES 47 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 686.63 FEET, WITH A CHORD BEARING OF NORTH 84 DEGREES 31 MINUTES 14 SECONDS WEST, AND WITH A CHORD LENGTH OF 421.99 FEET, TO THE SOUTHEASTERLY CORNER OF SAID R6;

THENCE NORTH 44 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 423.39 FEET TO THE NORTHEASTERLY CORNER OF R6;

THENCE SOUTH 45 DEGREES 11 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT WHICH LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 44 DEGREES 04 MINUTES 37 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 220.05 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3263227;

THENCE NORTH 57 DEGREES 11 MINUTES 14 SECONDS EAST, A DISTANCE OF 227.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE THE ARC LENGTH OF WHICH IS 185.05 FEET, THROUGH A CENTRAL ANGLE OF 24 DEGREES 24 MINUTES 32 SECONDS, THE RADIUS OF WHICH IS 434.37 FEET, WITH A CHORD BEARING OF NORTH 69 DEGREES 24 MINUTES 18 SECONDS EAST, AND WITH A CHORD LENGTH OF 183.65 FEET, TO THE SOUTHEASTERLY CORNER OF SAID INSTRUMENT 3263227;

THENCE NORTH 01 DEGREES 04 MINUTES 11 SECONDS WEST A DISTANCE OF 109.74 FEET TO THE NORTHEASTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 324.48 FEET, THROUGH A CENTRAL ANGLE OF 07 DEGREES 23 MINUTES 37 SECONDS, THE RADIUS OF WHICH IS 2,514.51 FEET, WITH A CHORD BEARING OF SOUTH 72 DEGREES 50 MINUTES 29 SECONDS WEST, AND WITH A CHORD LENGTH OF 324.25 FEET;

THENCE SOUTH 69 DEGREES 08 MINUTES 29 SECONDS WEST A DISTANCE OF 191.45 FEET, TO THE NORTHWESTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 43 DEGREES 46 MINUTES 26 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 54.29 FEET TO A POINT WHICH LIES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY;

THENCE NORTH 69 DEGREES 09 MINUTES 46 SECONDS EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 561.60 FEET TO AN ANGLE POINT;

THENCE NORTH 84 DEGREES 23 MINUTES 34 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1,679.81 FEET TO A POINT WHICH LIES ALONG THE EAST LINE OF SECTION 7;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 1,037.83 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3417898 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE ABOVE REFERENCED "POINT A";

THENCE NORTH 07 DEGREES 46 MINUTES 52 SECONDS WEST A DISTANCE OF 50.59 FEET TO A FOUND 1/2 INCH REBAR AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 82 DEGREES 28 MINUTES 39 SECONDS WEST, A DISTANCE OF 147.62 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 330.15 FEET, THROUGH A CENTRAL ANGLE OF 27 DEGREES 57 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 676.58 FEET, WITH A CHORD BEARING OF NORTH 83 DEGREES 32 MINUTES 02 SECONDS WEST, AND WITH A CHORD LENGTH OF 326.88 FEET;

THENCE NORTH 07 DEGREES 32 MINUTES 26 SECONDS WEST A DISTANCE OF 422.82 FEET;

THENCE NORTH 82 DEGREES 31 MINUTES 11 SECONDS EAST A DISTANCE OF 464.96 FEET;

THENCE SOUTH 07 DEGREES 31 MINUTES 15 SECONDS EAST A DISTANCE OF 501.49 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN SPECIAL WARRANTY DEED AS 2008-3491528 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE FOLLOWING IS A DESCRIPTION OF A PARCEL OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 652, PAGE 74, COCONINO COUNTY RECORDS (CCR), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR);

THENCE SOUTH 07 DEGREES 32 MINUTES 25 SECONDS EAST (BASIS OF BEARINGS) ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 420.55 FEET TO A POINT WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 28 MINUTES 30 SECONDS WEST;

THENCE NORTHWESTERLY 33.78 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 52 MINUTES 08 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 273.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 25 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET;

THENCE NORTHERLY 110.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 74.91 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 255.98 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT 153.03 FEET THROUGH A CENTRAL ANGLE OF 34 DEGREES 15 MINUTES 08 SECONDS;

THENCE SOUTH 07 DEGREES 32 MINUTES 26 SECONDS EAST A DISTANCE OF 97.27 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THE FOLLOWING IS A DESCRIPTION OF A 2.00 FOOT WIDE STRIP OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 662, PAGE 74, COCONINO COUNTY RECORDS (CCR) (BASIS OF BEARINGS IS THE NORTH LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND

MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR); WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 676.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 21 MINUTES 37 SECONDS WEST;

THENCE NORTHWESTERLY 35.27 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 59 MINUTES 11 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 275.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 48 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 318.49 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 22 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 397.77 FEET;

THENCE NORTHERLY 109.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 49 MINUTES 59 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE ON A NON-TANGENT LINE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 73 DEGREES 50 MINUTES 31 SECONDS EAST;

THENCE SOUTHERLY 110.67 FEET THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 273.00 FEET;

THENCE SOUTHEASTERLY AND SOUTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS;

THENCE ON A NON-TANGENT LINE SOUTH 64 DEGREES 56 MINUTES 15 SECONDS EAST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 39 SECONDS WEST;

THENCE SOUTHEASTERLY 34.07 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 53 MINUTES 38 SECONDS;

THENCE SOUTH 07 DEGREES 34 MINUTES 32 SECONDS EAST ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 2.26 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2 AS DESCRIBED IN DOCKET 662, PAGE 75 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40, SOUTH OF THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY AND WEST OF THAT CERTAIN PARCEL OF LAND KNOWN AS THE RALSTON PURINA PROPERTY AS RECORDED IN INSTRUMENT 3242297, HEREINAFTER REFERRED TO AS R5, SAID PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 8, A POINT FROM WHICH THE NORTHWEST CORNER OF SECTION 8 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE WEST LINE OF SECTION 8 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 1,037.83 FEET TO THE NORTHWEST CORNER OF SAID RALSTON PURINA PROPERTY;

THENCE SOUTH 26 DEGREES 36 MINUTES 03 SECONDS EAST A DISTANCE OF 535.54 FEET TO AN ANGLE POINT ALONG THE WEST LINE OF THE RALSTON PURINA PARCEL;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST A DISTANCE OF 533.05 FEET TO THE SOUTHWEST CORNER OF SAID RALSTON PURINA PARCEL, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 107.47 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 25 MINUTES 26 SECONDS, THE RADIUS OF WHICH IS 14,523.95 FEET, WITH A CHORD BEARING OF SOUTH 78 DEGREES 03 MINUTES 40 SECONDS WEST, AND WITH A CHORD LENGTH OF 107.47 FEET;

THENCE SOUTH 88 DEGREES 20 MINUTES 38 SECONDS WEST A DISTANCE OF 124.43 FEET TO THE POINT OF BEGINNING.

EXHIBIT [redacted] "C"

PARCEL 1 AS DESCRIBED IN DOCKET 662, PAGE 74 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF THE BNSF/ATSF RAILROAD AND NORTHERLY OF THE INTERSTATE 40 RIGHT OF WAY AND OFF RAMP AS SHOWN ON THE ADOT RIGHT-OF-WAY MAP PROJECT #1-40-4-701, SHEET 5 OF 5 DATED 1973 (HEREINAFTER REFERRED TO AS R2) AND EAST OF U.S. HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS, AND EXCEPT THAT CERTAIN PARCEL OF LAND SET FORTH IN A SPECIAL WARRANTY DEED TO ADOT AND RECORDED IN INSTRUMENT 3390420 (HEREINAFTER REFERRED TO AS R6) MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 7, A POINT FROM WHICH THE NORTHEAST CORNER OF SECTION 7 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2,662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SECTION 7 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE EAST LINE OF SECTION 7 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 486.55 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A";

THENCE CONTINUING SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 286.32 FEET TO A POINT WHICH LIES ALONG THE EAST-WEST MID-SECTION LINE OF SECTION 7;

THENCE SOUTH 89 DEGREES 50 MINUTES 25 SECONDS WEST ALONG SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 24.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 236.69 FEET, THROUGH A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 28 SECONDS, THE RADIUS OF WHICH IS 1,095.92 FEET, WITH A CHORD BEARING OF NORTH 71 DEGREES 22 MINUTES 37 SECONDS WEST, AND WITH A CHORD LENGTH OF 236.23 FEET;

THENCE NORTH 66 DEGREES 35 MINUTES 27 SECONDS WEST A DISTANCE OF 150.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 428.93 FEET, THROUGH A CENTRAL ANGLE OF 35 DEGREES 47 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 686.63 FEET, WITH A CHORD BEARING OF NORTH 84 DEGREES 31 MINUTES 14 SECONDS WEST, AND WITH A CHORD LENGTH OF 421.99 FEET, TO THE SOUTHEASTERLY CORNER OF SAID R6;

THENCE NORTH 44 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 423.39 FEET TO THE NORTHEASTERLY CORNER OF R6;

THENCE SOUTH 45 DEGREES 11 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT WHICH LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 44 DEGREES 04 MINUTES 37 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 220.05 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3263227;

THENCE NORTH 57 DEGREES 11 MINUTES 14 SECONDS EAST, A DISTANCE OF 227.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE THE ARC LENGTH OF WHICH IS 185.05 FEET, THROUGH A CENTRAL ANGLE OF 24 DEGREES 24 MINUTES 32 SECONDS, THE RADIUS OF WHICH IS 434.37 FEET, WITH A CHORD BEARING OF NORTH 69 DEGREES 24 MINUTES 18 SECONDS EAST, AND WITH A CHORD LENGTH OF 183.65 FEET, TO THE SOUTHEASTERLY CORNER OF SAID INSTRUMENT 3263227;

THENCE NORTH 01 DEGREES 04 MINUTES 11 SECONDS WEST A DISTANCE OF 109.74 FEET TO THE NORTHEASTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 324.48 FEET, THROUGH A CENTRAL ANGLE OF 07 DEGREES 23 MINUTES 37 SECONDS, THE RADIUS OF WHICH IS 2,514.51 FEET, WITH A CHORD BEARING OF SOUTH 72 DEGREES 50 MINUTES 29 SECONDS WEST, AND WITH A CHORD LENGTH OF 324.25 FEET;

THENCE SOUTH 69 DEGREES 08 MINUTES 29 SECONDS WEST A DISTANCE OF 191.45 FEET, TO THE NORTHWESTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 43 DEGREES 46 MINUTES 26 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 54.29 FEET TO A POINT WHICH LIES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY;

THENCE NORTH 69 DEGREES 09 MINUTES 46 SECONDS EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 561.60 FEET TO AN ANGLE POINT;

THENCE NORTH 84 DEGREES 23 MINUTES 34 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1,679.81 FEET TO A POINT WHICH LIES ALONG THE EAST LINE OF SECTION 7;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 1,037.83 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3417898 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE ABOVE REFERENCED "POINT A";

THENCE NORTH 07 DEGREES 46 MINUTES 52 SECONDS WEST A DISTANCE OF 50.59 FEET TO A FOUND 1/2 INCH REBAR AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 82 DEGREES 28 MINUTES 39 SECONDS WEST, A DISTANCE OF 147.62 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 330.15 FEET, THROUGH A CENTRAL ANGLE OF 27 DEGREES 57 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 676.58 FEET, WITH A CHORD BEARING OF NORTH 83 DEGREES 32 MINUTES 02 SECONDS WEST, AND WITH A CHORD LENGTH OF 326.88 FEET;

THENCE NORTH 07 DEGREES 32 MINUTES 26 SECONDS WEST A DISTANCE OF 422.82 FEET;

THENCE NORTH 82 DEGREES 31 MINUTES 11 SECONDS EAST A DISTANCE OF 464.96 FEET;

THENCE SOUTH 07 DEGREES 31 MINUTES 15 SECONDS EAST A DISTANCE OF 501.49 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN SPECIAL WARRANTY DEED AS 2008-3491528 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE FOLLOWING IS A DESCRIPTION OF A PARCEL OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 652, PAGE 74, COCONINO COUNTY RECORDS (CCR), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR);

THENCE SOUTH 07 DEGREES 32 MINUTES 25 SECONDS EAST (BASIS OF BEARINGS) ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 420.55 FEET TO A POINT WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 28 MINUTES 30 SECONDS WEST;

THENCE NORTHWESTERLY 33.78 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 52 MINUTES 08 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 273.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 25 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET;

THENCE NORTHERLY 110.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 74.91 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 255.98 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT 153.03 FEET THROUGH A CENTRAL ANGLE OF 34 DEGREES 15 MINUTES 08 SECONDS;

THENCE SOUTH 07 DEGREES 32 MINUTES 26 SECONDS EAST A DISTANCE OF 97.27 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THE FOLLOWING IS A DESCRIPTION OF A 2.00 FOOT WIDE STRIP OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 662, PAGE 74, COCONINO COUNTY RECORDS (CCR) (BASIS OF BEARINGS IS THE NORTH LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND

MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR); WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 676.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 21 MINUTES 37 SECONDS WEST;

THENCE NORTHWESTERLY 35.27 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 59 MINUTES 11 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 275.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 48 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 318.49 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 22 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 397.77 FEET;

THENCE NORTHERLY 109.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 49 MINUTES 59 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE ON A NON-TANGENT LINE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 73 DEGREES 50 MINUTES 31 SECONDS EAST;

THENCE SOUTHERLY 110.67 FEET THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 273.00 FEET;

THENCE SOUTHEASTERLY AND SOUTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS;

THENCE ON A NON-TANGENT LINE SOUTH 64 DEGREES 56 MINUTES 15 SECONDS EAST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 39 SECONDS WEST;

THENCE SOUTHEASTERLY 34.07 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 53 MINUTES 38 SECONDS;

THENCE SOUTH 07 DEGREES 34 MINUTES 32 SECONDS EAST ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 2.26 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2 AS DESCRIBED IN DOCKET 662, PAGE 75 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40, SOUTH OF THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY AND WEST OF THAT CERTAIN PARCEL OF LAND KNOWN AS THE RALSTON PURINA PROPERTY AS RECORDED IN INSTRUMENT 3242297, HEREINAFTER REFERRED TO AS R5, SAID PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 8, A POINT FROM WHICH THE NORTHWEST CORNER OF SECTION 8 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE WEST LINE OF SECTION 8 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 1,037.83 FEET TO THE NORTHWEST CORNER OF SAID RALSTON PURINA PROPERTY;

THENCE SOUTH 26 DEGREES 36 MINUTES 03 SECONDS EAST A DISTANCE OF 535.54 FEET TO AN ANGLE POINT ALONG THE WEST LINE OF THE RALSTON PURINA PARCEL;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST A DISTANCE OF 533.05 FEET TO THE SOUTHWEST CORNER OF SAID RALSTON PURINA PARCEL, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 107.47 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 25 MINUTES 26 SECONDS, THE RADIUS OF WHICH IS 14,523.95 FEET, WITH A CHORD BEARING OF SOUTH 78 DEGREES 03 MINUTES 40 SECONDS WEST, AND WITH A CHORD LENGTH OF 107.47 FEET;

THENCE SOUTH 88 DEGREES 20 MINUTES 38 SECONDS WEST A DISTANCE OF 124.43 FEET TO THE POINT OF BEGINNING.

Northland Exploration Surveys, Inc.

EXHIBIT [redacted] "D"

LEGAL DESCRIPTION (Industrial Drive):

A parcel of land, said parcel being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said parcel of land being more particularly described as follows:

BEGINNING at the point described as "The Northwesterly corner of said Instrument 3263227, said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547, Page 696;

thence Northerly along said Easterly Easement line, along a curve to the left, having a central angle of 13° 42' 57" and a radius of 397.90 feet, for a distance of 95.25 feet, the chord of said curve bears N 22° 48' 03" W for 95.02 feet, to a nontangent point;

thence S 69° 51' 20" E for a distance of 22.56 feet to a point;

thence N 68° 28' 31" E for a distance of 62.26 feet to a point of curvature;

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thence Northeasterly and Northerly along a curve to the left, having a central angle of 73° 53' 55" and a radius of 175.98 feet, for a distance of 226.97 feet, the chord of said curve bears N 31° 31' 33" E for 211.57 feet, to a point of compound curve;

thence Northerly and Northwesterly along a curve to the left, having a central angle of 90° 00' 00" and a radius of 175.92 feet, for a distance of 276.33 feet, the chord of said curve bears N 50° 25' 24" W for 248.79 feet, to a point of tangency;

thence S 84° 34' 36" W for a distance of 377.23 feet to a point of curvature;

thence Southwesterly along a curve to the left, having a central angle of 06° 02' 13" and a radius of 558.50, for a distance of 58.85 feet, the chord of said curve bears S 81° 33' 29" W for 58.82 feet, to a nontangent point on the East parcel line of a parcel of land described in Instrument No. 3263227 (R1);

thence N 00° 51' 02" W, along said East parcel line, for a distance of 8.27 feet to the Northeast parcel corner of said Parcel (R1), said point being a nontangent point of curvature;

thence Southwesterly along the North parcel line of said Parcel (R1), along a curve to the left, having a central angle of 03° 26' 05" and a radius of 2514.58 feet, for a distance of 150.74 feet, the chord of said curve bears S 74° 59' 38" W for 150.72 feet, to a point;

thence continue Southwesterly along said North parcel line, along said curve to the left, having a central angle of 03° 57' 32" and a radius of 2514.58 feet, for a distance of 173.74 feet, the chord of said curve bears S 71° 17' 50" W for 173.71 feet, to a point of tangency;

thence S 69° 19' 04" W, along said North parcel line, for a distance of 191.45 feet to the **POINT OF BEGINNING,**

said parcel contains 2.7458 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL** 1 on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Drive

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 08/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC 10/08/13
INIT DATE

Right-of-Way
Descriptive Title

City File No. 03-09008

Northland Exploration Surveys, Inc.

EXHIBIT "A"

LEGAL DESCRIPTION (Parcel 2):

A strip of land, 10 feet in width, said strip of land being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said strip of land being Northerly, Easterly and Southerly of the following described line:

FROM the point described as "The Northwesterly corner of said Instrument 3263227, 'said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature, said point being the **TRUE POINT OF BEGINNING**;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547, Page 696, said point being the **END OF SAID STRIP OF LAND**;

the Easterly easement line being extended or shortened to intersect with the Southerly Railroad Right-of-Way line at the North end and the Easterly easement line at the South end,

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said parcel contains 0.1808 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL 2** on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Parcel 2

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 08/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC
INT
10/08/13
DATE

SLOPE EASEMENT
Descriptive Title

City File No. 03-09008

Northland Exploration Surveys, Inc.

EXHIBIT "A"

LEGAL DESCRIPTION (Parcel 3):

A strip of land, 8 feet in width, said strip of land being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said strip of land being Northerly, Easterly and Southerly of the following described line:

FROM the point described as "The Northwesterly corner of said Instrument 3263227, said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547. Page 696;

thence Northerly along said Easterly Easement line, along a curve to the left, having a central angle of 13° 42' 57" and a radius of 397.90 feet, for a distance of 95.25 feet, the chord of said curve bears N 22° 48' 03" W for 95.02 feet, to a nontangent point, said point being the **TRUE POINT OF BEGINNING**;

thence S 69° 51' 20" E for a distance of 22.56 feet to a point;

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thence N 68° 28' 31" E for a distance of 62.26 feet to a point of curvature;

thence Northeasterly and Northerly along a curve to the left, having a central angle of 73° 53' 55" and a radius of 175.98 feet, for a distance of 226.97 feet, the chord of said curve bears N 31° 31' 33" E for 211.57 feet, to a point of compound curve;

thence Northerly and Northwesterly along a curve to the left, having a central angle of 90° 00' 00" and a radius of 175.92 feet, for a distance of 276.33 feet, the chord of said curve bears N 50° 25' 24" W for 248.79 feet, to a point of tangency;

thence S 84° 34' 36" W for a distance of 377.23 feet to a point of curvature;

thence Southwesterly along a curve to the left, having a central angle of 06° 02' 13" and a radius of 558.50, for a distance of 58.85 feet, the chord of said curve bears S 81° 33' 29" W for 58.82 feet, to a nontangent point on the East parcel line of a parcel of land described in Instrument No. 3263227 (R1), said point being the **END OF SAID STRIP OF LAND**;

the Westerly easement line being extended or shortened to intersect with the Easterly parcel line of said Parcel (R1) at the North end and the Easterly easement line at the South end,

said strip of land contains 0.1864 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL 3** on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Parcel 3

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC 10/08/13
INT DATE

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 09/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

SLOPE EASEMENT
Descriptive Title

City File No. 03-09008

WHEN RECORDED, RETURN TO:
Elizabeth Burke, City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

SECOND AMENDMENT TO LEASE

The City of Flagstaff, a political subdivision of the state of Arizona ("City" or "Landlord") and Nestle Purina Petcare Company, a Missouri corporation ("Purina" or "Tenant") enter into this Second Amendment to Lease effective 15Th day of September, 2015.

RECITALS:

A. Landlord and Tenant entered into a Lease in 2003, and First Amendment to Lease in 2008. The form of Lease is set forth in the recorded Development Agreement referenced below, and the First Amendment to Lease is recorded in Instrument No. 3491226, Official Records of the Coconino County, Arizona (collectively "Lease").

B. The Leased Property consists of the land legally described in Exhibit A ("Original Property"), and Exhibit B ("Additional Property") and Purina facilities located on such land, but excludes certain parcels subsequently conveyed to the City and legally described as Exhibit C ("Fire Station Parcel") and Exhibit D ("Industrial Drive Parcel"). The Fire Station Parcel was conveyed to the City by Special Warranty Deed and recorded on January 16, 2009 in Instrument No. 3510883 in the Official Records of the Coconino County, Arizona. The Industrial Drive Parcel was conveyed to the City by Quit Claim Deed and recorded on January 12, 2015 Instrument No. 3711317 in the Official Records of the Coconino County, Arizona.

C. City/Landlord and Purina/Tenant entered into a Development Agreement in 2003, and First Amendment to Lease in 2008. Those documents are recorded in Instrument Nos. 3207666 and 3491226, Official Records of the Coconino County, Arizona ("Development Agreement").

D. Pursuant to A.R.S. § 42-6203.A.4 the City and Purina have approved a Second Amendment to Development Agreement to temporarily extend the Development Agreement and underlying Lease for a period commencing October 14, 2015 and continuing for up to six (6) months to further the original purposes of the Development Agreement and to explore the feasibility of voluntary installation of equipment at the Purina Facility to achieve measurable odor mitigation.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Extension Period. The Lease is hereby extended from October 14, 2015 to April 15, 2016, unless sooner terminated ("Extension Period.") Either party may terminate the Second Amendment upon giving at least five (5) days written notice to the other party. The Development Agreement and Lease term shall be coterminous.

2. Effect. All other terms and conditions of the Lease shall remain in effect.

TENANT: NESTLE PURINA PETCARE COMPANY

_____

By:_____

Its:_____

LANDLORD: CITY OF FLAGSTAFF

_____

By: Mayor Nabours

Attest:

_____

By: Elizabeth Burke, City Clerk

Approved as to form:

_____

By:_____

City Attorney's Office

Attachments: Exhibits A, B, C, D

EXHIBIT "A" [redacted]

Legal Description of Property

Landmark Engineering & Surveying, Inc.
sedona ❖ FOUNDED 1979 ❖ flagstaff
David Dow, R.L.S. ddow@landmarkes.com
Martin Etcheverry, R.L.S. metcheverry@landmarkes.com
Barry Giles, R.L.S. (California) bgiles@landmarkes.com
William McHenry L.S.I.T. wmchenry@landmarkes.com

p.o. box 1907
sedona, az 86339
(928) 282-7104 voice
(928) 282-7171 fax
www.landmarkes.com
tgraham@landmarkes.com
Wm.Tod Graham I,R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA WEST PARCEL

A parcel of land being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said parcel being more particularly described as follows:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;

Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;

Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;

Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E - 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract" which is the POINT OF BEGINNING;

Thence N 01°10'00" W (rec. same) a distance of 533.05 (527.54 rec.) feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to a ½" re-bar with plastic cap stamped "LS 14184" set at an angle point in said West boundary;

Thence N 26°36'03" W (rec. same) a distance of 535.54 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said West line of the North half of Section 8 with the South right-of-way line of the Burlington Northern and Santa Fe Railway (BNSF) (formerly Atchison, Topeka and Santa Fe Railway);

Thence N 84°23'13" E (N 84°23'24" E rec.) a distance of 177.33 (198.30 rec.) feet along said South right-of-way line of the BNSF Railway to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

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Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 1,332.69 (rec. same) and central angle of 12°00'00", an arc distance of 279.12 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Tangency;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 510.00 feet along said South right-of-way line of the BNSF Railway to a point that lies 100.0 feet southerly of the centerline of the South Main (Westbound) rails of said BNSF Railway;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 413.49 feet along said South right-of-way line of the BNSF Railway, which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said South right-of-way line with the Northerly projection of the centerline of steel columns aligned along the East wall of the Purina building as it existed in November of the year 2002;

Thence S 10°22'23" W a distance of 364.83 feet along said centerline projection and said centerline of steel columns to an angle point in said East wall;

Thence N 79°37'37" W a distance of 115.06 feet along said centerline of steel columns to an angle point in said East wall;

Thence S 10°22'23" W a distance of 331.18 feet along said centerline of steel columns and the southerly projection of said centerline to a ½" re-bar with plastic cap stamped "LS 14184" set on said North right-of-way line of I-40;

Thence Westerly along said North right-of-way line of I-40, being a non-tangent curve to the left and concave to the South having a chord bearing and length of S 80°27'22" W – 1,080.42 feet, radius of 14,523.95 (rec. same) feet and central angle of 4°15'47", an arc distance of 1,080.67 feet to the POINT OF BEGINNING.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I
Date Signed 1-6-03
ARIZONA, U.S.A.

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Page: 46 of 56
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Wm.Tod Graham I.R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA EAST PARCEL

A parcel of land being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said parcel being more particularly described as follows:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;

Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;

Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;

Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E – 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract";

Thence N 01°10'00" W (rec. same) a distance of 533.05 (527.54 rec.) feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to a ½" re-bar with plastic cap stamped "LS 14184" set at an angle point in said West boundary;

Thence N 26°36'03" W (rec. same) a distance of 535.54 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said West line of the North half of Section 8 with the South right-of-way line of the Burlington Northern and Santa Fe Railway (BNSF) (formerly Atchison, Topeka and Santa Fe Railway);

Thence N 84°23'13" E (N 84°23'24" E rec.) a distance of 177.33 (198.30 rec.) feet along said South right-of-way line of the BNSF Railway to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 1,332.69 (rec.

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same) and central angle of 12°00'00", an arc distance of 279.12 (rec. same) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Compound Curvature;

Thence Easterly along said South right-of-way line of the BNSF Railway being a tangent curve to the right and concave to the South having a radius of 2,764.93 (rec. same) and central angle of 2°00'00", an arc distance of 96.51 (96.52 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at a Point of Tangency;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 510.00 feet along said South right-of-way line of the BNSF Railway to a point that lies 100.0 feet southerly of the centerline of the South Main (Westbound) rails of said BNSF Railway;

Thence S 79°36'47" E (S 79°40'09" E rec.) a distance of 413.49 feet along said South right-of-way line of the BNSF Railway, which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, to a ½" re-bar with plastic cap stamped "LS 14184" set at the intersection of said South right-of-way line with the Northerly projection of the centerline of steel columns aligned along the East wall of the Purina building as it existed in November of the year 2002, said intersection being the POINT OF BEGINNING ;

Thence S 10°22'23" W a distance of 364.83 feet along said centerline projection and said centerline of steel columns to an angle point in said East wall;

Thence N 79°37'37" W a distance of 115.06 feet along said centerline of steel columns to an angle point in said East wall;

Thence S 10°22'23" W a distance of 331.18 feet along said centerline of steel columns and the southerly projection of said centerline to a ½" re-bar with plastic cap stamped "LS 14184" set on said North right-of-way line of I-40;

Thence Easterly along said North right-of-way line of I-40, being a non-tangent curve to the right and concave to the South having a chord bearing and length of S 89°31'08" E – 3,989.06 feet, radius of 14,523.95 (rec. same) feet and central angle of 15°47'11", an arc distance of 4,001.70 feet to a point on the East line of said North half of Section 8, from which an A.H.D. brass cap right-of-way monument found in concrete lies S 81°37'31" E a distance of 0.19 foot;

Thence N 00°21'19" E a distance of 9.94 feet along said East line of the North half of Section 8 to a ½" re-bar with plastic cap stamped "LS 14184" set on said South right-of-way line of the BNSF Railway which lies 100.0 feet southerly of and parallel with said centerline of the South Main (Westbound) rails, and from said set re-bar, an A.H.D. brass cap right-of-way monument found in concrete lies N 01°35'58" E a distance of 2.48 feet;

Thence N 79°36'47" W (N 79°40'09" W & N 79°43'03" W rec.) a distance of 3,812.96 feet along said South right-of-way line of the BNSF Railway to the POINT OF BEGINNING.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I.D.

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Wm.Tod Graham I,R.L.S.
president

January 6, 2003
Job No.: 102509

LEGAL DESCRIPTION
PURINA EASEMENT

A strip of land 50.00 feet wide being a portion of the "Purina Tract" as described in Exhibit "A" of that certain document recorded in Docket 476, Pages 41-46 (rec.) of the Coconino County Recorder's Office and being situated in the North half of Section 8, Township 21 North, Range 8 East of the Gila and Salt River Meridian in Coconino County, Arizona, said strip of land being more particularly defined as lying 25.00 feet on each side of the following described centerline:

Commencing at a ¾" O.D. iron pipe with no identification found in a handhole at the Northwest corner of said Section 8 and from which a square headed bolt found at the West quarter corner of said Section 8, lies S 01°10'00" E (basis of bearings per rec.) a distance of 2,665.67 feet;
Thence from said Northwest corner of Section 8, S 01°10'00" E (rec. same) a distance 2,567.77 (2,573.23 rec.) feet along the West line of said North half of Section 8 to a point on the North right-of-way line of Interstate Highway 40 (I-40) and from which a 60d nail with no identification was found lying S 88°19'56" W a distance of 0.57 foot;
Thence N 88°19'56" E (N 87°30'55" E rec.) a distance of 124.09 (125.81 rec.) feet along said North right-of-way line to an Arizona Highway Department (A.H.D.) brass cap right-of-way monument found in concrete at the beginning of a non-tangent curve;
Thence Easterly along said North right-of-way line being a curve to the right and concave to the South having a chord bearing and length of N 78°06'43" E – 107.80 feet, radius of 14,523.95 (rec. same) and central angle of 0°25'31", an arc distance of 107.80 (106.09 rec.) feet to a ½" re-bar with plastic cap stamped "LS 14184" set at the Southwest corner of said "Purina Tract";
Thence N 01°10'00" W (rec. same) a distance of 35.42 feet along the West boundary of said "Purina Tract", which is a line that lies 230.00 feet East of and parallel with said West line of the North half of Section 8, to the POINT OF BEGINNING of centerline (side lines of strip begin on said West boundary of the "Purina Tract");
Thence N 75°42'07" E a distance of 237.77 feet;
Thence N 80°14'11" E a distance of 384.51 feet;
Thence N 82°03'30" E a distance of 469.59 feet to the point of terminus of centerline on the East boundary of the "Purina West Parcel", said point lies N 80°27'22" E a distance of 1,080.42 feet, thence N 10°22'23" E a distance of 45.84 feet from said Southwest corner of the "Purina Tract" (side lines of strip end on said East boundary of the "Purina West Parcel").

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14184
WM. TOD
GRAHAM, I
Date Signed 1-6-03
ARIZONA, U.S.A.

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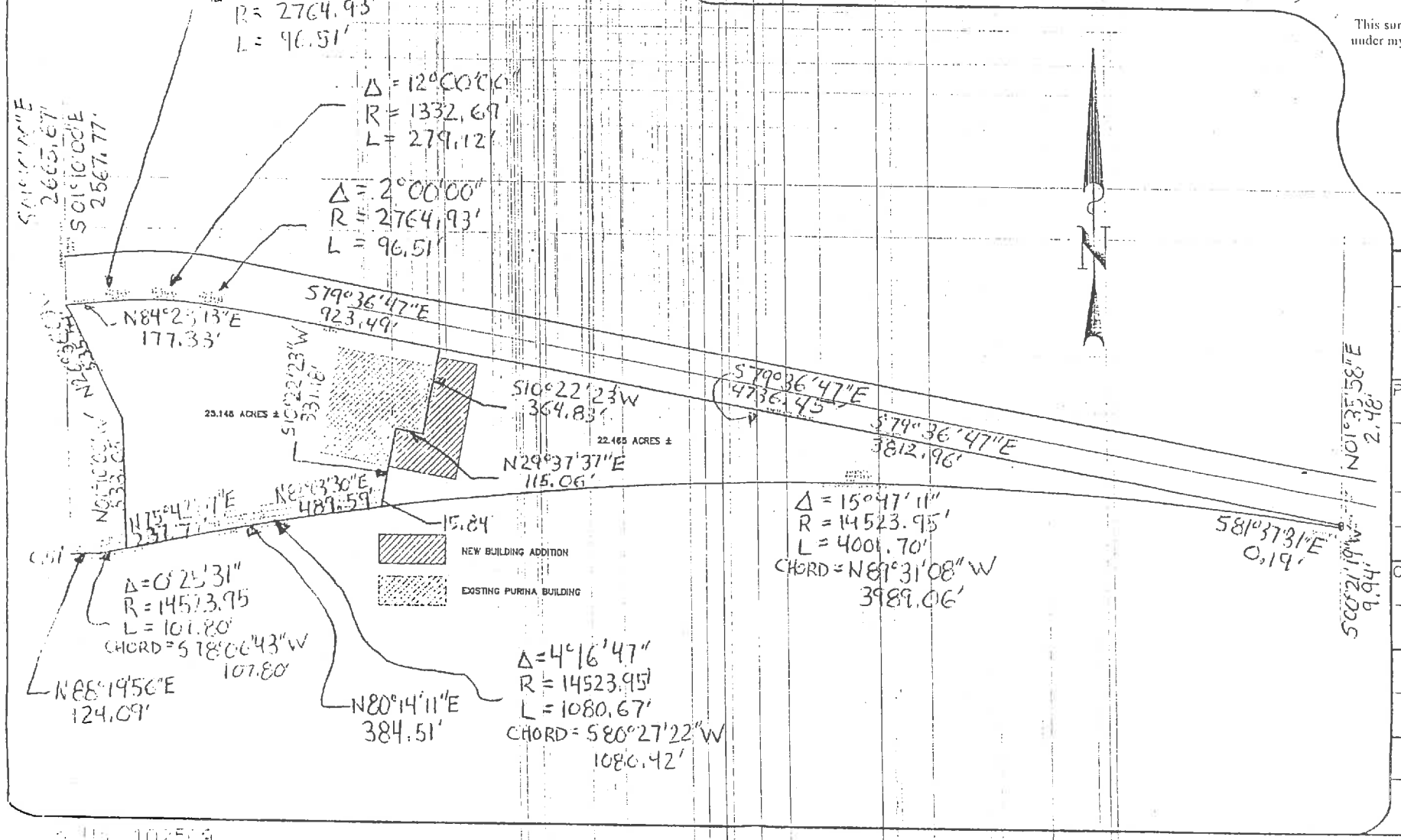
This survey was perfomed under my direct supervision



Date:	January 07, 2003
Revisions:	
Project Manager	
Survey Crew	
C.A.D. by:	J. Rogers
Checked by:	T. Graham
Contour Interval	N. A.
Scale:	1" = 400'
Project Name	102509
File Name	boundary.dwg
Sheet:	1 of 1
Job No.:	102509

EXHIBIT [redacted] "B"

PARCEL 1 AS DESCRIBED IN DOCKET 662, PAGE 74 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF THE BNSF/ATSF RAILROAD AND NORTHERLY OF THE INTERSTATE 40 RIGHT OF WAY AND OFF RAMP AS SHOWN ON THE ADOT RIGHT-OF-WAY MAP PROJECT #1-40-4-701, SHEET 5 OF 5 DATED 1973 (HEREINAFTER REFERRED TO AS R2) AND EAST OF U.S. HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS, AND EXCEPT THAT CERTAIN PARCEL OF LAND SET FORTH IN A SPECIAL WARRANTY DEED TO ADOT AND RECORDED IN INSTRUMENT 3390420 (HEREINAFTER REFERRED TO AS R6) MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 7, A POINT FROM WHICH THE NORTHEAST CORNER OF SECTION 7 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2,662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SECTION 7 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE EAST LINE OF SECTION 7 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 486.55 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A";

THENCE CONTINUING SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 286.32 FEET TO A POINT WHICH LIES ALONG THE EAST-WEST MID-SECTION LINE OF SECTION 7;

THENCE SOUTH 89 DEGREES 50 MINUTES 25 SECONDS WEST ALONG SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 24.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 236.69 FEET, THROUGH A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 28 SECONDS, THE RADIUS OF WHICH IS 1,095.92 FEET, WITH A CHORD BEARING OF NORTH 71 DEGREES 22 MINUTES 37 SECONDS WEST, AND WITH A CHORD LENGTH OF 236.23 FEET;

THENCE NORTH 66 DEGREES 35 MINUTES 27 SECONDS WEST A DISTANCE OF 150.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 428.93 FEET, THROUGH A CENTRAL ANGLE OF 35 DEGREES 47 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 686.63 FEET, WITH A CHORD BEARING OF NORTH 84 DEGREES 31 MINUTES 14 SECONDS WEST, AND WITH A CHORD LENGTH OF 421.99 FEET, TO THE SOUTHEASTERLY CORNER OF SAID R6;

THENCE NORTH 44 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 423.39 FEET TO THE NORTHEASTERLY CORNER OF R6;

THENCE SOUTH 45 DEGREES 11 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT WHICH LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 44 DEGREES 04 MINUTES 37 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 220.05 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3263227;

THENCE NORTH 57 DEGREES 11 MINUTES 14 SECONDS EAST, A DISTANCE OF 227.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE THE ARC LENGTH OF WHICH IS 185.05 FEET, THROUGH A CENTRAL ANGLE OF 24 DEGREES 24 MINUTES 32 SECONDS, THE RADIUS OF WHICH IS 434.37 FEET, WITH A CHORD BEARING OF NORTH 69 DEGREES 24 MINUTES 18 SECONDS EAST, AND WITH A CHORD LENGTH OF 183.65 FEET, TO THE SOUTHEASTERLY CORNER OF SAID INSTRUMENT 3263227;

THENCE NORTH 01 DEGREES 04 MINUTES 11 SECONDS WEST A DISTANCE OF 109.74 FEET TO THE NORTHEASTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 324.48 FEET, THROUGH A CENTRAL ANGLE OF 07 DEGREES 23 MINUTES 37 SECONDS, THE RADIUS OF WHICH IS 2,514.51 FEET, WITH A CHORD BEARING OF SOUTH 72 DEGREES 50 MINUTES 29 SECONDS WEST, AND WITH A CHORD LENGTH OF 324.25 FEET;

THENCE SOUTH 69 DEGREES 08 MINUTES 29 SECONDS WEST A DISTANCE OF 191.45 FEET, TO THE NORTHWESTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 43 DEGREES 46 MINUTES 26 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 54.29 FEET TO A POINT WHICH LIES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY;

THENCE NORTH 69 DEGREES 09 MINUTES 46 SECONDS EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 561.60 FEET TO AN ANGLE POINT;

THENCE NORTH 84 DEGREES 23 MINUTES 34 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1,679.81 FEET TO A POINT WHICH LIES ALONG THE EAST LINE OF SECTION 7;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 1,037.83 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3417898 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE ABOVE REFERENCED "POINT A";

THENCE NORTH 07 DEGREES 46 MINUTES 52 SECONDS WEST A DISTANCE OF 50.59 FEET TO A FOUND 1/2 INCH REBAR AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 82 DEGREES 28 MINUTES 39 SECONDS WEST, A DISTANCE OF 147.62 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 330.15 FEET, THROUGH A CENTRAL ANGLE OF 27 DEGREES 57 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 676.58 FEET, WITH A CHORD BEARING OF NORTH 83 DEGREES 32 MINUTES 02 SECONDS WEST, AND WITH A CHORD LENGTH OF 326.88 FEET;

THENCE NORTH 07 DEGREES 32 MINUTES 26 SECONDS WEST A DISTANCE OF 422.82 FEET;

THENCE NORTH 82 DEGREES 31 MINUTES 11 SECONDS EAST A DISTANCE OF 464.96 FEET;

THENCE SOUTH 07 DEGREES 31 MINUTES 15 SECONDS EAST A DISTANCE OF 501.49 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN SPECIAL WARRANTY DEED AS 2008-3491528 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE FOLLOWING IS A DESCRIPTION OF A PARCEL OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 652, PAGE 74, COCONINO COUNTY RECORDS (CCR), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR);

THENCE SOUTH 07 DEGREES 32 MINUTES 25 SECONDS EAST (BASIS OF BEARINGS) ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 420.55 FEET TO A POINT WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 28 MINUTES 30 SECONDS WEST;

THENCE NORTHWESTERLY 33.78 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 52 MINUTES 08 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 273.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 25 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET;

THENCE NORTHERLY 110.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 74.91 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 255.98 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT 153.03 FEET THROUGH A CENTRAL ANGLE OF 34 DEGREES 15 MINUTES 08 SECONDS;

THENCE SOUTH 07 DEGREES 32 MINUTES 26 SECONDS EAST A DISTANCE OF 97.27 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THE FOLLOWING IS A DESCRIPTION OF A 2.00 FOOT WIDE STRIP OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 662, PAGE 74, COCONINO COUNTY RECORDS (CCR) (BASIS OF BEARINGS IS THE NORTH LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND

MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR); WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 676.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 21 MINUTES 37 SECONDS WEST;

THENCE NORTHWESTERLY 35.27 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 59 MINUTES 11 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 275.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 48 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 318.49 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 22 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 397.77 FEET;

THENCE NORTHERLY 109.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 49 MINUTES 59 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE ON A NON-TANGENT LINE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 73 DEGREES 50 MINUTES 31 SECONDS EAST;

THENCE SOUTHERLY 110.67 FEET THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 273.00 FEET;

THENCE SOUTHEASTERLY AND SOUTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS;

THENCE ON A NON-TANGENT LINE SOUTH 64 DEGREES 56 MINUTES 15 SECONDS EAST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 39 SECONDS WEST;

THENCE SOUTHEASTERLY 34.07 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 53 MINUTES 38 SECONDS;

THENCE SOUTH 07 DEGREES 34 MINUTES 32 SECONDS EAST ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 2.26 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2 AS DESCRIBED IN DOCKET 662, PAGE 75 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40, SOUTH OF THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY AND WEST OF THAT CERTAIN PARCEL OF LAND KNOWN AS THE RALSTON PURINA PROPERTY AS RECORDED IN INSTRUMENT 3242297, HEREINAFTER REFERRED TO AS R5, SAID PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 8, A POINT FROM WHICH THE NORTHWEST CORNER OF SECTION 8 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE WEST LINE OF SECTION 8 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 1,037.83 FEET TO THE NORTHWEST CORNER OF SAID RALSTON PURINA PROPERTY;

THENCE SOUTH 26 DEGREES 36 MINUTES 03 SECONDS EAST A DISTANCE OF 535.54 FEET TO AN ANGLE POINT ALONG THE WEST LINE OF THE RALSTON PURINA PARCEL;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST A DISTANCE OF 533.05 FEET TO THE SOUTHWEST CORNER OF SAID RALSTON PURINA PARCEL, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 107.47 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 25 MINUTES 26 SECONDS, THE RADIUS OF WHICH IS 14,523.95 FEET, WITH A CHORD BEARING OF SOUTH 78 DEGREES 03 MINUTES 40 SECONDS WEST, AND WITH A CHORD LENGTH OF 107.47 FEET;

THENCE SOUTH 88 DEGREES 20 MINUTES 38 SECONDS WEST A DISTANCE OF 124.43 FEET TO THE POINT OF BEGINNING.

EXHIBIT [redacted] "C"

PARCEL 1 AS DESCRIBED IN DOCKET 662, PAGE 74 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF THE BNSF/ATSF RAILROAD AND NORTHERLY OF THE INTERSTATE 40 RIGHT OF WAY AND OFF RAMP AS SHOWN ON THE ADOT RIGHT-OF-WAY MAP PROJECT #1-40-4-701, SHEET 5 OF 5 DATED 1973 (HEREINAFTER REFERRED TO AS R2) AND EAST OF U.S. HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS, AND EXCEPT THAT CERTAIN PARCEL OF LAND SET FORTH IN A SPECIAL WARRANTY DEED TO ADOT AND RECORDED IN INSTRUMENT 3390420 (HEREINAFTER REFERRED TO AS R6) MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 7, A POINT FROM WHICH THE NORTHEAST CORNER OF SECTION 7 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2,662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SECTION 7 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE EAST LINE OF SECTION 7 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 486.55 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A";

THENCE CONTINUING SOUTH 82 DEGREES 13 MINUTES 08 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 286.32 FEET TO A POINT WHICH LIES ALONG THE EAST-WEST MID-SECTION LINE OF SECTION 7;

THENCE SOUTH 89 DEGREES 50 MINUTES 25 SECONDS WEST ALONG SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 24.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 236.69 FEET, THROUGH A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 28 SECONDS, THE RADIUS OF WHICH IS 1,095.92 FEET, WITH A CHORD BEARING OF NORTH 71 DEGREES 22 MINUTES 37 SECONDS WEST, AND WITH A CHORD LENGTH OF 236.23 FEET;

THENCE NORTH 66 DEGREES 35 MINUTES 27 SECONDS WEST A DISTANCE OF 150.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 428.93 FEET, THROUGH A CENTRAL ANGLE OF 35 DEGREES 47 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 686.63 FEET, WITH A CHORD BEARING OF NORTH 84 DEGREES 31 MINUTES 14 SECONDS WEST, AND WITH A CHORD LENGTH OF 421.99 FEET, TO THE SOUTHEASTERLY CORNER OF SAID R6;

THENCE NORTH 44 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 423.39 FEET TO THE NORTHEASTERLY CORNER OF R6;

THENCE SOUTH 45 DEGREES 11 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT WHICH LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 44 DEGREES 04 MINUTES 37 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 220.05 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3263227;

THENCE NORTH 57 DEGREES 11 MINUTES 14 SECONDS EAST, A DISTANCE OF 227.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE THE ARC LENGTH OF WHICH IS 185.05 FEET, THROUGH A CENTRAL ANGLE OF 24 DEGREES 24 MINUTES 32 SECONDS, THE RADIUS OF WHICH IS 434.37 FEET, WITH A CHORD BEARING OF NORTH 69 DEGREES 24 MINUTES 18 SECONDS EAST, AND WITH A CHORD LENGTH OF 183.65 FEET, TO THE SOUTHEASTERLY CORNER OF SAID INSTRUMENT 3263227;

THENCE NORTH 01 DEGREES 04 MINUTES 11 SECONDS WEST A DISTANCE OF 109.74 FEET TO THE NORTHEASTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 324.48 FEET, THROUGH A CENTRAL ANGLE OF 07 DEGREES 23 MINUTES 37 SECONDS, THE RADIUS OF WHICH IS 2,514.51 FEET, WITH A CHORD BEARING OF SOUTH 72 DEGREES 50 MINUTES 29 SECONDS WEST, AND WITH A CHORD LENGTH OF 324.25 FEET;

THENCE SOUTH 69 DEGREES 08 MINUTES 29 SECONDS WEST A DISTANCE OF 191.45 FEET, TO THE NORTHWESTERLY CORNER OF SAID INSTRUMENT 3263227, SAID POINT BEING LIES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 89, ALSO KNOWN AS THE CONTINENTAL DRIVE OVERPASS;

THENCE NORTH 43 DEGREES 46 MINUTES 26 SECONDS WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 54.29 FEET TO A POINT WHICH LIES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY;

THENCE NORTH 69 DEGREES 09 MINUTES 46 SECONDS EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 561.60 FEET TO AN ANGLE POINT;

THENCE NORTH 84 DEGREES 23 MINUTES 34 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1,679.81 FEET TO A POINT WHICH LIES ALONG THE EAST LINE OF SECTION 7;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 1,037.83 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN INSTRUMENT 3417898 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE ABOVE REFERENCED "POINT A";

THENCE NORTH 07 DEGREES 46 MINUTES 52 SECONDS WEST A DISTANCE OF 50.59 FEET TO A FOUND 1/2 INCH REBAR AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 82 DEGREES 28 MINUTES 39 SECONDS WEST, A DISTANCE OF 147.62 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 330.15 FEET, THROUGH A CENTRAL ANGLE OF 27 DEGREES 57 MINUTES 31 SECONDS, THE RADIUS OF WHICH IS 676.58 FEET, WITH A CHORD BEARING OF NORTH 83 DEGREES 32 MINUTES 02 SECONDS WEST, AND WITH A CHORD LENGTH OF 326.88 FEET;

THENCE NORTH 07 DEGREES 32 MINUTES 26 SECONDS WEST A DISTANCE OF 422.82 FEET;

THENCE NORTH 82 DEGREES 31 MINUTES 11 SECONDS EAST A DISTANCE OF 464.96 FEET;

THENCE SOUTH 07 DEGREES 31 MINUTES 15 SECONDS EAST A DISTANCE OF 501.49 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT CERTAIN PARCEL OF LAND AS RECORDED IN SPECIAL WARRANTY DEED AS 2008-3491528 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE FOLLOWING IS A DESCRIPTION OF A PARCEL OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 652, PAGE 74, COCONINO COUNTY RECORDS (CCR), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR);

THENCE SOUTH 07 DEGREES 32 MINUTES 25 SECONDS EAST (BASIS OF BEARINGS) ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 420.55 FEET TO A POINT WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 28 MINUTES 30 SECONDS WEST;

THENCE NORTHWESTERLY 33.78 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 52 MINUTES 08 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 273.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 25 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET;

THENCE NORTHERLY 110.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 74.91 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 255.98 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT 153.03 FEET THROUGH A CENTRAL ANGLE OF 34 DEGREES 15 MINUTES 08 SECONDS;

THENCE SOUTH 07 DEGREES 32 MINUTES 26 SECONDS EAST A DISTANCE OF 97.27 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THE FOLLOWING IS A DESCRIPTION OF A 2.00 FOOT WIDE STRIP OF LAND, BEING A PORTION OF THE PARCEL DESCRIBED IN DOCKET 662, PAGE 74, COCONINO COUNTY RECORDS (CCR) (BASIS OF BEARINGS IS THE NORTH LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041), SITUATE IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND

MERIDIAN, FLAGSTAFF, COCONINO COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 (CCR); WHICH IS THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 676.58 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 20 DEGREES 21 MINUTES 37 SECONDS WEST;

THENCE NORTHWESTERLY 35.27 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 59 MINUTES 11 SECONDS;

THENCE ON A NON-TANGENT LINE NORTH 64 DEGREES 56 MINUTES 15 SECONDS WEST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 275.00 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 48 SECONDS WEST;

THENCE NORTHWESTERLY AND NORTHERLY 318.49 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 22 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 397.77 FEET;

THENCE NORTHERLY 109.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 49 MINUTES 59 SECONDS, TO A POINT ON THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT.

THENCE ON A NON-TANGENT LINE NORTH 68 DEGREES 18 MINUTES 56 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE PROPOSED RIGHT-OF-WAY OF INDUSTRIAL DRIVE REALIGNMENT A DISTANCE OF 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 399.77 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 73 DEGREES 50 MINUTES 31 SECONDS EAST;

THENCE SOUTHERLY 110.67 FEET THROUGH A CENTRAL ANGLE OF 15 DEGREES 51 MINUTES 39 SECONDS TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 273.00 FEET;

THENCE SOUTHEASTERLY AND SOUTHERLY 316.20 FEET THROUGH A CENTRAL ANGLE OF 66 DEGREES 21 MINUTES 45 SECONDS;

THENCE ON A NON-TANGENT LINE SOUTH 64 DEGREES 56 MINUTES 15 SECONDS EAST A DISTANCE OF 47.56 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 674.58 FEET AND TO WHICH A RADIAL LINE BEARS SOUTH 23 DEGREES 20 MINUTES 39 SECONDS WEST;

THENCE SOUTHEASTERLY 34.07 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 53 MINUTES 38 SECONDS;

THENCE SOUTH 07 DEGREES 34 MINUTES 32 SECONDS EAST ALONG WESTERLY LINE OF THE PARCEL DESCRIBED IN INSTRUMENT 3314041 A DISTANCE OF 2.26 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2 AS DESCRIBED IN DOCKET 662, PAGE 75 (HEREINAFTER REFERRED TO AS R1) WHICH IS ALL OF THAT PORTION OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN IN COCONINO COUNTY, ARIZONA LYING NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40, SOUTH OF THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BNSF/ATSF RAILROAD RIGHT-OF-WAY AND WEST OF THAT CERTAIN PARCEL OF LAND KNOWN AS THE RALSTON PURINA PROPERTY AS RECORDED IN INSTRUMENT 3242297, HEREINAFTER REFERRED TO AS R5, SAID PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, FOR REFERENCE, AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 8, A POINT FROM WHICH THE NORTHWEST CORNER OF SECTION 8 BEARS NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2662.66 FEET AWAY (BASIS OF BEARING AS PER R1);

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 94.89 FEET TO THE INTERSECTION OF THE WEST LINE OF SECTION 8 WITH THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 40 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH 01 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SECTION 8 A DISTANCE OF 1,037.83 FEET TO THE NORTHWEST CORNER OF SAID RALSTON PURINA PROPERTY;

THENCE SOUTH 26 DEGREES 36 MINUTES 03 SECONDS EAST A DISTANCE OF 535.54 FEET TO AN ANGLE POINT ALONG THE WEST LINE OF THE RALSTON PURINA PARCEL;

THENCE SOUTH 01 DEGREES 10 MINUTES 00 SECONDS EAST A DISTANCE OF 533.05 FEET TO THE SOUTHWEST CORNER OF SAID RALSTON PURINA PARCEL, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH;

THENCE ALONG SAID CURVE, THE ARC LENGTH OF WHICH IS 107.47 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 25 MINUTES 26 SECONDS, THE RADIUS OF WHICH IS 14,523.95 FEET, WITH A CHORD BEARING OF SOUTH 78 DEGREES 03 MINUTES 40 SECONDS WEST, AND WITH A CHORD LENGTH OF 107.47 FEET;

THENCE SOUTH 88 DEGREES 20 MINUTES 38 SECONDS WEST A DISTANCE OF 124.43 FEET TO THE POINT OF BEGINNING.

Northland Exploration Surveys, Inc.

EXHIBIT [redacted] "D"

LEGAL DESCRIPTION (Industrial Drive):

A parcel of land, said parcel being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said parcel of land being more particularly described as follows:

BEGINNING at the point described as "The Northwesterly corner of said Instrument 3263227, said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547, Page 696;

thence Northerly along said Easterly Easement line, along a curve to the left, having a central angle of 13° 42' 57" and a radius of 397.90 feet, for a distance of 95.25 feet, the chord of said curve bears N 22° 48' 03" W for 95.02 feet, to a nontangent point;

thence S 69° 51' 20" E for a distance of 22.56 feet to a point;

thence N 68° 28' 31" E for a distance of 62.26 feet to a point of curvature;

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thence Northeasterly and Northerly along a curve to the left, having a central angle of 73° 53' 55" and a radius of 175.98 feet, for a distance of 226.97 feet, the chord of said curve bears N 31° 31' 33" E for 211.57 feet, to a point of compound curve;

thence Northerly and Northwesterly along a curve to the left, having a central angle of 90° 00' 00" and a radius of 175.92 feet, for a distance of 276.33 feet, the chord of said curve bears N 50° 25' 24" W for 248.79 feet, to a point of tangency;

thence S 84° 34' 36" W for a distance of 377.23 feet to a point of curvature;

thence Southwesterly along a curve to the left, having a central angle of 06° 02' 13" and a radius of 558.50, for a distance of 58.85 feet, the chord of said curve bears S 81° 33' 29" W for 58.82 feet, to a nontangent point on the East parcel line of a parcel of land described in Instrument No. 3263227 (R1);

thence N 00° 51' 02" W, along said East parcel line, for a distance of 8.27 feet to the Northeast parcel corner of said Parcel (R1), said point being a nontangent point of curvature;

thence Southwesterly along the North parcel line of said Parcel (R1), along a curve to the left, having a central angle of 03° 26' 05" and a radius of 2514.58 feet, for a distance of 150.74 feet, the chord of said curve bears S 74° 59' 38" W for 150.72 feet, to a point;

thence continue Southwesterly along said North parcel line, along said curve to the left, having a central angle of 03° 57' 32" and a radius of 2514.58 feet, for a distance of 173.74 feet, the chord of said curve bears S 71° 17' 50" W for 173.71 feet, to a point of tangency;

thence S 69° 19' 04" W, along said North parcel line, for a distance of 191.45 feet to the **POINT OF BEGINNING,**

said parcel contains 2.7458 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL 1** on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Drive

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 08/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC 10/08/13
INT DATE

RIGHT-OF-WAY
Descriptive Title

City File No. 03-09008

Northland Exploration Surveys, Inc.

EXHIBIT "A"

LEGAL DESCRIPTION (Parcel 2):

A strip of land, 10 feet in width, said strip of land being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said strip of land being Northerly, Easterly and Southerly of the following described line:

FROM the point described as "The Northwesterly corner of said Instrument 3263227, 'said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature, said point being the **TRUE POINT OF BEGINNING**;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547. Page 696, said point being the **END OF SAID STRIP OF LAND**;

the Easterly easement line being extended or shortened to intersect with the Southerly Railroad Right-of-Way line at the North end and the Easterly easement line at the South end,

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said parcel contains 0.1808 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL 2** on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Parcel 2

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 09/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC
INT
10/08/13
DATE

SLOPE EASEMENT
Descriptive Title

City File No. 03-09008

Northland Exploration Surveys, Inc.

EXHIBIT "A"

LEGAL DESCRIPTION (Parcel 3):

A strip of land, 8 feet in width, said strip of land being a portion of Parcel 1 as described in Instrument No. 3510883 (R) of the Records of Coconino County, Arizona, situated in the Northeast 1/4 of Section 7, Township 21 North, Range 8 East, Gila and Salt River Meridian, Coconino County, Arizona, said strip of land being Northerly, Easterly and Southerly of the following described line:

FROM the point described as "The Northwesterly corner of said Instrument 3263227, said point being lies along the Easterly Right-of-Way line of U.S. Highway 89, also known as the Continental Drive Overpass" in (R), thence N 43° 36' 39" W, along said Easterly Right-of-Way line of U.S. Highway 89, for a distance of 54.27 feet to the South Right-of-Way line of Burlington Northern Santa Fe Railroad;

thence N 69° 20' 45" E, along said South Right-of-Way line, for a distance of 561.61 feet to a point;

thence N 84° 34' 36" E, along said South Right-of-Way line, for a distance of 429.36 feet to a point of curvature;

thence Southeasterly and Southerly along a curve to the right, having a central angle of 90° 00' 00" and a radius of 255.92 feet, for a distance of 402.00 feet, the chord of said curve bears S 50° 25' 24" E for 361.92 feet, to a point of compound curve;

thence Southerly and Southwesterly along a curve to the right, having a central angle of 39° 38' 47" and a radius of 255.98 feet, for a distance of 177.13 feet, the chord of said curve bears S 14° 23' 59" E for 173.62 feet, to point on said curve, said point being the Northeast parcel corner of Exception Parcel No. 1 described in Instrument No. 3510883;

thence continue Southwesterly along the Northerly parcel line of said Parcel 1, along a curve to the right, having a central angle of 34° 15' 08" and a radius of 255.98 feet, for a distance of 153.03 feet, the chord of said curve bears S 51° 20' 57" W for 150.76 feet, to a point of tangency;

thence S 68° 28' 31" W, along said Northerly parcel line, for a distance of 76.99 feet to a nontangent point of curvature, said point being the Easterly easement line of a 50 foot easement described in Docket 547. Page 696;

thence Northerly along said Easterly Easement line, along a curve to the left, having a central angle of 13° 42' 57" and a radius of 397.90 feet, for a distance of 95.25 feet, the chord of said curve bears N 22° 48' 03" W for 95.02 feet, to a nontangent point, said point being the **TRUE POINT OF BEGINNING**;

thence S 69° 51' 20" E for a distance of 22.56 feet to a point;

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thence N 68° 28' 31" E for a distance of 62.26 feet to a point of curvature;

thence Northeasterly and Northerly along a curve to the left, having a central angle of 73° 53' 55" and a radius of 175.98 feet, for a distance of 226.97 feet, the chord of said curve bears N 31° 31' 33" E for 211.57 feet, to a point of compound curve;

thence Northerly and Northwesterly along a curve to the left, having a central angle of 90° 00' 00" and a radius of 175.92 feet, for a distance of 276.33 feet, the chord of said curve bears N 50° 25' 24" W for 248.79 feet, to a point of tangency;

thence S 84° 34' 36" W for a distance of 377.23 feet to a point of curvature;

thence Southwesterly along a curve to the left, having a central angle of 06° 02' 13" and a radius of 558.50, for a distance of 58.85 feet, the chord of said curve bears S 81° 33' 29" W for 58.82 feet, to a nontangent point on the East parcel line of a parcel of land described in Instrument No. 3263227 (R1), said point being the **END OF SAID STRIP OF LAND**;

the Westerly easement line being extended or shortened to intersect with the Easterly parcel line of said Parcel (R1) at the North end and the Easterly easement line at the South end,

said strip of land contains 0.1864 acres of land, more or less, including any easements of record over the above described parcel, as shown as **PARCEL 3** on that "Right-of-Way" map recorded in Instrument No. _____, which is made a part hereof by this reference.

NES # 09-032 Industrial Parcel 3

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV.
DC 10/08/13
INT DATE

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
14671
KENNETH A
KRENKE
Date Signed 09/29/13
ARIZONA, U.S.A.
EXPIRES 06/30/2015

SLOPE EASEMENT
Descriptive Title

City File No. 03-09008

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: McKenzie Jones, Sustainability Specialist

Date: 09/09/2015

Meeting Date: 09/15/2015

TITLE:

Consideration and Adoption of Ordinance No. 2015-17: An ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, by deleting Title 6, Police Regulations, Chapter 6-03, Animals, in its entirety and adopting revised Chapter 6-03, Animal Keeping; providing for severability, authority for clerical corrections, and establishing an effective date.

RECOMMENDED ACTION:

At the September 15, 2015, Council Meeting:
1) Read Ordinance No. 2015-17 by title only for the first time
2) City Clerk reads Ordinance No. 2015-17 by title only (if approval above)
At the October 6, 2015, Council Meeting:
3) Read Ordinance No. 2015-17 by title only for the final time
4) City Clerk reads Ordinance No. 2015-17 by title only (if approved above)
5) Adopt Ordinance No. 2015-17

Executive Summary:

For many city residents, raising animals for food, fiber, and labor is the most affordable way to obtain nutritious, locally grown food. The recession has highlighted the need for policies that reduce pressures on residents, especially those who may supplement grocery bills by raising or growing their own food supply. Urban agriculture is an effective way to achieve this goal. The proposed changes to the City's livestock animal keeping regulations diminish obstacles to self-sufficiency while strengthening restrictions on noise, runoff, and smells associated with keeping livestock animals. The purpose of these changes is to clarify the existing code and modify it to meet the community's needs.

Financial Impact:

There are no financial implications to adopting ordinance 2015-17.

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS:

10) Decrease the number of working poor.

REGIONAL PLAN:

Goal E&C.2. Reduce greenhouse gas emissions.
Goal E&C.3. Strengthen community and natural environment resiliency efforts through climate adaptation efforts.
Goal WR.6. Protect, preserve, and improve the quality of surface water, groundwater, and reclaimed water in the region.

Goal LU.3. Continue to enhance the region's unique sense of place within the urban, suburban, and rural context.
Policy LU.3.5. Allow and encourage urban agriculture.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

Option A: Adopt Ordinance 2015-17 as submitted and authorize changes to the City of Flagstaff's livestock animal keeping regulations.
Option B: Recommend changes to Ordinance 2015-17.
Option C: Not adopt Ordinance 2015-17 and leave the existing code as is.

Background/History:

Throughout the Regional Plan and Zoning Code revision processes, City staff received feedback that residents feel the existing animal keeping regulations are unclear and too restrictive. The current code does not provide clear guidance about the number or type of animals allowed in the city. Additionally, it requires that individuals keeping livestock animals obtain approval from the Chief of Police. In response to these issues, staff drafted proposed edits to the animal keeping regulations.

Key Considerations:

The purpose of these changes is to clarify the existing code and modify it to meet the community's needs.

Expanded Financial Considerations:

There are no financial implications to adopting ordinance 2015-17.

Community Benefits and Considerations:

Many city residents, raising animals for food, fiber, and labor is the most affordable way to obtain nutritious, locally grown food. Keeping livestock animals and bees can provide a host of benefits to the individual and community. For example, five laying hens, each of which will lay 250 to 280 eggs per year, can provide enough eggs to satisfy a family of five's annual egg consumption. In addition, five chickens can eat the kitchen waste of a family of four, decreasing 1,900 pounds of waste sent to the landfill annually. Beekeeping has an even broader impact on our local environment. Over the past 50 years, domesticated bee populations have decreased by 50%, yet these insects are invaluable in our food production due to the pollination activities they provide where one beehive can produce enough honey for 54 residents all year.

The recession has highlighted the need for policies that reduce economic pressures, especially for lower income families, and urban agriculture is an effective tool to support this goal. The proposed changes to the City's livestock animal keeping regulations diminish obstacles to self-sufficiency while strengthening restrictions on noise, runoff, and smells associated with keeping livestock animals. Additionally, the proposed changes affirm that residential bees benefit our community in a variety of ways while providing a healthy source of food.

Community Involvement:

Involve: Throughout this process, the community was consulted in shaping the changes proposed in this ordinance. Staff sought direction from neighborhood associations, realtors, HOAs, and various community groups, such as Flagstaff Foodlink, Flagstaff Liberty Alliance, Southside Neighborhood Association, and the City of Flagstaff Sustainability Commission. Additionally, expert guidance was provided by individuals from the Arizona Farm Bureau, Arizona State Department of Agriculture, Northern Arizona Organic Beekeepers Association, and Arizona State Beekeepers Association, as well as local backyard farmers. Public input was sought through an open house at the downtown library on July 20, 2015, which was publicized through social media, radio interviews, community calendars, and the Arizona Daily Sun, and was attended by 26 members of the public.

Expanded Options and Alternatives:

Option A: Adopt Ordinance 2015-17 as submitted and authorize changes to the City of Flagstaff's livestock animal keeping regulations.
Option B: Recommend changes to Ordinance 2015-17.
Option C: Not adopt Ordinance 2015-17 and leave the existing code as is.

Attachments: Existing Animal Keeping Code
Ord. 2015-17

CHAPTER 6-03
ANIMALS

SECTIONS:

6-03-001-0001 **KEEPING OF CERTAIN ANIMALS:**
6-03-001-0002 **VIOLATION:**

SECTION 6-03-001-0001 KEEPING OF CERTAIN ANIMALS:

It is hereby declared to be a nuisance, injurious to health, a source of filth and cause of sickness, and it shall be unlawful for any person excepting as hereinafter provided to keep or maintain swine, cattle, mules, burros, sheep, goats, poultry, fowl, rabbits, guinea pigs or horses within the City limits; provided, however, that the following animals may be maintained within the City limits with the following restrictions:

A. All of said animals may be maintained within areas of the City zoned R-R.

B. Not to exceed two (2) adult sheep may be maintained in all areas of the City provided that such animals shall not be maintained or permitted within seventy five feet (75') of any residence building.

C. Not to exceed twenty five (25) female poultry may be maintained within the City limits provided that said animals shall not be maintained within fifty feet (50') of any residence building.

D. Not to exceed five (5) adult rabbits, with litters not to exceed twelve (12) weeks of age may be maintained in all areas of the City but shall not be maintained within fifty feet (50') of any residence building.

The above shall not apply to such animals or fowl that are in transit or kept by a regularly recognized business for commercial purposes.

No such animals shall be permitted to be maintained in accordance with the terms of this Section except when authorized by the Chief of Police when he has found that a nuisance does not or will not exist as that term is defined in Section 13-601 A.R.S. No authorization shall be given by the Chief of Police to any person who has been convicted of a violation of this Section or other provisions of this City Code.

SECTION 6-03-001-0002 VIOLATION:

Upon determining the violation of any of the provisions hereof, the Chief of Police shall give written notice to the person violating this Chapter to remedy the violation by removing or causing to be removed said animal kept in violation of this Chapter within forty eight (48) hours after the time said notice was given, and if said animal or animals shall be deemed to be in violation of the terms of this Chapter then the owner thereof shall be deemed guilty of a misdemeanor, and the Chief of Police shall, upon such failure to remove said animals, abate the nuisance created by maintaining said animal or animals contrary to this Chapter in accordance with the terms and conditions of Sections 36-602 and 36-603, A.R.S. (Ord. 513, 1-24-61)

ORDINANCE NO. 2015-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, BY DELETING TITLE 6, *POLICE REGULATIONS*, CHAPTER 6-03, *ANIMALS,* IN ITS ENTIRETY AND ADOPTING REVISED CHAPTER 6-03, *ANIMAL KEEPING*; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City Council of the City of Flagstaff believes it is in the best interest of the City to allow City residents to keep certain animals as a healthy and affordable source of food, fiber, and labor;

WHEREAS, the City Council has determined that Chapter 6-03 of the City Code regarding animal keeping should be amended to clarify the rules and regulations related to the keeping of animals within the City; and

WHEREAS, the City Council intends, by adopting the proposed amendments, to protect and promote the public health, safety, convenience, and general welfare of the citizens of the City of Flagstaff.

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 6, *Police Regulations*, Chapter 3, *Animals*, is hereby deleted in its entirety and replaced with revised Chapter 6-03, *Animal Keeping*, as set forth below:

Chapter 6-03
ANIMAL KEEPING

SECTIONS:

6-03-001-0001 PURPOSE
6-03-001-0002 DEFINITIONS
6-03-001-0003 KEEPING OF LIVESTOCK
6-03-001-0004 BEE KEEPING
6-03-001-0005 VIOLATION

SECTION 6-03-001-0001 PURPOSE:

The purpose of this Chapter is to ensure that the keeping, raising, and maintenance of livestock animals within the City does not create an adverse impact on adjacent properties by reason of dust, fumes, noise, odor, insect or vermin infestations, or visual blight, and to maintain the

animal welfare and public health, safety, and well-being. This chapter does not pertain to domestic pets such as dogs and cats.

SECTION 6-03-001-0002 DEFINITIONS:

For the purposes of this Chapter, the following terms, phrases and words and their derivations will have the meaning given as set forth below when not inconsistent with the context.

Beehive: A structure for housing honey bees.

Bee Colony: The hive and its equipment and appurtenances including honey bees, comb, honey, pollen and brood.

Equine: Horse or other member of the horse family including mules and donkeys.

Flyway Barrier: A solid wall, fence, dense vegetation, or combination of these materials at least six feet high that extends at least 10 feet beyond the hives on each end of a bee colony.

Poultry: A domesticated bird that is used to produce meat or eggs, including but not limited to, chickens, ducks, pigeons, and quail.

Livestock: Domesticated animals raised to produce commodities such as food, fiber, and labor.

Large Livestock: Equine, cattle, swine, donkeys, mules, llamas, ostriches, goats, sheep, alpaca, and other similarly sized animals.

Small Livestock: Rabbits, chickens, miniature, dwarf or pygmy goats that are dehorned and neutered, and other similarly sized animals.

Pasture: Open, uncultivated land used for the grazing of livestock.

Shelter: A structure or environment, adequate to the species of animal, which provides protection from adverse weather conditions and predators.

Nuisance: Anything offensive or obnoxious to the health and welfare of the inhabitants of the City; or any act or thing repugnant to, or creating a hazard to, or having a detrimental effect on the property of another person or to the community.

SECTION 6-03-001-0003 KEEPING OF LIVESTOCK

The following standards apply to the keeping of livestock animals within city limits.

A. GENERAL RULES AND RESTRICTIONS

1. The number of animals permitted in each Zone is established in Table 6-03-003.A (Number of Animals Permitted by Zoning Designation) below.

2. The principal use of the property on which livestock animals are kept must be residential or educational.

3. No livestock may be kept in the front yard setback area.

4. Offspring of animals maintained on the same property that are less than four months old or that have not been weaned, whichever is longer, will not be subject to the maximum number of animals permitted per lot size established by this Chapter.

5. All animals and the pens, stalls, stables, yards, shelters, cages, and premises where they are held or kept, shall be maintained in such a manner so as to not become a public health nuisance. Nothing in this Subsection shall be deemed to prohibit the use of animal manure or droppings to fertilize any farm, garden, lawn or ranch in such a manner and for such purposes as are compatible with customary methods of good horticulture.

6. Feed troughs shall be provided for the feeding of vegetables, meat scraps, or garbage, and such feeding shall be done exclusively from containers or on an impervious platform. Food for feeding livestock shall be stored in rodent and predator resistant containers.

7. Watering troughs or tanks shall be provided, which shall be equipped with adequate facilities for draining the overflow, so as to prevent the ponding of water, the breeding of flies, mosquitoes or other insects, or any additional health hazards.

8. Shelter and fencing (e.g. barn, coop, corral, pens, stables, etc.) shall be provided to sufficiently contain the animals and keep them from roaming at large.

9. Shelters must be covered, predator-resistant, properly ventilated, and designed to be easily accessed, cleaned and maintained.

10. Shelters must be maintained to reduce the risk of fire in accordance with the City of Flagstaff Fire Code.

11. No incineration of animal refuse shall be permitted on the premises.

12. Slaughter of animals is prohibited in all residential zones and in zones where residential uses are allowed.

13. All animal-keeping facilities must be designed in a manner such that water runoff does not become a health hazard or nuisance to uses on other properties, and is contained and disposed of and does not contribute to the pollution of local groundwater or the flooding of adjacent properties.

14. No person shall keep or harbor any animal which by frequent or habitual howling, yelping, barking, crowing or the making of any other noise, day or night, unreasonably disturbs the peace and quiet of any person or persons.

B. RULES AND RESTRICTIONS – LARGE LIVESTOCK

1. Shelters for large livestock must be located:

   a. No less than 75 feet from any dwelling unit.

b. No less than ten feet from any property line.

2. At least one half acre of pasture must be made available for each large livestock animal.

3. No pigsty shall be built or maintained on marshy ground or land subject to overflow, or within 100 feet of any watercourse or other source of water supply, or within 300 feet of a dwelling unit on an adjoining property.

C. RULES AND RESTRICTIONS – SMALL LIVESTOCK

1. Male miniature goats must be neutered and dehorned by four months of age.

2. Shelters and fenced enclosures for housing, keeping or caring for small livestock must:

a. Be located no less than ten feet from any property line.

b. Have a minimum of four square feet of indoor space per poultry or rabbit.

c. Have a minimum of ten square feet of permeable outdoor space per poultry or rabbit.

d. Have a minimum of 130 square feet of permeable space per miniature goat.

3. Turkeys, peafowl, geese, and all other similarly noisy birds are prohibited in all zones within the City.

4. Male poultry over the age of four months shall not be permitted within the City.

SECTION 6-03-001-0004 BEE KEEPING

The following standards apply to provide for the safe and orderly keeping of bees.

A. Bee keeping is allowed in all zones. The principal use of the property on which beehives are kept must be residential or educational.

B. Beehives shall only be located in rear yards and shall be placed a minimum of 20 feet from any property line, except that in the Rural Residential (RR) Zone beehives also may be placed in the interior side yards. In all zones the entrance to the beehive shall face away from the property line closest to the hive.

C. A flyway barrier shall be established and maintained so that all bees are forced to fly at an elevation of at least six feet above ground level in the vicinity of the beehive. Any fence, wall, or natural barrier proposed as a flyway barrier shall comply with the provisions of City Code Title 10, Zoning Code, Division 10-50.50 (Fences and Screening), as well as the following:

1. Be a minimum of six feet tall;

2. Be solid such that bees cannot fly through it;

3. Be placed parallel to the property line; and

4. Extend a minimum of five feet beyond the beehive(s) in each direction.

D. A convenient source of water shall be made available for the bees at all times of the year so that bees are less likely to congregate at swimming pools, pet watering bowls, bird baths, or other water sources.

E. In any instance in which a colony exhibits unusually defensive characteristics by stinging or attempting to sting without provocation or exhibits an unusual disposition toward swarming, beekeepers shall promptly re-queen the colony with another marked queen. Queens shall be selected with a gentle disposition from stock bred for gentleness and non-swarming characteristics. Must be able to produce proof of a receipt from a queen breeder.

Table 6-03-001-0003.A Number of Animals Permitted by Zoning Designation

Type of Animal	**Zones in which Specific Animals are Permitted**	**Total Number of Animals Permitted per Lot Size**						
Large Livestock		**≤19,999 sq ft**	**20,000 – 29,999 sq ft**	**30,000 – 39,999 sq ft**	**40,000 – 79,999 sq ft**	**80,000 – 119,999 sq ft**	**120,000 – 159,999 sq ft**	**≥160,000 sq ft**
Equine	ER and RR	0	0	4 (max of 3 equine on ER lot)	5	6	7	8
Cattle, Swine, Llamas, Alpacas, Goats, Sheep, Other Large Livestock Not Prohibited By This Chapter	RR							
Small Livestock								
Goats (miniature, pygmy, dwarf)	All zones*	2	2	2	4	4	4	4
Ducks, Rabbits, Chickens	All zones*	5	10	15	20	25	25	25
Bees								
Bee Colonies	All zones*	2	4	6	8	8	8	8

***** The principal use of the property must be residential or educational.

SECTION 6-03-001-0005 VIOLATION

A. It shall be unlawful for any person to cause, facilitate, or aid or abet a violation of any provision of this Chapter or to fail to perform any act or duty required by this Chapter in connection with the keeping of animals.

B. Any person found responsible for violating any provision of this Chapter will be deemed guilty of a misdemeanor and shall be subject to a fine of no less than $100 for every offense. Recurring violations will be subject to larger fines. Any violation that is continuing in nature shall constitute a separate offense on each successive date the violation continues.

C. Civil actions or proceedings to enforce the requirements of this Chapter will be commenced and prosecuted in compliance with City Code Title 1, Administration, Chapter 1-15, Municipal Court, Section 1-15-001-0011, Civil Enforcement Procedures.

SECTION 2. 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 3. Clerical Corrections

The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary related to this ordinance as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency, within thirty (30) days following adoption by the City Council.

SECTION 4. 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 _____ day of _____, 2015.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: David Wessel, Metro Planning Org Manager

Co-Submitter: Di Ann Butkay, Buyer

Date: 09/09/2015

Meeting Date: 09/15/2015

TITLE:

Consideration and Approval of Contract: Street Lighting in Support of Dark Skies RFP 2015-69
(Approve contract with Monrad Engineering, Inc. for the development of an installation and light management plan in the amount of $100,000).

RECOMMENDED ACTION:

Award the contract for Street Lighting In Support of Dark Skies RFP 2015-69 to Monrad Engineering, Inc. of Tucson, AZ in the amount of $100,000.

Executive Summary:

Street Lighting in Support of Dark Skies (SLEDS) is an applied research effort to develop a replacement strategy for the City's increasingly obsolete Low Pressure Sodium (LPS) street lights with a newer technology, most likely Light Emitting Diodes (LED). LED lights have advantages and disadvantages relative to dark skies. They can be filtered to limit damaging blue light but this reduces energy efficiency. They direct light better reducing glare and allowing light to be placed where it is needed. They are readily controlled providing the opportunity to turn them on or dim them as needed. This effort will test a series of LED light types and control strategies and evaluate them for the impact on astronomical studies, street lighting needs, and municipal capital and operating budgets. The consultant, Monrad Engineering, was selected by a panel that included representation from Lowell Observatory. They have done similar work in Tucson and are looking to synthesize several areas of research and application into a unified process for street light planning. Their proposal includes work with a citizens committee and the existing Flagstaff Dark Skies Working Group will serve this purpose. The City of Flagstaff Transportation Engineering Section will manage the day-to-day aspects of the research.

Financial Impact:

The cost of the contract is $100,000. The schedule is approximated at 7-8 months. Variability due to weather and atmospheric conditions and procurement process for obtaining test luminaires is expected. One result of the study should be an estimated capital expense for replacing luminaires city-wide. A $200,000 grant has already been approved to support purchase of test luminaires for this effort.

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:

E&C5 Preserve dark skies as an unspoiled natural resources, basis for an important economic sector, and core element of community character.

Has There Been Previous Council Decision on This:

The Council supported the Dark Skies Summit last year and approved in June the use of $200,000 in federal funds in procurement of light fixtures.

Options and Alternatives:

1) Approve the contract and award as recommended.
2) Remand the project to the FMPO Executive Board for further consideration. This may result in funds being put to a different use. It will delay reaching a decision on a future light source for the City street lights.
3) Remand the project to the review committee for further review and consideration.
4) Do not approve the contract

Background/History:

LPS was set as a standard for lighting in Flagstaff in the 1980's and Flagstaff was identified as the world's first Dark Skies City. With the advent of LED lighting the production of LPS has decreased resulting in cost increases, poorer quality and delay deliveries. Further, the LPS lighting fixtures are large, catch the wind and fatigue the light poles and mast arms. Together these create an increasingly urgent need to find a replacement technology. The US Department of Energy promotes the use of LED lights as very energy efficient. This is true for those lights producing white light. However, the light levels and light spectrum from white LED is very disruptive to the regional observatories. Last year's Darks Skies Summit convened experts in astronomy, development, health and lighting where these and other issues were examined. Extensive blue light application can have negative implications for health and the environment by disrupting circadian rhythms.

In May of 2015, the Purchasing Section conducted a Request for proposals (RFP) and received a total of four (4) proposal responses. The evaluation committee evaluated and scored the four (4) proposal responses according to the evaluation criteria outlined in the RFP document. Monrad Engineering's proposal was determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors outlined in the RFP.

Key Considerations:

In awarding the contract, the Council may wish to consider the following:

- The regional observatories were involved in the Dark Skies Summit, the development of the request for proposal, and Lowell Observatory was involved the review and selection of the consultant.
- Four proposals were received, three of which were highly qualified. The experience, priority and ability to work with the observatories was a deciding factor in selecting Monrad Engineering, Inc.
- Monrad Engineering is based in Arizona providing ready access to Flagstaff and local interests.
- Monrad's proposal includes working with a citizen's group and such a group is already in operation.

- The FMPO Executive Board approved the Summit, the research effort and the $200,000 expenditure on light fixture procurement in the annual Transportation Improvement Program.
- Coconino County will consider the results of this study in determining how to replace their inventory of LPS lights.
- A goal of the study is to produce a methodology and applications that are transferable to other communities. This will help Flagstaff retain its role as a leader in Dark Skies protection.

Expanded Financial Considerations:

- The research is federally funded using Surface Transportation Program dollars passed through from the Arizona Department of Transportation to the Flagstaff Metropolitan Planning Organization.
- The City will charge its indirect cost allocation plan rates to this project.
- The City will provide in-kind services to install the test lights.
- Longer term financial implications to be learned from this study include capital costs (luminaire and possible pole replacement) and life-cycle operations and maintenance.

Community Benefits and Considerations:

Maintaining dark skies has implications for the astronomical sector of our regional economy, tourism and daily quality of life for our citizens. The ability to change technologies and employ strategies to manage dark skies friendly street lighting in as cost-effective means as possible is a service to tax-payers.

Community Involvement:

Involve - Citizens from the Flagstaff Dark Skies Working Group will be engaged in evaluating different lighting types and strategies.

Attachments: SLEDS
Scoring tabulation
Contract
grant provisions
RFP

Street Lighting for Enhancing Dark Skies (SLEDS)

- Primary focus
  - Strategy to replace Low Pressure Sodium lights that are becoming obsolete
  - Ability to employ new technology in a cost-effective manner that protects dark skies
- Lowell Observatory involved in scope preparation and proposal review
- $100,000 contract award to Monrad Engineering, Inc. recommended
- Federal funds through the Flagstaff MPO

Street Lighting for Enhancing Dark Skies (SLEDS)

- Scope of Work
  - Establish base line light conditions through extensive ground-based, aerial and satellite measurements
  - Intensively evaluate a range of LED light sources in one test area and take samples readings in several others to allow for generalization to the entire system
    - Work with Flagstaff Dark Skies Working Group to examine social acceptance of different light sources and general compliance with dark skies policies
  - Develop installation and light management plan

CITY OF FLAGSTAFF
PURCHASING DIVISION
RFP NO. 2015-69 FMPO STREET LIGHTING FOR ENHANCING DARK SKIES (SLEDS)

SCORING TABULATION

Evaluation Criterion #1-- (20% value)Experience of the Team				
	Benya/Burnett/Monrad	***Virginia Tech Transportation***	***Clanton & Associates***	***Synergy/Illuminatos***
Evaluator #1	18.00	18.00	17.00	10.00
Evaluator #2	18.00	16.00	15.00	7.00
Evaluator #3	15.00	18.00	18.00	5.00
Subtotal:	**51.00**	**52.00**	**50.00**	**22.00**
Criteria Ranking:	2	1	3	4
Evaluation Criterion #2-- (40% value) Research Approach				
Evaluator #1	35.00	30.00	25.00	-
Evaluator #2	35.00	40.00	30.00	15.00
Evaluator #3	35.00	38.00	37.00	-
Subtotal:	**105.00**	**108.00**	**92.00**	**15.00**
Criteria Ranking:	2	1	3	4
Evaluation Criterion #3-- (15% value) Cost Effectiveness of Proposed Work				
Evaluator #1	15.00	10.00	12.00	-
Evaluator #2	13.00	5.00	10.00	5.00
Evaluator #3	15.00	15.00	15.00	-
Subtotal:	**43.00**	**30.00**	**37.00**	**5.00**
Criteria Ranking:	1	3	2	4
Evaluation Criterion #4-- (15% value) Residual Value to the City				
Evaluator #1	13.00	10.00	12.00	5.00
Evaluator #2	12.00	15.00	10.00	-
Evaluator #3	15.00	15.00	13.00	-
Subtotal:	**40.00**	**40.00**	**35.00**	**5.00**
Criteria Ranking:	1	1	2	3
Evaluation Criterion #3-- (10% value) Transerability				
Evaluator #1	8.00	5.00	7.00	-
Evaluator #2	5.00	8.00	5.00	-
Evaluator #3	10.00	8.00	9.00	-
Subtotal:	**23.00**	**21.00**	**21.00**	**-**
Criteria Ranking:	1	2	2	3
TOTAL SCORE:	**297.00**	**288.00**	**277.00**	**140.00**
Total Criteria Ranking:	**1**	**2**	**3**	**4**

ATTACHMENT A

CONTRACT FOR
FMPO – STREET LIGHTING FOR ENHANCING DARK SKIES (SLEDS)
Contract No. 2015-69

This Contract is entered into this _____ day of _____, 20___ by and between the City of Flagstaff, a political subdivision of the State or Arizona ("City"), and _Monrad Engineering 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 parties agree as follows:

SERVICES

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

FMPO – STREET LIGHTING FOR
ENHANCING DARK SKIES (SLEDS)

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

Schedule of Services: Contractor shall perform all work pursuant to the schedule set forth in Exhibit A.

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

Key Personnel: Contractor's Key Personnel 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.

Subcontractors: Contractor's subcontractors for this Contract are listed in Exhibit A.

Grants Provisions: The Grants Provisions are attached hereto as Exhibit D is hereby incorporated by reference in their entirety.

CITY RESPONSIBILITIES

City Representative: The City Representative is David Wessel, FMPO Manager, 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.

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

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 August 30th, 2016 and consistent with the Schedule of Services. The term as defined by the Grant is for an initial one (1) year.

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.

Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.

PAYMENT

Compensation: Contractor shall be paid for all satisfactory performance of the work, in accordance with the Price Schedule attached hereto as Exhibit A. Except as expressly otherwise provided for and itemized in the Price Schedule, payment to Contractor shall be in full compensation for all of Contractor's work, and Contractor will not be entitled to reimbursement for any additional expenses, direct or indirect costs.

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

DATA AND RECORDS

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 assigns all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.

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 City's work product for the benefit of Contractor or any third parties without City's prior written consent.

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 of all City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

INSURANCE

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

MISCELLANEOUS

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 Purchasing City of Flagstaff 211 W. Aspen Flagstaff, Arizona 86001 dbutkay@flagstaffaz.gov	
With a copy to:	With a copy to:
David Wessel, FMPO Manager	

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

STREET LIGHTING for ENHANCING DARK SKIES (SLEDS)

PURPOSE
The City of Flagstaff seeks a qualified research team to evaluate the impact of different street lighting applications on its dark skies, a resource highly valued by the City and the community.

BACKGROUND
Street lighting in Flagstaff

The city of Flagstaff was the first to be recognized by the International Dark Sky Association as an *International Dark Sky City.* Flagstaff earned this distinction, in part, by the establishment in 1989 of a lighting code and engineering standards specifying the use of low-pressure sodium (LPS) light fixtures for all roadway and parking lot lighting. Today, LPS lights are increasingly difficult to acquire as low demand has prompted many manufacturers and distributers to stop production. In addition, the use of the largest 180 watt LPS fixtures on the current poles and mast arms along arterial streets creates high wind loads. The City seeks proposals to partner on the application or development of an innovative light fixture technology to replace the current LPS technology and is particularly interested in narrow band amber LED, phosphor-coated amber LED, and various filtered LED options. The City seeks proposals that effectively and appropriately mitigate the impacts of these lighting options on the community's dark sky natural resource.

LED lighting relative to LPS

Flagstaff adopted LPS due to the very close proximity (2-10 miles from city limits) of major astronomical observatories established in 1894 (Lowell Observatory) and 1955 (the U. S. Naval Observatory). The low-pressure sodium spectrum covers 589-590 nm – only 1 nm spectral coverage. In contrast, the standard white LED spectrum has significant emission over more than 300 nm and filtered LEDs (FLED) over about 220 nm. Conversion of Flagstaff street lighting to 4100K CCT white LEDs has been estimated to increase sky glow by a factor of 7 relative to LPS, and conversion to FLED by a factor of 3.7, severely compromising the observatories' missions and greatly degrading the visual appearance of the night sky in the city.

Other LED options exist, however. Phosphor-coated amber LEDs (PCALED) have a narrower spectrum than FLED, cutting off at about 530 nm. True narrow band amber LEDs (NBALED) have only a 20nm bandpass centered near 590 nm; this is wider than LPS but entirely acceptable from an astronomical perspective. Filters that cut off the blue end of the spectrum at 550 nm (FLED550) create an LED option reasonably closely

resembling high-pressure sodium (HPS, with a roughly 120nm bandpass). True narrow band LED options are also available at slightly redder wavelengths than amber (about 620 nm rather than 590 nm). See Figure 1 for representative spectra of some of these options.

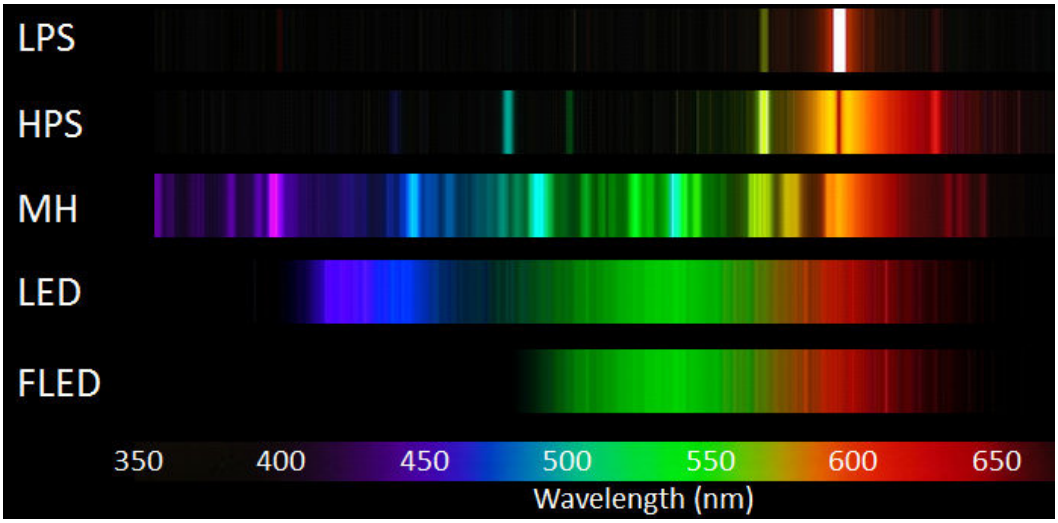

Figure 1. Representative lighting spectra. At present, Flagstaff is a mix of LPS and HPS, as over 50% of the city's street lights have been replaced by LPS since adoption of the 1989 ordinance. Metal halide (MH), LED, and FLED all result in dramatically increased sky glow relative to LPS or even HPS. *(Figure of spectral distributions prepared by Jeffrey Hall, Lowell Observatory)*

Challenges and opportunities presented by this RFP

At issue are the relative efficiencies of the lamps. NBALED is less efficient, at present, than FLED or white LED, making it less cost effective for citywide implementation. At the same time, it is the only LED option that preserves the current level of sky glow above the city. As an example scenario, if the City were to convert all its 180-watt LPS street lighting to NBALED and all of its HPS to FLED550, sky glow would be roughly conserved – but this solution would at present be extremely expensive.

We seek to identify how the City can effect a solution to this challenge. At the same time, we identify it as an opportunity for Flagstaff to demonstrate to other municipalities an innovative lighting solution for dark-sky preservation with LED technology. This entails:

- A cost effective solution to long-term street lighting needs that achieves municipal objectives for safety and cost effectiveness and astronomical objectives for maintaining dark skies.
- Innovation that advances the industry or best practices for technology transfer that advances the purpose of preserving dark skies.

PARAMETERS FOR PROPOSERS

Available funds:
Through the Flagstaff Metropolitan Planning Organization, the City of Flagstaff has funding to (1) conduct innovative research and monitoring as well as (2) purchase new lighting technology. These funds are subject to federal requirements including compliance with procurement laws, Buy America, Civil Rights/Title VI, and the National Environmental Policy Act, among others.
The City will commit the following to the street lighting research collaborative:

- $100,000 toward monitoring and research.*
- $200,000 toward the purchase of light fixtures.*
    - It is the intent of the City to seek a phased approach to evaluating light fixture technologies by conducting small scale evaluations first to potentially eliminate some choices prior to purchases for the larger scale evaluations.
- $11,000 of in-kind labor for installation of lighting technology (in-kind).*

(*The City's indirect cost allocation plan will be charged against all federal grant funding.)
General guidelines

- Proposals must support widespread applicability for the City's entire lighting inventory.
- Proposals must provide a clear plan and timeline for LPS to LED transition that maintains the City's dark-sky quality as new technology is implemented.
- Baseline data must be established across a range of measures of effectiveness.
- Proposals for modeling will not be accepted in the place of field testing, but existing evaluation or estimation software may be used for preliminary analysis during test designs and post-test estimates for city-wide impacts of new lighting recommendations.

The City is open to several ideas, including, but not limited to:

- Prototype – collaboration with a manufacturer to identify paths toward development of a cost-effective, narrow band LED replacement for a 180 Watt LPS fixture as the highest priority.
- Evaluation of selected corridors in the City for testing of one or multiple light sources.
- Proof of concept: Using available models to predict light levels on the streets and changes in sky glow and under different scenarios employing varying amounts of lumens emitted by different lamps and fixture arrangements.

Measures of Effectiveness (MOE)

The City seeks cost-effective replacement technologies that (1) maintain or approximate current lighting levels and (2) do not adversely impact the City's dark-sky natural resource or the missions of the Lowell Observatory and the U.S. Naval Observatory. In consideration of cost effectiveness, the City seeks to utilize existing light pole infrastructure. Measures of effectiveness may include:

- Light uniformity
- (1) Brightness and (2) spectrum analysis from several perspectives, including:
    - on the street
    - at the observatories
    - general sky brightness
    - identification of ambient light levels (i.e., absence of streetlights)
- Color rendition
- Wind loading (Effective Projected Area)
- Public commentary on lighting levels and color rendition
- Life Cycle Costs including, but not limited to, initial capital expenses, energy use, and maintenance

Project description

The project description must contain four sections in the order given below. These sections are designed to encourage a step-by-step evaluation of the evolution of an LED-based, dark-sky lighting solution in Flagstaff, and to create a roadmap for other communities that wish to embark on similar efforts. Proposers must source in the reference section all statements from the primary or secondary literature, case studies, and municipal codes and strategic plans.

Evaluation of lighting pole infrastructure in Flagstaff

As stated above, the City desires to maintain existing lighting pole infrastructure in the interest of cost effectiveness. Proposers should provide a plan and timeline for assessment of this infrastructure. The City will provide the selected team with its lighting pole inventory documentation for the purposes of this evaluation. Critical questions include

- Where mast arm overloading by 180 watt LPS fixtures is of critical urgency
- Where poles themselves require engineering or replacement

Evaluation of LPS lighting technology

Proposers must outline a plan to evaluate the state of low pressure sodium lighting in industry. This should include plans and a timeline to provide

- A review of LPS usage generally, showing usage trends and evolution of demand
- A projection for the future availability, cost, and efficiency of LPS lighting, to establish timescales on which LPS must be phased out in favor of LED

Evaluation of LED lighting options

The proposal must provide a plan for evaluation of LED lighting technology. Options that must be explored include but are not limited to:

- FLED (500 nm cutoff)
- PCALED (530 nm cutoff)
- FLED550 (550 nm cutoff)
- NBALED (20 nm band width at 590 nm)
- Other NBALED-analogous options (e.g., narrow band centered at 620-630 nm)

Parameters that must be evaluated are:

- Current efficiency
- Prospects and timescale for improvements in efficiency
- Cost implications to the City of implementation of the various options if it
    - Replaces 180-watt LPS fixtures in critical engineering areas identified in section 5.2.2.1 above
    - Replaces all current 180-watt LPS fixtures citywide
    - Replaces additional HPS fixtures citywide
- Examination of hybrid solutions for LPS/HPS replacement is acceptable and welcomed

Plan for transition of lighting in Flagstaff from LPS/HPS to LED

Narrow band LED lighting preserves the viability and the missions of the local observatories. Proposers should describe a clear path to transitioning Flagstaff from LPS to dark-sky preserving LED. Elements of this plan should include, but are not limited to

- Maintenance of LPS through mechanical solutions (e.g., additional support of mast arms, removal of mast arms and attachment of fixtures directly to poles) while LED solutions are explored and implemented, and timescales for viability of such maintenance
- Temporary installation of broad-spectrum LED (e.g., FLED) in areas of critical urgency identified above while narrower band (PCALED, FLED550, NBALED, orange NBALED) options and improvements are explored
- Proposals for installation of the various types of LED options for public evaluation

- Timescale and limits of improvement in narrow band LED technology
- Plan for phased conversion of LPS and HPS streetlight fixtures to a mix of LED that maintains the dark sky standards in the city
- Projections for change in sky glow under the various scenarios presented

References cited

All references included in the Project Description should be assembled in an alphabetical list. Proposers may use a citation style of their choosing, but they should be consistent throughout the reference list.

Project personnel

Proposers should provide an explanation of the proposed personnel arrangements and the biographical data sheets for each of the main contributors to the project. The explanation should specify how many persons at what percentage of time and in what academic categories will be participating in the project. If the program is complex and involves people from multiple firms or institutions, the organization of the staff and the lines of responsibility must be made clear.

Budget and Budget Narrative

Proposers should present a budget including the following line items.

- Effort level and salary or hourly rate for all personnel involved in the project (FTE levels expected for exempt personnel, hours to be invested for non-exempt personnel).
- Total fringe benefits.
- Direct costs including but not limited to
    - Travel and lodging
    - Computers, software, and software licenses
    - Equipment
    - Subcontracts and consultant fees
    - Supplies
    - Administrative costs
- Indirect costs, accompanied by documentation of negotiated rate as appropriate.
- A budget narrative of 1-2 pages should accompany the full budget.

GRANT PROVISIONS

Grant Agency: Federal Highway Administration (FHWA) through Arizona Department of Transportation (ADOT), and Surface Transportation Program Funds (STP)

Grant Name: FMPO 2014 Work Program,
Street Lighting for Enhancing Dark Skies (SLEDS)

Agreement Number: JPA 11-085

Funding Source: FHWA Surface Transportation Funds
CFDA 20.205

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES – COMMITMENT, COMPLIANCE AND REPORTING

1. The CITY has adopted ADOT's established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT (the DEPARTMENT) has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is CITY'S policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts. It is also CITY'S policy to:

a. Ensure nondiscrimination in the award and administration of federally-funded contracts;

b. Create a level playing field on which DBEs can compete fairly for federally-funded contracts;

c. Ensure that the DBE program is narrowly tailored in accordance with applicable law;

d. Ensure that only firms that fully meet 49 CFR Part 26 eligibility requirements are counted as DBEs;

e. Help remove barriers to the participation of DBEs in federally-funded contracts; and

f. Assist in the development of firms that can compete successfully in the marketplace.

The Federal regulations require a recipient of federal highway funding to implement an approved DBE Program that consists of establishing a statewide DBE utilization goal that uses race-neutral means to the maximum feasible extent to achieve the goal. Where race-neutral measures prove inadequate to achieve the goal, the STATE is required to use race-conscious measures, such as a DBE participation goal for individual contracts.

The DEPARTMENT has established an overall annual goal for DBE participation on Federal-aid contracts. The DEPARTMENT intends to meet the goal with a combination of race-conscious efforts and race-neutral efforts. Race-conscious participation occurs where the CONSULTANT uses a percentage of DBEs to meet a contract-specified goal. Race-neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses.

The CONSULTANT is required to adhere to the commitment made to utilize certified Disadvantaged Business Enterprises (DBE) as indicated in the firm's Statement of

Qualifications (SOQ) or subsequently agreed to by the STATE during negotiations. The STATE, at its discretion on a case by case basis, may waive the above limitations.

2. **COMPLIANCE**:

a. This CONTRACT is subject to DBE compliance tracking for the CONSULTANT and its Subconsultants. Lower-tier Subconsultants and Vendors are required to provide any requested DBE CONTRACT compliance-related data in hard copy or electronically as determined by the STATE, including written agreements between the CONSULTANT and Subconsultant DBEs. The CONSULTANT shall report the amount earned by and paid to each DBE and Non-DBE Subconsultants working on the project for the preceding month on each monthly Progress Payment Report. The CONSULTANT is responsible for ensuring that the CONSULTANT and all its Subconsultants and lower-tier Subconsultants have completed all requested items and that their contact information is accurate and up-to-date.

b. The CONSULTANT'S achievement of the DBE goal is measured by actual payments made to the DBEs. At the completion of the project, the CONSULTANT shall complete and submit a *Certification of Payments to DBE Firms* affidavit for each DBE firm working on the project. This affidavit shall be signed by the CONSULTANT and the relevant DBE Subconsultant and submitted to ECS and CRO.

3. **REPORTING AND SANCTIONS**:

a. ADOT is required to collect DBE participation data on all Federal-aid projects, whether or not there is a stated DBE goal/commitment on this CONTRACT. Therefore, the CONSULTANT shall report the monthly payments made to all DBE, Non-DBE Subconsultants and Direct Expense Vendors, including all lower-tier Subconsultants, for labor, equipment, and materials. If the CONSULTANT and its Subconsultants do not provide all required DBE usage and payment information with the monthly Progress Payment Reports (PRs) submittals for the preceding month, the STATE shall deduct $1,000 for each delinquent report, whether from the CONSULTANT or any of its Subconsultants, from the progress payment for the current month, not as a penalty but as liquidated damages. If by the following month, the required DBE payment information for the previous month has still not been provided, the STATE shall deduct an additional $1,000 for each delinquent report. Such deductions shall continue for each subsequent month that the CONSULTANT or its Subconsultants fail to provide the required payment information.

b. DBEs shall confirm the payments received from the CONSULTANT through CRO'S DBE Contract & Labor Compliance Management System (**DBE System**).

c. After execution of this CONTRACT and before the first Payment Report/Invoice is submitted to ECS, the CONSULTANT is required to log into

the CRO'S online DBE System (https://adot.dbesystem.com) and enter the name, contact information, and subcontract amounts for all Subconsultants, lower-tier Subconsultants and Direct Expense vendors performing any work on the project to help ADOT track payments to DBE and Non-DBE Subconsultants on the project and to confirm that the scope of services and commitments made via the DBE Intended Participation Affidavits are being met.

d. All DBE and non-DBE subcontracting activities and payments shall be reported by the CONSULTANT. All DBE subcontracting activities will be counted toward DBE participation. This includes lower-tiers subcontracting activities regardless of whether or not the DBE is under contract with another DBE.

4. At the completion of the contract, the CONSULTANT shall submit a *Certificate of Payments to DBE Firms* affidavit certifying that all DBEs were paid in full for material and/or work promised and performed under the terms of this CONTRACT.

5. **DBE SUBSTITUTION OR REPLACEMENT**:

a. The CONSULTANT shall not terminate a DBE Subconsultant listed in the SOQ or in the CONSULTANT or Subconsultant DBE Affidavit submitted with each approved Task Order without the prior written approval by the STATE.

b. If a Subconsultant is terminated, or fails to complete its work on this CONTRACT for any reason, the CONSULTANT shall make a good faith effort to find another DBE to perform at the least the same amount of work under the CONTRACT as the DBE that was terminated, to the extent needed to meet the DBE commitment percentage established in this CONTRACT.

6. The DEPARTMENT, at its sole discretion, may terminate the CONTRACT at any time if the DEPARTMENT determines that the CONSULTANT is not satisfactorily meeting the DBE goal/commitment stated in the CONTRACT or is not making satisfactory good faith efforts to meet the goal.

4.48 COUNTING DBE PARTICIPATION

In counting the DBE participation, the Department shall apply the rules in 49 CFR §26.55 (see **APPENDIX C**) as a supplement herein. The firm shall count only the value of the work actually performed by the DBE toward DBE goals.

1. CONTRACTS created to artificially create DBE participation are not acceptable; the arrangement shall be within normal industry practices. The DBE shall perform a commercially useful function.

2. Count the entire amount of that portion of a CONTRACT (or other CONTRACT not covered by paragraph (2) of this section) that is performed by the DBE's own

forces. Firms shall include the cost of supplies and materials obtained by the DBE for the work on the CONTRACT, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subconsultant purchases or leases from the CONSULTANT or its affiliate).

3. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specially required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with the fees customarily allowed for similar services.

4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the lower-tier Subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.

5. It is presumed that the DBE is not performing a commercially useful function if: (a) a DBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its CONTRACT with its own work force; or (b) the DBE subcontracts a greater portion of the work of a CONTRACT than would be expected on the basis of normal industry practice for the type of work involved.

CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS
APRIL, 1969

The bidder _____, proposed subcontractor _____, hereby certifies that he has _____, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he has _____, has not _____, filed with the Joint Reporting committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

_____
(Company)

By: _____

_____
(Title)

Date: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7b (1),) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally only contracts or subcontracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Information concerning Standard Form 100 (EEO-1) is available from:

Joint Reporting Committee
P.O. Box 19100
Washington, D.C. 20036-9100

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

R7/03

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation,* as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation,* as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation*, may determine to be appropriate, including, but not limited to:

   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

* USE ON FEDERAL AID JOBS OVER $100,000 *

(102LOBY, 10/01/90)

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS:

102.09 **Non-Collusion Certification:** of the Standard Specifications is modified to add:

(A) Lobbying:

The bidder certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract grant, loan, or cooperative agreement.

(2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions..

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The bidder also agrees, by submitting his or her bid or proposal, that he or she shall require that the language of this certification be included in all subcontracts and lower tier subcontracts which exceed $100,000 and that all such subcontractors and lower tier subcontractors shall certify and disclose accordingly.

The Department will keep the prime contractors' certifications on file as part of their original bid proposals. Each prime contractor shall keep individual certifications from all subcontractors and lower tier subcontractors on file. Certifications shall be retained for three years following completion and acceptance of any given project.

Disclosure forms for the prime contractor shall be submitted to the Engineer at the pre-construction conference. Disclosure forms for subcontractors and lower tier subcontractors shall be submitted to the Engineer by the prime contractor along with the submittal of each subcontract or lower tier subcontract, as required under Subsection 108.01, when said subcontracts exceed $100,000.00. During the performance of the contract the prime contractor and any affected subcontractors shall file revised disclosure forms at the end of each calendar year quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. Disclosure forms will be submitted by the Engineer to the Federal Highway Administration for further processing.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- 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): and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et seq).

E

City of Flagstaff / FMPO

SOQ Proposer's Solicitation List

(Must be submitted with the SOQs)

Contract No.: _____

In accordance with 49 CFR 26.11, ADOT is required to create and maintain a *Proposer's Solicitation List* to capture accurate data regarding the universe of DBE, non-DBE, and Small Business Concerns (**SBC**) Consultants and Subconsultants who expressed interest or were solicited to work on this contract. Proposers **must** complete the required information below.
INSERT AGENCY NAME will review this form to ensure compliance with 49 CFR 26.11. Firms may be contacted for clarification or additional information.

FAILURE TO COMPLETE THIS FORM IN ITS ENTIRETY AND SUBMIT IT WITH THE SOQ PROPOSAL SHALL RESULT IN REJECTION OF THE SOQ PROPOSAL

Consultant Name	Contact Person	Address	Phone Number (XXX) XXX-XXXX	Email Address	AZ UTRACS Vendor Registration Number *	Select one **D** = DBE **N** = Non-DBE
*** Prime Consultant's failure to include their AZ UTRACS vendor registration number in this form shall result in SOQ proposal rejection.**						

List each Subconsultant that (1) your firm directly solicited to be a part of this contract, (2) contacted your firm expressing interest in this contract and (3) your firm ultimately proposes to work on this contract.

Subconsultant Name	Contact Person	Address	Phone Number (XXX) XXX-XXXX	Email Address	AZ UTRACS Vendor Registration Number (if available)	Select one **D** DBE **N** Non-DBE **S** SBC

Copy form and add additional sheets as needed.

All prime Consultants are REQUIRED to register in ADOT *Arizona Unified Transportation Registration and Certification System* (AZ UTRACS). Failure to complete this form in its entirety and submit it with the SOQ proposal shall result in the rejection of the SOQ proposal.

March 16, 2015

RE: DBE Goal Assessment and OJT Hours (0 for 0 Trainees)
PFM14 08P JPA 11-085 Amendment 2
Dark Skies Research

The above referenced project has been classified as **race-neutral and is only valid for 120 days from this date.** No DBE goal will be assessed for this contract/project; however, DBE participation is strongly encouraged. Project(s) to be advertised after **for 120 days** from this date must be re-assessed for a new DBE goal by completing the appropriate *DBE Goal Setting Worksheet* and resubmitting to DBEContractGoals@azdot.gov. Limited DBE availability has been identified in the following categories:

- Street Lighting Research for Dark Skies
- Street Lighting Research

Some DBE availability is based on the *Arizona Unified Transportation Registration and Certification System* (AZ UTRACS), which can be searched by specialty and/or NAICS code at: https://adot.dbesystem.com/

There are no On-the-Job Training requirements for this contract.

Contact ADOT Business Engagement & Compliance Office at (602) 712-7761 if you have any questions regarding this assessment.

Sincerely,

Beverly Krumm
LPA/Subrecipient Program Manager
Business Engagement & Compliance Office
Arizona Department of Transportation

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

BUYER: Candace Schroeder, CPPB
PH: (928) 213-2278 FX: (928) 213-2209

CITY OF FLAGSTAFF

REQUEST FOR PROPOSALS

SOLICITATION FOR: FMPO-STREET LIGHTING FOR ENHANCING DARK SKIES (SLEDS)

SOLICITATION NO.: 2015-69

CLOSING DATE AND TIME: Wednesday, July 15th, at 3:00 PM

WHERE TO SUBMIT PROPOSALS ("OFFERS"): Offers shall be submitted prior to the Closing Date and Time in a sealed envelope as addressed below:

Attention Buyer: Candace Schroeder, CPPB
SEALED OFFER: Solicitation No. 2015-69 Street Lighting for Enhancing Dark Skies, (SLEDS)
Closing Date and Time: Wednesday, July 15th, 3:00 PM
City of Flagstaff, Management Services-Purchasing Division
211 West Aspen Avenue
Flagstaff, AZ 86001

CITY NEEDS: The City of Flagstaff seeks a qualified research team to evaluate the impact of different street lighting applications on its dark skies, a resource highly valued by the City and the community. The City seeks proposals to partner on the application or development of an innovative light fixture technology to replace the current LPS technology and is particularly interested in narrow band amber LED, phosphor-coated amber LED, and various filtered LED options. The City seeks proposals that effectively and appropriately mitigate the impacts of these lighting options on the community's dark sky natural resource.

INFORMATION: The Solicitation and all related materials and any addenda may be downloaded from the City Website, www.flagstaffaz.gov.

BUYER: Candace Schroeder, CPPB, Telephone No.: (928) 213-2278, Facsimile No.: (928) 213-2209, Email Address: cschroeder@flagstaffaz.gov. If the Buyer cannot be immediately reached, you may contact the receptionist for the City Management Services Purchasing Division at (928) 213-2206.

PRE-OFFER MEETING: Wednesday, May 20, 2015 at 10:00 AM, Finance Conference Room, City Hall, Second Floor. A pre-proposal conference call will be held to answer questions. Members of the scoring panel will attend the teleconference to ensure all proposers have equal opportunity to present their questions and ideas to evaluators.

QUESTIONS: Any questions must be received by the Buyer via telephone, email, or facsimile at least five (5) calendar days prior to the Closing Date and Time.

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SOLICITATION DESCRIPTION

PURPOSE

The City of Flagstaff seeks a qualified research team to evaluate the impact of different street lighting applications on its dark skies, a resource highly valued by the City and the community.

BACKGROUND

Street lighting in Flagstaff

The city of Flagstaff was the first to be recognized by the International Dark Sky Association as an *International Dark Sky City.* Flagstaff earned this distinction, in part, by the establishment in 1989 of a lighting code and engineering standards specifying the use of low-pressure sodium (LPS) light fixtures for all roadway and parking lot lighting. Today, LPS lights are increasingly difficult to acquire as low demand has prompted many manufacturers and distributors to stop production. In addition, the use of the largest 180 watt LPS fixtures on the current poles and mast arms along arterial streets creates high wind loads. The City seeks proposals to partner on the application or development of an innovative light fixture technology to replace the current LPS technology and is particularly interested in narrow band amber LED, phosphor-coated amber LED, and various filtered LED options. The City seeks proposals that effectively and appropriately mitigate the impacts of these lighting options on the community's dark sky natural resource.

LED lighting relative to LPS

Flagstaff adopted LPS due to the very close proximity (2-10 miles from city limits) of major astronomical observatories established in 1894 (Lowell Observatory) and 1955 (the U. S. Naval Observatory). The low-pressure sodium spectrum covers 589-590 nm – only 1 nm spectral coverage. In contrast, the standard white LED spectrum has significant emission over more than 300 nm and filtered LEDs (FLED) over about 220 nm. Conversion of Flagstaff street lighting to 4100K CCT white LEDs has been estimated to increase sky glow by a factor of 7 relative to LPS, and conversion to FLED by a factor of 3.7, severely compromising the observatories' missions and greatly degrading the visual appearance of the night sky in the city.

Other LED options exist, however. Phosphor-coated amber LEDs (PCALED) has a narrower spectrum than FLED, cutting off at about 530 nm. True narrow band amber LEDs (NBALED) have only a 20nm bandpass centered near 590 nm; this is wider than LPS but entirely acceptable from an astronomical perspective. Filters that cut off the blue end of the spectrum at 550 nm (FLED550) create an LED option reasonably closely resembling high-pressure sodium (HPS, with a roughly 120nm bandpass). True narrow band LED options are also available at slightly redder wavelengths than amber (about 620 nm rather than 590 nm). See Figure 1 for representative spectra of some of these options.

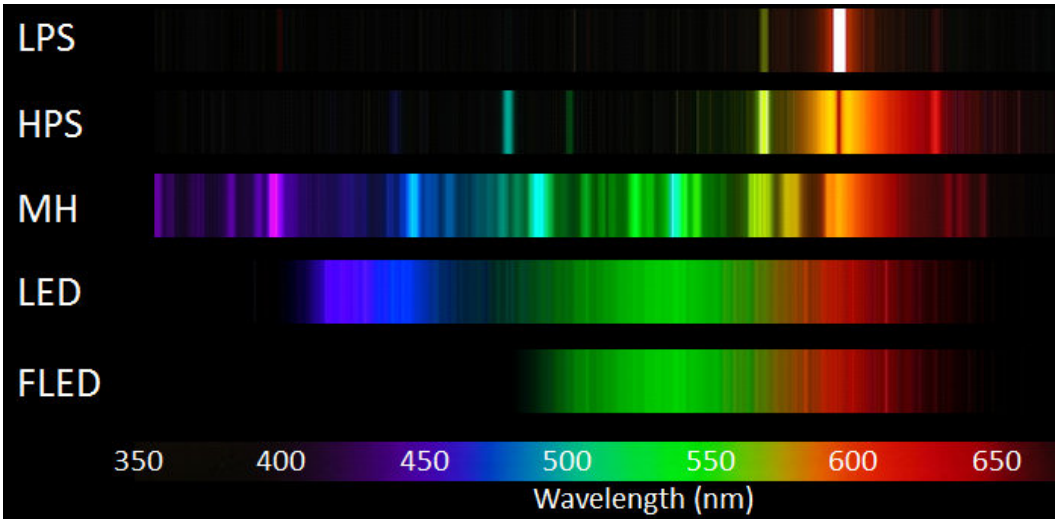

Figure 1. Representative lighting spectra. At present, Flagstaff is a mix of LPS and HPS, as over 50% of the city's street lights have been replaced by LPS since adoption of the 1989 ordinance. Metal halide (MH), LED, and FLED all result in dramatically increased sky glow relative to LPS or even HPS. *(Figure of spectral distributions prepared by Jeffrey Hall, Lowell Observatory)*

Challenges and opportunities presented by this RFP

At issue are the relative efficiencies of the lamps. NBALED is less efficient, at present, than FLED or white LED, making it less cost effective for citywide implementation. At the same time, it is the only LED option that preserves the current level of sky glow above the city. As an example scenario, if the City were to convert all its 180-watt LPS street lighting to NBALED and all of its HPS to FLED550, sky glow would be roughly conserved – but this solution would at present be extremely expensive.

We seek to identify how the City can affect a solution to this challenge. At the same time, we identify it as an opportunity for Flagstaff to demonstrate to other municipalities an innovative lighting solution for dark-sky preservation with LED technology. This entails:

- A cost effective solution to long-term street lighting needs that achieves municipal objectives for safety and cost effectiveness and astronomical objectives for maintaining dark skies.

- Innovation that advances the industry or best practices for technology transfer that advances the purpose of preserving dark skies.

PARAMETERS FOR PROPOSERS

Available funds

The Flagstaff Metropolitan Planning Organization has secured FHWA Surface Transportation Program funding to (1) conduct innovative research and monitoring, and (2) purchase new lighting technology, within the municipal region of the City of Flagstaff. This contract is subject to all federal compliance requirements set forth in 2CFR200, as administered through Arizona Department of Transportation.

The City will commit the following to the street lighting research collaborative:

- $100,000 toward monitoring and research.*

- $200,000 toward the purchase of light fixtures.*
    - It is the intent of the City to seek a phased approach to evaluating light fixture technologies by conducting small scale evaluations first to potentially eliminate some choices prior to purchases for the larger scale evaluations.
- $11,000 of in-kind labor for installation of lighting technology (in-kind).*

(*The City's indirect cost allocation plan will be charged against all federal grant funding.)

General guidelines

- Proposals must support widespread applicability for the City's entire lighting inventory.
- Proposals must provide a clear plan and timeline for LPS to LED transition that maintains the City's dark-sky quality as new technology is implemented.
- Baseline data must be established across a range of measures of effectiveness.
- Proposals for modeling will not be accepted in the place of field testing, but existing evaluation or estimation software may be used for preliminary analysis during test designs and post-test estimates for city-wide impacts of new lighting recommendations.

The City is open to several ideas, including, but not limited to:

- Prototype – collaboration with a manufacturer to identify paths toward development of a cost-effective, narrow band LED replacement for a 180 Watt LPS fixture as the highest priority.
- Evaluation of selected corridors in the City for testing of one or multiple light sources including adaptive (i.e., time-of-day) technologies.
- Proof of concept: Using available models to predict light levels on the streets and changes in sky glow and under different scenarios employing varying amounts of lumens emitted by different lamps and fixture arrangements.

Measures of Effectiveness (MOE)

The City seeks cost-effective replacement technologies that (1) maintain or approximate current lighting levels and (2) do not adversely impact the City's dark-sky natural resource or the missions of the Lowell Observatory and the U.S. Naval Observatory. In consideration of cost effectiveness, the City seeks to utilize existing light pole infrastructure. Measures of effectiveness may include:

- Light uniformity
- (1) Brightness and (2) spectrum analysis from several perspectives, including:
    - on the street
    - at the observatories
    - general sky brightness
    - identification of ambient light levels (i.e., absence of streetlights)
- Color rendition
- Wind loading (Effective Projected Area)

- Public commentary on lighting levels and color rendition
- Life Cycle Costs including, but not limited to, initial capital expenses, energy use, and maintenance

INSTRUCTIONS

INSTRUCTIONS IN GENERAL

DUE DILIGENCE: It is your responsibility to examine the entire Solicitation prior to completing your offer, including the form of contract, City of Flagstaff Standard Terms and Conditions and Special Terms and Conditions.

INSPECTION OF WORK SITE: Before submitting an offer, you are required to inspect any work sites referenced in the Solicitation and notify the Buyer if you believe the work sites or conditions do not match the description found in the Solicitation or are unsafe.

PRE-OFFER MEETING: If a Pre-Offer Meeting is scheduled, you are strongly encouraged to attend. If scheduled, the date and time of this meeting will be indicated on the cover page of the Solicitation. The purpose of this meeting shall be to clarify the Solicitation in order to prevent any misunderstandings. Any questions, apparent omission or discrepancy should be presented to the City at this time. The City shall then determine the appropriate action necessary, if any, and issue a written amendment to the Solicitation. Oral statements or instructions shall not constitute an amendment to this Solicitation.

DISABILITIES: A person with a disability may request a reasonable accommodation in the Solicitation process by contacting the Buyer as early as possible to allow time to arrange the accommodation.

SUBMITTAL OF OFFER: Clearly label your offer as follows:

Attention Buyer: Candace Schroeder, CPPB
SEALED OFFER: Solicitation No. 2015-69 FMPO-Street Lighting for Enhancing Dark Skies, (SLEDS)
Closing Date and Time: Wednesday, July 15th, 3:00 PM
City of Flagstaff, Management Services-Purchasing Division
211 West Aspen Avenue
Flagstaff, AZ 86001

on the outside of the sealed envelope. Submit **four (4) original hard copy and an electronic version in Adobe Acrobat ® (PDF) on either a compact disc or disc drive** of your offer in the sealed envelope (or box if needed) prior to the Closing Date and Time specified on the first page of the Solicitation. Submit your offer by mail or hand delivery to the address as labeled. Offers submitted by facsimile, email, telegraph or mailgram will not be considered.

COST OF OFFER: You are responsible for all costs related to preparation and submittal of an offer. The City will not reimburse any such costs.

LATE OFFERS: Late offers shall not be accepted. The City will return any late offers.

WITHDRAWAL OF OFFERS: You may withdraw an offer before the Closing Date and Time. A withdrawal must be signed by the vendor's authorized representative and submitted to the Buyer by hand delivery or mail.

OFFER ACCEPTANCE PERIOD: An offer made in response to this Solicitation shall be valid and irrevocable for ninety (90) days after the Closing Date and Time.

QUESTIONS: If you have any questions about this Solicitation, contact the Buyer. **The City will only respond to questions at least five (5) calendar days before the Closing Date and Time**. Questions should be submitted in writing. The Buyer may require you to submit any question in writing. Any question shall refer to the Solicitation number, page and paragraph number in question. The City **will not** be responsible if you adjust your offer based on any verbal statements made by employees or officers of the City, particularly if such statements conflict with the Solicitation. You may request the Buyer to issue an addendum to the Solicitation.

ADDENDA: The City will issue any interpretation or correction of the Solicitation only by written addendum and a copy of each addendum will be mailed, faxed or delivered only to those vendors who have returned an Acknowledgment of Receipt (form). Submit this form immediately. Addenda will also be posted on the City website.

RETURN OF SIGNED ADDENDA: You are required to sign and return each Addendum along with your offer. Failure to return a signed copy of each Addendum shall result in rejection of the offer.

IMPROPER CONTACT WITH CITY EMPLOYEES: All vendors submitting an offer (including the firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) will refrain from direct or indirect contact for the purpose of influencing or creating bias in the evaluation/selection process with any person who may play a part in the evaluation/selection process. This includes but is not limited to the evaluation committee, City Council Members, City Manager, Assistant City Manager(s), Deputy City Manager(s), Department Directors or other staff ("City Staff"). This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public, and to protect the integrity of the selection process. Vendor is responsible for bringing all questions and concerns to the Buyer identified on Page One of this document. If the Buyer is unresponsive, the vendor may contact the City Manager. A vendor may be disqualified if the vendor: (a) contacts a quorum of the Council or contributes to an open meeting law violation; (b) offers political support or gratuities in exchange for approval or support of vendor's offer; (c) obtains information from City Staff not available to other vendors which may result in an unfair advantage in the competitive procurement process and fails to notify Buyer of this fact within 48 hours thereafter; or (d) engages in any other egregious conduct.

SAMPLES: If you are requested to provide sample materials to the City, all samples submitted shall become the property of the City for testing purposes and/or future comparison at no charge to City. Any sample not destroyed by testing or retained for future comparison will be returned to you. (You may be required to pick up the sample from the City).

PROCUREMENT PROCESS: The City's procurement process is described in the Procurement Code Manual, which can be accessed at http://www.flagstaff.az.gov/index.aspx?nid=2991. You are not required, but may review this Manual. The Solicitation is intended to provide all relevant information related to the procurement so that you may submit an offer. In the event of any conflict, the procedure outlined in this Solicitation will be followed or the conflict will be resolved by an Addendum.

CONTRACT WITH CITY

FORM OF CONTRACT: The City's proposed form of contract is included as part of this RFP for your review (**Attachment A**). The final form of contract will be conformed to match this Solicitation prior to Contract award.

INSURANCE: The City's insurance requirements can be accessed at http://www.flagstaff.az.gov/index.aspx?nid=3054. The insurance requirements are an explicit part of the Solicitation and any resulting contract with the City. Please see the attached **Exhibit C**.

STANDARD TERMS AND CONDITIONS: The City of Flagstaff Standard Terms and Conditions can be accessed at http://www.flagstaff.az.gov/index.aspx?NID=3052 and are an explicit part of the Solicitation and any resulting contract with the City, unless otherwise specified in the Solicitation.

SPECIAL TERMS AND CONDITIONS: The City of Flagstaff Special Terms and Conditions (attached if applies) are an explicit part of the Solicitation and any resulting contract with the City.

EXCEPTIONS: You may request changes to the form of contract, insurance or any terms and conditions as part of your offer. (Use the Exceptions form)

CHANGES TO CONTRACT AFTER CONTRACT AWARD: Requests to change the contract after contract award, including but not limited to changes to insurance may be rejected by the City. The contract shall not be modified within the first year after contract award where: (a) an amendment may result in a competitive advantage that was not made available to other vendors; (b) requests for changes may delay commencement of performance.

FINANCIAL AND TAX CONSIDERATIONS FOR OFFER

QUANTITIES: Unless the Solicitation states otherwise (in the Solicitation Description or Special Terms and Conditions), the Contract will be non-exclusive, and the City makes no guarantees as to the quantities of materials or services to be purchased from a vendor.

PARTIAL AWARD: The City reserves the right to make multiple awards or to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

ALL CHARGES: The offer should separately list all applicable fees, charges, and taxes. The failure to include such information may cause the City to consider the offer as non-responsive or non-responsible.

UNIT PRICES: Please check all math prior to submittal of your offer. If the offer unit prices do not correspond with the multiplied subtotal or total, the unit price shall prevail unless there is a blatant clerical error in the unit price.

PAYMENT: The City's standard form of contract provides that payment will be made within 30 days following receipt and acceptance of material/ service and a correct invoice.

DISCOUNTED PAYMENT: You may offer discounted pricing if the City pays in less than 30 days. If you offer discounted pricing, the payment discount period shall be computed from the date the City receives the material/service or correct invoice, whichever is later, to the date the City's warrant is

mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts given for payment within ten (10) calendar days or more after City's receipt of the materials/service and correct invoice shall be deducted from the offer price when evaluating the offer. However, the City shall be entitled to take advantage of any payment discount offered by the offer provided payment is made within the discount period.

TRANSACTION PRIVILEGE (SALES)/USE TAX: State and local transaction privilege or use tax, as required, shall be indicated as a separate item on the offer. The State of Arizona and City of Flagstaff both impose a transaction privilege tax and use tax. Information concerning current tax rates can be found on the Arizona Department of Revenue website, www.azdor.gov. The City will not pay any taxes on invoices received unless an Arizona Transaction Privilege/Use Tax License Number is listed in the offer. The City also requires submittal of a City Business License Number from any vendor operating any portion of its business from a building located within City limits. The City will figure applicable taxes to offers received from out of state vendors who do not list an Arizona Transaction Privilege/Use Tax License number for tabulation and total cost evaluation.

FEDERAL EXCISE TAXES: The City is exempt from Federal Excise Tax, including the Federal Transportation Tax.

DELIVERY CHARGES: Delivery charges are considered non-taxable and exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges. **Delivery charges if separately stated are considered to be non taxable.**

FREIGHT CHARGES: Freight charges for delivery from place of production or the manufacturer to the Proposer either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight-in" and are not considered delivery. **Freight-in charges are taxable.**

EVALUATION OF OFFER AND CONTRACT AWARD

PROPOSAL MOST ADVANTAGEOUS TO THE CITY: The City will award a contract to a responsible and responsive vendor whose offer is the most satisfactory and advantageous to the City based on the Evaluation Criteria set forth in the Solicitation. Notwithstanding, any other provision of the RFP, the City reserves the right to waive any immaterial defect or informality; or reject any or all proposals or portions thereof; or reissue the RFP. A response to a RFP is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's RFP. Proposals do not become contracts unless and until they are formally executed as a separate contract document by the City (**See Attachment A – Sample Contract**).

EVALUATION CRITERIA: The following evaluation criteria will be used by the City's selection committee comprised of FMPO, City of Flagstaff, and representatives from the local observatories to score proposals based on the following:

The following evaluation criteria will be used for selection of a vendor.

RELATIVE IMPORTANCE

EVALUATION CRITERIA	***PERCENTAGE***
• Experience of the Team:	20 points
• Research Approach	40 points
o Creativity	
o Effectiveness of MOEs	
• Cost effectiveness of proposed work	15 points
• Residual Value to the City	15 points
• Transferability	10 points
TOTAL POINTS POSSIBLE	**100**

EVALUATION PROCESS: The City of Flagstaff's evaluation committee will review the initial offers and score them according to the Evaluation Criteria. To evaluate these outcomes, the City will evaluate research collaboration proposals based on:

- Experience and qualifications of the research team.
- Identification of the best path forward to finding and implementing a resolution to lighting issues. The manner in which MOEs are identified and presented will be considered here.
- Cost effectiveness, and for teams including universities, clear identification of indirect or administrative overhead for grant or project management.
- Potential for residual value to the City – the degree to which the proposed research project may leave in place light fixtures and other material for use by the City.
- Potential for transferability – the degree to which the project can be applied and scaled to other communities, establishing Flagstaff as a precedent for dark-sky applications of LED technology.

The committee will then:

a. Engage in discussions with highest scoring vendor. If the parties are unable to reach an agreement, the evaluation committee may engage in discussions with the second-highest scoring vendor.

   Or

b. Engage in discussions with the highest scoring vendors ("short list"). Following such discussions, the City may request such vendors to make "Best and Final" offers.

PURPOSE OF DISCUSSIONS: The purpose of discussions with a vendor (pursuant to Section 11.9 of the Procurement Code Manual) shall be to:

a. Determine in greater detail such vendor's qualifications;

b. Explore with the vendor the scope and nature of the project, the vendor's proposed presented approach, the relative utility of alternate methods of approach and method of performance;

c. Determine that the vendor will make available the necessary personnel and facilities to perform within the required time;

d. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services/equipment, the scope and complexity of proposed project and nature of such services/equipment.

In conducting discussions, there shall be no disclosure of any information derived from offers submitted by competing vendors.

REVISIONS TO OFFERS: If the City calls for "best and final" offers, those vendors will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of offers prior to contract award.

FINANCIAL STATUS: If requested by the City following the Closing Date and Time, you must provide a current audited financial statement, a current audited financial report, or a copy of a current federal income tax return. Failure or refusal to provide this information within five (5) business days after communication of the request by the City shall be sufficient grounds for the City to reject an offer, and/or to declare the offer as non-responsive or non-responsible.

REQUESTS FOR ADDITIONAL INFORMATION: After the Closing Date and Time, the City may request you to provide additional information related to your offer. Failure to provide this information within five (5) business days after communication of the request by the City will be grounds for the City to reject an offer, and/or to declare the offer as non-responsive or non-responsible.

RESERVATION OF RIGHTS: The City reserves the right to reject any and all offers, or any part thereof. The City reserves the right to accept any offer in whole or in part, or any line item, and to award a contract for purchase of the same. The City reserves the right to waive any clerical error or nonmaterial defect in the offer when it is deemed to be in the City's best interest. The City reserves the right to cancel or reissue a Solicitation.

NOTICE OF PROPOSED CONTRACT AWARD OR RECOMMENDATION: All vendors will receive an email notifying them of the City's proposed contract award or recommendation to reject all offers. This notice will be posted as part of the agenda for the regular meeting of the City Council, on the City website. The agenda is typically posted at least one (1) week prior to the Council Meeting.

PUBLIC RECORDS: Offers received by the City are available for public inspection after a contract has been awarded, subject to any confidentiality restrictions.

PROTESTS: If you wish to protest the Solicitation, a protest shall be in writing and shall be personally delivered or served upon the City Purchasing Director. A protest related to the Solicitation (such as specifications, requirements, or scope) shall be received by the City Purchasing Department before the Closing Date and Time. A protest of a proposed award or of an award shall be personally delivered or served upon the City Purchasing Director within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:
a. The name, address and telephone number of the protester;

b. The signature of the protester or its representative;
c. Identification of the solicitation or contract number;
d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
e. The form of relief requested.

OFFER FORMAT

QUALITY OF OFFER: The City will evaluate the quality of the offer as evidence of your qualifications and competence. The offer should be: (1) complete, (2) thorough, (3) accurate, (4) comply with Solicitation instructions, (5) organized, and (6) concise.

PAGE LIMIT: The offer **shall not exceed a total of 20 pages**, except the Cover, Cover Letter, and City Forms will not be counted in the page limit. Any pages attached to the City Forms shall be counted toward the page limit. The City may reject an offer that exceeds the page limit as non-responsive.

NUMBER OF COPIES: Submit **FOUR (4) ORIGINAL HARD COPY AND AN ELECTRONIC VERSION IN ADOBE ACROBAT ® (PDF) ON EITHER A COMPACT DISC OR DISC DRIVE** of your offer. The original hard copy must be bound.

MATERIALS USED FOR OFFER: The offer must be submitted in packaging/packing materials that meet at least one of, and preferable all of the following criteria: (a) Made from 100% post-consumer recycled materials; (b) Non-toxic; (c) Bio-degradable; (d) Reusable; (e) Recyclable. The original hard copy should be printed on recycled paper (minimum 50% post-consumer waste) and printed double-sided.

OFFER FORMAT:

Cover:
The cover should contain the following:
- Solicitation Number
- Solicitation Name
- Closing Date and Time
- Company name (and logo if desired)
- Other information/graphics as desired

Tabbed Sections of Bound Proposal:

Cover Letter (1 page)

All proposals must follow the general guidelines and format outlined below exactly. Proposals that do not follow these criteria will be returned without review.

General guidelines

To ensure easy readability, proposals should use at least one-inch page margins and 12-point font of an easily legible font face. The content of Section 5.2.2 below, including all graphs, figures, and tables, may not exceed 20 pages.

Proposal contents

The proposal should present a plan to provide a comprehensive recommendation for a transition from legacy technology (LPS and HPS, and non-dark-sky-compliant lighting that may be in use in Flagstaff or other communities) to LED. The City of Flagstaff and Lowell Observatory see this as an opportunity for proposers to devise an innovative solution to support municipal priorities while maintaining exemplary dark-sky practice and policy.

Title and Abstract

The first page of the proposal should provide a descriptive title and an abstract of no more than 300 words. The abstract should provide an effective summary statement of the problem addressed, identify the solution, and specify the objectives and methods of the proposed solution.

Project description

The project description must contain four sections in the order given below. These sections are designed to encourage a step-by-step evaluation of the evolution of an LED-based, dark-sky lighting solution in Flagstaff, and to create a roadmap for other communities that wish to embark on similar efforts. Proposers must source in the reference section all statements from the primary or secondary literature, case studies, and municipal codes and strategic plans.

Evaluation of lighting pole infrastructure in Flagstaff

As stated above, the City desires to maintain existing lighting pole infrastructure in the interest of cost effectiveness. Proposers should provide a plan and timeline for assessment of this infrastructure. The City will provide the selected team with its lighting pole inventory documentation for the purposes of this evaluation. Critical questions include

- Where mast arm overloading by 180 watt LPS fixtures is of critical urgency
- Where poles themselves require engineering or replacement

Evaluation of LPS lighting technology

Proposers must outline a plan to evaluate the state of low pressure sodium lighting in industry. This should include plans and a timeline to provide

- A review of LPS usage generally, showing usage trends and evolution of demand
- A projection for the future availability, cost, and efficiency of LPS lighting, to establish timescales on which LPS must be phased out in favor of LED

Evaluation of LED lighting options

The proposal must provide a plan for evaluation of LED lighting technology. Options that must be explored include but are not limited to:

- FLED (500 nm cutoff)
- PCALED (530 nm cutoff)
- FLED550 (550 nm cutoff)

- NBALED (20 nm band width at 590 nm)
- Other NBALED-analogous options (e.g., narrow band centered at 620-630 nm)

Parameters that must be evaluated are:

- Current efficiency
- Prospects and timescale for improvements in efficiency
- Cost implications to the City of implementation of the various options if it
    - Replaces 180-watt LPS fixtures in critical engineering areas identified in section 5.2.2.1 above
    - Replaces all current 180-watt LPS fixtures citywide
    - Replaces additional HPS fixtures citywide
- Examination of hybrid solutions for LPS/HPS replacement is acceptable and welcomed

Plan for transition of lighting in Flagstaff from LPS/HPS to LED

Narrow band LED lighting preserves the viability and the missions of the local observatories. Proposers should describe a clear path to transitioning Flagstaff from LPS to dark-sky preserving LED. Elements of this plan should include, but are not limited to

- Maintenance of LPS through mechanical solutions (e.g., additional support of mast arms, removal of mast arms and attachment of fixtures directly to poles) while LED solutions are explored and implemented, and timescales for viability of such maintenance
- Temporary installation of broad-spectrum LED (e.g., FLED) in areas of critical urgency identified above while narrower band (PCALED, FLED550, NBALED, orange NBALED) options and improvements are explored
- Proposals for installation of the various types of LED options for public evaluation
- Timescale and limits of improvement in narrow band LED technology
- Plan for phased conversion of LPS and HPS streetlight fixtures to a mix of LED that maintains the dark sky standards in the city
- Projections for change in sky glow under the various scenarios presented

References cited

All references included in the Project Description should be assembled in an alphabetical list. Proposers may use a citation style of their choosing, but they should be consistent throughout the reference list.

Project personnel

Proposers should provide an explanation of the proposed personnel arrangements and the biographical data sheets for each of the main contributors to the project. The explanation should specify how many persons at what percentage of time and in what academic categories will be participating in the project. If the program is complex and involves people from multiple firms or institutions, the organization of the staff and the lines of responsibility must be made clear.

Budget and Budget Narrative

Proposers should present a budget including the following line items.

- Effort level and salary or hourly rate for all personnel involved in the project (FTE levels expected for exempt personnel, hours to be invested for non-exempt personnel).
- Total fringe benefits.
- Direct costs including but not limited to
    - Travel and lodging
    - Computers, software, and software licenses
    - Equipment
    - Subcontracts and consultant fees
    - Supplies
    - Administrative costs
- Indirect costs, accompanied by documentation of negotiated rate as appropriate.
- A budget narrative of 1-2 pages should accompany the full budget.

A. **Offer (form)** (attach signed Solicitation Addenda)

B. **Vendor Questionnaire (form)** (attach copies of licenses)

C. **References (form)**

D. **Exceptions (form)** (attach information)

E. **Confidential Materials (form)**

F. **Cooperative Purchases (form)**

G. **Disclosure (form); Declaration Related to Solvency (form); Declaration Related to Gratuities (form); Declaration of Non-Collusion (form)** (attach explanations)

All completed forms must be submitted with offer!

ACKNOWLEDGMENT OF RECEIPT AND REQUEST FOR ADDENDA (FORM)

SOLICITATION FOR: FMPO-STREET LIGHTING FOR ENHANCING DARK SKIES, (SLEDS)

SOLICITATION NO.: 2015-69

CLOSING DATE AND TIME: Wednesday, July 15th, 3:00 PM

Please complete this form and return it to the City Buyer via e-mail at cschroeder@flagstaffaz.gov, facsimile at (928) 213-2209 or mail it to the Buyer at the address listed above to acknowledge your receipt of this Solicitation and **to receive notification of any addenda or responses to questions regarding this Solicitation.**

Company Name: _____

Name / Title of Contact: _____

Address: _____

_____

_____

Phone #: (____) _____ Fax #: (____) _____

E-Mail Address: _____

Signature: _____ Date: _____

NO RESPONSE (FORM)

SOLICITATION FOR: FMPO-STREET LIGHTING FOR ENHANCING DARK SKIES, (SLEDS)

SOLICITATION NO.: 2015-69

CLOSING DATE AND TIME: Wednesday, July 15th, 3:00 PM

If you are not responding to this Solicitation, please complete and return this form to the Buyer at the address listed above, fax to (928) 213-2209 or email to cschroeder@flagstaffaz.gov.

Company Name:_____

Address: _____

City: _____ State: _____ Zip: _____

Phone:_____ Fax:_____

Reason for NO OFFER:

- ☐ Do not provide the materials or services requested
- ☐ Unable to respond due to current staff availability and/or business conditions
- ☐ Insufficient time
- ☐ Unable to meet terms, conditions, specifications or requirements as described within the solicitation due to:

  _____

  _____

- ☐ Other:_____

This *NO OFFER* response is authorized by: _____
Signature

_____
Title

Please check one:

- ☐ Retain our company on the mailing list for future solicitations.
- ☐ Please remove our company from the mailing list.
- ☐ Please remove our company from this commodity or service only.

OFFER (FORM)

TO THE CITY OF FLAGSTAFF:

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

Representative or Contact Person's Name:_____

Telephone:_____ Fax:_____

Offeror (Vendor):_____

Address:_____

City, State, Zip:_____

_____ _____
Signature of Person Authorized to Sign Offer Title

_____ _____
Printed Name Date

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

VENDOR QUESTIONNAIRE (FORM)

Vendor:

Company Name: _____

Doing Business As (if different than above): _____

Address: _____

City: _____ State: _____ Zip: _____-_____

Phone: _____ Fax: _____

E-Mail Address: _____ Website: _____

Taxpayer Identification Number: _____

Mailing Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____-_____

Vendor Contact for Questions about Offer:

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

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

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

OR

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

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

Business License Information (check one):

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

OR

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

Flagstaff Business License Number:_____

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

_____

Insurance (who will provide required coverages):

Insurance Company Name_____.

Contact & Phone Number_____

Subcontractors:

List any subcontractors to be utilized, if any.

_____

REFERENCES (FORM)

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

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Date, Size, Complexity, Scope and Duration:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Date, Size, Complexity, Scope and Duration:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Date, Size, Complexity, Scope and Duration:	

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Date, Size, Complexity, Scope and Duration:	

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Date, Size, Complexity, Scope and Duration:	

EXCEPTIONS (FORM)

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

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

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

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

Exceptions (INITIAL ONE):

_____ No exceptions

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

CONFIDENTIAL MATERIALS (FORM)

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

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

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

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

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

Confidential/Proprietary Materials (INITIAL ONE):

_____ No confidential/proprietary materials have been included with this offer

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

COOPERATIVE PURCHASES (FORM)

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

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

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

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

_____ Yes _____ No (INITIAL ONE)

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

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

DISCLOSURE (FORM)

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

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

1. Any offense indicating a lack of business integrity or honesty, including fraud, bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, theft, price fixing, proposal rigging, restraint of trade or other antitrust law violation? YES_____ NO_____

2. Violation of the terms of any public contract? YES_____ NO_____

3. Failure to pay any uncontested debt to any government agency? YES_____ NO_____

4. Violation of any law or regulation pertaining to the protection of public health or the environment? YES_____ NO_____

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

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

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

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

YES_____ NO_____

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

_____ _____ _____
Signature Title Date

DECLARATION RELATED TO SOLVENCY (FORM)

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

_____ Yes _____No (INITIAL ONE)

DECLARATION RELATED TO GRATUITIES (FORM)

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

_____ _____
Signature of Person Authorized to Sign Offer Title

DECLARATION OF NON-COLLUSION (FORM)

I hereby verity and declare that:

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

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

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

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

Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

_____ _____
Signature of Person Authorized to Sign Offer Title

Memorandum

16. A.

CITY OF FLAGSTAFF

To:	The Honorable Mayor and Council
From:	Roger Eastman, Zoning Code Administrator
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE:

Policy discussion on proposed amendments to Chapters 10-10 and 10-20 of the Flagstaff Zoning Code.

DESIRED OUTCOME:

At this work session, staff will be seeking Council direction on any policy issues associated with proposed amendments to Chapter 10-10 (Title, Purpose and Jurisdiction) and Chapter 10-20 (Administration, Procedures and Enforcement) of the Flagstaff Zoning Code.

EXECUTIVE SUMMARY:

This fall the Council and staff will commence a review of proposed amendments to the Flagstaff Zoning Code in a series of ongoing work sessions organized by chapter. In the work sessions, staff will introduce the more substantive amendments to the Council explaining the reason for them and why the new amendment is being proposed. The Council will be able to identify any policy issues that warrant a more in-depth discussion, either at the current work session, or in a future work session. The policy issues identified by staff for the Council's consideration are provided in the table below.

INFORMATION:

POLICY AMENDMENTS:

The amendments identified by staff that may require a more in-depth policy discussion with the Council are summarized in the table below (The Council may also identify additional policy issues as they review the proposed amendments):

Policy Question	*Section No.:*	*Zoning Code Page No.:*
Neighborhood Meetings Required: *Should the number of required neighborhood meetings held by an applicant be increased from one to two or more?* *Should the applicant also be required to inform the residents living on the subject property of the neighborhood meeting?* *Should the record of proceedings of the neighborhood meeting be forwarded to all attendees for their review/information?*	*10-20.30.060 Neighborhood Meeting*	*20.30-5*

Notice Requirements: ***Should the legal notice also be sent to the residents living on the subject property to inform them of upcoming public hearing for a new development?*** ***Should the responsibility for posting the subject property and mailing to surrounding property owners be shifted from City staff to the applicant?***	***10-20.30.080 Notice of Public Hearings***	***20.30-11***

COUNCIL GOALS:
7) Address key issues and processes related to the implementation of the Regional Plan
8) Improve effectiveness of notification, communication, and engagement with residents, neighborhoods and businesses and about City services, programs, policies, projects and developments.

REGIONAL PLAN:
The Flagstaff Regional Plan 2030 supports the update and amendment of the Flagstaff Zoning Code with the following goals (policies are only included where needed to clarify a goal):

Goal NH.6. Neighborhood conservation efforts of revitalization, redevelopment, and infill are compatible with and enhance our overall community character.

Goal ED.1. Create a healthy environ-ment for business by ensuring transparent, expeditious, and predictable government processes.
Policy ED.7.1. Support planning, design, and development that positively, creatively, and flexibly contribute to the community image.

Background information on the adoption of the Zoning Code in November 2011, and the process and types of amendments proposed to the Zoning Code now that it has been in active use for almost four years, is included in the first attachment.

A summary of the Planning Commission's more significant recommendations on the amendments is included in the second attachment.

Also attached are two documents that contain all the amendments proposed in Chapters 10-10 (Title, Purpose, and Jurisdiction) and 10-20 (Administration, Procedures and Enforcement), respectively. Full details of all the proposed amendments are included in these documents, including an explanation of why the amendment is proposed. This may be easily identified because it is written in *italic* font.

SUBSTANTIVE AMENDMENTS
Chapter 10-10 Title, Purpose and Jurisdiction
Staff has not identified any substantive amendments in Chapter 10-10 (Title, Purpose and Jurisdiction). The Planning and Zoning Commission had no substantive comments or discussion on the proposed amendments to Chapter 10-10.

Chapter 10-20 Administration, Procedures and Enforcement
A summary of the substantive amendments to this chapter is provided in a table on the first page with a brief description of the amendment and on what page it may be found.

The substantive amendments identified by staff that may require a more in-depth policy discussion with the Council are described below (The Council may also identify additional policy issues as they review the proposed amendments):

1. Section 10-20.30.060 (Neighborhood Meeting): Increases the number of required neighborhood

meetings to a minimum of two, but allows the Director to waive the second meeting. Also includes a requirement to inform residents living on the subject property. Further, the applicant is required to keep detailed notes of the meeting's outcome and to distribute them to the people who attended the meeting.

Current Zoning Code:
Requires an applicant to conduct a neighborhood meeting, and allows the Planning Director to waive this meeting.
Does not specifically state that the Planning Director may expand the notification area for the neighborhood meeting.
Does not provide for notification of a proposed development to be sent to residents/tenants who reside on the subject property.
Requires a record of proceedings to be submitted to the Planning Director.

Proposed Amendment:
Would require an applicant to conduct a minimum of two neighborhood meetings, and allows the Planning Director to waive the second or additional neighborhood meetings if there were no substantive issues identified in the first meeting or if there was minimal participation at the first meeting.
Specifically states that the Planning Director may expand the notification area for the neighborhood meeting to ensure surrounding residents are informed of the meeting for the proposed development.
Requires that residents/tenants who reside on the subject property are also informed of a proposed development on that property.
Requires a record of proceedings to be submitted to the Director as well as to all the people who recorded their names on the sign-in sheet for the neighborhood meeting.

2. Section 10-20.30.080 (Notice of Public Hearings): Responsibility for posting the subject property and mailing notices to surrounding property owners and residents living on the subject property is shifted from the City to the applicant. The City will continue to assume responsibility for providing legal notice in the Arizona Daily Sun.

Current Zoning Code:
Requires the City to place the public hearing notice in the Arizona Daily Sun, to post the subject property, and to mail notice to surrounding property owners.
Does not specifically state that the Planning Director may expand the notification area to property owners beyond 300 feet from the subject property.
Does not provide for notification of a proposed development to be sent to residents/tenants who reside on the subject property.

Proposed Amendment:
Would continue to require the City to place the public hearing notice in the Arizona Daily Sun, but shifts the responsibility to post the subject property and to mail notice to surrounding property owners to the applicant.
Specifically states that the Planning Director may expand the notification area for the distribution of the legal notice to ensure more residents are informed of the upcoming public hearing.
Requires that residents/tenants who reside on the subject property are also informed of a proposed development on that property.

Conclusion:
In June 2015, the US Supreme Court rendered it's decision in the *Reed v Town of Gilbert* sign code case. Staff has been diligently studying the court's opinion and working on first drafts of possible revisions to the Sign Code with specific reference to temporary signs. In October the Council will hold an executive session with staff to discuss the legal implications of the *Reed* case to the City of Flagstaff's

Sign Standards. Additional amendments to the various provisions of the Zoning Code may be required and will be presented to the Council in the months ahead concurrent with the other amendments proposed to the Zoning Code.

The working calendar has been updated with the following suggested dates for future council policy discussion on the proposed amendments to the Zoning Code;

September 15	work session - Chapters 10-10 and 10-20	
September 29	regular - Chapter 10-30 and 10-40	
October 6	work session - Chapter 10-40 continued	
October 13	regular - Chapter 10-40 continued and Chapter 10-50	
October 20	work session - Chapter 10-50 continued	
October 27	regular - Chapter 10-50 continued	
November 3	work session - Chapters 10-60 through 10-90	
November 10	regular - Hold for Zoning Code as needed	
November 17	work session – Zoning Code as needed	
November 24	regular - Public Hearing/Resolution/First reading of ordinance	

If you have questions, or require clarification on the contents of this staff summary, please contact Roger E. Eastman, AICP, Comprehensive Planning and Code Administrator at reastman@flagstaffaz.gov or (928) 213-2640.

Attachments: Background Information
Summary PZ Recommendations
Chapter 10-10 Amendments
Chapter 10-20 Amendments

Attachment #1 to Staff Summary – September 15, 2015

CITY of FLAGSTAFF
2015 Zoning Code Amendments

Background to Amendments to the Flagstaff Zoning Code

September 9, 2015

The City Council adopted the Flagstaff Zoning Code (City Code Title 10) on November 1, 2011 to replace the former Land Development Code. Amendments to the Zoning Code have been anticipated since that time, and over the past few years, City planning staff, as well as staff that work with the Zoning Code on a regular basis (i.e. from the engineering, traffic, stormwater, housing or legal sections/divisions), have documented sections of the Code where possible amendments would be required. Also, ideas for amendments have been submitted by interested Flagstaff residents and design professionals, and these have been compiled with staff's revisions into a comprehensive document of suggested revisions to the Code.

The Planning and Zoning Commission held three work sessions on the proposed amendments – April 29, 2015 (the required citizen review session), May 13, 2015 and May 27, 2015 – to review, discuss and provide comment and feedback to staff on the proposed amendments. On June 10, 2015 the Commission held a public hearing in which they heard from some residents and continued their review and discussion. Finally, on June 24, 2015 the Commission unanimously moved to recommend that the Council approve the proposed amendments as presented by staff together with additional recommended changes. These amendments were provided to the Council in early-July when they were also posted to the Zoning Code webpage – www.flagstaff.az.gov/zoningcode.

At a work session on June 30th the Council and staff discussed a path forward for the Council's review of the proposed amendments to the Zoning Code. It was agreed that the best approach (based on the Council experience with the review of the Zoning Code before its adoption in November 2011) was as follows:

- July 14th Executive Session to discuss the possible implications for Proposition 207 claims relative to some of the proposed amendments. (Completed)

- In July staff will provide the Council with the Planning and Zoning Commission's final recommendation on the proposed Zoning Code amendments (assuming these are finalized on June 24th) so that the Council has the opportunity to review them over the summer recess. (Completed)

- In September Council and staff will commence a review of the proposed amendments in a series of work sessions. The amendments in some chapters may be combined into one work session (e.g., Chapters 10-10 through 10-20), and other work sessions may be scheduled for one chapter at a time (e.g. Chapter 10-40). In the work sessions, staff will introduce the more substantive amendments to the Council explaining the reason for them and why the new amendment is being proposed. Furthermore, a summary of the Planning Commission's discussion and recommendations on the amendments will be presented. As a result of this staff presentation the Council should be able to identify any policy issues that warrant a more in-depth discussion, either at the current work session, or in a future work session. Council may invite members of the public to

comment on the amendments to each chapter at the work sessions. Staff will ensure that the work sessions are well advertised so that residents and local stake holder groups may attend.

- Following the work sessions on the proposed amendments, and the conclusion of any policy recommendations by the Council, staff will schedule a public hearing as required by Arizona law and the Zoning Code. Thereafter, first and second readings of the ordinance adopting the proposed amendments to the Zoning Code will be scheduled.

The proposed amendments fall into three general categories:

Minor amendments:
These include clarification of language, insertion of appropriate cross-references, rearranging of text so that it is more logically organized in the Code (without substantive amendment to intent), or correction of a standard that was incorrectly stated.

Major or substantive amendments:
These include a revision to a development standard, addition of a new land use in the land use tables of Chapter 10-40 (Specific to Zones), addition of a new standard (typically more restrictive than the current Code), addition of a new or changed process/procedure, or addition of a development standard from the former Land Development Code that was not brought forward into the current Zoning Code. Some of these amendments may involve a policy decision by the Council after consideration of the staff's, Commission's, and public's recommendations and ideas on the subject.

Non-substantive clerical and grammatical amendments:
Staff has developed an ongoing list of non-substantive clerical and grammatical edits that do not change the intent of a Code provision, but which do correct cross-references, incorrect word use, and grammatical errors.

Attachment #2 to Staff Summary – September 15, 2015

CITY of FLAGSTAFF
2015 Zoning Code Amendments

Summary of the P&Z Commission's Recommendations on the Amendments to the Flagstaff Zoning Code

September 9, 2015

The Planning and Zoning Commission held three work sessions on the proposed amendments – April 29, 2015 (the required citizen review session), May 13, 2015 and May 27, 2015 – to review, discuss and provide comment and feedback to staff on the proposed amendments. On June 10, 2015 the Commission held a public hearing in which they heard from some residents and continued their review and discussion. Finally, on June 24, 2015 the Commission unanimously moved to recommend that the Council approve the proposed amendments as presented by staff together with additional recommended changes. These amendments were provided to the Council in early-July when they were also posted to the Zoning Code webpage – www.flagstaff.az.gov/zoningcode.

The Commission's concerns and final recommendations on the amendments to Chapter 10-20 are described in *italic font* within the explanation of why the amendment is proposed, and may be identified by the *"**(P&Z)**" notation*. Specific topics that warranted the most discussion are listed below:

Page 20-3: 10-20.30.020.E (Availability of Materials) – As a result of the Commission's suggestions this paragraph was completely rewritten.

Page 20-5: 10-20.30.060.D (Neighborhood Meeting Notification) – This amendment reflects a suggestion from a member of the public that was supported by the Commission.

Page 20-8: 10-20.30.080.A.5 (Notice Requirements) – The Commission offered suggestions for additional noticing tools (e.g. the use of QR Codes) that will be incorporated into staff's processes and procedures.

Page 20-9: 10-20.40.030.D (Conditional Certificates of Occupancy) – A minor amendment suggested by the Commission was added to paragraph 1.b.

Page 20-13: Table 10-20.40.090.A – Based on the Commission's recommendation, additional types of Minor Modifications have been added to this Table (Row # 25 and 26).

Page 20-15: 10-20.40.140.B.1 (Site Plan Review) – Includes a clarification to subparagraph a. recommended by the Commission.

Proposed Amendments to the Zoning Code
Final Planning and Zoning Commission Recommendation

First created: October 26, 2011
Date of previous update: July 19, 2013
Most recent updates: January 27, 2015; May 2, 2015: May 27, 2015; June 10, 2015; June 24, 2015

Chapter 10-10: Title, Purpose, and Jurisdiction

Division 10-10-10: Title
10-10.10.020 Zoning Map

- Page 10.30-1

A. **Adoption**

The Zoning Map, which divides the City of Flagstaff (City) ~~is hereby divided~~ into zones, ~~as shown on the Zoning Map which,~~ together with all explanatory notes provided on the Zoning Map, is adopted by reference and declared to be a part of this Zoning Code. ~~The Zoning Map shall be kept on file in the office of the Planning Director (Director).~~

B. **Zone Boundary or Classification Changes**

If, in compliance with the provisions of the Zoning Code, changes are made to~~in~~ zone boundaries, zone classifications, or other matters set forth on the Zoning Map, such changes shall be entered on the Zoning Map within 30 days following the effective date of the ordinance adopting the change.

C. **Maintenance of Zoning Map**

The Zoning Map shall be kept on file in the office of the Planning Director (Director), and.~~The Zoning Map~~ shall be maintained in electronic format by the Information Technology Division, as authorized by the Director.

These essentially clerical amendments improve the readability of this Section.

Division 10-10-20: Legislative Intent and Purpose
10-10.20.020 Purpose of Zoning Code

- Page 10.30-4

~~C. This Zoning Code is adopted in compliance with the requirements and authority granted to the City by the Arizona Constitution, Article XIII, Arizona Revised Statutes, Title 9, Chapter 4, and the City Charter in order to carry out the purposes stated in those laws.~~

This text is also included on Page 10.30-1 and, therefore, may be deleted.

Division 10-10.30: Authority
10-10.30.030 Applicability

- Page 10.30-2

C. **Property Owned by Federal or State Agencies**

The provisions of this Zoning Code shall not apply to property owned by the United States of America or any of its agencies, ~~nor to~~ the State of Arizona, or ~~to~~ any local agency not required to comply with this Zoning Code by State law ~~when the proposed use or structure is for a governmental purpose~~. All exempt agencies are encouraged to

design any new developments in compliance with the standards set forth in this Zoning Code and to cooperate in meeting the goals and objectives of this Zoning Code and the General Plan.

The text shown to be deleted above is redundant and may be deleted.

10-10.30.040 Rules of Interpretation

- Page 10.30-3

C. Whenever any provisions within this Zoning Code impose overlapping or contradictory regulations, or whenever any provisions of this Zoning Code and any other code, rule, or regulation impose overlapping or contradictory regulations, the provision which is more restrictive or imposes higher standards or requirements shall govern, so that in all cases the most restrictive provision shall apply.

This amendment ensures that if there are internal conflicts within the Zoning Code itself, the more restrictive standard or requirement would apply.

D. It is not intended that any provision of this Zoning Code nor any act by an administrative official or Review Authority shall restrict or impair the right of any ~~private or public~~ person to bring ~~any~~ legal or equitable action for redress against nuisances, hazards, or injuries to persons or property.

This essentially clerical amendment removes confusing language from this sentence.

10-10.30.070 Calculation of Fractions

- Page 10.30-4

***(P&Z)**: Following Commission discussion on this Section, no revisions are proposed and staff recommends that the original text should remain unchanged.*

10-10.30.090 Rules of Transition

- Page 10.30-5

The following rules shall apply to all properties in the City on the effective date of this Zoning Code:

B. **Developments with Approvals or Permits**

1. **Building Permit Issued Prior to Effective Date**

Any building, structure, or sign for which a lawful Building Permit has been~~is~~ issued or for which a complete Building Permit or Sign Permit application ~~as determined by the Building Official or Director~~ has been filed at least one day prior to the effective date of this Zoning Code or any subsequent amendment to the Code, may be constructed and completed in conformance with the permit and other applicable approvals, permits and conditions, even if such building, structure or sign does not fully comply with this Zoning Code or any subsequent amendment to the Code. If construction is not commenced in compliance with the applicable permit terms, the Building Official may grant an extension in compliance with the provisions of the Building Code. If the extension does not state a specific time, it shall be an extension for six months. If the building, structure, or sign is not completed in conformance with the Building Permit and any granted extension, then the building, structure, or sign shall be constructed, completed or occupied only in compliance with this Zoning Code or any subsequent amendment to the Code.

The amendments in this Subsection clarify that any project for which a building permit or sign permit has been filed may be constructed even if the development or sign for which the permit may be issued does not comply with the Zoning Code or any subsequent amendment to the Code.

2. **Final Site Plan Review and Approval Prior to Effective Date**
   An applicant whose development has received Site Plan Review and Approval prior to the effective date of this Zoning Code or any subsequent amendment to the Code may file an application for a Building Permit in compliance with the approved site plan and any conditions of approval, even if the development does not comply with the provisions of this Zoning Code or any subsequent amendment to the Code. Upon approval of construction plans for the development, a Building Permit may be issued. ~~Site Plan Review and~~ Approvals granted ~~for developments approved~~ prior to the effective date of this Zoning Code or any subsequent amendment to the Code shall be valid for one year from the date of approval. No time extensions shall be permitted.

These minor amendments eliminate redundant language in this Subsection and update the provisions regarding the effective date of the Zoning Code or any subsequent amendment to the Code.

- Page 10.30-6

C. **Applications Filed Prior to the Effective Date**

1. Complete applications for new developments including, but not limited to Site Plan Review and Approval, Conditional Use Permits, and preliminary plats, that are filed prior to the effective date of this Zoning Code or any subsequent amendment to the Code may be approved under the provisions of the zoning code previously in effect (1991 Land Development Code). Applicants may also elect to develop in compliance with the provisions of this Zoning Code~~, and in that case shall comply with all provisions of this Zoning Code~~. If a Building Permit application is not filed within one year of the date of approval of the application for new development, the approval shall expire. No time extensions shall be permitted.

2. Applications for amendments to the Zoning Map filed prior to the effective date of this Zoning Code shall be governed by the provisions of the 1991 Land Development Code unless the applicant elects to comply with this Zoning Code.

These minor amendments eliminate redundant language in this Subsection and update the provisions regarding the effective date of the Zoning Code or any subsequent amendment to the Code.

Division 10-10-40: Severability

10-10.40.010 Severability

- Page 10.40-1

B. ~~The invalidation of the application of~~ A determination by order of any court of competent jurisdiction that any section, sentence, clause, phrase, word, portion, or provision of this Zoning Code does not apply to any particular property or structure, or to any particular properties or structures, ~~by order of any court of competent jurisdiction~~ shall not affect the application of such section, sentence, clause, phrase, word, portion, or

provision to any other property or structure not specifically included in the court's order.

This minor amendment improves the readability of this sentence.

Division 10-10-50: Effective Date

10-10.50.010 Effective Date

- Page 10.50-1

~~A. As of the effective date of this Zoning Code, all codes, or portions of such codes, applicable to zoning, and land use within the incorporated areas of the City which are inconsistent with the provisions of this Zoning Code are hereby repealed to the extent of such inconsistency.~~

~~B~~. This Zoning Code is hereby enacted as~~and shall be~~ the zoning ordinance for the City~~,~~ and shall be ~~in full force and effect from and after its passage, the~~ effective ~~date being~~ as of 12:01 A.M., December 5, 2011, unless this Zoning Code is referred to a vote of the people, in which case it will take effect, if at all, 10 days after the election approving its adoption~~this Zoning Code~~.

This Section was written to clearly define when the new Zoning Code would become effective following the Code's adoption by the City Council on November 1, 2011. These minor amendments eliminate redundant language, change the tense to the past to reflect that the Code has been adopted and is now in effect, and to improve the readability of this Section. Paragraph A may be deleted as it is now redundant.

Proposed Amendments to the Zoning Code
Final Planning and Zoning Commission Recommendation

First created: October 26, 2011
Date of previous update: July 19, 2013
Most recent updates: 1/27/2015; 2/2/2015; 2/20/2015; 4/16/2015; 4/23/2015; 5/2/2015; 5/27/2015; 6/10/2015; 6/24/2015

Chapter 10-20: Administration, Procedures and Enforcement

A summary of major/substantive amendments (e.g. where a new process or procedural requirement is proposed, a standard is changed, etc.) is provided in the table below:

Section No.:	Zoning Code Page No.:	Brief Description	Page No. (this document):
10-20.30.050 Concept Plan Review	20.30-4	Applicability: Expands the projects that may be reviewed through Concept Plan Review rather than the more time consuming Site Plan Review process.	3
10-20.30.060 Neighborhood Meeting	20.30-5	Neighborhood Meetings Required: Increases the number of required neighborhood meetings to two, but allows the Director to waive the second meeting. Also includes a requirement to inform residents living on the subject property.	4
10-20.30.080 Notice of Public Hearings	20.30-11	Notice Requirements: Includes a requirement to inform residents living on the subject property. Further, responsibility for posting the subject property and mailing to surrounding property owners is shifted from City staff to the applicant.	6
10-20.40.060 Development Agreements	20.40-12	Consideration and Decision; Staff Responsibilities: Defines when the terms of the development agreement may be negotiated, i.e. after impact analyses are accepted.	11
10-20.40.090 Minor Modifications to Development Standards	20.40-15	Applicability: More precisely defines the Zoning Code Administrator's role in reviewing these requests. The subsection on modifications to site plans is moved to Section 10-20.40.140 (Site Plan Review and Approval). Further, additional standards are included as eligible for modification.	12
10-20.40.150 Temporary Uses	20.40-35	New section to allow the temporary occupancy of a recreation vehicle while a residence is under construction.	18
10-20.50.040 Procedures	20.50.9	Protest Procedures: Establishes a time frame in which a protest of a zone change must be filed to provide sufficient time to provide it to the Council in a timely manner.	20
10-20.50.040 Procedures	20.50.10	Conditions of Approval: Requires compliance with resource protection standards even if the subject property is not located in the RPO.	21

Division 10-20.30: Common Procedures

Section 10-20.30.020 Application Process

- Page 20.30-2

B. **Application Content**

3. The Director shall specify the form and content of applications required by this Zoning Code. The Director may require supporting materials as part of the application~~,~~ including, but not limited to, legal descriptions, statements, photographs, plans, drawings, renderings, models, material samples, and other items necessary to describe the existing situation and the proposed development. The applicant is~~shall be~~ responsible for the accuracy and completeness of all information submitted to the City. The Director may waive the submission of specific material or information ~~if~~ upon a finding that ~~he finds~~ it is not needed to reach a decision on the application.

4. Prior to and as a condition of final approval of a change to any land use regulation or standard, Zoning Map amendment, or Conditional Use Permit, the Director may require the owner to execute a Waiver of Claims for Diminution in Value (City Code Title 1 (Administration), Chapter 1-17 (City Finances)) in compliance with the A.R.S. § 12-1131 through 12-1138.

(P&Z) *The amendment in paragraph 4 suggested by the P&Z Commission clarifies that the Prop 207 waiver is also required for zone changes and Conditional Use Permits. Upon further consultation with the City Attorney's office, staff recommends that the sample language used by some Valley cities (e.g. City of Buckeye) should not be inserted on the application form, and rather that a cross reference to the Zoning Code Section above should be included on this form. June 24th – Commissioner Turner stated for the record that he felt no applicant should give up their rights by signing a Proposition 207 Waiver.*

- Page 20.30-2

C. **Determination of Administrative Completeness and Substantive Review**

1. After receiving an application accompanied by the required fee (See Appendix 2 (Planning Fee Schedule)), all applications shall be reviewed in compliance with the time frames for administrative and substantive review on file with the Planning Section, as required by A.R.S. § 9-832 et.seq.

2. In order to ~~the Director shall~~ determine if the application is complete within the established administrative review period~~in compliance with the review schedule on file with the Planning Section. In order to make the completeness determination~~, the Director may submit the application to other City ~~departments or~~ divisions, as appropriate. The Director shall notify the applicant if the application is complete and has been accepted for processing. If the application is incomplete, the Director shall identify the items that must be filed to complete the application and return it to the applicant. No application will~~shall~~ be reviewed and no public hearings will~~shall~~ be scheduled until an application is determined to be complete. An applicant may appeal the Director's determination of completeness to the Community Development Director (See Section 10-20.80 (Procedures for Appeals)).

3. When an application has been determined to be complete, it will be considered for substantive review within the established substantive review period for the application. The Director may submit the application to other affected City divisions which shall determine whether the application complies with pertinent standards and regulations. An applicant may appeal a determination of the Director to the Board of Adjustment as set forth in Section 10-20.80.020 (Appeals of Interpretations by the Zoning Code Administrator and Director).

The amendments proposed in this Subsection are necessary in order to ensure that the requirements of A.R.S. § 9.852 et. seq. as approved by the state legislature in SB1598 (The Regulatory Bill of Rights), and as updated by HB2443 in the 2013 legislative session, are included in the Zoning Code.

- Page 20.30-3

E. **Availability of Materials**

Applications and supporting materials are public records pursuant to A.R.S. § 39-121 through 39-128. Public records may be reviewed and copied upon request during normal business hours, unless protected from disclosure. The applicant shall clearly label each page of copyrighted or trademarked materials (e.g., ©, ®, TM) and such materials will be available for public inspection, but copyrighted materials will not be copied.

*(**P&Z**): As a result of the Commission's discussion on this topic, the previous language offered by staff has been replaced by the new text suggested above that more clearly addresses under what conditions materials submitted in support of a development application may be made available for public inspection. The amendment is consistent with similar provisions in most Arizona city's zoning codes.*

10-20.30.050 Concept Plan Review

- Page 20.30-4

A. **Purpose**

~~Concept Plan Review is required for all developments requiring Site Plan Review and Approval (Section 10-20.40.140).~~ Concept Plan Review is an informal review to ensure that the applicant is aware of the procedures and substantive requirements of the City, and to identify any potential problems or concerns prior to submitting for Site Plan Review and Approval (Section 10-20.40.140).

B. **Applicability**

Concept Plan Review is required for the following:

1. All developments requiring Site Plan Review and Approval (Section 10-20.40.140);

2. Any change of use that triggers an increase in required parking;

3. A proposed duplex;

4. Non-structural remodeling of an exterior façade; and

5. A proposed single-family residence located on a parcel that is not part of a platted subdivision.

This amendment which adds an Applicability section is necessary in order to expand the list of new developments that are subject to Concept Plan Review consistent with staff's current practices. In an attempt to simplify the development review process, provide a higher level of customer service, and reduce costs to new development, when it is appropriate to do so staff guides new development through the Concept Plan Review process rather than more time consuming Site Plan Review process. Subparagraph #5 is included as new homes in unplatted areas of the City (e.g. Rain Valley) may require the coordination of infrastructure and other conditions, such as the need for a cistern, non-combustible construction, or the construction of a fire access road. The concept plan review provides the home owner with early notice of issues that need to be addressed, of which they may not have been aware. Renumber all following Subsections.

C~~B~~. **Application for Concept Plan Review**

2. **Application Review**
Upon receipt of an application, the Director shall refer the Concept Plan application to any applicable departments or agencies, which shall review the application for compliance with City standards and regulations. The Director, in compliance with the Review Schedule on file with the Planning Section, shall provide conditions and comments to the applicant~~, in compliance with the Review Schedule on file with the Planning Section~~. Major developments (i.e. those over 20,000 square feet in gross floor area or over 50 dwelling units) may be scheduled for a longer review period.

10-20.30.060 Neighborhood Meeting

- Page 20.30-5

A. **Neighborhood Meetings Required**

1. Applicants for a General Plan amendment, Specific Plan amendment, Zoning Map amendment~~s~~, Conditional Use Permit, annexation or change of use within the PF (Public Facility) Zone shall schedule and conduct at least two neighborhood meetings in compliance with this Section. The applicant is responsible for all costs associated with the neighborhood meetings.

2. The Director may waive the requirement for ~~a~~ neighborhood meetings if it can be demonstrated that there are a limited number of property owners adjacent to the subject property and that other techniques for informing them of the application would be more effective, such as direct mailing with information on the application or one-on-one meetings with affected property owners.

This amendment adds an additional level for citizen engagement and public outreach by requiring applicants for the processes listed to hold at least two neighborhood meetings. Currently only one is required, but the Director may require an additional meeting if substantial changes are proposed after the first meeting was held. As described in Subsection G. below, the requirement for the second neighborhood meeting may be waived if there were no substantive

issues raised by the meeting participants or there was minimal public participation in the initial meeting.

C. **Neighborhood Meeting Planning**

1. The applicant's neighborhood meetings shall be scheduled ...

2. A plan for how the applicant intends to conduct the neighborhood meetings shall be submitted ...

   a. Property owners, citizens, jurisdictions and public agencies within 300 feet of the development or that may be affected by the application. The Director may expand the required notification area as stipulated in Paragraph D.3 below;

Consistent with commonly applied practice, the amendment in paragraph 3 codifies that the Director may expand the notification area beyond 300 feet based on the context of the subject property to ensure that as many nearby property owners as possible are informed of the proposed development. For example, this is important in areas of the City where parcels are large.

D. **Neighborhood Meeting Notification**

3. Notify by first-class mail all property owners of record within 300 feet of the subject property. Notification within a larger area may be required when ~~,~~ ~~unless~~ the General Plan or other applicable adopted City policy (See Section 10-20.30.070 (Additional Requirements for Citizen Outreach) for example) stipulates ~~requires~~ notification within a larger area. The Director may also expand the notification area based on the location and context of the subject property if it is determined that the potential impact of the development extends beyond the required notification boundary;

4. Notify by first-class mail to the situs or actual address of all tenants and residents living on the subject property;

5~~4~~. Notify by first-class mail all Homeowners Associations (HOAs) that govern land within 1,000 feet of the subject property as well as all persons or groups whose names are on the Registry of Persons and Groups described in Section 10-20.30.080.B who are interested in receiving such notice. If it is determined that the potential impact of the development extends beyond the required notification boundary, the Director may expand the notification area; and

Consistent with commonly applied practice, the amendment in paragraph 3 codifies that the Director may expand the notification area beyond 300 feet based on the context of the subject property to ensure that as many nearby property owners as possible are informed of the proposed development. For example, this is important in areas of the City where parcels are large.
***(P&Z)**: The amendment in paragraph 4 is in response to public comment provided at the June 10th public hearing. It ensures that any person living on the subject property as a tenant is also informed of the neighborhood meeting and any development plans that may affect them.*

E. **City Staff Involvement**

City staff may attend the neighborhood meetings. The role of City staff ...

F. **Record of Proceedings**

The applicant shall create a written summary of the meetings, which shall be submitted ~~filed with the Director~~with the next formal submission to the Director. This written summary will be attached to the director's report to the Planning and Zoning Commission and City Council. At a minimum, the report shall include the following information:

4. The applicant shall also send a copy of written summary to all the people who recorded their names on the sign-in sheet for the meeting.

This amendment requires the applicant to also send a copy of the written summary to all meeting attendees who signed-in so that they can be informed of how the applicant recorded their comments and concerns.

G. **Request to Waive the Second or Additional Neighborhood Meetings**

An applicant may submit a written request to the~~The~~ Director to waive the requirement for the second or ~~may require that~~ any ~~one or more~~ additional neighborhood meetings if either no substantive issues were identified by the meeting participants, including but not limited to, density, compatibility, traffic or stormwater issues, or there was minimal participation at the initial neighborhood meeting as documented in the record of proceedings described in Subsection F.~~be held~~. If the application is substantially modified from what was presented at the initial neighborhood meeting, the Director shall~~may~~ require ~~that~~ a second or additional neighborhood meetings in compliance with this Section be held to present the modified application.

This amendment allows the applicant to waive the requirement for the second neighborhood meeting provided there were no substantive issues raised by the meeting participants or there was minimal public participation (recommendation from the P&Z Commission) in the initial meeting.

10-20.30.070 Additional Requirements for Citizen Outreach

- Page 20.30-8

A. **Applicability**

This Section shall apply, in addition to those requirements established in Section 10-20.30.060 (Neighborhood Meeting), to the following developments for which a Zoning Map or General Plan amendment is required:

1. New single-family or multi-family residential developments that exceed 300 units; or

2. New commercial, industrial, and public facility developments that exceed 20 acres or 100,000 square feet of gross floor area.

This amendment is necessary to ensure that industrial and public facility developments are also included in the additional requirements for citizen outreach.

10-20.30.080 Notice of Public Hearings

- Page 20.30-11

A. **Notice Requirements**

3. **Manner of Notification**
Notices of required public hearing shall be sent by first-class mail to the following persons:

b. Each real property owner (if different from the applicant) as shown on the last assessment of the property of any land which is located within 300 feet of the property subject to the application for which the public hearing is required. The Director may expand the notification area based on the location and context of the subject property if it is determined that the potential impact of the development extends beyond the required notification boundary.

c. The situs or actual address of all tenants and residents living on the subject property.

d. All local government agencies which have reviewed and commented on the proposed development or Zoning Map amendment or which abut the subject property.

Consistent with commonly applied practice, the amendment in Paragraph 3.b. codifies that the Director may expand the notification area beyond 300 feet based on the context of the subject property to ensure that as many nearby property owners as possible are informed of the proposed development. For example, this is important in areas of the City where parcels are large.
The amendment in Paragraph 3.c. ensures that tenants and residents on the subject property are informed of the public hearing through their situs address (i.e. the actual address of the property established by the County Assessor's Office).

5. **Responsibility for Providing Notice**
a. The Director~~City~~ shall be responsible for placing the public hearing notices required by this Section in a newspaper of general circulation within the City.

b. The applicant ~~City~~ shall post the notice(s)~~,~~ as required by this Section on the subject property. ~~, and t~~The applicant is ~~hall be~~ required to maintain the posting and remove the sign within seven days after the public hearing and final action. Failure to remove the sign may~~shall~~ result in the City removing the sign and ~~a~~ charging~~e~~ ~~to~~ the applicant for costs incurred. The applicant shall submit a notarized Affidavit of Posting and photographs of the signs posted on the subject property to the Director no less than 15 days prior to the public hearing date.

c. If notice is required to be provided by mail, the applicant is ~~hall be~~ responsible for ~~providing the City with~~ establishing a list of names and addresses of property owners in compliance with the requirements of Section 10-20.30.060.D.3 and 4~~within 300 feet of the subject property~~, as well as the names and situs addresses of all tenants and residents living on the subject property, in compliance with this Section. The applicant ~~In addition, the applicant~~ shall mail a public hearing notice to each of the ~~provide a stamped, pre-addressed No. 10 envelope (approximately 4-1/4" x 9-1/2") for each~~ property owners on the list referenced above no later than 15 days prior to the public hearing date. ~~-~~A notarized copy

of the mailing list shall be submitted to the Director prior to or on the fifteenth day prior to the public hearing date.

~~c.~~d. Failure to provide the documentation described in Subparagraphs b. and c. above will result in continuance of the case to the next available public hearing date.~~a complete list or the associated envelopes shall constitute an incomplete application and will delay the public hearing. The City shall be responsible for mailing the required notices.~~

These suggested amendments place the responsibility on the applicant for posting a subject property and sending notices to surrounding property owners. This approach has been implemented by the City of Buckeye for some years now and other Valley cities. By so doing there is less exposure and risk to staff, and will save staff time when processing the application. Note that staff will continue to be responsible for writing the legal notice to be published in the newspaper. Staff will provide a copy of this legal notice to the applicant to be mailed to surrounding property owners as required in Paragraph c. If this amendment is adopted, the City's application forms will be updated to provide useful information to an applicant, including for example, how to develop the list of property owners and how best to install the signs on the property. The amendment also ensures that any persons residing on the subject property are also informed of the upcoming public hearing.
***(P&Z)** At the June 10th public hearing it was suggested that consideration should be given to also providing notice via prevailing technological means, such as the use of QR Codes, Facebook, the city's webpage, etc. Staff agrees, and suggests that instead of incorporating this idea into the Zoning Code, staff's processes and procedures will be updated to include this information.*
One consideration with the amendment proposed above that requires an applicant to mail the legal notices and post the property is that the fee schedule should be revised as these costs are already assumed in the current fee schedule. When the Council reviews proposed changes to the fee schedule in the coming months, this issue will be discussed at that time.

10-20.30.100 Final Decisions

- Page 20.30-13

B. **Notice of Decision**

When a final decision is made by Notice of Decision, the decision made and the findings that were the basis for the decision shall be ~~described~~ documented in writing and sent via first class mail ~~. The Director shall mail the Notice of Decision~~ to the applicant at the mailing address stated in the application, and to any other person or entity requesting such notification in writing.

*Paragraph B (Notice of Decision) requires that when a final decision is made by Notice of Decision, the Director must mail the Notice of Decision to the applicant. This amendment clarifies that the Notice of Decision must be sent via first class mail to the applicant and is in response to public comments at the June 10th public hearing (**P&Z**). In addition, to sending the Notice of Decision via first class mail, the notice may also be provided to the applicant via e-mail or other means.*

10-20.30.110 Effect of Denials

- Page 20.30-13

A new application concerning property for which a previous application has been denied (i.e. it may be the same as the previous application or it may be a different proposal) may only be considered when:

A. The application does not involve the same request for Conditional Use Permit, Variance, Zone Change, Annexation, or General Plan amendment, or allege the same misinterpretation or hardships as the previous application;

B. The subsequent application involves a development proposal which is, in the opinion of the Director, materially different from prior proposals, ~~in the opinion of the Director;~~ or is responsive~~, in the opinion of the Director,~~ to negative findings set forth in the denial of the prior application;

C. A substantial change in the use of adjacent property has occurred since the previous application was denied; or

D. A period of not less than one year has passed since the previous application was denied and all appeals provided by the City have been exhausted.

This amendment is necessary because the list of applicable development applications in Paragraph A is incomplete.

Division 10-20.40: Permits and Approvals

10-20.40.010 Purpose

- Page 20.40-1

B. **Review and Approval**

The Director, in compliance with the Review Schedule on file with the Planning Section, shall review the permit application and supporting documentation for compliance with the standards provided in this Zoning Code, and shall determine whether the permit may be issued or if the applicant must supply additional information to complete the permit application ~~in compliance with the Review Schedule on file with the Planning Section~~. If the permit application is denied, the reason shall be stated in writing.

10-20.40.030 Building Permits and Certificates of Occupancy

- Page 20.40-3

D. **Conditional Certificate of Occupancy**

1. A Conditional Certificate of Occupancy may be issued by the Director provided that:

a~~1~~. The applicant demonstrates that the incomplete components of the building and site (such as landscaping or private or public infrastructure) will not affect the public health, safety and general welfare;

b~~2~~. The applicant demonstrates that completion is impractical at the time the Certificate of Occupancy is sought due to weather or other conditions as requested~~determined~~ by the applicant and as approved by the Director; and~~or~~

c~~3~~. The applicant secures the completion of the construction with appropriate assurances in a form acceptable to the Director and the City Attorney, and in an amount sufficient to complete the construction, as determined by the applicant and as approved by the Director.

~~4~~2. Requests for Conditional Certificates of Occupancy shall contain:

*(**P&Z**) This essentially clerical amendment corrects the numbering convention for this Subsection, and as all three of the requirements for a Conditional Certificate of Occupancy must be satisfied before it is issued, the incorrect "or" is replaced with "and". The P&Z Commission recommended the clarifying amendment in paragraph b.*

10-20.40.050 Conditional Use Permits

- Page 20.40-7

C. **Application Requirements**

1. **Pre-application Review**

2. **Application Requirements**

An application for a Conditional Use Permit shall be submitted on a form prescribed by the City in compliance with Section 10-20.30.020 (Application Process), together with the information and materials requested in the application checklist and the required fee established in Appendix 2 (Planning Fee Schedule).

3~~2~~. **Responsibility**

This amendment provides a cross-reference to Application Process Section of the Zoning Code. All following paragraphs will be renumbered without any other text changes.

D. **Public Hearings and Procedures**

The Planning Commission shall hold a public hearing on the application for a Conditional Use Permit and shall, at the conclusion of the public hearing, approve, with or without conditions, or deny the application in compliance with the requirements for conditional uses and other applicable requirements of this Zoning Code. The public hearing shall be noticed in compliance with Section 10-20.30.080 (Notice of Public Hearings).

This minor amendment provides a cross-reference to the notice of public hearings Section of the Zoning Code.

- Page 20.40-9

H. **Time Limits and Permit Implementation**

1. A Conditional Use Permit will~~shall~~ become null and void one year after the effective date unless one of the following has occurred:

   a. A grading permit or building permit has been issued and construction commenced ~~begun~~ and diligently pursued;

   b. The approved use has been established; or

   c. An extension has been granted by the Planning Commission. Such extension shall ...

A grading permit has been included in subparagraph a. because some conditional uses may require approval of a grading permit before the building permit is issued. Also, this subparagraph has been amended to reflect current practice.

Note that the term "to completion" that was added at the end of subparagraph a. has been removed as it is not needed and was causing confusion.

10-20.40.060 Development Agreements

- Page 20.40-12

C. **Consideration and Decision**

1. **Staff Responsibilities**

a. The Director in consultation with the City Attorney shall direct the negotiations with the applicant regarding terms of the development agreement.

~~a.~~b. At such time as impact analyses are accepted by the City Engineer or Utilities Director, negotiations with the applicant regarding the terms of the development agreement may commence. An applicant shall provide a list of conditions, requirements, and stipulations to be included in a development agreement.

~~b.~~c. Once negotiations are completed, the Director shall schedule the proposed development agreement for approval by the Council in compliance with this Division.

This amendment resolves a gap in the current Zoning Code by clearly stating at what stage of the project's review the terms of the development agreement may be negotiated.

10-20.40.070 Home Occupation Permits

- Page 20.40-14

B. **Review and Final Decision**

1. The Director shall review the Home Occupation Permit application and supporting documentation required by Section 10-20.30.020 (Application Process) for compliance with the requirements of the Zoning Code.

This amendment provides a cross-reference to Application Process Section of the Zoning Code.

2. The Director, in compliance with the Review Schedule on file with the Planning Section, shall determine whether the Home Occupation Permit can be issued or if additional information is required from the applicant to complete the application ~~in compliance with the Review Schedule on file with the Planning Section~~. If the Home Occupation Permit application is denied, the reason shall be stated in writing.

10-20.40.080 Minor Improvement Permits

- Page 20.40-15

B. **Review and Final Decision**

1. The Director shall review the Minor Improvement Permit application and supporting documentation required by Section 10-20.30.020 (Application Process) for compliance with the requirements of the Zoning Code.

This amendment provides a cross-reference to Application Process Section of the Zoning Code.

2. The Director, in compliance with the Review Schedule on file with the Planning Section, shall determine whether the Minor Improvement Permit can be issued or if additional information is required from the applicant to complete the application ~~in compliance with the Review Schedule on file with the Planning Section~~. If the application is denied, the reason shall be stated in writing.

10-20.40.090 Minor Modifications to Development Standards

- Page 20.40-15

B. **Applicability**

~~1.~~ The ~~Director or~~ Zoning Code Administrator may approve a Minor Modification for only those items specified in Table A (Types of Minor Modifications Allowed), and only after first making the findings specified in Subsection D.3, below.

~~2. In addition, the Director may approve Minor Modifications to site plans associated with Zoning Map amendments provided that the modifications will not cause any of the following circumstances to occur:~~

~~a. A change in the character of the development;~~

~~b. A significant increase in impacts on utility infrastructure, as well as traffic on roadways adjacent or external to the development;~~

~~c. A change in the external impacts on adjacent property; and~~

~~d. A reduction in the originally approved setbacks from property lines, or modification of structure height.~~

In order to ensure consistency of interpretation and ease of record keeping the Zoning Code Administrator should be the only staff person approving Minor Modifications. As described below, the Planning Director will retain the authority to approve minor modifications to site plans.

This Subsection regarding modifications to site plans was incorrectly placed in Section 10-20.40.090 (Minor Modifications to Development Standards) and instead should be inserted into Section 10-20.40.140 (Site Plan Review and Approval).

Table 10-20.40.090.A: Types of Minor Modifications Allowed

- Page 20.40-16

Types of Minor Modifications Allowed	Maximum Modification
16. To encourage the development of housing units for disabled persons with limited mobility, ~~the Director may allow~~ a reasonable deviation from the prescribed standards of Chapter 10-40 (Specific to Zones) where necessary to install features that facilitate access and mobility of disabled persons may be allowed.	Determined on a case-by-case basis

This minor amendment is suggested to ensure consistency with the preceding amendment in which the Zoning Code Administrator will be responsible for the review of all minor modifications to development standards.

- Page 20.40-17
  Insert as new rows in this table:

Types of Minor Modifications Allowed		Maximum Modification
22.	To encourage the preservation of existing healthy trees located more than 25 feet from a building foundation (Section 10-50.60.050.A.1)	100%
23.	To encourage the use of passive solar designs and other sustainable practices, a reasonable deviation from the prescribed standards of Chapter 10-40 (Specific to Zones) where necessary to promote energy conservation may be allowed.	Determined on a case-by-case basis
24.	A modification of Section 10-40.60.160 (Drive-through Retail), Subsections C.1 through C.5 only, to provide flexibility in the application of these standards when unique site circumstances exist.	Determined on a case-by-case basis
25.	A modification of Subsection 10-50.20.030.B.7 (Windows) to allow the use of alternative window design and placement when warranted by unusual site circumstances and the development's context.	Determined on a case-by-case basis
26.	A modification of Table 10-40.60.250.A (Site Layout and Development Design Standards). Factors to be considered include: the width and character of the street; if the site is located within a floodplain; if site conditions such as changes in topography make providing pedestrian accessibility difficult; if there is vacant property or existing non-commercial uses on the opposite side of the street; or if the mixed-use development is proposed on a through lot between two primary streets and commercial uses are only appropriate on one such primary street.	Determined on a case-by-case basis

*These amendments provide flexibility to a developer to address circumstances where it may not be possible to meet the standard to allow credits for existing healthy trees, promote energy conservation, provide flexibility for drive-through retail facilities, and allow for alternative window placement and design solutions (**P&Z**).*
*(**P&Z**) – June 10th public hearing: The standard for required commercial space on the ground floor of a mixed use building has been added to this Section so that it may be modified subject to specified criteria.*
NOTE – rearrange this table so that the standards listed within it are listed in the order they are found in the Zoning Code.

- Page 20.40-17

C. **Decision by the ~~Director or~~ Zoning Code Administrator**
The ~~Director or~~ Zoning Code Administrator may approve Minor Modifications in compliance with Subsection B above~~,~~ or may ~~defer making a decision and instead~~ refer the application to the Board of Adjustment for review and final decision~~,~~ in compliance with this Section.

Consistent with the amendment proposed in Subsection B. (Applicability) above, in order to ensure consistency of interpretation and ease of record keeping the Zoning Code Administrator should be the only staff person approving minor modifications to development standards.

Ensure that this same change is also completed in Subsection D. (Review and Final Decision) in paragraphs 1, 2, 3, and 5.

D. **Review and Final Decision**

1. The ~~Director or~~ Zoning Code Administrator in compliance with Subsection B above shall review the application for a Minor Modification and supporting

documentation required by Section 10-20.30.020 (Application Process) for compliance with the requirements of this Zoning Code. A public hearing shall not be required for the decision on a Minor Modification.

This amendment provides a cross-reference to the Application Process Section of the Zoning Code.

10-20.40.100 Outdoor Lighting Permits

- Page 20.40-19

B. **Review and Final Decision~~s~~**

The Director shall review the application ~~determine whether the~~ for an Outdoor Lighting Permit and supporting documentation required by Section 10-20.30.020 (Application Process) for compliance with the requirements of this Zoning Code. The Director, in compliance with the Review Schedule on file with the Planning Section, shall determine whether the Outdoor Lighting Permit may be issued or if additional information is required from the applicant ~~to complete the permit application in compliance with the Review Schedule on file with the Planning Section~~. If the Outdoor Lighting Permit application is denied, the reason shall be stated in writing.

This amendment provides a cross-reference to the Application Process Section of the Zoning Code and ensures consistency with similar text throughout this Chapter.

10-20.40.110 Parking Lot Maintenance Permits

- Page 20.40-20

C. **Review and Final Decision**

1. The Director, in compliance with the Review Schedule on file with the Planning Section, shall review the Parking Lot Maintenance Permit application and supporting documentation required by Section 10-20.30.020 (Application Process) for compliance with the requirements of this Zoning Code. To the maximum extent feasible, existing nonconforming parking areas constructed prior to the effective date of this Zoning Code should be restriped consistent with the applicable provisions of Division 10-50.80 (Parking Standards).

This amendment provides a cross-reference to the Application Process Section of the Zoning Code and ensures consistency with similar text throughout this Chapter.

10-20.40.120 Sign Permits – Permanent Signs

- Page 20.40-21

D. **Review and Approval**

1. **Review**

The Director shall review the Sign Permit application and supporting documentation required by Section 10-20.30.020 (Application Process) for compliance with the standards of Division 10-50.100 (Sign Standards).

This amendment provides a cross-reference to the Application Process Section of the Zoning Code and ensures consistency with similar text throughout this Chapter.

2. **Determination**

The Director, in compliance with the Review Schedule on file with the

Planning Section, shall determine whether the Sign Permit may be issued or if additional information is required from the applicant to complete the permit application ~~in compliance with the Review Schedule on file with the Planning Section~~. If the Sign Permit application is denied, the reason shall be stated in writing.

10-20.40.130 Sign Permits – Temporary Signs

- Page 20.40-24

D. **Review and Approval**

2. **Review**

The Director shall review the Temporary Sign Permit application and supporting documentation required by Section 10-20.30.020 (Application Process) for compliance with the standards of Section 10-50.100.070 (Temporary Signs).

This amendment provides a cross-reference to the Application Process Section of the Zoning Code and ensures consistency with similar text throughout this Chapter.

3. **Determination**

The Director, in compliance with the Review Schedule on file with the Planning Section, shall determine whether the Temporary Sign Permit may be issued or if additional information is required from the applicant to complete the permit application ~~in compliance with the Review Schedule on file with the Planning Section~~. If the Temporary Sign Permit application is denied, the reason shall be stated in writing.

10-20.40.140 Site Plan Review and Approval

- Page 20.40-25

B. **Applicability**

1. **Site Plan Review**

Site Plan Review and Approval shall be required for all authorized uses, changes of use and approved conditional uses ~~as determined by the Director~~ in any Zone, except for the following;

a. Detached single-family dwellings (up to two on one lot or parcel, where permitted by the Zone, including a proposed single-family residence located on a parcel that is not part of a platted subdivision), duplexes, and related accessory uses and buildings in approved subdivisions;

b. Interior tenant alterations or improvements which do not affect parking requirements or exterior building appearance;

c. Nonstructural remodeling of a building facade treatment; and

d. Sign permits for properties not otherwise subject to site plan review.

(P&Z) *This amendment clarifies that site plan review and approval is not needed for either a single-family home located on a parcel that is not part of a platted subdivision or a duplex (added by the P&Z Commission).*

- Page 20.40-25

C. **Application for Site Plan Review**

1. **Application Requirements**

An application for a Site Plan Review shall be submitted on a form prescribed by the City in compliance with Section 10-20.30.020 (Application Process), together with the information and materials requested in the Site Plan Review application checklist and the required fee established in Appendix 2 (Planning Fee Schedule).

Paragraph 1., Application Requirements, is commonly included in the Zoning Code but was inadvertently omitted from the first version of the Code. All following paragraphs will be renumbered without any other text changes.

~~1~~2. **Standards of Review**

- Page 20.40-26

~~2~~3. **Application Review**

a. **Receipt of Application**

(1) Upon receipt of an application for Site Plan Review, the Director in compliance with the Review Schedule on file with the Planning Section shall refer it ~~the Site Plan Review application~~ to any affected departments or agencies, which shall determine whether the application complies with pertinent City standards and regulations.

~~(1)~~(2) The review and administrative approval of charter schools shall be conducted on an expedited basis in compliance with A.R.S. § 15-189.01 to allow for a public hearing or appeal to the Board of Adjustment (See Division 10-20.80 (Procedures for Appeals)).

This amendment is required to ensure that the requirements of A.R.S. § 15-189.01 are included in the Zoning Code to allow for expedited review for charter schools.

b. **Minor Modifications to Site Plans Associated with Zoning Map Amendments**

The Director may approve Minor Modifications to site plans associated with Zoning Map amendments provided that the modifications will not cause any of the following to occur:

(1) A change in the character of the development;

(2) A significant increase in impacts on utility infrastructure or traffic on roadways adjacent or external to the development;

(3) A change in the external impacts on adjacent property; or

(4) A reduction in the originally approved setbacks from property lines or modification of structure height.

This Subsection regarding modifications to site plans was incorrectly placed in Section 10-20.40.090 (Minor Modifications to Development Standards) and has been moved into Section 10-20.40.140 (Site Plan Review and Approval) where it is more logically placed. All following paragraphs will be renumbered without any other text changes.

10-20.40.150 Temporary Use Permits

- Page 20.40-29

B. **Review and Final Decision**

1. The Director shall review the Temporary Use Permit application and supporting documentation required by Section 10-20.30.020 (Application Process) for compliance with the requirements of Section 10-20.40.150 (Temporary Use Permits).

2. The Director, in compliance with the Review Schedule on file with the Planning Section, shall determine whether the Temporary Use Permit can be issued or if additional information is required from the applicant to complete the application. If the application is denied, the reason shall be stated in writing.

This amendment provides a cross-reference to the Application Process Section of the Zoning Code and ensures consistency with similar text throughout this Chapter. Renumber all following Subsections.

- Page 20.40-29

~~B~~C. **Time Limits**

1. Unless otherwise provided for in Subsection ~~C~~D below, a Temporary Use Permit shall be valid for up to 180 days in any given calendar year.

2. The same temporary use may only be established at a maximum of three different locations, each for a maximum of 180 days in any given calendar year (~~i.e. a total of 18 months maximum~~).

This amendment clarifies that the 180 day time frame is counted within a calendar year.

- Page 20.40.30

~~C~~D.3 **Food Vendors**

a. The food vendor shall provide written authorization from the private property owner(s) or property management company(s) representing the property owner(s) to utilize the property on which they intend to locate. No food vendor shall be permitted to operate on more than five~~three~~ properties within a calendar year.

Staff recommends that the number of locations where mobile food vendors may be located should be increased to five consistent with the way a number of these vendors operate. This will allow them to cover more of the City in approved locations, provide additional options for food service, and hopefully increase their sales.

c. The location of the vendor's equipment, structures and display(s) shall be a minimum of 10 feet inside the ~~private~~ property line and shall conform to an approved site drawing.

The word "private" may be removed from this sentence as it is unnecessary.

h. Temporary food vendors that operate within the City for a total of 60 days or less per calendar year at a single or multiple locations may continue to use the same location(s) for subsequent calendar years.

i. Temporary food vendors whose business is ~~seasonal (i.e.~~ limited to a maximum of nine months per calendar year~~)~~ that operate within the City for more than 61 days per calendar year at a single or multiple locations shall be limited to two consecutive years at the same location(s). A one-time extension of the Temporary Use Permit may be granted for a maximum of one additional year. When issuing a renewal of a Temporary Use Permit, the Director shall ensure that the following conditions are satisfied:

The word "seasonal" can be removed from this sentence as it is unneeded and has caused confusion.

- Page 20.40-32

D~~C~~.4 **Merchandise and Service Vendors**

c. The location of the vendor's equipment, structures and display(s) shall be a minimum of 10 feet inside the ~~private~~ property line and shall conform to an approved site drawing.

The word "private" may be removed from this sentence as it is unnecessary.

- Page 20.40-35

D~~C~~. **Allowed Temporary Uses**

13. **Temporary Occupancy of a Recreational Vehicle**

In any residential zone with a lot or parcel area of at least 0.5 acre, a recreational vehicle may be used as a temporary residence while a new single-family home is under construction subject to the following conditions:

a. Only the property owner may live in a recreational vehicle while the new residence is under construction. As soon as construction has been concluded (i.e. a Certificate of Occupancy has been issued), the recreational vehicle must be vacated and the owners must move into the completed residence;

b. The construction of the residence must be diligently pursued to completion, i.e. the residence must be constructed within the typical time frame for constructing such a building. If the residence is not completed within a reasonable period of time the Temporary Use Permit allowing temporary residence may be terminated by the Zoning Code Administrator.

14~~3~~. **Similar Temporary Activities**
The Director may authorize other temporary activities that are similar to the ~~other~~ activities listed in this Subsection and that are compatible with the applicable zone and surrounding land uses.

City staff has frequently been asked whether an RV may be occupied while a residence is under construction. Two sections of the Zoning Code support a decision to allow this temporary use subject to approval of a Temporary Use Permit – 10-20.40.150.A (Purpose) and 10-20.40.150.C.13 (Similar Temporary Activities). This amendment further addresses and clarifies this issue.

10-20.40.160 Zoning Verification

- Page 20.40-36

A. **Purpose**
Zoning Verification Letters may be requested from the Director by a property owner or a representative for a property owner who is seeking verification of the zoning status for a property. Other associated information may also be requested and provided, if available, such as any development approvals granted by the City, existing nonconformities or violations.

B. **Process for Review**
Upon receipt of a complete zoning verification request, the Director, in compliance with the Review Schedule on file with the Planning Section, shall:

Division 10-20.50: Amendments to the Zoning Code Text and the Zoning Map

10-20.50.040 Procedures

- Page 20.50-2

B. **Citizen Review**
All applications to amend the text of this Zoning Code or the Zoning Map shall include a process for ~~be subject to a~~ citizen participation~~review process~~. ~~The Director may establish additional procedures for the citizen review process. The c~~Citizen participation ~~review process~~ shall, at a minimum, consist of a Neighborhood Meeting or a work session of the Planning Commission, as set forth below. The Director may implement additional procedures for citizen participation.

1. **Zoning Map Amendments**
The applicant shall schedule and conduct a Neighborhood Meeting in compliance with the procedures set forth in Section 10-20.30.060 (Neighborhood Meeting). For requests to designate property as a Landmark, Historic Property or Historic District a public meeting of the Heritage Preservation Commission held prior to any public hearing on the request shall satisfy the requirement for a Neighborhood Meeting.

2. **Text Amendments to this Zoning Code**
a. A citizen review session shall be held at the~~a~~ Planning Commission work session that is scheduled for the consideration of any proposed text amendment. ~~in compliance with the Review Schedule on file with the Planning Section~~. ~~A work session of the~~

~~Heritage Preservation Commission on a request to designate property as a Landmark, Historic Property or Historic District held prior to any public hearing on the request shall satisfy the requirement for a citizen review session.~~ Landowners and other citizens potentially affected by the proposed text amendment will~~shall~~ have an opportunity to comment on the proposed text amendment~~al~~.

This amendment eliminates the term "citizen review process" which has caused some confusion, and instead refers to what is really intended by this phrase, "citizen participation". The confusion between a work session and a public meeting of the Heritage Preservation Commission is also corrected to correctly refer to the requirement for a neighborhood meeting, rather than a citizen review session.

- Page 20.50-4

C.2.c. **Large Scale Zoning Map Amendments**

These are applications for Zoning Map amendments that meet the following thresholds:

(1) Include residential developments over 100 units, or all commercial developments over 50,000 sq. ft. or 15 acres, or all industrial and research and development uses over 150,000 sq. ft. or 20 acres; or

(2) Require a major amendment to the General Plan as defined in Section 11-10.20.020 (Major Plan Amendments and New Elements).

For such applications, the minimum submittal requirements for a concept zoning plan are required, as well as infrastructure analyses as required by the *Engineering Standards*. Compliance with the requirements of Section 10-20.30.070 (Additional Requirements for Citizen Outreach) may also be required depending on the size of the proposed development. In addition a development agreement ~~(See Section 10-20.40.060 (Development Agreements)) is required~~ that~~o~~ defines applicant/City obligations such as offsite infrastructure improvements, affordable housing, or open space is required to be submitted at such time as impact analyses have been accepted by the City Engineer or Utilities Director (See Section 10-20.40.060 (Development Agreements)).

These amendments provide a cross reference to the Additional Requirements for Citizen Outreach and Development Agreement Sections of the Code.

10-20.50.040 Procedures

- Page 20.50-9

M. **Protest Procedures**

A protest against a proposed amendment may be filed in writing by~~If~~ the owners of 20 percent or more of~~,~~ either;

1. ~~of t~~The area of the parcel(s) of land included in the proposed zoning map amendment~~,~~; or

2. The area of those parcel(s) of land immediately adjacent in the rear or any side of the subject property(ies) extending 150 feet from the subject property(ies)~~,~~; or

3. The area of those parcel(s) of land directly opposite the subject property(ies) extending 150 feet from the street frontage of the opposite parcels of land.~~, file a protest in writing against a proposed amendment~~

Such protest shall be hand-delivered to the City Clerk by no later than 12:00 noon five business days after the City Council first considers the application at a public hearing.~~,~~ If a timely protest is filed, the amendment shall not become effective except by a favorable vote of three-fourths of all members of the Council. If any member of the Council is unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths of the remaining membership of the Council, provided that such required number of votes shall in no event be less than a majority of the full membership of the Council.

Most Arizona cities include language in their Codes that prescribe the time frame within which a protest of a proposed zone change application should be filed with the City. This amendment is, therefore, proposed as the City Clerk agrees that the Flagstaff Zoning Code should have a similar provision.

- Page 20.50-10

N. **Conditions of Approval**

2. Such conditions of approval may include, but are not limited to:

c. Limitations on the height, setbacks, FAR, or other standards specific to the approved Zone which are more restrictive than the applicable requirements of Division 10-40.30 (Non-Transect Zones) or 10-40.40 (Transect Zones);

h. A stipulation that if the subject property is not located within the Resource Protection Overlay Zone (see Section 10-40.50.030 (Overlay Zones)), then compliance with the resource protection standards established in Division 10-50.90 (Resource Protection Standards) is required.

The amendment in paragraph c. is suggested to also include transect zones. The amendment in subparagraph h. was suggested by the former Planning Director and staff. It allows a condition of approval to be added that would require compliance with Division 10-50.90 (Resource Protection Standards) when a zone change is requested in areas of the City that are not subject to the Resource Protection Overlay Zone.

Division 10-20.60: Nonconforming Provisions

10-20.60.010 Purpose

- Page 20.60-1

A. **Purpose**
This Division provides regulations for nonconforming land uses, structures, parcels, landscaping, manufactured home parks, parking, signs, and outdoor lights that were lawful before the adoption or amendment of this Zoning Code, but which would be prohibited, regulated or restricted differently in compliance with the current regulations.

This minor amendment completes the list of nonconforming issues included within in this Division.

10-20.60.070 Nonconforming Manufactured Home Parks

- Page 20.60-5

A. Existing manufactured home parks located outside of the MH Zone prior to the effective date of this Zoning Code are considered legal nonconforming uses. All new or replaced manufactured home units placed within legal nonconforming manufactured home parks shall meet the standards ~~of Section 10-40.60.210 (Manufactured Home) and the standards~~ provided in Subsection C below.

The reference to the standards in Section 10-40.60.210 is incorrect as the standards regarding separation between manufactured homes are already established in Subsection C.

B. A nonconforming manufactured home may be replaced by ~~a travel trailer or a recreational vehicle that has dimensions of eight feet by 32 feet or greater, or~~ a park home permitted in accordance with Building Code requirements.

Staff suggests that it is not appropriate to allow travel trailers or RVs to replace nonconforming manufactured homes.

10-20.60.090 Nonconforming Parcels or Lots

- Page 20.60-7

B. **Subdivision of a Nonconforming Parcel or Lot**

3. Owners of single, nonconforming lots or parcels, or lots or parcels combined in compliance with Subsection 2 above that are nonconforming, may be granted a Building Permit upon approval by the Director. In granting the approval, the Director may authorize only development that complies with all relevant zoning requirements, except for minimum area requirements for the parcel and its dimensions. ~~The lots or parcels described in Subsection 4 below shall not be eligible for a Building Permit.~~

The last sentence of this paragraph should be deleted as it is unnecessary because Subsection 4 was deleted at the time of the Code's adoption.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Elizabeth A. Burke, City Clerk
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE

Future Agenda Item Request (F.A.I.R.): A request by Councilmember Putzova to place on a future agenda a resolution replacing Columbus Day with Indigenous People's Day to celebrate the contributions and culture of Native Americans and the indigenous community.

RECOMMENDED ACTION:

Council direction.

EXECUTIVE SUMMARY:

Rule 4.01, Procedures for Preparation of Council Agendas, of the City of Flagstaff City Council Rules of Procedure outlines the process for bringing items forward to a future agenda. Councilmember Putzova has requested this item be placed on an agenda under Future Agenda Item Requests (F.A.I.R.) to determine if there are three councilmembers interested in placing it on a future agenda.

INFORMATION:

None

Attachments:

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Elizabeth A. Burke, City Clerk
Date:	09/09/2015
Meeting Date:	09/15/2015

TITLE

Future Agenda Item Request (F.A.I.R.): A request by Councilmember Putzova to place on a future agenda a discussion of the Council Travel Policy and Use of Travel Funds.

RECOMMENDED ACTION:

Council direction.

EXECUTIVE SUMMARY:

Rule 4.01, Procedures for Preparation of Council Agendas, of the City of Flagstaff City Council Rules of Procedure outlines the process for bringing items forward to a future agenda. Councilmember Putzova has requested this item be placed on an agenda under Future Agenda Item Requests (F.A.I.R.) to determine if there are three councilmembers interested in placing it on a future agenda.

INFORMATION:

None

Attachments: