

REGULAR COUNCIL MEETING  
TUESDAY  
JANUARY 5, 2021

STAFF CONFERENCE ROOM  
SECOND FLOOR - CITY HALL  
211 WEST ASPEN AVENUE  
3:00 P.M.

## **ATTENTION**

**IN-PERSON AUDIENCES AT CITY COUNCIL MEETINGS HAVE BEEN SUSPENDED UNTIL  
FURTHER NOTICE**

The meetings will continue to be live streamed on the city's website  
(<https://www.flagstaff.az.gov/1461/Streaming-City-Council-Meetings>)

## **PUBLIC COMMENT PROTOCOL**

**The process for submitting a public comment has changed and public comments will no longer be  
read by staff during the Council Meetings.**

All public comments will be taken either telephonically or accepted as a written comment.

**Public comments may be submitted to [publiccomment@flagstaffaz.gov](mailto:publiccomment@flagstaffaz.gov)**

If you wish to address the City Council with a public comment by phone you must submit the  
following information:

First and Last Name  
Phone Number  
Agenda Item number you wish to speak on

If any of this information is missing, you will not be called. We will attempt to call you only one  
time. We are unable to provide a time when you may be called.

All comments submitted otherwise will be considered written comments and will be documented  
into the record as such.

If you wish to email Mayor and Council directly you may do so at [council@flagstaffaz.gov](mailto:council@flagstaffaz.gov).

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## **AGENDA**

### **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 DEASY  
VICE MAYOR DAGGETT  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY

COUNCILMEMBER SALAS  
COUNCILMEMBER SHIMONI  
COUNCILMEMBER SWEET

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 for all.*

4. **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.*

5. **LIQUOR LICENSE PUBLIC HEARINGS**

- A. **Consideration and Action on Liquor License Application:** Jeffrey Michael Chastain "Milton Mobil," 2020 S. Milton Road, Series 09 (liquor store - all spirituous liquor), Owner Transfer.

**STAFF RECOMMENDED ACTION:**

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with a recommendation for denial based on information from staff, the testimony received at the public hearing and/or other factors.

6. **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 Contract:** Wildcat Hill WRP emergency crane repair

**STAFF RECOMMENDED ACTION:**

1. Approve the contract with Kone Cranes for the repair of the overhead Crane used to move Sulfur Dioxide chemical containers in the amount of \$ 53,646
2. Authorize the City Manager to execute the necessary documents.

- B. **Consideration and Approval of Contract:** Multiple Job Order Contracting Services Contracts for upcoming projects under \$1,000,000.

**STAFF RECOMMENDED ACTION:**

1. Approve award of Job Order Contracting Services Contracts to 15 contractors representing five discipline areas.
  - Horizontal Construction: Eagle Mountain Construction Co. (EMC), Kinney Construction Services, Inc. (KCS), Markham Contracting Co., Inc., and Tiffany Construction Co.
  - Vertical Construction: Kinney Construction Services, Inc., Loven Contracting, Inc., and Wespac Construction, Inc.
  - Water/Wastewater General Construction: KEAR Civil Corporation, PCL Construction, Inc., and Schofield Civil Construction, Inc.
  - Water/Wastewater Controls Construction: M# Engineering and Technology Corporation and Southwest Automation Services, LLC
  - Landfill Construction: Fann Contracting Inc., Markham Contracting Co., Inc. and Rummel Construction, Inc
2. Authorize the City Manager to execute the necessary documents.

7. **REGULAR AGENDA**

- A. **Consideration and Adoption of Resolution No. 2020-01:** A Resolution of the Flagstaff City Council, approving the first amendment to the Restated Master Intergovernmental Agreement between Coconino County, the Arizona Board of Regents acting for and on behalf of Northern Arizona University, Coconino Community College, and the City of Flagstaff pertaining to public transit service in the greater Flagstaff area

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2021-01 by title only
- 2) City Clerk reads Resolution No. 2021-01 by title only (if approved above)
- 3) Adopt Resolution No. 2021-01

- B. **Consideration and Adoption of Resolution No. 2021-02:** A resolution for an Intergovernmental Agreement for Emergency Management Mutual Aid Compact between the City of Flagstaff, Coconino County, Northern Arizona University, Community College District, Flagstaff Unified School District, and Northern Arizona Intergovernmental Public Transportation Authority.

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2021-02 by title only
- 2) City Clerk reads Resolution No. 2021-02 by title only (if approved above)
- 3) Adopt Resolution No. 2021-02

- C. **Consideration and Adoption of Resolution No. 2021-04:** A resolution authorizing an Intergovernmental Agreement between the City of Flagstaff and Flagstaff Unified School District (FUSD) for Community-Wide After School Programs.

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2021-04 by title only
- 2) City Clerk reads Resolution No. 2021-04 by title only (if approved above)
- 3) Adopt Resolution No. 2021-04

- D. **Consideration and Adoption of Resolution No. 2021-03:** A resolution of the Flagstaff City Council approving an Intergovernmental Agreement (IGA) between the City of Flagstaff and Coconino County establishing maintenance and operation responsibilities and an extended warranty period for a segment of the Sheep Crossing FUTS Trail.

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2021-03 by title only
- 2) City Clerk reads Resolution No. 2021-03 by title only (if approved above)
- 3) Adopt Resolution No. 2021-03

8. **COUNCIL LIAISON REPORTS**

9. **CITY MANAGER REPORT**

- A. **City Manager Report**

10. **COVID-19 UPDATES**

- A. **COVID-19 Updates**

11. **INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, FUTURE AGENDA ITEM REQUESTS**

12. **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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Stacy Saltzburg, MMC, City Clerk

## 5. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Stacy Fobar, Deputy City Clerk  
**Date:** 12/28/2020  
**Meeting Date:** 01/05/2021



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#### TITLE:

**Consideration and Action on Liquor License Application:** Jeffrey Michael Chastain "Milton Mobil," 2020 S. Milton Road, Series 09 (liquor store - all spirituous liquor), Owner Transfer.

#### STAFF RECOMMENDED ACTION:

Open the public hearing.  
Receive citizen input.  
Close the public hearing.

The City Council has the option to:

- (1) Forward the application to the State with a recommendation for approval;
- (2) Forward the application to the State with a recommendation for denial based on information from staff, the testimony received at the public hearing and/or other factors.

#### 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 09 licenses are a quota licenses and must be obtained through the person/location transfer of an existing license from another business. This license was purchased from THAT Flagstaff Butler Chevron by Chastain Enterprises, LLC. The location of the license remains the same.

Butler Chevron is an existing business in Flagstaff. If approved, it will be the 32nd active series 09 liquor license in Flagstaff. To view surrounding liquor licenses, please visit the [Active Liquor Licenses Map](#).

The property has been posted as required, and the Police and Community Development divisions have reviewed the application and provided their respective reports.

#### Financial Impact:

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

#### Policy Impact:

Not applicable.

#### Connection to PBB Key Community Priorities/Objectives & Regional Plan:

Liquor licenses are a regulatory action and there are no Community Priorities that directly apply.

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

Not applicable.

**Key Considerations:**

Because the application is for a owner transfer, consideration may be given to only the personal qualifications of the applicant.

The deadline for issuing a recommendation on this application is January 8, 2021.

**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 December 15, 2020. No written protests have been received to date.

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**Attachments:**     [Milton Mobil - Letter to Applicant](#)  
                              [Hearing Procedures](#)  
                              [Series 09 Description](#)  
                              [Milton Mobil - PD Memo](#)  
                              [Milton Mobil - Zoning Memo](#)  
                              [Milton Mobil - App](#)



# City of Flagstaff

OFFICE OF THE CITY CLERK

12/14/2020

Jeffrey Michael Chastain  
Chastain Enterprises LLC  
2020 S. Milton Road  
Flagstaff, AZ 86001

Dear Mr. Chastain:

Your application for a new Series 09 Liquor License for Milton Mobil located at 2020 S. Milton Road, Flagstaff, AZ will be posted on December 15, 2020. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, January 5, 2020 which is currently scheduled to begin at 3:00 p.m.**

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

The twenty-day posting period for your liquor license application is set to expire on January 4, 2021 and the application may be removed from the premises at that time.

There is an \$815 application fee which needs to be received prior to the hearing date. Payment can be made online at <https://www.flagstaff.az.gov/2452/E--Services> under Business Licensing Payment Online Services by clicking Liquor License Request Payment, in person at the payment window, or you can send a check to my attention at 211 W. Aspen Ave., Flagstaff, AZ 86001.

If you have any questions, please feel free to call me at 928-213-2077 or 928-220-5995.

Sincerely,

*Stacy M. Fobar*

Stacy M. Fobar  
Deputy City Clerk

Enclosures



# 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 09 Liquor Store License (All spirituous liquors)

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

Off-sale retail privileges

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

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### PURPOSE:

Allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

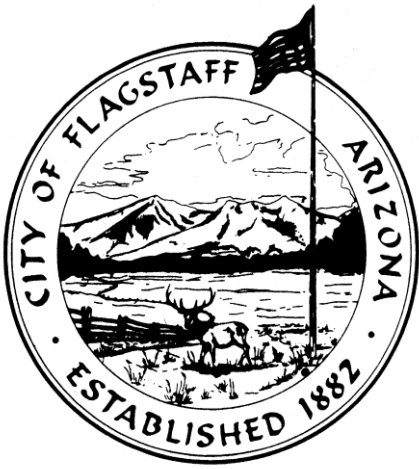
A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

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.





# FLAGSTAFF POLICE DEPARTMENT

911 SAWMILL RD • FLAGSTAFF, ARIZONA 86001 • (928) 779-3646

ADMIN FAX (928) 213-3372

TDD 1-800-842-4681



Chief of Police  
Dan Musselman (Interim)

## MEMORANDUM

**Memo #20-086**

**TO: Chief Dan Musselman**

**FROM: Sgt. Ryan Turley**

**DATE: December 8<sup>th</sup> 2020**

**RE: LIQUOR LICENSE APPLICATION – SERIES 9 - FOR “Milton Mobil”.**

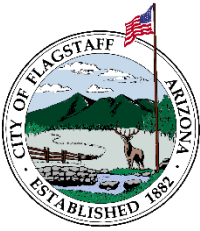
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On December 8th, I initiated an investigation into an application for Series 9 (Liquor Store) liquor license application filed by Jeffery Chastain (Agent) and Jolie Chastain (Member). The license # is 09033002, and it is for the Mobil gas station located at 2020 S. Milton Road.

I conducted a query through local systems and public access on Jeffery and Jolie and I found no derogatory records for them.

I found no current or historic liquor violations under this existing license number or applicants. There is no school or church within 300 feet of the building. I was provided documentation that shows Jeffery has taken a liquor law training course within the past three years.

I spoke to Jeffery about this application. He confirmed that he or one of the other applicants would attend the council meeting on January 5th, 2020. The Mobil is a gas station and convenience store which is open 24 hours.



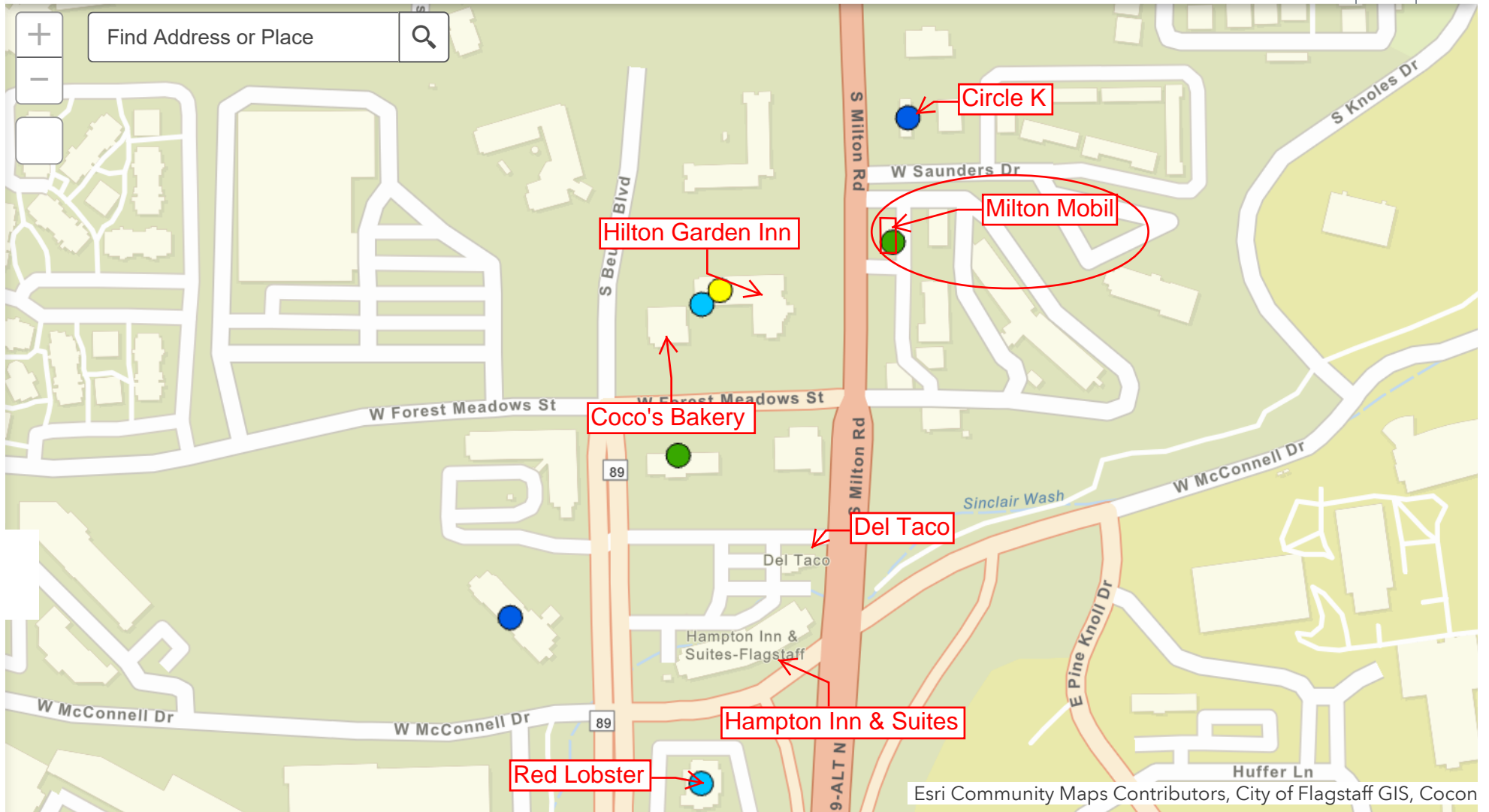
## Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk  
From: Reggie Eccleston, Code Compliance Manager  
CC: Tiffany Antol, Planning Director  
Date: Dec. 8, 2020  
Re: Application for Liquor License #125472  
2020 S. Milton Rd., Flagstaff, Arizona 86001  
Assessor's Parcel Number 103-24-003  
Jeffrey Chastain on behalf of Milton Mobil

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This application is a request for a transfer Series 09 Liquor Store liquor license by Jeffrey Chastain on behalf of Milton Mobil. This business is located within the Highway Commercial district. This district does allow for this use.

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



## 6. A.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** James Huchel, Wastewater Manager  
**Co-Submitter:** Ryan Roberts  
**Date:** 12/28/2020  
**Meeting Date:** 01/05/2021



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#### TITLE:

**Consideration and Approval of Contract:** Wildcat Hill WRP emergency crane repair

#### STAFF RECOMMENDED ACTION:

1. Approve the contract with Kone Cranes for the repair of the overhead Crane used to move Sulfur Dioxide chemical containers in the amount of \$ 53,646
2. Authorize the City Manager to execute the necessary documents.

#### Executive Summary:

This is a confirming approval of an emergency repair. During our annual inspection staff was informed by the contracted inspection company (Kone Cranes) that there is a recall on our Sulfur Dioxide Crane Rail. Overhead cranes require this inspection annually as part of the OSHA Standard 1910.179. Now that we know this is a potential danger, we must either repair it or quit using it. This equipment is utilized weekly to move 1-ton Sulfur Dioxide containers so that we can place them on scales so that we can track usage. We have no way to unload the Sulfur Dioxide containers from delivery semi-trucks or move them inside the building. We will be utilizing emergency funds for this Project.

#### Financial Impact:

Water Services will be using a portion of the FY 2020-21 budget in account # 203-08-375-3235-0-4421 emergency reserve in the Wastewater Fund. This repair was not budgeted, however is critical for staff and public safety.

#### Policy Impact:

No Impact

#### Connection to PBB Key Community Priorities/Objectives & Regional Plan:

##### **Priority Based Budget Key Community Priorities and Objectives**

- **Priority Based Budget Key Community Priorities and Objectives**
  - **Safe & Healthy Community**
  - Foster a safe, secure, and healthy community
  - Provide public safety with the resources, staff, and training to respond to community needs
  - Ensure the built environment is safe through the use of consistent standards, rules and

regulations, and land use practices

- **Sustainable, Innovative Infrastructure**
- Utilize existing long-range plan(s) that identify the community's future infrastructure needs and all associated costs
- **Environmental Stewardship**
- Actively manage and protect all environmental and natural resources

### **Regional Plan**

N/A

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

No prior discussion

### **Options and Alternatives:**

Approve the award as recommended. All work has been safely completed.

### **Background/History:**

The Wildcat Hill WRP Sulfur Dioxide overhead crane was installed when the facility was built in 1982. During the annual inspection of plant crane equipment this year it was noted that this crane system has a recall, was tagged as unsafe and should be replaced as soon as possible.

Chemicals represent a large investment in the effective operation of wastewater treatment plants. Wildcat Hill Water Reclamation Plant uses the chemical Sulfur Dioxide to remove chlorine from reclaim water that has been chlorinated for disinfection.

The procurement justification for this purchase is approved as an emergency purchase. Due to the critical need and nature of the equipment, procurement allowed this project to move forward on an emergency basis.

### **Key Considerations:**

- Overhead cranes used to safely move chemical containers and are a critical part of our WWTP operation.
- Failure of crane assembly would result in a OSHA permit violation.
- Sulfur Dioxide is utilized to reduce Chlorine residual within reclaim water at Wildcat to below permit level of 0.009 mg/l. Without this chemical reaction, COF would be in violation of the ADEQ allowable permit level.

### **Expanded Financial Considerations:**

N/A

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

These repairs will ensure that this crane equipment will be functional for at the next 20 Years. It will ensure staff can safely transport chemical containers. It will also serve to ensure public safety.

### **Community Involvement:**

N/A

### Expanded Options and Alternatives:

N/A

**Attachments:**

### Arch Beam Potential Danger

## City Of Flagstaff SO2 Monorail replacement Quote

## Service Report

## Emergency Procurement Form

### Old Beam Photo

### New Beam

# Arch Beams: Potential Danger



Arch beam (castellated beam) is a type of crane that has cut outs in the web and could look like the one in these images. If the web is not continuously welded to the lower flange it is a castellated beam. Though it hasn't been manufactured since 1962, it is still in use in plants throughout North America.

Companies need to be aware of the possible dangers posed by age and fatigue in the welds of these Arch Beams (castellated beams).

- Cracks in welds and lower T Sections
- Tracks with raised tread worn away
- Most cranes have exceeded their useful life expectancy, but some users see cranes as “timeless”
- Current inadequate crane maintenance regulations may lull owners into a false sense of security about crane safety and/or conditions
- Due to the age of equipment, the exact understanding of a crane's design duty cycle may be difficult to determine without engineering analysis. (i.e. documentation may be missing)

Got Arch Beam? Here is what we recommend:

Our primary recommendation is to Replace All Arch Beams with Tarca® Beams - contact Gorbel at 800-821-0086 or email [info@gorbel.com](mailto:info@gorbel.com)

- If this is economically unfeasible, conduct regular safety audits
- Safety Audits: Steps to a safer and more reliable crane - Use only skilled personnel for the audit
- Identify the highest risk cranes in your inventory by age and cycles
- Study and compare the original design versus the current usage
- Fully inspect every weld in the beam. Through inspections, find discontinuity and then use non destructive testing
- Benchmark critical components using reliability based maintenance practices and software

# Replace *Patent* Track

Handled by: Eric Willard  
Offer date: 08/20/2020 / Revision B  
Offer number: 1-16F90D2A-01

Page 1

**Customer:** City of Flagstaff  
**Address:** 2800 N El Paso Flagstaff Rd.  
Flagstaff, AZ 86004-7868

**Inquiry date:** 08/12/2020  
**Subject:** S02 Tank house  
**Contact Person:** Scott Gede/ Jim Huchel  
**Customer Tel:** 928-213-2426  
**Customer Email:** jhuchel@flagstaffaz.gov

Thank you for the opportunity to be of service. This proposal details the planned repairs we have discussed. Konecranes is pleased to offer the following proposal for your consideration and approval.

## Scope:

- Remove Existing Hoist from Service. (3-Ton Shaw box)
- Remove all patent track from service. (48 Feet)
- Install Rated & Properly Sized Monorail. (*fabricated & engineered to fit*)
- Reinstall Hoist & Trolley. (3-ton Shaw Box)
- Complete 100% rated load test.

## Comments:

- Offer includes Labor, Material, Equipment, Test Weights & Engineering.
- *Engineering included to review Tieback, Beam fabrication & Header beam Anchors.*
- *Anchors need to be inspected & cannot be reused if damaged. (\$5,000.00)*

<b>Total Investment w/o Anchor Repair .....</b>	<b>\$48,464.00</b>
<b>Total Investment w/ Anchor Repair.....</b>	<b>\$53,464.00</b>

Above pricing is based strictly on the parameters as outlined. Any modifications to these parameters may result in revisions to the indicated price.

Above pricing is for the equipment described only and does not include any field installation/modification costs including any costs involved in modification of the crane bridge to suit the proposed equipment.

Proposal is based on Konecranes / \_\_\_\_\_ documentation on the crane and any known Konecranes / \_\_\_\_\_ modifications. It is up to the customer to inform us of any other modifications accomplished without our involvement.

Above proposal is based on the assumption that all existing crane components are in first class condition. Our price does not include any correction of other discrepancies that are not addressed in this proposal. All concealed damages and/or items found necessary to be repaired or replaced upon start of the above project, and not otherwise covered by the purchase order, shall be brought to your immediate attention and a price for said work agreed upon prior to proceeding with the repairs.

Prices quoted are Ex-Works Konecranes factory as per INCOTERMS 2010.



# OFFER

Offer number:

Page 2

Above Prices are based upon:

- Field services will be performed by Konecranes non-union technicians in conjunction with our chosen sub-contractors at our standard wage rates on a straight time, first shift, normal workday basis. If any restrictions on chosen sub-contractors, union labor or prevailing wages are to apply the proposal must be reviewed and modified accordingly.
- Free and clear access provided to the crane(s) and the required work area beneath and around the crane(s) without interference from other contractors or trades.
- The equipment being available to the service technician(s) at the expected time of arrival through completion of the required work.
- Adequate clear space is provided to stage components and set up equipment.
- Local permits or licenses are provided by others.
- Unless otherwise stated all field equipment (mobile cranes, man lifts, welding equipment, etc.) to be supplied by the customer. If requested by customer Konecranes will provide the necessary equipment at cost plus 20%.
- Additional labor and per diem charges will be applicable due to any delays caused by customer or other contractors/trades, etc.
- On installation completion we will perform Konecranes standard operational tests. We will provide at least 30 minutes notice before performing the tests to allow customer personnel to witness these tests.
- Old components and materials will be left on-site at a point beneath the crane for disposal by customer.

## COMMERCIAL TERMS

This quotation, proposal or offer is subject to and incorporates as if fully rewritten herein the Seller's Standard Terms and Conditions of Sale (Service) (Revision 08.01.2016), a copy of which is attached hereto or is available at [www.konecranesUSA.com](http://www.konecranesUSA.com) or upon request of Buyer. No other Terms and Conditions are applicable unless specifically agreed to by Konecranes and are hereby rejected in their entirety.

All payments due in 15 days. A service charge of 1½% (18% per annum) will be assessed to all overdue accounts. If cancellation of this order is necessary, for any reason, cancellation charges will be based on costs for actual work completed, costs for materials in production at time of cancellation, costs for cancellation charges from material suppliers arising out of cancelled orders, administrative costs plus a reasonable profit for costs incurred in the performance of the terminated work.

**Shipment to Install Time: 6-7 Weeks Pending with Purchase Order.**

**Payment terms: 35% upon Receipt of Order (Non-Refundable)  
65% upon completion of Field Work.**

Validity:

This offer shall remain valid and firm for a period of 30 days, from the date of the offer.

Taxes/Permits:

Unless otherwise indicated on the pricing page, federal and state sales taxes, etc. / permits are not included.

# OFFER

**Offer number:**

**Page 3**

**Documentation:**

Two complete operating and service manuals will be supplied for the new equipment provided. These manuals will be supplied after the shipment of the equipment.

**Standards:**

The above equipment includes all safety features required by (our interpretation of) OSHA standards in effect as of the date of quotation. All wiring is in accordance with N.E.C. requirements.

**Warranty:**

Parts proven to be defective within this period will be replaced Ex-Works Konecranes factory. This warranty does not apply to parts that must be replaced due to wear or due to abuse of the equipment or equipment that is manufactured by parties other than Konecranes.

We understand and appreciate the urgency of completing these repairs and will order parts/confirm scheduling promptly after receipt of your notification authorization. Please feel free to contact us at any time for any reason.

We sincerely appreciate your consideration and look forward your acceptance.

Best Regards,  
Konecranes Inc.

Eric Willard  
Service Sales  
Office: 602-267-8191  
Mobile: 520-235-3429  
Email: [eric.willard@konecranes.com](mailto:eric.willard@konecranes.com)

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## STANDARD TERMS AND CONDITIONS (SERVICE)

Rev. 08.01.2016 US

**1. APPLICABILITY.** The sale of any and all Seller services and/or goods included in and/or provided in connection with such services ("Goods") shall be conditioned upon, and subject to the following terms and conditions ("Terms and Conditions") which shall form an integral part of any agreement between Buyer and Seller. Buyer's acceptance of any quotation, proposal or offer made by Seller for the sale of its services and/or Goods (collectively, "Quotation") is expressly made subject to these Terms and Conditions and none of the Terms and Conditions may be added to, modified, superseded or otherwise altered except as revised in writing by Seller. All orders for services and/or Goods received by Seller shall be governed only by these Terms and Conditions, notwithstanding any terms and conditions in any purchase order, release order, or any other form issued by Buyer. Seller hereby objects to any terms and conditions which may be found in any purchase order, release order, or any other form issued by Buyer and hereby notifies Buyer that they are rejected.

**2. PRICE.** Prices quoted by Seller shall remain firm for a period of thirty (30) days from the date of a Quotation; provided, however, Seller reserves the right, at any time prior to the acceptance of a Quotation by Buyer to adjust said prices by providing written notice to Buyer regarding any such adjustment. Quotations provided are priced based on Buyer's purchase of the entire scope of services and/or Goods identified in a Quotation. If less than the entire scope of services and/or Goods identified in a Quotation is ordered by Buyer, prices may vary. Unless otherwise stated in a Quotation, installation, commissioning, supervision and/or start-up services are not included in the price of services and/or Goods to be provided by Seller. Buyer shall pay Seller to the extent of services provided, or for the quantity of Goods shipped should Seller be unable for any reason to provide and/or ship the entire scope of services and/or Goods identified in a Quotation. Prices quoted by Seller are exclusive of all local permits and taxes (except taxes levied on Seller's income) including federal, state, provincial and local use, sales, property or similar taxes, and Buyer shall pay all such taxes in full or shall reimburse Seller for any such taxes paid by Seller.

**3. SCOPE OF SERVICES AND GOODS.** The services and/or Goods provided by Seller pursuant to a Quotation are limited exclusively, at the express request of Buyer, to the services and/or Goods expressly identified in such Quotation. As a result, Seller does not assume responsibility and/or liability for the failure to provide any other services and/or Goods. Modifications, additions or deletions to or from the scope referenced in a Quotation shall only be effective if evidenced in writing signed by Seller and the sale of any and all services and/or Goods affected by such modification, addition or deletion shall be subject to these Terms and Conditions whether or not referenced therein.

**4. MINIMUM CHARGE.** All services and/or Goods supplied by Seller are subject to a one hundred dollar (USD \$100.00) (or the local currency equivalent) minimum charge. If the total quantity of services and/or Goods purchased by Buyer (excluding freight charges) results in a charge of less than one hundred dollars (USD \$100.00) (or the local currency equivalent) Seller reserves the right to charge Buyer the difference between the price of the services and/or Goods purchased and one hundred dollars (USD \$100.00) (or the local currency equivalent) as an additional charge for the services and/or Goods purchased.

**5. PAYMENT TERMS.** Unless otherwise provided in the Quotation, all Seller invoices shall be paid by Buyer within fifteen (15) days of the date of invoice. If Buyer fails to timely pay invoices, Seller shall be entitled to suspend all work and deliveries and issue a late charge equivalent to the lesser of one and one half percent (1 1/2%) per month (eighteen percent (18%) per annum) or the maximum rate allowed by law on all unpaid invoices or invoices not paid in accordance with these Terms and Conditions. Buyer shall reimburse Seller for all expenses, regardless of their nature or type (including attorney's fees), related in any way to Seller's collection of invoices not paid in accordance with these Terms and Conditions or otherwise incurred by Seller in the enforcement of these Terms and Conditions. Unless otherwise provided in a Quotation, for all services and/or Goods with a Quotation or purchase order price in excess of thirty thousand dollars (USD \$30,000.00) (or the local currency equivalent), Buyer shall pay a deposit in the amount of forty percent (40%) of the price (due upon Seller's receipt of Buyer's purchase order). Buyer shall make progress payments as stated in the applicable Quotation or otherwise agreed to in a writing signed by Buyer and Seller. Buyer shall have no right to offset any amounts due Seller by any payment or other obligation which Seller or any of its affiliates may owe to Buyer.

**6. CANCELLATION.** A purchase order may be cancelled by Seller (in whole or in part) at any time if (a) Buyer fails to strictly comply with the terms governing the order, (b) Buyer becomes insolvent, appoints or has appointed a receiver, or makes an assignment for the benefit of creditors, (c) a petition in bankruptcy or insolvency is filed by or against Buyer, (d) Seller requests and is unable to secure acceptable payment assurances from Buyer for the services and/or Goods identified in a Quotation or purchase order, or (e) amounts due Seller by Buyer are unpaid. Upon cancellation of a purchase order, Buyer shall be obligated to pay to Seller the price for all services performed to date and all Goods that can be completed and shipped within thirty (30) days of the date of cancellation, all special tooling for which commitments have been made by Seller, and all of Seller's costs, expenses and reasonable profit for work in process as of the date of cancellation.

**7. CREDIT APPROVAL.** All orders are subject to Buyer credit approval by Seller. Seller reserves the right to refuse shipment or provision of any and all services and/or Goods identified in any Quotation or purchase order and/or modify the payment terms identified therein or in Section 5 hereof.

**8. DELIVERY TERMS AND DELAYS.** Unless otherwise identified in a Quotation, all shipments of Goods are F.C.A. Seller's plant, warehouse or dock, as defined by Incoterms® 2010, and all risk of loss with respect to any Goods shipped shall pass to Buyer when such Goods are delivered to the carrier at such plant, warehouse or dock. Title to Goods shall transfer to Buyer upon Seller's receipt of payment in full for all services and Goods provided pursuant to a Quotation and/or purchase order.

**a. Delivery.** All dates for the shipment and/or delivery of Goods and/or for the provision of services are approximate. Seller shall not be liable for delay in or failure to make shipment and/or delivery of Goods or commencement, performance or completion of services by any

identified date for any reason whatsoever. In the event of any delay, regardless of the cause, the parties shall agree upon a new date for the shipment and/or delivery of Goods and/or commencement, performance or completion of services. In the event of any delay caused by Buyer, Buyer shall pay Seller for all costs and expenses incurred by Seller related to such delay.

**b. Freight Charges.** Any reference to freight charges contained in a Quotation is an estimate. Seller is not responsible for any differences that may occur between freight estimates contained in a Quotation and actual freight charges applicable at the time of shipment, and Buyer shall incur and be responsible for all costs associated therewith.

**c. Packaging.** Unless otherwise identified in a Quotation, quoted prices do not include the cost for export or special packaging of Goods and Buyer shall assume and be responsible for those extra costs associated with such export and packaging.

**d. Cost of Goods.** Unless otherwise stated in a Quotation, Buyer shall pay all cost increases Seller is assessed for materials incorporated into services and/or Goods, including but not limited to steel, copper, and fuel surcharges, to the extent such increases exceed any estimated costs used by Seller to develop a Quotation by ten percent (10%) and which occurs after the issuance of a Quotation, but prior to the provision of the services and/or delivery of the Goods.

**e. Site Condition.** Buyer warrants that the site where Goods are to be delivered and/or installed and/or where services are to be performed shall be ready and adequate for Seller's delivery and/or installation of the Goods and/or performance of services. Buyer's obligations in this regard include but are not limited to the removal of all obstructions and institution of adequate safety measures to protect Seller's property, employees, agents and contractors. Buyer shall be responsible for all costs and expenses associated with Seller's delay and/or inability to deliver and/or install any Goods and/or perform any services related to Buyer's failure to comply with this provision. Seller in no way warrants the sufficiency of the site where the services are performed and/or Goods are delivered and/or installed.

**9. SECURITY INTEREST.** Buyer hereby grants Seller a security interest in the Goods to secure the unpaid balance of the price and all other obligations of Buyer to Seller however arising. Buyer authorizes Seller to file all necessary financing statements and other similar documents required to perfect the security interest granted herein and irrevocably grants Seller a power of attorney to execute any documents on behalf of Buyer relating thereto.

#### **10. WARRANTIES.**

**a. Products manufactured by Seller ("Seller Products").** To the extent that Seller Products are incorporated into the scope of services and/or Goods stated in a Quotation, such Seller Products shall be warranted in accordance with Seller's Standard Warranty for such Seller Products in effect on the date of sale (incorporated by reference as if fully rewritten herein and a copy of which is attached to the Quotation or is available at [www.konecranesUSA.com](http://www.konecranesUSA.com) or upon request of Buyer). Repair and replacements provided pursuant to the Standard Warranty do not extend the original warranty provided with the Goods at the time of sale.

**b. Services.** Seller warrants that all services performed by Seller will conform in all material respects to the description of services identified in a Quotation and will be performed in a good, workmanlike manner. All claims for breach of this warranty for services performed by Seller must be brought by Buyer within six (6) months of the date of Seller's performance of such services; provided, however, Buyer shall notify Seller of any alleged warranty claims within seventy two (72) hours of Buyer's discovery thereof. Buyer's failure to comply with the terms of this procedure shall void the warranty in this Section 10.b. Seller does not warrant services provided by any third party. Buyer's sole and exclusive remedy for Seller's breach of this warranty for services performed by Seller shall be the re-performance of such services by Seller. Buyer acknowledges and agrees that Seller shall have no liability for loss of use, downtime or any indirect or consequential damage arising from Seller's breach of this warranty for services.

**c. Products manufactured by parties other than Seller and/or its affiliates ("Third Party Products").** Third Party Products supplied by Seller to Buyer are not warranted by Seller. Third Party Products may be warranted separately by their respective manufacturers or such other parties from whom Seller purchases such Third Party Products and Seller shall, to the extent possible, assign to Buyer whatever rights Seller may obtain under any such warranties.

**d. Inherent Defects.** To the extent remanufacturing, refurbishment, modernization and/or modification services are included within the scope of services identified in a Quotation, any defect in Buyer's equipment to which Seller performs such remanufacturing, refurbishment, modernization and/or modification services that is attributable in whole or in part to engineering, design specifications, latent defects, corrosion or fatigue that are inherent to and/or present in or on the equipment is not covered by any warranty of Seller and Seller shall not be liable for any costs, expenses, losses or damages that are caused in whole or in part by any such defect.

**e. Non-Transferable.** Any warranty of Seller is limited to and only for the benefit of Buyer and is not transferable or assignable by Buyer without the prior written consent of Seller.

**THE FOREGOING REPRESENTS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER TO BUYER WITH RESPECT TO THE GOODS AND/OR SERVICES PROVIDED UNDER A QUOTATION AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**BUYER HEREBY WAIVES ANY CLAIM THAT ANY EXCLUSIONS OR LIMITATIONS OF ANY WARRANTY PROVIDED BY SELLER DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE ITS AGREEMENT WITH SELLER TO FAIL OF ITS ESSENTIAL PURPOSE.**

**BUYER SHALL BE ENTITLED TO NO OTHER REMEDY REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION, WHETHER BASED IN AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.**

**11. LIMITATION OF DAMAGES.** SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY END USER OF GOODS OR SERVICES PROVIDED UNDER A QUOTATION WITH RESPECT TO THE SALE OF GOODS OR PROVISION OF SERVICES UNDER A QUOTATION FOR LOST PROFITS OR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. SELLER'S LIABILITY IS LIMITED TO THE AMOUNT OF BUYER'S DIRECT DAMAGES UP TO THE AMOUNT OF THE CONTRACT PRICE AND IN NO EVENT SHALL SELLER BE LIABLE TO BUYER

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**OR ANY END USER OF GOODS OR SERVICES PROVIDED UNDER A QUOTATION FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE TOTAL PRICE PAID BY BUYER FOR GOODS AND/OR SERVICES REFERENCED IN A QUOTATION.**

**12. DISCLAIMER (Inspection Services and/or Preventative Maintenance Programs).** Notwithstanding any representation made by any party to the contrary in any other verbal or written communication, the performance of any equipment (or component) inspection as all or part of the services under a Quotation by Seller and the preparation of the report derived therefrom are conditioned upon and evidence of Buyer's acknowledgment and acceptance of the following additional terms, conditions and disclaimers:

**a.** At the request of Buyer, the scope of any equipment (or component) inspection performed by Seller is limited exclusively to a search for readily observable defects apparent on the equipment and on those equipment component parts identified in the inspection scope accompanying a Quotation that are safely and conveniently accessible to the inspecting personnel.

Seller shall not dismantle the equipment or the equipment components to be inspected, nor shall it use any ultrasonic or other technical means to inspect and detect latent or non-observable defective conditions in the equipment or its components. Notwithstanding the performance of this inspection and regardless of any representation made in any report to the contrary, including the inspection report prepared by Seller, latent or non-observable defects may exist or develop on or in the subject equipment or its components on or following the moment of inspection and Buyer is hereby notified of the potential existence thereof. The use of equipment possessing any defect, including latent or non-observable defects, may result in catastrophic equipment failure potentially causing damage to property or injury or death to persons in, on or around the subject equipment.

**b.** The conditions identified during the equipment (or component) inspection and reported by Seller orally or in writing are representative of the conditions of the subject equipment and its components as they appeared during the inspection. These conditions can and will change immediately following inspection due to the use or non-use of the subject equipment (and its components). The information provided to Buyer as a result of and following the inspection does not reflect any changes in the condition of the subject equipment and/or its components following inspection by Seller and Buyer retains and/or assumes all risk for such changes in condition.

**c.** The decision concerning whether or not to repair, or replace the equipment or any deficient component of the subject equipment lies exclusively with Buyer. By completing the inspection and preparing the inspection report Seller expressly recommends that Buyer authorize the repair and/or replacement of the equipment or any component identified during the inspection or listed in the report derived therefrom as deficient in any manner or degree prior to operating the subject equipment. Seller hereby notifies Buyer that failure to do so may result in catastrophic equipment failure causing damage to property or injury or death to persons in, on or around the subject equipment.

**d.** To the extent applicable, the scope and performance of any inspection by Seller as all or part of the services utilizing Magnetic Particle Testing (MT), Magnetic Rubber Testing (MRI) and/or Liquid Penetrant Testing (PT), and the preparation of the report derived therefrom, are limited to the detection of exposed surface flaws no less than 150 nanometers in diameter. MT, MRI and PT are highly sensitive to external conditions and to the characteristics of the inspected material, component, or assembly. Further, contaminations on the inspected surface may mask actual defects. As such, notwithstanding the performance of any such inspection by Seller and regardless of any representation made to the contrary, including the inspection report prepared by Seller, latent, sub-surface, and/or covered surface flaws may exist on the subject material on the date of inspection and Buyer is hereby notified of the potential existence thereof.

**e. SELLER IS NOT LIABLE FOR CLAIMS, DEMANDS, DAMAGES OR LIABILITY ARISING FROM (I) CAUSES OUTSIDE THE SCOPE OF THE INSPECTION AS IDENTIFIED IN SECTION 12.A., (II) ANY CONDITION THAT OCCURS FOLLOWING THE INSPECTION AS IDENTIFIED IN SECTION 12.B., (III) FAILURE OF BUYER TO REPAIR OR REPLACE ANY EQUIPMENT OR COMPONENT AS IDENTIFIED IN SECTION 12.C., OR (IV) FLAWS THAT ARE NOT DETECTABLE BY OR WHOSE DETECTION IS LIMITED WHEN UTILIZING THE INSPECTION METHODS DESCRIBED IN SECTION 12.D.**

**13. NON-SOLICITATION.** Buyer agrees, on behalf of itself and its parents, subsidiaries, affiliates, successors and assigns, that during Seller's performance of the work referenced in a Quotation and for a period of one (1) year thereafter, Buyer shall not directly or indirectly solicit, entice, approach, offer employment to, or employ in any capacity any employee of Seller. For purposes of this section the term "employee" means any individual actively employed by Seller at the time a Quotation is accepted and associated in any way with Seller's performance of the work referenced therein.

**14. CONFIDENTIALITY; LICENSE.** Without limitation, Buyer shall not at any time disclose to any other person or entity any information relating to the business of Seller, including without limitation, plans and specifications and any other inventions, devices, formulas, processes, programs, software, listings, print-outs, documentation, notes, charts, manuals, programming aids, source codes, object codes, compilations, technology, know-how, price lists, costs, policies, techniques, trade practices, accounting methods, methods of operation or other data that Seller considers confidential, and trade secrets of every kind relating to Seller's business, whether or not patentable or copyrightable. Such information shall remain the exclusive property of Seller and shall be returned to Seller upon request at any time. Further, these Terms and Conditions do not constitute a license or authorization of any kind for Buyer to use any of the trademarks or trade names owned or licensed by Seller. Buyer hereby grants to Seller a worldwide, irrevocable, royalty-free, non-exclusive license to collect, store and use any data collected by Seller during the performance of any inspection and/or services for any internal purposes of Seller, including but not limited to research and development.

**15. INDEMNIFICATION; WAIVER OF IMMUNITY. SELLER SHALL NOT BE LIABLE FOR AND BUYER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND ANY ENTITY AFFILIATED IN ANY WAY THEREWITH FROM ANY CLAIMS, DEMANDS, DAMAGES (REGARDLESS OF THEIR TYPE, INCLUDING, BUT NOT LIMITED TO DIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL), LIABILITIES, LOSSES AND EXPENSES (WHETHER KNOWN OR UNKNOWN, PRESENT OR FUTURE), ANY AND ALL LIABILITY, OF AND FROM ANY AND ALL MANNER OF SUITS, ACTIONS OR CAUSE(S) OF ACTION (INCLUDING BUT NOT LIMITED TO SUITS FOR CONTRIBUTION AND/OR INDEMNITY AND ALL SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, OF WHATEVER KIND OR NATURE) ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF ACTS OR OMISSIONS OF BUYER, ITS AGENTS, CONTRACTORS, EMPLOYEES OR ANY PERSON UNDER THEIR CONTROL AND RELATING IN ANY WAY**



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**TO THE GOODS AND/OR SERVICES PROVIDED UNDER A QUOTATION OR THE EQUIPMENT RELATED THERETO, INCLUDING BUT NOT LIMITED TO BUYER'S USE, INSTALLATION, INCORPORATION OR SELECTION THEREOF. BUYER HEREBY WAIVES ANY IMMUNITY OR DEFENSE UNDER APPLICABLE WORKERS' COMPENSATION LAWS OR OTHER LAWS THAT WOULD OTHERWISE LIMIT BUYER'S OBLIGATIONS HEREUNDER.**

**16. MANUALS.** To the extent an equipment manual is delivered to Buyer with Goods (applicable exclusively to those Goods where such a manual is produced), Seller reserves the right to assess a charge, per manual, for each additional manual requested by Buyer. Each manual produced by Seller is a confidential, proprietary and copyrighted document and may not be copied, published or reproduced in any manner or form without prior written agreement of Seller. Such agreement is at the sole discretion of Seller and Seller may revoke the same at its discretion at any time.

**17. APPROVAL DRAWINGS.** Approval drawings, if provided to Buyer by Seller and either signed by a representative of Buyer with apparent authority to do so or not objected to by Buyer in writing within a reasonable time or, if required, the time required by Seller, shall constitute exclusive proof regarding Buyer's verification and acceptance of the dimensions and other information relating to the Goods described therein and Buyer shall be entitled to rely on such approval drawings to develop a Quotation and provide the services and/or Goods referenced therein. Buyer hereby assumes any and all responsibility for any inaccurate or incomplete information contained therein.

**TO THE EXTENT THAT BUYER PROVIDES THE DESIGN AND/OR SPECIFICATIONS FOR ANY GOODS OR SERVICES TO BE PERFORMED BY SELLER, BUYER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTION AND FROM ALL COSTS, EXPENSES, DAMAGES AND LIABILITIES (INCLUDING BUT NOT LIMITED TO ATTORNEYS AND CONSULTANTS FEES) FOR ACTUAL OR ALLEGED INFRINGEMENT OF ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT, TRADEMARK, INTELLECTUAL PROPERTY RIGHTS, OR PROPRIETARY RIGHTS OF THIRD PARTIES BY REASON OF THE USE, SALE, MANUFACTURE, OR DESIGN OF SUCH GOODS AND/OR SERVICES.**

**18. DATA COLLECTION.** The Goods purchased by Buyer may have functionality through an included data connection ("Data Connection") that monitors, transmits and records data related to certain aspects of equipment usage. Buyer acknowledges and agrees that Seller may activate the Data Connection immediately upon or at any time following installation of Goods or equipment and the data collected will be transmitted to and collected by Seller or its affiliates through the Data Connection. Buyer, on behalf of itself, any end user of equipment ("End User") and any individual identified or identifiable by equipment usage data, hereby consents to the collection, storage and use by Seller of such information and agrees that Seller's collection of such information may continue until such time that Buyer or End User terminate its agreement to receive and/or purchase remote monitoring services from Seller or its affiliates (if applicable) or otherwise directs Seller in writing to deactivate the Data Connection (provided, however, Buyer hereby acknowledges and agrees that deactivation of the Data Connection may not be immediate and Seller will use its commercially reasonable best efforts to deactivate the Data Connection as promptly as possible). Buyer further accepts and agrees that Seller shall not actively monitor or inspect any equipment or equipment usage data or other information that is generated by using a condition monitoring unit incorporated into any equipment and/or transmitted and collected through the Data Connection. Regardless of the nature of information collected by Seller, Buyer acknowledges and agrees that Seller shall have no obligation to alert or notify Buyer of any information collected by Seller except as specifically set forth in a separate agreement between Seller and Buyer and, unless and until Buyer has agreed to purchase or receive remote monitoring services offered by Seller, Seller shall be under no obligation to provide any equipment usage data to Buyer.

**19. COMPLIANCE WITH LAWS; EMBARGOES AND ECONOMIC SANCTIONS COMPLIANCE.** Buyer shall at all times comply with all federal, state, local and provincial laws, ordinances, regulations, and orders that are applicable to the services and/or Goods provided by Seller and its performance hereunder, except to the extent that failure to comply therewith could/would not, in the aggregate, reasonably be expected to have a material adverse effect on its business or on its ability to comply with its obligations under these Terms and Conditions. Buyer represents and warrants that Buyer: (i) is and shall remain in compliance with all laws administered by the United States Office of Foreign Assets Control or any other applicable governmental entity imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries, entities and persons (collectively, "Embargoed Targets"); (ii) is not an Embargoed Target or otherwise subject to any Economic Sanctions Law; and (iii) shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, Buyer shall not (a) directly or indirectly export, re-export, transship or otherwise deliver any Goods and/or services provided by Seller or any portion of such Goods and/or services to an Embargoed Target, or (b) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

**BUYER SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER OR ANY ENTITY AFFILIATED IN ANY WAY THEREWITH FROM ANY CLAIMS, DEMANDS, DAMAGES LIABILITIES, FINES, PENALTIES, LOSSES AND EXPENSES OF AND FROM ANY AND ALL MANNER OF SUITS, ACTIONS OR CAUSE(S) OF ACTION (INCLUDING BUT NOT LIMITED TO SUITS FOR CONTRIBUTION AND/OR INDEMNITY AND ALL GOVERNMENTAL ACTIONS AND/OR SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, OF WHATEVER KIND OR NATURE) ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF BUYER'S BREACH OF THIS SECTION 19.**

**20. SURVIVAL.** Each of the sections herein intended for the benefit of Seller shall survive expiration or termination of the services or delivery of the Goods outlined in a Quotation.

**21. ENTIRE AGREEMENT.** These Terms and Conditions and the applicable Quotation, together with Seller's Standard Warranty incorporated herein by reference, represent the entire agreement between Seller and Buyer. **THESE TERMS AND CONDITIONS AND THE PRICES SET OUT IN A QUOTATION SPECIFICALLY RECOGNIZE THE ALLOCATION OF THE RISKS OF PERFORMANCE OF THE PARTIES AS WELL AS THE LIMITATION OF LIABILITY AND DAMAGES AND THE RECOVERY OF COLLECTION COSTS, AND THE PARTIES EXPRESSLY AGREE THAT THESE LIMITATIONS ON REMEDIES, RESPONSIBILITY FOR COLLECTION COSTS, AND OBLIGATIONS TO INDEMNIFY ARE ESSENTIAL PARTS OF THE AGREEMENT BETWEEN THEM AND ARE SPECIFICALLY BARGAINED FOR.** Any purchase order or other document issued by Buyer shall be deemed to (i) be solely for the record keeping

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convenience of Buyer, and (ii) confirm these Terms and Conditions and not add to, delete from, or otherwise change or modify these Terms and Conditions or those contained in a Quotation.

**22. SEVERABILITY.** The partial or complete invalidity of any one or more provisions of these Terms and Conditions shall not affect the validity or continuing force and effect of any other provision. If any portion of these Terms and Conditions shall be determined to be invalid or unenforceable, that portion shall automatically be modified to the extent necessary to make it valid. Notwithstanding the foregoing, such determination of invalidity or unenforceability shall not affect any other portion of these Terms and Conditions and such other portions shall remain in full force and effect.

**23. GOVERNING LAW; JURISDICTION.** Any controversy arising out of or related to these Terms and Conditions, a Quotation, the provision of services and/or Goods thereunder, or any contract between Seller and the Buyer shall be construed and governed by the laws of the State of Ohio, including Article 2 of the Uniform Commercial Code as codified in Ohio Revised Code Chapter 1302, notwithstanding conflicts of law principles. Any action arising from or related to these Terms and Conditions, a Quotation, the provision of services and/or Goods thereunder, or any contract between Seller and the Buyer shall be instituted and litigated in any state court located in Clark County, Ohio, or in any federal court with jurisdiction over Clark County, Ohio. Seller and Buyer hereby irrevocably consent to the jurisdiction of the courts of Clark County, Ohio. The rights and obligations of Seller and Buyer will not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods; rather these rights and obligations will be governed by the laws of the State of Ohio.

**24. WAIVER.** No waiver by Seller of any breach of any term or condition of these Terms and Conditions shall be deemed a waiver of any other breach. No delay in enforcement of rights by Seller will be deemed a waiver, and Seller's failure to object to any provision contained in any communication from Buyer shall not be deemed an acceptance thereof or a waiver of any of these terms and conditions.

**25. NUCLEAR LIABILITY.** In the event that the services and/or Goods provided by Seller and/or otherwise identified in these Terms and Conditions or in a Quotation are provided, used, or otherwise employed in, on or around a facility generating and/or otherwise employing in any manner nuclear, radioactive or ionizing radiation whether as a fuel, product or any other substance, the terms and conditions of the Seller Nuclear Liability Addendum (Revision 12.31.2012) incorporated by reference as if fully rewritten herein and a copy of which is attached to the Quotation or is available at [www.konecranesUSA.com](http://www.konecranesUSA.com) or upon request of Buyer.

**26. ENGLISH LANGUAGE.** Buyer and Seller confirm that it is their wish that these Terms and Conditions and each Quotation as well as all other documents relating to these Terms and Conditions and each Quotation, including notices, be drawn up in English only.

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## KONECRANES STANDARD WARRANTY (EQUIPMENT)

**1. WARRANTY POLICY.** Subject to those terms and conditions contained herein, Seller warrants that all Seller products conform in all material respects to the description identified in the quotation, proposal or offer made by Seller to Buyer for the sale of its products (collectively, "Quotation") and will be free from defects in material and workmanship for two (2) years from the date of shipment to Buyer (except for spare parts which Seller warrants for one (1) year from the date of shipment to Buyer). Products manufactured by manufacturers other than Seller and/or its affiliates ("Other Manufacturer's Products") supplied by Seller to Buyer are not warranted by Seller. Other Manufacturer's Products may be warranted separately by their respective manufacturers and Seller shall, to the extent possible, assign to Buyer whatever rights Seller may obtain under any such warranties.

**THE FOREGOING REPRESENTS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER TO BUYER AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**2. WARRANTY REMEDIES.** Buyer's sole and exclusive remedy for Seller's breach of the foregoing warranties during the warranty period shall be, at Seller's sole discretion, the repair and/or replacement of any defective products (or component parts thereof) pursuant to the terms of and conditioned upon Buyer's compliance with the procedure identified in Section 5 hereof.

**3. LIMITATION OF DAMAGES. SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY END USER OF PRODUCTS OR SERVICES WITH RESPECT TO THE SALE OF PRODUCTS OR PROVISION OF SERVICES UNDER THE QUOTATION FOR LOST PROFITS OR FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN, CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE, EVEN IF SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE TOTAL PRICE PAID BY BUYER FOR PRODUCTS AND/OR SERVICES REFERENCED IN THE QUOTATION.**

**4. INAPPLICABILITY OF, AND VOIDING OF THE WARRANTY.** This Standard Warranty does not cover defects in Seller products which, in the sole discretion of Seller, are not defects in material and workmanship and may be attributed to other causes including but not limited to failure to operate and/or maintain Seller products in accordance with the applicable Seller installation and/or operator's manuals, owner's manuals, maintenance manuals, manufacturer's recommendations, and any other manuals, guidelines or recommendations of Seller concerning the maintenance and operation of Seller products that may be communicated to Buyer from time to time, side-pulling of load, shock loading, excessive jogging, eccentric loading, overloading, accidental occurrence, improper repair, improper handling or storage of products, chemical exposure and/or abnormal operating conditions not identified to Seller in writing prior to Seller's issuance of a Quotation, or any other cause that in Seller's sole discretion is not attributable to defects in material and workmanship. Failure of products to meet published performance specifications due to abnormal operating conditions beyond Seller's knowledge or control shall not be considered defects in either workmanship and/or material.

Modification of Seller products and/or incorporation of Other Manufacturer's Products into Seller products by individuals and/or organizations other than Seller shall void this Standard Warranty.

Buyer's failure to pay in full for the products and services provided for in a Quotation shall void this Standard Warranty.

**5. WARRANTY PROCEDURE.** To obtain warranty remedies pursuant to this Standard Warranty, Buyer must strictly adhere to the following procedure. Buyer's failure to comply with the terms of this procedure shall void this Standard Warranty.

**a.** Buyer shall, within seventy-two (72) hours of any claimed nonconformance or defect in Seller products, notify Seller's Warranty Administrator in writing of the alleged nonconformance or defect.

**b.** Seller shall, within a reasonable time, advise Buyer of its intention to initially accept or deny the warranty claim pursuant to the terms of this Standard Warranty. If Seller elects to initially accept the warranty claim, it shall advise Buyer of its intention to replace, repair or otherwise further inspect the allegedly nonconforming or defective products (or component parts thereof) ("Initial Acceptance").

**(1) Replacement of allegedly nonconforming or defective products.** Should Seller provide Initial Acceptance of Buyer's warranty claim and elect to replace the allegedly nonconforming or defective products (or component parts thereof), or should Seller elect to provide Initial Acceptance of Buyer's warranty claim through notification to Buyer that Seller elects to inspect the allegedly nonconforming or defective products (or component parts thereof) and then subsequently elect to replace the allegedly nonconforming or defective products (or component parts thereof), Seller shall within a reasonable time, ship new, comparable, replacement products to Buyer F.C.A. Seller's plant, warehouse or dock, as defined by Incoterms 2010, via the lowest cost method available.

**(2) Repair of allegedly nonconforming or defective products.** Should Seller provide Initial Acceptance of Buyer's warranty claim and elect to repair and/or permit the repair of the allegedly nonconforming or defective products (or component parts thereof) by approved third parties, or should Seller elect to provide Initial Acceptance of Buyer's warranty claim through notification to Buyer that Seller elects to inspect the allegedly nonconforming or defective products (or component parts thereof) and then subsequently elects to repair the allegedly nonconforming or defective products, Seller shall, unless otherwise agreed in writing by the Warranty Administrator, pay only those direct labor costs incurred to effectuate the repair and the cost of Seller replacement products consumed during said repair provided that the costs for all products and/or services are approved in advance in writing by Seller's Warranty Administrator.

**(3) Inspection of allegedly nonconforming or defective products.** Should Seller provide Initial Acceptance of Buyer's warranty claim through notification to Buyer that Seller elects to inspect the allegedly nonconforming or defective products (or component parts thereof) and then subsequently determine that the alleged nonconformity or defect is not covered under this Standard Warranty, Seller shall bill Buyer, and Buyer shall pay Seller any and all costs associated with the performance of inspection of allegedly nonconforming or defective products.

**6. WAIVER. BUYER HEREBY WAIVES ANY CLAIM THAT THE EXCLUSIONS OR LIMITATIONS IDENTIFIED HEREIN DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSES THIS OR ANY OTHER AGREEMENT WITH SELLER TO FAIL OF ITS ESSENTIAL PURPOSE. BUYER SHALL BE ENTITLED TO NO OTHER REMEDY OTHER THAN THOSE IDENTIFIED IN SECTION 2 HEROF WITH RESPECT TO THE PROVISION OF PRODUCTS AND/OR SERVICES BY SELLER REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION, WHETHER BASED IN AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.**



# SERVICE REPORT

Report Created: Nov 18, 2020 6:37 AM

## Customer and Service Information

<b>Customer</b>	City of Flagstaff - Wildcat Hill WWTP		
<b>Business Location</b>	City of Flagstaff - Wildcat Hill WWTP, Flagstaff, 2800 N El Paso Flagstaff Rd		
<b>City</b>	Flagstaff		
<b>Agreement</b>			
<b>Service Request</b>	1-92503746984		
<b>Description</b>	U401 PHX - Asset 05 - Revolution will remove crane, remove old beam. install new runway beam, install crane. and repair wall. And will repair stucco. Revolution will transport weights & Konecranes will rewire all electrical and preform load test.  beam bent. Unable to repair. Needs to be replaced.  Inspect and replace header bolt anchors. Inspect and or replace C channel bolts. Repair Stucco around end of beam when new one beam is installed.  Perform a load test.		
<b>PO Number</b>	21-000424		
<b>Billing Type</b>	Fixed		
<b>Customer Contact</b>	Scott Gede 928-526-2520 sgede@flagstaffaz.gov	<b>Konecranes Contact</b>	Sara Holbrook  sara.holbrook@konecranes.com

## Component Condition

- ✓ Acceptable (No issues detected)
- ! Need Attention

## Assets



05

Monorail system - 1 trolley electric wire rope hoist, Capacity = 3t, Location = BLDG #2

<b>Manufacturer</b>	HOMEMADE	<b>Span</b>	65ft
<b>Serial number</b>	N/A	<b>Lift</b>	10ft
<b>Criticality</b>	High	<b>Volt/Ph/Hz</b>	480-3-60
<b>Site Location</b>	BLDG #2 SO2 / Sulfur Dioxide		
<b>Capacity/SWL</b>	3.0 ton		
<b>Model</b>	N/A		
<b>Service Products</b>	Planned Repairs		

Runway

Beam

# SERVICE REPORT

**KONECRANES®**  
Lifting Businesses™

✓ **Runway beam**

**Repaired**

**Date Reported**

Oct 9, 2020

**Technician**

Nicholas Gerhardt

**Task Type**

Visual assessment

**Fault Code**

Girder(s) bent

**Risk**

**Safety Risk**

**Recommendation**

Repair

**Comment:**

Drove to customers location. Checked in with site contact. The new section of monorail was previously installed. I inspected monorail and performed 100% load test on unit. Unit passed load test. It was brought to my attention that the west door would not close properly since the repair to the door was made. I investigated why the door wouldn't shut all the way, I drilled and bolted the door frame to the monorail beam which gave me enough clearance for the doors to shut. Cleaned up work area and tested all functions including limits.



Nov 17, 2020 4:16 PM Scott Gede, Customer



Nov 17, 2020 4:16 PM Nicholas Gerhardt, Technician

## Findings and Actions

### **Safety Risk** **WARNING**

Indicates an unsafe condition. Failure to remedy such condition before continued operation of the identified Asset may result in personal injury including death, or property damage.

### **Production Risk**

Indicates an inefficient condition. Failure to remedy such condition before continued operation of the identified asset may result in inefficient asset performance or an interruption in production.

### **Undetermined Condition**

Indicates that the condition could not be directly verified through visual inspection as a result of asset configuration and/or obstruction.

The condition of certain components cannot be directly verified through visual inspection without further disassembly and/or the use of other inspection methods. These advanced services are generally excluded from the scope of typical compliance and preventive maintenance inspections. Consultation Services may be added to a Service Program or offered on a stand-alone basis to assess the condition of these components. Inspection frequency for these components should follow OEM recommendations and/or governing regulations. If no records are available, we recommend appropriate inspections be carried out to determine current condition and to establish a baseline for recurring inspections.

### **Improvement Opportunity**

Indicates a potential opportunity to improve the safety, productivity, application or useful life of the asset.

### **Acceptable / Repaired Item**

Component condition is verified by Konecranes service technician. No actions required. If a component or other object has been repaired within the service visit, green color code is shown as well.

**KONECRANES' STORE**  
SPARE PARTS, ACCESSORIES AND SELECT  
PRE-CONFIGURED LIFTING EQUIPMENT  
[store.konecranes.com](http://store.konecranes.com)

**ONLINE**  
**ANY TIME**

**YOUR KONECRANES**  
CRANE MAINTENANCE INFORMATION  
AND REMOTE MONITORING DATA  
[your.konecranes.com](http://your.konecranes.com)

**CITY OF FLAGSTAFF**  
**Purchasing Section**

**Special Procurement Justification** (check applicable box below)

Divisions/Sections Requesting Sole Source, Proprietary or Emergency Procurement Must Complete This Form

  **X**   **Emergency Procurement Justification**

**TO:** Purchasing Section Buyer

**PREPARER:** Scott Gede  
Services/ Water Reclamation

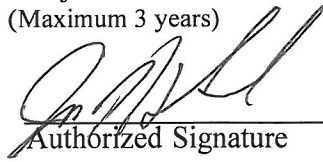
**DIVISION/SECTION:** Water

**DATE SUBMITTED:** 8-21-20

**Emergency Justification**

1. Briefly, what is the scope of the project or emergency related issue in which this product or service will be used. **During our annual inspection we were informed by the contracted inspection company (Kone Crane) that there is a recall on our Sulfur Dioxide Crane Rail. Overhead cranes require this inspection annually as part of the OSHA Standard 1910.179. Now that we know this is a potential danger, we must either repair it or quit using it. This unit is utilized weekly to move 1-ton Sulfur Dioxide containers so that we can place them on scales so that we can track usage. We have no way to unload the Sulfur Dioxide containers from delivery semi-trucks or move them inside the building. We have will be utilizing emergency funds for this Project. We will be replacing the Crane Rails system to include:**
  - Removal and reuse of the existing hoist. (3-ton Shaw box)
  - Removal of 48' patent track system from service
  - Install Rated & properly sized Monorail (Fabricated and Engineered to fit)
  - Reinstall hoist and Trolley (3-ton Shaw box)
  - Replace all anchors
  - Includes engineering to review Tieback, beam fabrication & header beam anchors
  - Complete 100% rated load test
2. What is the threat to the health, safety or welfare of the public and/or staff? Clearly describe the potential danger from a health, safety or welfare perspective if not corrected.  
**They can suddenly and catastrophically fail. This has the potential to harm staff and/or create a leak of sulfur Dioxide which again could harm staff or the public. This is a critical part of our operation and failure would result in a permit violation. (Sulfur Dioxide is Utilized to reduce Chlorine residual at Wildcat to below 0.009 mg/l). Without this chemical reaction, we will violate the permit daily. Which can result in publication in the newspaper and/or fines from ADEQ.**
3. Who is the identified vendor and why were they chosen? Example: Only vendor available or most available? Already onsite and mobilized? Have provided same work on this site in past? **Kone Cranes, they will provide the reengineered documentation, which is required by OSHA. We are contacting other vendor and are awaiting pricing; however, they don't appear to be including the engineering require for this project. No other work has been performed on this or similar units.**

This justification is valid through 3 Years (TO BE DETERMINED BY BUYER).  
(Maximum 3 years)



Authorized Signature

8-24-20

Date

8.24.2020

Purchasing Section Buyer's Signature Date

Jim Huchel – Water Reclamation Manager

Printed Name

Title

Emily Markel Sr. Procurement Specialist

Printed Name

Title

Purchasing Director Signature Date









## 6. B.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Matthew Luhman, Purchasing Manager  
**Date:** 12/28/2020  
**Meeting Date:** 01/05/2021



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#### TITLE:

**Consideration and Approval of Contract:** Multiple Job Order Contracting Services Contracts for upcoming projects under \$1,000,000.

#### STAFF RECOMMENDED ACTION:

1. Approve award of Job Order Contracting Services Contracts to 15 contractors representing five discipline areas.
  - Horizontal Construction: Eagle Mountain Construction Co. (EMC), Kinney Construction Services, Inc. (KCS), Markham Contracting Co., Inc., and Tiffany Construction Co.
  - Vertical Construction: Kinney Construction Services, Inc., Loven Contracting, Inc., and Wespac Construction, Inc.
  - Water/Wastewater General Construction: KEAR Civil Corporation, PCL Construction, Inc., and Schofield Civil Construction, Inc.
  - Water/Wastewater Controls Construction: M# Engineering and Technology Corporation and Southwest Automation Services, LLC
  - Landfill Construction: Fann Contracting Inc., Markham Contracting Co., Inc. and Rummel Construction, Inc
2. Authorize the City Manager to execute the necessary documents.

#### Executive Summary:

Award of the Job Order Contracting (JOC) Services Contracts will allow expediency for project delivery during the short construction months, while providing best value to the project. The City has utilized cooperative contracts in the past to accommodate this need. The JOC Services Contracts follow the Arizona Revised Statutes (A.R.S.) Title 34 expenditure limits for Job Order Contracting. Each job performed under the overarching JOC Services Contracts will also require the contractors and the City to execute an individual JOC Construction Contract which will specify each project's name, cost, time to completion and will require the contractors to provide bonds and insurance coverage specific to each individual project initiated under the JOC program.

#### Financial Impact:



Costs will be expended from budgets already approved and allocated by the City Council. Awarding multiple contracts based on specific areas of qualifications and experience on an as needed basis will result in increased efficiency.

**Policy Impact:**

No impact.

**Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

**Priority Based Budget Key Community Priorities and Objectives**

Safe & Healthy Community

- Ensure the built environment is safe through the use of consistent standards, rules and regulations, and land use practices.
- Promote physical health through providing recreation opportunities, parks, open space & multiple transportation options.

Sustainable, Innovative Infrastructure

- Deliver outstanding services to residents through a healthy, well maintained infrastructure system.
- Provide effective management of and infrastructure for all modes of transportation.

**Regional Plan**

- Goal T.1 - Improve mobility and access throughout the region.
- Goal T.2 - Improve transportation safety and efficiency for all modes.
- Goal T.4 - Promote transportation infrastructure and services that enhance the quality of life of the communities within the region.
- Goal T.5 - Increase the availability and use of pedestrian infrastructure, including FUTS, as a critical element of a safe and livable community.
- Goal T.6 - Provide for bicycling as a safe and efficient means of transportation and recreation.
- Goal CD.1 Improve the City and County financial systems to provide for needed infrastructure development and rehabilitation, including enhancement of existing infrastructure.
- Policy WR2.2 - Maintain and develop facilities to provide reliable, safe and cost-effective water, wastewater and reclaimed water services.

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

Yes. Flagstaff City Council approved Multiple Job Order Contracting Services Contracts at the July 21<sup>st</sup> meeting in 2015 (item 10.D.).

**Options and Alternatives:**

1. Approve the multiple JOC Services Contract awards as recommended
2. Approve a smaller number of JOC Services Contracts
3. Reject the JOC Services Contracts and re-solicit with revised scopes of disciplines
4. Reject the JOC Services Contracts and do not re-solicit

**Background/History:**

The City of Flagstaff handles and manages a significant number of projects, which span a wide range in size and complexity in each discipline area. Job Order Contracting is a way for the City to get numerous, commonly encountered construction projects done quickly and easily during the short construction season. JOC reduces burdensome levels of engineering, design, and contract procurement time along with construction project procurement costs by awarding long-term contracts for a wide variety of renovation, repair, and construction projects. Staff determined that up to four contractors in the vertical and horizontal construction disciplines and up to three contractors in each of the other three discipline areas would be adequate to handle the City's estimated projects needed.

Additionally, the City has also utilized cooperative contracts from other municipal agencies for required JOC projects. Some cooperative contracts may carry an administration fee, either charged to the contractor and passed through the pricing to the City, or directly to the City. Having the City of Flagstaff's own JOC Services Contracts could reduce or eliminate the need to utilize cooperatives for these sorts of projects.

Purchasing utilized the Request for Statement of Qualifications (RSOQ) solicitation method in determining the most qualified and experienced contractors participating in JOC Services. The RSOQ rendered 44 Statement of Qualifications (SOQ) from interested contractors across all five disciplines advertised. An evaluation committee comprised of six members, including one local registered contractor, evaluated all responses in the following evaluation criteria:

- A. Firm/Team Overview, General Background & Information
- B. Company Project Management Approach
- C. Experience and Qualifications of Firm and Key Personnel
- D. Project Approach
- E. Executive Summary of Qualifications and Experience Presented
- F. Value Added Knowledge and Experience

After completing the evaluation process, the evaluation committee identified the four top firms in the discipline of Horizontal Construction, the three top firms in the disciplines of Vertical Construction, Water/Wastewater Treatment Plant Construction and Landfill Construction, and the top two firms in the discipline of Water/Wastewater Treatment Plant Controls Automation Construction.

The Evaluation Criteria and Basis for Award section of the RSOQ solicitation document notified applicants that awards may be made to one or up to four firms in the Horizontal and Vertical Construction disciplines and that awards may be made to one or up to three firms in the other remaining disciplines (Water/Wastewater Treatment Plant Construction, Water/Wastewater Treatment Plant Controls Automation Construction and Landfill Construction).

Staff recommends award of JOC Services Contracts to:

- The top four firms in the discipline of Horizontal Construction
- The top three firms in the disciplines of Vertical Construction, Water/Wastewater Treatment Plant Construction and Landfill Construction
- The top two firms in the discipline of Water/Wastewater Treatment Plant Controls Automation Construction

Scoring summary results are attached.

The JOC Services contracts (attached as JOC Services Contract) allows for an initial three (3) year term, with the option to extend the contract for two (2) one-year additional terms. Specific projects will be awarded on an as needed basis, based upon competitive pricing requested of the contractors. Each project will then be awarded on a separate construction contract containing the City's required terms and conditions, bonding requirements, and engineering requirements for City-owned construction projects (attached as JOC Construction Contract).

**Key Considerations:**

Job Order Contracting Services will allow the City to react more quickly to repair and make enhancements and/or additions to, facilities as well as other infrastructure including, but not limited to, roadways and FUTS trails.

By awarding the recommended JOC Services Contracts Council will be allowing the City to continue this program that has proved to be quite vital and successful over the last five years.

The JOC Services Contracts will:

- Save a considerable amount of staff time in contracting for smaller capital, maintenance and repair projects;
- Maximize the accomplishment of the large number of projects needed during Flagstaff's small construction season window, minimizing the number of winter shut downs needed;
- Save the City the cost of multiple solicitation advertisements and staff time as well as the related soft dollar (indirect overhead) costs of conducting a formal solicitation process for each separate project

**Expanded Financial Considerations:**

Increased efficiency in project delivery will render project and staff time savings that will then be utilized on other additional projects. With all non-emergency related projects, City Staff will make its best effort to obtain pricing proposals from all JOC contractors in the particular discipline under which the project falls. City staff will then move forward with the lowest cost proposal and initiate a JOC Construction Contract with that chosen firm to perform the work.

**Community Benefits and Considerations:**

Community will receive repair and enhancements to their roadways, trails, service facilities and other infrastructure in a more expedient manner.

**Community Involvement:**

N/A

**Expanded Options and Alternatives:**

None

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**Attachments:**     [JOC Scoring Summary](#)  
                             [JOC Services Contract](#)  
                             [JOC Construction Contract](#)

**CITY OF FLAGSTAFF**  
**JOC Services**  
**EVALUATION SUMMARY**  
 RSOQ #2020-100

**Horizontal Construction**

684	657	510	657	680	495	687	529	0	645	668
EMC	Fann	HDS	Banicki	KCS	LP's	Markham	Mtn. High	Ripple	Rummel	Tiffany

**Vertical Construction**

643	657	653	657	619	647	522	677	694	667	643
BWC/Woodruff	CORE	Caliente	FCI	GCON	Haydon	HDS	KCS	Loven	Wespac	Willmeng

**Water/Wastewater Treatment Plant Construction**

619	496	623	653	617	426	632	697	628	711	639
Fann	HDS	KEG	KEAR	KCS	LP's	Markham	PCL	Revolution Ind	Schofield Civil	Summa Mech

**Water/Wastewater Treatment Plant Controls Automation Construction**

323	668	651	514
HDS	M3	SWAS	SCS

**Landfill Construction**

607	671	451	614	646	681	614
EMC	Fann	HDS	KCS	Markham	Rummel	SCS

# SERVICE CONTRACT

**PROFESSIONAL SERVICE CONTRACT  
FOR  
JOB ORDER PROFESSIONAL CONTRACTING SERVICES:  
[DISCIPLINE]  
Contract No.: 2020-100**

This Contract for the On-Call Professional Services (Contract) is made by and between the City of Flagstaff (Owner), an Arizona municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and [Party's Name], [Form of organization], with offices at [Party's address] (Firm), effective as of the date written below.

## RECITALS

A. The Owner desires to enter into this Contract in order to obtain services of a Firm for the On-Call Professional services [Service Name], as outlined in the Scope of Work/Specifications section of the RSOQ document; and

B. Firm has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Contract;

For the reasons recited above, and in consideration of the mutual covenants contained in this Contract, the Owner and Firm agree as follows:

## **1. SERVICES TO BE PERFORMED BY FIRM**

Firm agrees to perform the following services:

1.1 Firm agrees to provide the services as set forth in detail in Exhibit "A" attached and incorporated in this Contract. All of the terms and conditions set forth in this RSOQ pertaining to the services set forth in Attachment A, including all standard terms and conditions shall be incorporated in this Contract as if fully set forth herein.

1.2 Firm warrants that all materials, services or construction delivered under the Contract shall conform to the specifications of the Contract. The Owner's receipt or inspection of the materials, services, or construction specified shall not alter or affect the obligations of Firm or the rights of the Owner under the foregoing warranty.

1.3 All services, information, computer program elements, reports and other deliverables which may be created under the Contract are the sole property of the Owner and shall not be used or released by Firm or any other person except with prior written permission of the Owner.

## **2. COMPENSATION OF FIRM**

Firm agrees to provide all of the services set forth in Exhibit "A" for prices not to exceed the amounts set forth in the fee. Firm agrees that any specific scopes of work for individual Job Order Construction Contracts will have specific and mutually agreed upon fee schedules attached.

### **3. RIGHTS AND OBLIGATIONS OF FIRM**

**3.1 Independent Firm.** The parties agree that Firm performs specialized services and that Firm enters into this Contract with the Owner as an independent contractor. Nothing in this Contract shall be construed to constitute Firm or any of Firm's agents or employees as an agent, employee or representative of the Owner. As an independent contractor, Firm is solely responsible for all labor and expenses in connection with this Contract and for any and all damages arising out of Firm's performance under this Contract.

**3.2 Firm's Control of Work.** All services to be provided by Firm shall be performed as determined by the Owner in accordance with the Scope of Services set forth in Exhibit "A." Firm shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Contract. Firm shall be responsible for, and in full control of, the work of all such personnel.

**3.3 Reports to the Owner.** Although Firm is responsible for control and supervision of work performed under this Contract, the services provided shall be acceptable to the Owner and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Firm to the Owner and the right of the Owner, as set forth in the Scope of Services, and the right of the Owner to audit Firm's records.

**3.4 Compliance with All Laws.** Firm shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Contract. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Contract shall be deemed inserted, whether or not such provisions appear in this Contract.

### **4. NOTICE PROVISIONS**

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

To the Owner's Authorized Representative

To Firm:

Matthew Luhman, CPP, CPPB  
Purchasing Manager  
City of Flagstaff  
211 W. Aspen  
Flagstaff, Arizona 86001

Firm 's representative's name, title  
Firm 's name, e.g. name of corporation  
Address Line 1  
Address Line 2  
City, State Zip Code

### **5. INDEMNIFICATION**

To the fullest extent permitted by law, Firm shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) ("Claims") including claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Firm or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Firm to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Firm from and against any and all claims. It is agreed that Firm shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Firm shall waive all rights of subrogation against the City of Flagstaff, its officers, officials, agents and employees for losses arising from the work performed by Firm for the City of Flagstaff.

## **6. INSURANCE**

Firm and subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Contract by the Firm, Firm's agents, representatives, employees or contractors until all of their obligations under this Contract have been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Owner does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Firm from liabilities that might arise out of this Contract, and Firm is free to purchase such additional insurance as Firm may determine is necessary.

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

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

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$500,000
Medical Expense (any one person)	Optional

- 6.1.2. Automobile Liability - Any Automobile or Owned, Hired and Non-owned Vehicles  
(Form CA 0001, ed. 12/93 or any replacement thereof)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
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- 6.1.3. Workers' Compensation and Employer's Liability

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

- 6.1.4. Professional Liability \$1,000,000

**6.2 Self-insured Retention/Deductibles.** Any self-insured retentions and deductibles must be declared to and approved by the Owner. If not approved, the Owner may require that the insurer reduce or eliminate such self-insured retentions with respect to the City of Flagstaff, its officers, agents, employees, and volunteers.

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

6.3.1 Commercial General Liability and Automobile Liability Coverages. The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Contract and activities performed by or on behalf of the Firm, including products and completed operations of the Firm; and automobiles owned, leased, hired or borrowed by the Firm.

6.3.2 The Firm's insurance shall contain broad form contractual liability coverage.



6.3.3 The City of Flagstaff, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Firm even if those limits of liability are in excess of those required by this Contract.

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

6.3.5 The Firm's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.3.6 Coverage provided by the Firm shall not be limited to the liability assumed under the indemnification provisions of this Contract.

6.3.7 The policies shall contain a waiver of subrogation against the City of Flagstaff, its officers, officials, agents and employees for losses arising from work performed by Firm for the Owner.

**6.6 Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Owner. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the Owner. Notices required by this section shall be sent directly to Matthew Luhman, Purchasing Manager, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.

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

**6.8 Verification of Coverage.** The Firm shall furnish the Owner with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

6.8.1 The Owner must receive and approve all certificates of insurance before the Firm commences work. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Firm's and its subcontractors' obligations under this Contract have been met. The Firm's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.

6.8.2 All certificates of insurance shall be sent directly to Matthew Luhman, Purchasing Manager, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001. The Owner's project/contract number and project description shall be noted on the certificates of insurance. The Owner reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The Owner shall not be obligated, however, to review any insurance policies or to advise Firm of any deficiencies in such policies and endorsements. The Owner's receipt of Firm's policies or endorsements shall not relieve Firm from, or be deemed a waiver of, the Owner's right to insist on strict fulfillment of Firm's obligations under this Contract.

**6.9 Subcontractors.** Firm's certificate(s) shall include all subcontractors as additional insureds under its policies, or Firm shall furnish to the Owner separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

**6.10 Approval.** Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City of Flagstaff's Attorney's Office, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

## **7. DEFAULT AND TERMINATION**

**7.1 Events of Default Defined.** The following shall be Events of Default under this Contract:

7.1.1 Any material misrepresentation made by Firm to the Owner;

7.1.2 Any failure by Firm to perform its obligations under this Contract including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Contract due to a reason or circumstance within Firm's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Firm's reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the Owner;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the Owner as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Firm's reasonable control;

7.1.2.6 Unsatisfactory performance as judged by the Contract Administrator;

7.1.2.7 Failure to provide the Owner, upon request, with adequate assurance of future performance;

7.1.2.8 Failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance; and

7.1.2.9 Any other acts specifically stated in this Contract as constituting a default or a breach of this Contract.

## **7.2 Remedies.**

7.2.1 Upon the occurrence of any Event of Default, the Owner may declare Firm in default under this Contract. The Owner shall provide written notification of the Event of Default. If such Event of Default is not cured within seven (7) days of receipt of the notification, the Owner may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Contract as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Firm's compensation under this Contract;

7.2.1.5 The right to deem Firm non-responsive in future contracts to be awarded by the Owner; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The Owner may elect not to declare an Event of Default or default under this Contract or to terminate this Contract upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the Owner, and that if the Owner allows Firm to continue to provide the Services despite the occurrence of one or more Events of Default, Firm shall in no way be relieved of any of its responsibilities or obligations under this Contract, nor shall the Owner be deemed to waive or relinquish any of its rights under this Contract.

7.2.3 In the Event of Default by the Firm, the Owner shall not be liable to Firm for any amount, and Firm may be liable to the Owner for any and all damages sustained by reason of the default which gave rise to the termination.

**7.3 Right to Offset.** Any costs, including but not limited to attorney's fees, costs of remediation, and costs of delay, incurred by the Owner due to default of Proposer, or due to the Owner's exercise any of the remedies available to it under this Contract, may be offset by use of any payment due for services completed before the default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Firm shall be liable for and shall remit promptly to the Owner the balance upon written demand from the Owner.

**7.4 Termination for Convenience.** The Owner reserves the right to terminate, with or without cause, this Contract upon ninety (30) days written notice. The Owner shall be responsible only for those standard items or services which have been delivered and accepted. If any items being purchased are truly unique and therefore not saleable or useable for any other application, the Owner shall reimburse Proposer for actual labor, material, and burden costs, plus a profit not to exceed 8%. Title to all materials, work in progress, and completed but undelivered goods, shall pass to the Owner after costs are claimed and allowed. Proposer shall submit detailed cost claims in an acceptable manner and shall permit the Owner to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

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

## **8. GENERAL PROVISIONS**

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

**8.2 Jurisdiction and Venue.** This Contract shall be administered and interpreted under the laws of the State of Arizona. Firm hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

**8.3 Attorney's Fees.** Subject to Section 8.11, if suit or action is initiated in connection with any controversy arising out of this Contract, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court, including an appellate court, may adjudge reasonable as attorney fees.

**8.4 Severability.** If any term or provision of this Contract shall be found by a court of competent jurisdiction to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, the remainder of this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

**8.5 Successors and Assigns.** No right or interest in the Contract shall be assigned by Firm without prior written permission of the Owner, and no delegation of any duty of Firm shall be made without prior

written permission of the Owner. The Owner shall not unreasonably withhold approval and shall notify Firm of the Owner's position within fifteen (15) days of receipt of written notice by Firm. This Contract shall extend to and be binding upon the Firm, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Firm shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Firm shall sell its assets.

**8.6 Subcontracts.** No subcontract shall be entered into by Firm with any other party to furnish any service specified in this Contract without the advance written approval of the Owner. All subcontracts shall comply with Federal, State and local laws and regulations that are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth in the Contract which shall apply with equal force to the subcontract, as if the subcontractor were the Firm. Firm is responsible for contract performance whether or not subcontractors are used. The Owner shall not unreasonably withhold approval and shall notify Firm of the Owner's position within fifteen (15) days of receipt of written notice by Firm. Firm shall be responsible for executing the agreement with subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

**8.7 Conflict of Interest.** Firm covenants that Firm presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Contract. Firm further covenants that in the performance of this Contract, Firm shall not engage any employee or apprentice having any such interest. The parties agree that this Contract may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

**8.8 Authority to Contract.** Each party represents and warrants that it has full power and authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Contract.

**8.9 Integration.** This Contract represents the entire understanding of Owner and Firm as to those matters contained in this Contract, and no prior oral or written understanding shall be of any force or effect with respect to those matters, except for documents comprising the RSOQ Package that have been incorporated into this Contract. This Contract may not be modified or altered except in writing signed by duly authorized representatives of the parties.

**8.10 Non-Appropriation.** If the City Council does not appropriate funds to continue this Contract and pay for charges under this Contract, the Owner may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the Owner's payment obligations. The Owner agrees to give written notice of termination to the Firm at least thirty (30) days prior to any termination for a lack of funds and will pay to the Firm all approved charges incurred prior to Firm's receipt of such notice, subject to the availability of funds appropriated and budgeted by the Owner to fund payments under this Contract.

**8.11 Non-Discrimination.** Firm shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75-5 as modified by State Executive Order 99-4 or A.R.S. 41-1461 et. seq. The Firm shall be required to comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

**8.12 Compliance with Federal Immigration Laws and Regulations.** Firm hereby warrants to the Owner that the Firm and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter "Firm Immigration Warranty").

8.12.1 A breach of the Firm Immigration Warranty shall constitute a material breach of this Contract and shall subject the Firm to penalties up to and including termination of this Contract at the sole discretion of the Owner.

8.12.2 The Owner retains the legal right to inspect the papers of any Firm or Subcontractor employee who works on this Contract to ensure that the Firm or Subcontractor is complying with the Firm Immigration Warranty. Firm agrees to assist the Owner in regard to any such inspections.

8.12.3 The Owner may, at its sole discretion, conduct random verification of the employment records of the Firm and any of Subcontractors to ensure compliance with Firm's Immigration Warranty. Firm agrees to assist the Owner in regard to any random verifications performed.

8.12.4 The provisions of this Article must be included in any contract the Firm enters into with any and all of its Subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**8.13 Anti-Trust Violations.** The Owner maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Firm. Therefore, to the extent permitted by law, Firm hereby assigns to the Owner any and all claims for such overcharges as to the goods or services used to fulfill this Contract.

**8.14 Advertising.** Proposer shall not advertise or publish information concerning the Contract, without the prior written consent of the Owner.

**8.15 Inspection.** All material, services or construction are subject to final inspection and acceptance by the Owner. The Owner may, at reasonable times and at its expense, inspect the plant or place of business of Firm or its subcontractor(s) which is related to the performance of this Contract. This right of inspection and supervision shall include, but not be limited to the right of the Owner to audit Firm's records.

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

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

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

**8.19 Records.** The Owner and its employees, agents, and authorized representatives shall have the right at all reasonable times and during all business hours to inspect and examine Firm's records related to this Contract. Firm shall retain all records related to this Contract for a period consistent with the Owner of Flagstaff's records retention policy. This record retention requirement shall remain in effect following termination of the Contract.

## **9. SPECIAL TERMS AND CONDITIONS**

**9.1 Job Order; Authorization to Proceed.** All proposed work under this Contract shall be performed pursuant to the issuance of individual Job Orders. Firm shall perform no work under this Contract until or unless a written Job Order has been issued by the Owner and executed by the Parties, which Job Order describes the specific services and the time of performance requested by the Owner. Firm shall respond to each Job Order issued by the Owner by submitting a written fee proposal and time required to complete the specific services requested in the Job Order. When the Job Order is agreed to and executed by both Parties, the Job Order shall constitute Firm's authorization to proceed with the requested services. All Firm invoices shall reference the Job Order number and shall contain an itemization of all hours and expenses per the Price Schedule.

**9.2 Technical and Professional Requirements; Key Personnel.** Firm shall be professionally licensed and qualified in all pertinent disciplines for consulting services required under this Contract. It is essential that Firm provide adequately experienced personnel who are capable of, and devoted to, the successful accomplishment of all services performed under this Contract. Key personnel to be assigned to the project shall be identified in writing to the Owner by Firm at the time of Notice to Proceed. At a minimum the Firm shall identify for the Owner's written approval, the project manager who shall be empowered to act for the Firm in accordance with this Contract in all matters relating to the technical administration of services to be provided. Authorization for changes in key personnel must be requested in writing by the Firm.

**9.3 Subcontracts.** At the time subcontracted services are anticipated, the Firm shall notify the Owner of the nature of, and need for, such services and identify the proposed subcontracting contractor. The Firm must receive approval in writing from the Owner prior to utilization of any subcontractor other than the parties listed in this article. The Firm is authorized by the Owner to subcontract work having a cost which will not exceed 30 percent (30%) of the total amount of compensation due under this Contract. The Firm shall be responsible to the Owner for the actions of persons and contractors performing subcontract work.

### **9.4 Rights and Obligations of Firm**

**9.4.1 Work Schedule:** Upon receipt of an executed copy of a Job Order, the Firm shall prepare a work schedule. The work schedule shall include:

9.4.1.1. Events which will satisfy SECTION 1. Services to be performed by the Firm.

9.4.1.2 Date each event shall start and its duration.

9.4.1.3 Critical relationship of events.

9.4.1.4 Name(s) of the person(s) responsible for the project. The work schedule shall provide for the completion of SECTION I services not later than 365 calendar days from the written Notice-to-Proceed.

9.4.1.5 The schedule shall be updated periodically as necessary.

9.4.1.6 The Firm agrees to maintain adequate resources to provide the described services within the time provided in the agreed upon schedule. Failure to adhere to the schedule may result in termination of this contract.

**9.5 Maintenance of Documents.** Firm shall deliver to the Owner copies of reports, specifications and drawings prepared under the terms of this Contract. If drawings are prepared, the Owner will be provided with a set of full-size reproduces. Originals of design and study notes, calculations, correspondence and similar material will be filed by the Firm and made available to the Owner on Request. Copies will be furnished to the Owner by the Firm at cost. Except as otherwise provided herein, documents prepared under the terms of this

Contract will not be used by the Owner on other projects or extensions to this project except with the written agreement of the Firm.

**9.6 Alteration in Character of Work.** Whenever an alteration in the character of work results in a substantial change in the Planned Consulting Services, thereby materially increasing or decreasing the cost of the performance, the work will be performed in accordance with the contract and as directed; provided however, that before such work is started, a contract change order shall be approved and executed by the Owner and the Firm. Additions to, modifications, or deletions from the project provided herein may be made and the compensation to be paid to the Firm may be adjusted accordingly by mutual agreement of the Owner and Firm. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the Firm will be allowed by the Owner except as provided herein, nor shall the Firm do any work, or furnish any materials not covered by this Contract unless such work is first ordered in writing.

9.6.1 Any such work or materials furnished by the Firm without such written order first being given shall be at his own risk, cost, and expense, and Firm hereby agrees that without such written order he will make no claim for compensation for such work or materials furnished.

**9.7 Completeness and Accuracy of Firm's Work.** The Firm shall be responsible for the completeness and accuracy of his survey work, plans, supporting data, and Special Provisions prepared or compiled under his obligation for this project and shall correct, at his expense, all errors or omissions therein which may be disclosed during the review of the plans.

9.7.1 All documents prepared by the design professional shall bear the stamp or seal of the design professional. All preparation of technical and related documents shall be completed in accordance with the prevailing Arizona law.

9.7.2 Correction of engineering errors or omissions disclosed and determined to exist by the Owner during the construction of the project shall be accomplished by the Firm. The cost of the design necessary to correct those errors attributable to the Firm and any expense incurred by the Owner as a result of additional construction costs caused by such engineering errors shall be chargeable to the Firm. The fact that the Owner has accepted or approved the Firm's work shall in no way relieve the Firm of any of his responsibilities. Should the Firm be contracted to perform construction inspection of the project, he shall be responsible for errors and omissions in construction inspection disclosed and determined to exist by the Owner during and subsequent to the construction of the project. Firm's duty in the construction inspection phase is to assure Owner that the project is constructed in conformity with detailed plans and specifications and the cost of design necessary to correct errors and omissions in inspection attributable to the Firm and any expense incurred by Owner as a result of additional construction costs caused by such errors shall be chargeable to the Firm. Acceptance or approval by Owner of Firm's work shall not relieve Firm of inspection responsibilities.

**9.8 General Responsibilities and Obligations of Firm.** The Firm is employed to render a professional service only, and any payments made to him are compensation solely for such services as he may render and recommendations he may make in carrying out the work. The Firm shall follow the practice of the profession to make findings, opinion, factual presentations, and to offer professional advice and recommendations. To the fullest extent permitted by law, the Firm shall defend, indemnify and hold harmless the City of Flagstaff, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Firm, its employees, agents, or any tier of subcontractors in the performance of this Contract. The Firm's duty to defend, hold harmless and indemnify the City of Flagstaff, 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 Contract including any employee of the Firm or any tier

of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Firm may be legally liable.

9.8.1 The amount and type of insurance coverage requirements set forth herein (Section, 7. Insurance) will in no way be construed as limiting the scope of the indemnity in this paragraph.

9.8.2 In performing construction management services, Firm shall act as agent of the Owner. The Firm's review or supervision of work prepared or performed by other individuals or contractors employed by the Owner shall not relieve those individuals or contractors of complete responsibility for the adequacy of their work.

9.8.3 It is understood that any resident consulting or inspection provided by the Firm is for the purpose of determining compliance with the technical provisions of the project specifications and does not constitute any form of guarantee or assurance with respect to the performance of a contractor. The Firm does not assume responsibility for methods or appliances used by a contractor, for safety of construction work, or for compliance by contractors with laws and regulations.

9.8.4 The Firm agrees to notify the owner of any potential unsafe conditions observed at a construction site while performing resident consulting services. It is understood that the resident Firm will perform the aforesaid services only as incidental to the agreed consulting services and only while at the site; no duty to inspect for unsafe conditions is accepted by the resident Firm.

**9.9 Cooperative Use Of Contract.** This Contract resulting from the RSOQ may be extended for use by the members of the Flagstaff Alliance for the Second Century. An Intergovernmental Agreement (IGA) has been executed between the City of Flagstaff, Coconino County Community College District, Northern Arizona University, Coconino County and Flagstaff Unified School District. The Contract may also be extended to other municipalities and government agencies of the state. Any such usage by other municipalities and government agencies must be in accordance with the ordinance, charter and/or rules and regulations of the respective political entity. Any public agencies not identified within this Contract who wish to cooperatively use the contract are subject to the approval of Vendor.

The City of Flagstaff 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. These cooperatives are achieved through Intergovernmental Agreements (IGA) in accordance with provisions allowed by A.R.S. §11-952 and §41-2632. The IGAs permit purchases of material, equipment and services from Vendors at the prices, terms and conditions contained in contracts originated between any and all of these agencies and the Vendor(s) contract, as awarded.

## **10. DURATION**

This Contract shall become effective on and from the date it is executed by the Parties and shall continue for a period of **three (3) consecutive years**, unless sooner terminated as provided in this Contract. The Owner reserves the right to unilaterally extend the period of the Contract for up to four (4) additional ninety (90) day term extensions beyond the stated termination date. The Contract may be renewed in writing for a supplemental period of up to **two (2) additional one-year terms, at the discretion of the Owner**. The City Council authorizes the City of Flagstaff Purchasing Director to administratively renew and extend this Contract for the additional terms specified in this paragraph. Any additional renewals or extensions, other than those specified in this paragraph, must be approved by the City Council.

## **11. FORCE MAJEURE**

The parties acknowledge that there may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in temporary delay or permanent shut down of the work



that is the subject of this Contract, as set forth in Exhibit A. This may be caused by such things as stay-at-home orders, loss of labor force, supply chain delays, and other impediments to timely delivery of the Contract.

The parties agree that there will be no claims arising from a temporary delay or permanent shut down caused by the events described above and that the City will pay no additional costs incurred as a result of such events.

The parties agree to act in good faith to extend the Contract completion date without any penalty to the Contractor and that the extension will be in an amount of time equal to any temporary delay. This term supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

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

**City of Flagstaff**

**Firm**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
**FIRM'S NAME AND REPRESENTATIVE  
TITLE**

Attest:

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

Approved as to form:

\_\_\_\_\_  
City Attorney

Date of Execution: \_\_\_\_\_

## JOB ORDER CONTRACT

City of Flagstaff, Arizona  
and

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This Job Order Contract ("Contract") is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and \_\_\_\_\_ ("Contractor"), with offices at \_\_\_\_\_. Contractor and the Owner may be referred to each individually as a "Party" and collectively as the "Parties."

### RECITALS

- A. Owner desires to obtain Job Order Contracting (JOC) for [**Construction Discipline**] construction services ("Services"); and
- B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

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

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

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

**2. Contract; Ownership of Work.** Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with this Contract; Construction Plans; Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and Specifications; the latest version of the Maricopa Association of Governments ("MAG") Specifications for Public Works Construction and City revisions to the MAG Specifications for Public Works Construction ("Exhibit A"); and any Arizona Department of Transportation (A.D.O.T.) Standards that may be referenced on the Plans or in the specifications, incorporated in this Contract by reference, plans and associated documents. All provisions of the Invitation for

Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders and Field Orders, if any, are hereby incorporated into this Contract. All materials, work, specifications and plans shall be the property of the Owner.

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

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

2.1.2 Scope & Cost Estimation (R.S. Means or Open Book Pricing) Exhibit B

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

- 3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials as identified and in conjunction with the Cost Estimation in **Exhibit B**;
- 3.2 The City Engineer shall have the right to determine the final amount due to Contractor;
- 3.3 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;
- 3.4 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;
- 3.5 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

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

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

**6. Acceptance of Work; Non-Waiver.** No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an

acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials, which are not strictly in accordance with the Contract.

**7. Delay of Work.** Any delay in the performance of this Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of the Contractor and not caused by any wrongful act or negligence of the Contractor shall entitle the Contractor to an extension of time equal to the delay so caused. The Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in Section 13 below (Contract Violations).

**8. Failure to Complete Project in Timely Manner.** If Contractor fails or refuses to execute this Contract within the time specified in Section 3 above, or such additional time as may be allowed, the proceeds of Contractor's proposal guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in execution of this Contract, and bonds and the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to execute this Contract and bond as required. If Contractor has submitted a certified check or cashier's check as a proposal guaranty, the check shall be returned after execution of this Contract.

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

**10. Material Storage.** During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at his or her own expense. The Contractor shall at all times keep the premises reasonably free from debris and in a condition, which will not increase fire hazards. Upon completion of the work, the Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials and supplies belonging to the Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of

any temporary construction yard, material storage area or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit A, Section 107.2.1.)

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

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

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

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

**If to Owner:**

Matthew Luhman, CPP, CPPB  
Purchasing Manager  
211 West Aspen Avenue  
Flagstaff, AZ 86001

**If to Contractor:**

**14. Contract Violations.** In the event of any of the provisions of this Contract are violated by the Contractor or by any of Contractor's subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract (the "Notice to Terminate").

The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner's notice of termination, the Owner may complete the work at the expense of the Contractor, and the Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work.

If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances and plants as may be on the worksite site and necessary for completion of the work.

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

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

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

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

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

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

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

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

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

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

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

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

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

**28. No Third Party Beneficiaries.** The parties acknowledge and agree that the terms, provisions, conditions, and obligations of this Contract are for the sole benefit of, and may be enforceable solely by, the Parties to this Contract, and none of the terms, provisions, conditions,

and obligations of this Contract are for the benefit of, or may be enforced by, any person or entity not a party to this Contract.

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

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

**31. Records.** 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 Provider's records related to this Agreement. Provider shall retain all records related to this Agreement for a period consistent with the City of Flagstaff's records retention policy. This record retention requirement shall remain in effect following termination of the Agreement.

**32. Force Majeure.** The parties acknowledge that there may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in temporary delay or permanent shut down of the work that is the subject of this Contract, as set forth in Exhibit B. This may be caused by such things as stay-at-home orders, loss of labor force, supply chain delays, and other impediments to timely delivery of the Contract.

The parties agree that there will be no claims arising from a temporary delay or permanent shut down caused by the events described above and that the City will pay no additional costs incurred as a result of such events.

The parties agree to act in good faith to extend the Contract completion date without any penalty to the Contractor and that the extension will be in an amount of time equal to any temporary delay. This term supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.



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

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

**Owner, City of Flagstaff**

**Contractor**

\_\_\_\_\_  
Kevin Burke, City Manager

\_\_\_\_\_  
Signature

Attest:

\_\_\_\_\_  
Printed Name

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

Approved as to form:

\_\_\_\_\_  
City Attorney

**CITY OF FLAGSTAFF, ARIZONA  
PAYMENT BOND**

**PROJECT NAME:**

**PROJECT NUMBER:**

**PRICE PROPOSAL NUMBER:**

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34  
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_  
(Hereinafter called the Principal), as Principal, and, \_\_\_\_\_  
\_\_\_\_\_, a corporation  
organized and existing under the laws of the State of \_\_\_\_\_, with its  
principal office in the City of \_\_\_\_\_ (“Surety”), as Surety, are held and  
firmly bound unto the City of Flagstaff, Arizona (“Obligee”), in the amount of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment  
whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors,  
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to the City of Flagstaff, which  
Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at  
length herein.

Now, therefore, the condition of this obligation is such, that if the principal promptly pays  
all monies due to all persons supplying labor or materials to the principal or the principal's  
subcontractors in the prosecution of the work provided for in the contract, this obligation is void.  
Otherwise it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter  
2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in  
accordance with the provisions, conditions and limitations of said Title and Chapter, to the same  
extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable  
attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Principal (Seal)

\_\_\_\_\_  
Surety (Seal)

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

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

\_\_\_\_\_  
Agency of Record

\_\_\_\_\_  
Agency Address

**CITY OF FLAGSTAFF, ARIZONA  
PERFORMANCE BOND**

**PROJECT NAME:**

**PROJECT NUMBER:**

**PRICE PROPOSAL NUMBER:**

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34  
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_  
(hereinafter called the Principal), as Principal, and, \_\_\_\_\_  
\_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_  
\_\_\_\_\_, with its principal office in the City of \_\_\_\_\_  
("Surety"), as Surety, are held and firmly bound unto the City of Flagstaff, Arizona ("Obligee"), in  
the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_  
\_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, and their heirs,  
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee,  
dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ in the City of Flagstaff which  
Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at  
length herein.

Now, therefore, the condition of this obligation is such, that if the principal faithfully  
performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of  
contract during the original term of the contract and any extension of the contract, with or without  
notice to the surety, and during the life of any guaranty required under the contract, and also  
performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all  
duly authorized modifications of the contract that may hereafter be made, notice of which  
modifications to the surety being hereby waived, the above obligation is void. Otherwise it  
remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34,  
Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined  
in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at  
length in this Contract.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Principal (Seal)

\_\_\_\_\_  
Surety (Seal)

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

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

\_\_\_\_\_  
Agency of Record

\_\_\_\_\_  
Agency Address

**CITY OF FLAGSTAFF**  
**STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Dean Coughenour, Director of Risk Management  
**Date:** 12/28/2020  
**Meeting Date:** 01/05/2021



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**TITLE:**

**Consideration and Adoption of Resolution No. 2020-01:** A Resolution of the Flagstaff City Council, approving the first amendment to the Restated Master Intergovernmental Agreement between Coconino County, the Arizona Board of Regents acting for and on behalf of Northern Arizona University, Coconino Community College, and the City of Flagstaff pertaining to public transit service in the greater Flagstaff area

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2021-01 by title only
- 2) City Clerk reads Resolution No. 2021-01 by title only (if approved above)
- 3) Adopt Resolution No. 2021-01

**Executive Summary:**

The Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA), also known as Mountain Line, has experienced difficulty in acquiring the amount of liability coverage as required in the existing restated Master Intergovernmental Agreement (IGA) pertaining to public transit services in the Flagstaff area. NAIPTA has worked with Risk Management at both the City and the County to reduce the current required limit from 30 million to 21 million to protect the parties to the agreement. The current market conditions, given capacity and pricing considerations, make this move prudent at this time. Attached are the resolution, IGA, and a communication from NAIPTA to their board explaining the issues and options.

Additionally language has been added to clarify that their policies are primary in the areas of general and auto liability.

**Financial Impact:**

NONE

**Policy Impact:**

NONE

**Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

**Priority Based Budget Key Community Priorities and Objectives**

High Performing Governance

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

NONE

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**Attachments:**    Res. 2021-01  
                          IGA Amendment  
                          NAIPTA board presentation  
                          Restated Master IGA

**RESOLUTION NO. 2021-01**

**A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING THE FIRST AMENDMENT TO THE AMENDED AND RESTATED MASTER INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY, THE ARIZONA BOARD OF REGENTS ACTING FOR AND ON BEHALF OF NORTHERN ARIZONA UNIVERSITY, COCONINO COMMUNITY COLLEGE, AND THE CITY OF FLAGSTAFF**

**RECITALS:**

WHEREAS, Coconino County, the Arizona Board of Regents acting for and on behalf of Northern Arizona University, Coconino Community College, and the City of Flagstaff entered into the Amended and Restated Master Intergovernmental Agreement (the "Restated Master IGA") on July 1, 2013, for the continuation of the intergovernmental public transportation authority;

WHEREAS Coconino County, the Arizona Board of Regents acting for and on behalf of Northern Arizona University, Coconino Community College, and the City of Flagstaff now desire to amend the Restated Master IGA to update liability insurance requirements reflective of the risk, loss history, and current market for liability insurance.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. In General.

The Flagstaff City Council hereby authorizes the Mayor to execute the First Amendment to the Amended and Restated Master IGA between Coconino County, the Arizona Board of Regents acting for and on behalf of Northern Arizona University, Coconino Community College, and the City of Flagstaff, Arizona, attached hereto as Exhibit A.

SECTION 2. Effective Date.

This resolution shall be immediately effective upon adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of January, 2021.

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MAYOR



ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Exhibits:

First Amendment to the Amended and Restated Master IGA

**FIRST AMENDMENT TO  
AMENDED AND RESTATED MASTER INTERGOVERNMENTAL AGREEMENT**

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (this "FIRST Amendment") is made and entered into effective as of the 1st day of July, 2020 (the "Effective Date"), by and among Coconino County, a body politic and corporate of the State of Arizona ("**Coconino County**"); the City of Flagstaff, an Arizona municipal corporation ("**Flagstaff**"); the Arizona Board of Regents, acting for and on behalf of Northern Arizona University, an Arizona state university ("**Northern Arizona University**") and Coconino Community College. The parties to this Restated Master IGA may be referred to herein collectively as the Parties or each individually as a Party.

**RECITALS:**

A. The Parties entered into the Amended and Restated Master Intergovernmental Agreement for the continuation of the IPTA dated July 1, 2013, (the "Restated Master IGA").

B. The Parties now desire to amend the Restated Master IGA to update liability insurance requirements reflective of the risk, loss history, and current market for Liability Insurance.

**AGREEMENTS:**

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Restated Master IGA as follows:

1. Section 16.1, "**NAIPTA Liability Insurance**" is amended to replace prior language in its entirety with the following:

16.1 **NAIPTA Liability Insurance.**

- a. NAIPTA shall maintain insurance for its property on a replacement cost all risk special form coverage basis at currently appraised values, and shall insure its fleet of vehicles for automobile physical damage.
- b. At a minimum, NAIPTA shall maintain general liability, automobile liability, and employment practices liability with limits of at least one million dollar in coverage with a Five Million Dollar (\$5,000,000.00) aggregate and a Twenty Million Dollar (\$20,000,000) excess or umbrella policy that is over each of the lines of coverage. NAIPTA shall also maintain statutory workers' compensation coverage for its employees

with employer's liability limits of at least: (i) One Million Dollars (\$1,000,000.00) for each accident; (ii) One Million Dollars (\$1,000,000.00) for each employee by disease; and One Million Dollars (\$1,000,000.00) by disease; with a Five Million Dollar (\$5,000,000.00) umbrella over its employer's liability policy limits, NAIPTA will purchase the insurance policies and keep them on file for all Members to review.

- c. NAIPTA will name the Members, their agents, officials, employees and volunteers as additional insureds for general liability including premises/operations, personal and advertising injury, products/completed operations, and as additional insured for automobile liability, employment practices liability, employee benefits liability, and Directors and Officers errors and omissions liability, and will specify that the insurance afforded by NAIPTA for general liability, automobile liability, employment practices liability, employee benefits liability, and Directors and Officers errors and omissions liability is primary insurance and that any insurance coverage carried or self-insurance by the Member, any department or any employee of the Member will be excess coverage and not contributory insurance to that provided by NAIPTA. Said policies must contain a severability of interest provision.
- d. NAIPTA will comply with statutory requirements for both workers' compensation and unemployment insurance coverage during the term of this Agreement. The insurer must agree to waive all rights of subrogation against the Member and their officers, agents, employees and volunteers for losses arising from work performed by NAIPTA.
- e. NAIPTA shall evidence its required insurance coverages and endorsements to Member entities each year within fifteen (15) days of the anniversary date of 07/01. If a policy does expire during the life of the Agreement, a renewal certificate must be sent to Member entities within fifteen (15) days of the expiration date.

2. Section 16.4, "Insurance Policies" is amended to replace prior language in its entirety with the following:

16.4. **Insurance Policies.** Insurance obtained to meet the requirements of this Agreement shall be obtained from: (a) insurers rated A- or better in Best's Insurance Guide; and/or (b) from an insurance pool with current financial resources deemed acceptable by review of their current financial statements by the Board or their appointed designee.

3. **Incorporation of Recitals and Attachments.** The Recitals are acknowledged to be true and correct and are hereby incorporated as agreements of the Parties, and the Attachments are incorporated herein as if fully set forth in this First Amendment.

4. **Reaffirmation of Restated Master IGA.** Except as amended by this First Amendment, the Restated Master IGA shall remain in full force and effect. In the event of any

conflict between this First Amendment and the Restated Master IGA the terms of this First Amendment shall prevail.

5. Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this First Amendment may be transmitted between them via facsimile or email. The Parties intend that the faxes or emailed signatures constitute original signatures and that a faxed or emailed agreement containing the signatures (original, emailed or faxed) of all the Parties is binding upon the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Master IGA.

Attest:

\_\_\_\_\_  
Clerk of Board of Supervisors

COCONINO COUNTY,  
a body corporate and politic of the State  
of Arizona limited partnership

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

Its: \_\_\_\_\_

Attest:

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

CITY OF FLAGSTAFF,  
an Arizona municipal corporation

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

Its: \_\_\_\_\_

NORTHERN ARIZONA UNIVERSITY,  
an Arizona State University, by the  
Arizona Board of Regents

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

Its: \_\_\_\_\_

COCONINO COMMUNITY COLLEGE

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

Its: \_\_\_\_\_

## PROPER FORM AND AUTHORITY

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Coconino County Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Flagstaff City Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Attorney for Arizona Board of Regents

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Attorney for Coconino Community College



## Mountain Line

3773 N. Kaspar Drive · Flagstaff, AZ 86004 · 928-679-8900 · FAX 928-779-6868 · [www.mountainline.az.gov](http://www.mountainline.az.gov)

**DATE PREPARED:** June 26, 2020

**DATE:** June 29, 2020

**TO:** Honorable Chair and Members of the Board

**FROM:** Heather Dalmolin, CEO and General Manager

**SUBJECT:** Consider FY2021 Liability Insurance Options

### **RECOMMENDATION:**

Staff recommends that the Board of Directors 1) authorize the CEO and General Manager to engage Mountain Line's partners to revise the Master IGA regarding section 16 Insurance as a result of the changing liability insurance market and to reflect Mountain Line loss history and 2) delegate authority to the CEO and General Manager and Mountain Line legal counsel to finalize the language for executing signatures.

### **BACKGROUND:**

Annually, staff works with Mountain Line's insurance broker to market and bind liability insurance. The lines of insurance include auto, property, employment, and public official policies. Recently, Mountain Line added Cyber Crime coverage due to growing risk as related to cybercrimes and use of social media. Per the Master IGA, coverage provides limits of \$30M through multiple policies including umbrella and excess coverage. Mountain Line has contracted with AON Risk Insurance Services West (AON) since 2006, to act as its broker, and has been working with a team out of the Albuquerque office successfully. The annual renewal process has resulted in stable premiums and deductibles. Staff have been satisfied with representation of AON and the marketing efforts conducted annually. For the past several years, Mountain Line has been successful in binding the necessary coverage at a cost of roughly \$300,000 per year.

As reported in late June, renewal of Mountain Line's liability insurance has been challenging. We suffered significant representation changes in our Broker contract when AON closed the New Mexico office that had been marketing and binding our coverage for the last 10 plus years. Our prior umbrella carrier left the public transit market forcing us to seek other carrier coverage at the same time that the insurance market hardened for placement of public transit coverage. These factors resulted in limited options at the last minute.

As of June 30, 2020, we had successfully secured \$21 million in liability insurance as follows:

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Travelers is providing a total of \$6M

- General Liability \$1M per Occurrence/\$2M Aggregate
- Automobile Liability \$1M per Accident
- Public Entity Management Liability \$1M Each Wrongful Act/\$2M Aggregate
- Employment Practices Liability \$1M Each Wrongful Offense/\$2M Aggregate
- Employers Liability \$1M Each Accident/\$1M Policy Limit
- Umbrella \$5M Occurrence/\$5M Aggregate

Transit Re - \$5Mx\$5M Excess

- General Liability per occurrence/no aggregate
- Automobile Liability per occurrence/no aggregate
- Public Officials Liability including Employment Practices Liability per occurrence/no aggregate

Great American - \$10Mx\$10M Excess

- General Liability per occurrence/aggregate
- Automobile Liability per occurrence/aggregate
- Public Officials Liability including Employment Practices Liability per occurrence/aggregate

We have attempted to secure an additional \$10 million in excess coverage in order to meet the terms of the Master IGA. We have exhausted the market that we felt could provide the excess layer for \$100,000 or less and we are now marketing to firms that, if they bid, are expected to bid at costs up to \$300,000.

Staff have met with both Coconino County and City of Flagstaff Risk Management to review our challenges and discuss strategies, including amending our IGA to reduce the \$30 million requirement. Both entities confirmed their own similar experience with renewals this year. Coconino County modified their insurance limits from \$30M to \$15M and the City joined the Arizona Municipalities Risk Retention Pool, both as a result of the challenges faced in renewing policies. Staff also reviewed the history behind the \$30M liability insurance requirement and the parties agreed that public entities in Flagstaff raised insurance policies in reaction the event involving FUSD transportation in 1996. We also discussed our total loss history as a final test to determine reasonableness of reducing policy requirements, we have had only one large claim that was settled for \$750,000 (August 2012 accident) and experience an average of \$25,000 or less per year in small and incidental claims that fall below our deductible.

Based on these discussions, staff are recommending we cease attempts to gain another \$10M in excess coverage, request an amendment to the IGA, and continue to pursue other opportunities leading up to the FY2022 renewal. The proposed amendment corrects the following gaps identified as areas we are unable to comply with in our recent renewals:

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- The IGA requires A-Rated coverage however opportunities for pooled coverage will violate this requirement as pools are not rated coverage plans.
- The IGA requires the same coverage of \$30M in all policies however we are unable to obtain this limit on Employer's Liability coverage and have not been able to provide in past either.
- The IGA requires partners to be named as Additional Insured on all policies; however, we are unable to offer that status to other agencies for both the Management Liability policy or Employment Practices Liability policy.
- We do not have \$30M in coverage and it is cost prohibitive to obtain the additional \$10M of excess coverage.
- The IGA is missing language requiring Mountain Line policies to be primary and noncontributory, and for the Workers' Compensation policy to require an endorsement for waiver of subrogation for the IGA parties. Primary and noncontributory wording is available for General Liability and Auto only.

The red-line version of section 16 Insurance is attached in the recommended amendment, to be sent to our partner agencies. We are not recommending a change to any other clauses at this time.

### TAC DISCUSSION:

The progress on obtaining liability insurance and the challenges was reported to the TAC in the attached Progress Report. The decision to recommend an amendment to the IGA has been shared with the TAC member for each partner agency. The appropriate risk management personnel at the City and County have reviewed and support the amendment language.

### ALTERNATIVES:

- 1) Authorize the CEO and General Manager to engage Mountain Line's partners to revise the Master IGA regarding section 16 Insurance as a result of the changing liability insurance market and to reflect Mountain Line loss history and delegate authority to the CEO and General Manager and Mountain Line legal counsel to finalize the language for executing signatures (**recommended**): This action ensures that Mountain Line acquires cost effective coverage for potential risk exposure and is compliant with terms of the Master IGA. The commitment to explore all solutions, including changes to limits, ensures long-term financial commitment is reflective of the liability risk of the agency.
- 2) Do not approve the recommendation of staff (**not recommended**): If the Board does not approve the recommendation, Mountain Line is non-compliant with the terms of the IGA and is exposed to paying for costly coverage that is not aligned with actual risk.

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## **Mountain Line**

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### **FISCAL IMPACT:**

Coverage as currently purchased is over budget; however, it is anticipated that there is capacity and savings available due to reduced service levels in July and August. If additional insurance must be purchased NAIPTA could exceed the annual budget by more than \$300,000.

### **SUBMITTED BY:**

---

Heather Dalmolin  
CEO and General Manager

### **ATTACHMENTS:**

- |   |              |
|---|--------------|
| 1. 1 <sup>st</sup> Amendment to the Restated Master IGA | -pages 46-52 |
| 2. Progress Report to the TAC, 08.06.2020               | -page 53     |

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## AMENDED AND RESTATED MASTER INTERGOVERNMENTAL AGREEMENT

This Amended and Restated Master Intergovernmental Agreement (this "**Restated Master IGA**") is made effective as of the 1<sup>st</sup> day of July, 2013 (the "**Effective Date**") by and among Coconino County, a body politic and corporate of the State of Arizona ("**Coconino County**"); the City of Flagstaff, an Arizona municipal corporation ("**Flagstaff**"); the Arizona Board of Regents, acting for and on behalf of Northern Arizona University, an Arizona state university ("**Northern Arizona University**") and **Coconino County Community College District**, an Arizona community college district. The parties to this Restated Master IGA may be referred to herein collectively as the Parties or each individually as a Party.

### RECITALS

A. Arizona Revised Statutes Title 28, Chapter 26 (the "**Statutes**"), authorizes the formation of an intergovernmental public transportation authority ("**IPTA**") in any county having a population of two hundred thousand persons or less. The board of the IPTA is to conduct a periodic survey of transportation needs in the authority and determine an appropriate public transportation system to meet those needs and the means to finance the system.

B. On or about March 15, 2006, and pursuant to the authority vested in them by the Statutes, Coconino County, Yavapai County, Flagstaff, the City of Cottonwood ("**Cottonwood**") and the City of Sedona ("**Sedona**") entered into a Master Intergovernmental Agreement (the "**Master IGA**") for the formation of the Northern Arizona Intergovernmental Public Transportation Authority ("**NAIPTA**"). Pursuant to the provisions of the Statutes, Northern Arizona University became a member of NAIPTA by intergovernmental agreement dated October 19, 2007. The goal of the parties in creating NAIPTA was to take a regional, collaborative approach to creating a comprehensive integrated Regional Transportation System.

C. The governing bodies of Cottonwood and Sedona subsequently determined that they wished to resign from NAIPTA and that Cottonwood should assume responsibility for the operation of the CAT system. Pursuant to the approvals of their respective city councils, Cottonwood and Sedona withdrew from NAIPTA effective June 30, 2012.

D. On or about February 19 2013, the Yavapai County Board of Supervisors voted to withdraw from NAIPTA, effective June 30, 2013.

E. In 2009, the state legislature amended Arizona Revised Statutes Title 28, Chapter 26 to provide that a community college that is located in a municipality that is a member of an IPTA may become a member of the authority by Intergovernmental Agreement. Coconino County Community College District now wishes to join NAIPTA.

F. The purpose of this Restated Master IGA is to provide for the continuation of the IPTA, for the addition of new members and amended boundaries, and for changes to the composition of the Transit Advisory Committee ("**TAC**").

## **AGREEMENTS**

1. **Goals.** The goals of the Parties in creating the IPTA are to take a regional, collaborative approach to creating a comprehensive integrated Regional Transportation System that provides a seamless transition from various transportation modes while serving the transportation needs of the region efficiently. The Regional Transportation System will have a strong central system with excellent frequency provided to outlying areas and their communities in a way that addresses each Party's unique transit needs. The Regional Transportation System will provide services that assist each of the Parties to meet federal transit-related requirements, with an equitable allocation of costs.

2. **Names and Authority.** The name of the IPTA is the Northern Arizona Intergovernmental Public Transportation Authority ("**NAIPTA**"). NAIPTA is a corporate body and political subdivision of the State of Arizona, with all of the power and privileges granted to it by law. The terms "NAIPTA" and "IPTA" may both be used in this Restated Master IGA to refer to the intergovernmental public transportation authority created hereby.

3. **Members and Board of Directors.**

3.1. **Members.** The Members of NAIPTA, pursuant to the terms of this Restated Master IGA are:

- A. Coconino County
- B. Flagstaff
- C. Northern Arizona University
- D. Coconino County Community College District

3.2. **Board of Directors.** NAIPTA shall be governed by a Board of Directors consisting of at least five (5) and not more than nine (9) members (the "**Board**"). Upon the approval and execution of this Restated Master IGA by all Parties, the Board shall be comprised of five (5) directors, consisting of one (1) member of the Coconino County Board of Supervisors or designee; two (2) members of the Flagstaff City Council or designees; one (1) member of the Northern Arizona University administration appointed by the Northern Arizona University President, and the President of Coconino County Community College District or designee. In the event that additional municipalities join NAIPTA, the number of directors may be increased (to a maximum of nine (9) directors) by a vote of the Board. In the event that additional Board positions are created by the Board pursuant to this section, the Board shall, subject to the statutory requirement that Board membership shall be apportioned among the participating municipalities according to their respective populations, request one or more member municipalities to appoint a director to fill the new position.

3.2.1. Directors serve five-year staggered terms on the Board. The Coconino County Community College District director shall serve an initial term of four (4) years, and thereafter shall serve five-year terms. Directors appointed to the Board prior to the Effective Date shall continue to serve their existing terms on the Board.

3.2.2. A member agency may remove its appointed director for cause, as determined by the governing body of such member agency.

3.2.3. The Board shall elect a chairperson and other officers from among its members and shall, by Rules of Procedure approved by a majority of the Board, prescribe their functions and terms and conditions of appointment.

3.2.4. Alternate directors may be appointed pursuant to the NAIPTA Rules of Procedure.

3.3. **Powers of Board of Directors.** The Board shall have all of the powers set forth in A.R.S. § 28-9122 (the "**Statutory Powers**"), and those powers necessary to implement the Statutory Powers.

3.4. **Membership Fees.** Membership fees shall be assessed against Members represented on the Board, to offset the Board's administrative expenses and to establish a NAIPTA general fund, as further described in Section 9.3.2 of this Restated Master IGA (the "**General Fund**"). Fees shall be Five Hundred Dollars (\$500.00) per seat for the fiscal year commencing July 1, 2013. The annual fee may be adjusted by the Board through the budget process.

3.5. **End of Year Funds.** At the end of the fiscal year, any shortfall in the NAIPTA budget shall be charged to the Members in a manner consistent with the NAIPTA Cost Allocation methodology set forth in Section 10.3 and with the terms of the Service IGA's then in effect. Monies remaining in NAIPTA's accounts at the end of the fiscal year shall be deposited in the General Fund.

4. **Boundaries.** The boundaries of NAIPTA include all territory within the corporate boundaries of Flagstaff and the portions of unincorporated territory in Coconino County described on Exhibit "A" and depicted on Exhibit "B."

5. **Changes in Membership and Boundaries.**

5.1. **Addition of New Members.** The Board may, by a vote of a majority of those voting thereon, increase the membership of NAIPTA to include additional municipalities located in counties that have a population of two hundred thousand (200,000) or less on the Effective Date (a "**New Member**"). The vote to add a New Member shall be taken upon written application of the proposed New Member. The application shall include:

A. A complete description of any transportation system or transit services operated in or by the New Member, including but not limited to the routes, ridership, assets, and liabilities of such system or service;

B. A Service IGA and Service Provider IGA, as appropriate, between the New Member and NAIPTA that provides for the integration of any transportation system or transit service operated in or by the New Member, into the Regional Transportation System.

5.2. **Amendment to Boundaries of the IPTA.**

5.2.1. At such time as a New Member is admitted to NAIPTA, this Restated Master IGA shall be amended to include the New Member as a Party to this Restated Master IGA and to increase the boundaries of NAIPTA to include the jurisdictional area of the New Member as well as any unincorporated areas of a county that are between the New Member and the existing boundaries of NAIPTA and any unincorporated areas that a Board of Supervisors has determined should be included in NAIPTA in order to serve the needs of the New Member. A depiction of the amended boundaries shall be attached to this Restated Master IGA as an exhibit and be incorporated herein by reference without the need to formally amend this IGA.

5.2.2. In the event that a member resigns from NAIPTA as further set forth in Section 6.4, this Restated Master IGA and the boundaries of NAIPTA shall be amended in a manner consistent with such resignation.

6. **Dissolution/Resignation.**

6.1. **Proposal to Dissolve the IPTA.** A majority of all of the directors appointed to the Board may propose at a public meeting that NAIPTA be dissolved, provided that all contractual obligations and debts of NAIPTA are satisfied or transferred to another governmental entity or entities, and provided further that such governmental entity or entities will accept dedication of all NAIPTA property and assume all NAIPTA obligations. A public hearing on the proposed dissolution shall be held not less than fifteen (15) nor more than thirty (30) days after the proposal is made.

6.2. **Plan of Termination.** Following the public hearing held pursuant to Section 6.1, the Board shall adopt by resolution a plan of termination to be executed within a stated period of time after it is adopted. The plan of termination shall include a schedule for transferring the assets and obligations of NAIPTA to a governmental entity or entities named in the Plan.

6.3. **Growth of County Population.** The growth of a county's population to more than two hundred thousand persons shall not cause the dissolution of NAIPTA by operation of law.

6.4. **Resignation.** A member may resign from NAIPTA upon consultation with the Board, in which case the boundaries shall be amended pursuant to Section 5.2.2. Prior to the Resignation of a Member pursuant to this Section, the Board must determine how the resignation will impact the Regional Transportation System or the services provided to the remaining Members.

7. **Power and Authority.** NAIPTA has sole authority for designing, operating and maintaining the Regional Transportation System, including a regional bus

system (the "**Bus System**") and community funded transportation services including dial-a-ride programs and special needs transportation services in the boundaries established by, and subject to the terms and conditions of, this Restated Master IGA and the Service IGAs.

7.1. **Existing and New Services.** The Parties understand and agree that Existing Transit Services are currently provided by one or more of the Parties to this Restated Master IGA, and that it is in the interest of achieving the goals of this Restated Master IGA, that such Parties continue to provide the Existing Transit Services during the planning and initial implementation period for the Regional Transportation System (the "**Transition Period**"). No new Transit Services may be provided by a Party after the Effective Date, except as provided in the plans for the Regional Transportation System.

7.2. **Coordination.** The Board shall be responsible for coordinating and implementing among the Parties the establishment of the Regional Transportation System, subject to the terms of this Restated Master IGA, the Service IGA's and the Service Provider IGA's.

7.3. **Contract for Operation of Bus System.** The Board may enter into a contract with public or private entities to operate the Bus System or any part thereof.

7.4. **Rules and Regulations.** The Board shall adopt rules (the "**Rules and Regulations**") that are proper and necessary to the use, operation and maintenance of its Regional Transportation System, property, facilities and service. The Board shall hold one public hearing within the boundaries of NAIPTA prior to adopting Rules and Regulations and any amendments or additions to such Rules and Regulations.

7.5. **Committees.** In addition to the Transit Advisory Committee established pursuant to Section 11 of this Restated Master IGA, The Board may appoint subcommittees as it deems necessary to provide input to the Board concerning operational matters of NAIPTA, including but not limited to finance, personnel, and customer service matters.

## **8. Planning and Programming.**

8.1. **Survey of Public Transportation.** The Board will conduct a survey of public transportation needs in NAIPTA, or may adopt, with such additions and updates as it deems appropriate, a survey which has been conducted within the last two (2) years for all or part of the area included in NAIPTA (the "**Transportation Survey**").

8.2. **Public Transportation System.** The Board shall determine an appropriate Regional Transportation System to serve the public transportation needs identified in the Transportation Survey, and the means to finance the Transportation System:

8.3. **Transportation Program.** Each year, on or before the 31st day of March, the Board will produce a five-year public transportation program (the "**Transportation Program**") that is consistent with the regional transportation plan approved by the Northern Arizona Council of Governments ("**NACOG**") and the Flagstaff Metropolitan Planning Organization ("**FMPO**"). The Transportation Program shall:

8.3.1. Contain public transportation projects financed with monies from federal, state and local funding;

8.3.2. Contain a description of each project, including a schedule of expenditures and a source of funding for each project;

8.3.3. Identify the entity that is responsible for implementing each project or phase of the Transportation Program;

8.3.4. Define and identify regional public transportation corridors;

8.3.5. Define the public transportation problems, goals and needs for each corridor and policies and priorities for meeting those goals and needs;

8.3.6. Determine a mix of public transportation modes appropriate for development in light of the public transportation goals and needs for each corridor;

8.3.7. Locate routes and access points to the public transportation system.

8.3.8. Determine the ridership capacity and use of public transportation systems.

8.3.9. Include the capital and operating costs of the Regional Transportation System, presented on an individual fiscal year basis.

8.3.10. Set forth the revenue needed by source, according to A.R.S. § 28-9142, to fund the Regional Transportation System, presented on an individual fiscal year basis.

8.4. **Advertising Policy.** The Board shall, with input from the Members, prescribe a uniform advertising policy for all vehicles and equipment utilized to provide Transit Services as part of the Regional Transportation System (the "**Advertising Policy**"). The Advertising Policy shall be deemed incorporated by reference into each Service IGA, provided however, that entities that operate Existing Transit Services for the period provided in Section 7.1 shall be exempt from the Advertising Policy for the Transition Period, to the extent the Advertising Policy conflicts with an adopted advertising policy of the entity providing the Existing Transit Services. Advertising Revenues arising out of contracts entered into after the Effective Date of this Restated Master IGA shall be deposited into the General Fund.



9. **Budgeting and Finance.**

30. 9.1. **Fiscal Year.** The fiscal year of the IPTA shall be July 1 – June

9.2. **IPTA Treasurer and Accounting System.**

9.2.1. **Treasurer.** NAIPTA shall appoint an IPTA treasurer or may enter into an intergovernmental agreement with the Coconino County Treasurer to provide financial services for NAIPTA. The treasurer shall furnish a surety bond to be approved by the Board, to be conditioned upon the faithful performance of his duties. The premium for the bond shall be paid by NAIPTA.

9.2.2. **Budget Controls.**

9.2.2.1. The NAIPTA accounting system and financial management shall comply with generally accepted accounting principles.

9.2.2.2. NAIPTA will comply with Federal Transit Administration (“FTA”) guidelines for finance, procurement, performance and disposition of assets and shall be in compliance with the FTA requirements.

9.2.2.3. NAIPTA will institute a program of proper internal controls for business conducted by the IPTA.

9.3. **Public transportation authority fund.**

9.3.1. **Establishment of Fund.** NAIPTA treasurer shall maintain a Public Transportation Authority Fund (the “**Transportation Fund**”) consisting of all monies received by NAIPTA including:

- A. Monies appropriated or paid to NAIPTA by Members;
- B. Monies received by NAIPTA from the federal government or the State of Arizona
- C. Grants, gifts and other donations from any source.
- D. Revenues collected by NAIPTA as fares and other proceeds from operating the public transportation system.

9.3.2. **General Fund.** Within the Transportation Fund there shall be created a special General Fund, consisting of End of Year Funds as set forth in Section 3.5 and Advertising Funds, as set forth in Section 8.4, together with any grants, gifts or other donations given to NAIPTA for the specific purpose of maintaining a General Fund.

9.3.2.1. Monies in the General Fund are intended to provide NAIPTA with the flexibility to respond to unforeseen crises or unanticipated

emergencies, when such response is in the best interest of the NAIPTA member agencies, as determined by the Board.

9.3.2.2. To the extent possible, General Fund uses will be identified during the annual budget process and adopted by the Board. The Board may, by vote taken at a public meeting, authorize additional uses of General Fund monies to address needs that were not identified during the budget process.

9.3.2.3. NAIPTA may attach repayment provisions to grants and loans from the General Fund, on a case-by-case basis.

### 9.3.3. **Use of Funds.**

9.3.3.1. Except as otherwise provided in Section 9.3.2, monies in the Transportation Fund may be used for any lawful purpose of NAIPTA.

9.3.3.2. The NAIPTA treasurer may invest any unexpended monies in the Transportation Fund as provided by state law, including the local government investment pool if authorized by the state treasurer. Interest and other income from investments shall be credited to the Transportation Fund.

9.3.3.3. The NAIPTA treasurer shall invest monies to mature at the times when the fund assets will be required for the purposes of this article. If the liquid assets in the fund become insufficient to meet NAIPTA's obligations, the board of directors shall:

A. Direct the IPTA treasurer to liquidate sufficient securities to meet all of the current obligations; and

B. Immediately notify the auditor general of the insufficiency. The auditor general shall investigate and audit the circumstances surrounding the depletion of the Transportation Fund and report the findings to the board.

9.3.3.4. The Board shall cause an annual audit to be conducted of the Transportation Fund by an independent certified public accountant within one hundred twenty days after the end of the fiscal year. The Board shall formally approve and thereafter immediately file a certified copy of the audit with the auditor general. The auditor general may make further audits and examinations as necessary, but if the auditor general takes no official action within thirty days after the audit is filed, the audit is considered to be sufficient. The Board shall pay all fees and costs of the certified public accountant and auditor general under this subsection from the fund.

9.4. **Annual Budget.** No later than June 30 of each year, the Board shall hold a public hearing to adopt and submit to the governing body of each of the Members a budget for the following fiscal year that includes:

A. Receipts during the past fiscal year;

B. Expenditures during the past fiscal year;

- C. Estimates of amounts necessary for expenses during the following fiscal year including amounts proposed for:
  - 1. Costs of maintaining, operating and managing the public Transportation System;
  - 2. Promotional and marketing expenses of NAIPTA for the following year;
- D. Anticipated revenue to NAIPTA in the following fiscal year;
- E. A complete asset and liability statement;
- F. A statement of profit or loss from operations;
- G. Cash on hand as of the date the budget is adopted and the anticipated balance at the end of the current fiscal year.
- H. An itemized statement of commitments, reserves and anticipated obligations for the following fiscal year.

9.4.1. The Board may amend the budget on the finding of good cause.

9.4.2. The first year of said annual Transportation Program shall form the basis for the budget of NAIPTA.

## 10. **Responsibilities of the Members.**

### 10.1. **Planning.**

10.1.1. Each of the Members shall, upon request, collaborate with the planning staff of NAIPTA as required by the FTA to maintain the Transportation Plan.

10.1.2. Each of the Members shall, upon request, provide NAIPTA planning staff with updates for inclusion in the Transportation Plan and/or Transportation Program as appropriate.

### 10.2. **Funding.**

10.2.1. Each Member will maintain a fund balance with NAIPTA equal to three (3) months of the Member's annual transit operating budget. This fund balance will be deposited to and managed by NAIPTA for the benefit of the Member's operations. At no time shall the fund balance fall below a three (3) month reserve.

10.2.2. NAIPTA is the designated recipient of federal funds for the area included in the boundaries of NAIPTA. Each of the Members shall, at the request of NAIPTA, take such actions as are necessary to secure federal funds for the area included in the boundaries of NAIPTA, and will support the pursuit of federal funds that will benefit NAIPTA.

### 10.3. **Cost Allocation for Transportation Services.**

10.3.1. All direct costs to provide Transportation Services shall be the responsibility of the Member requesting the Transportation Services, who shall provide evidence satisfactory to the Board that funds to meet such costs are or will be available when needed.

10.3.2. Administrative Costs will be allocated among the Members based upon an agreed upon methodology and consistent with OMS A87 where applicable.

10.3.3. Working capital is the amount to be paid by each Member to NAIPTA, in proportion to the impacts of service provided to that Member by NAIPTA and as further defined in the Service IGA's.

10.4. **Capital Transportation Costs.** Capital costs shall be allocated in the Service IGA's.

## 11. **Transit Advisory Committee.**

11.1. **Membership.** The Transit Advisory Committee ("**TAC**") shall consist of the Coconino County Manager or designee; a Coconino County citizen appointed by the Board of Supervisors; Flagstaff City Manager or designee; a Flagstaff citizen appointed by the City Council; Northern Arizona University Vice President of Administration or designee; Coconino County Community College District Vice-President or designee; the Manager of the Flagstaff Metropolitan Planning Organization; the Student Senate President from Northern Arizona University or designee; the Student Senate President from Coconino County Community College or designee; and, at the discretion of the Board, a representative of a business or economic development association. Additional guest members from surrounding communities may be invited by the TAC Chair as needed to hold meaningful regional discussions. Such invitations are intended to be for a temporary period as necessary for the particular topic. The Student Senate Presidents and guest members shall be ex-officio, non-voting members.

11.2. **Terms of Office.** Citizen members of the TAC shall serve for terms of three years each.

11.3. **Responsibilities.** The TAC shall: (i) serve an advisory role to the NAIPTA CEO and General Manager; (ii) meet monthly or as required to discuss operational and intergovernmental issues; review financial plans; review funding opportunities; review staffing, administration and capital plans; review ridership enhancement policies; and consider liability issues; (iii) consider and comment upon staff and consultant recommendations related to transit service; (iv) convene public meetings on behalf of NAIPTA transit services to gain citizen feedback and input; and, (v) review and comment upon policies affecting NAIPTA.

12. **Service IGA's.** Each agency wishing to purchase transit services from NAIPTA shall be required to enter into a Service IGA that describes the services to be

purchased and assigns responsibilities for construction, operation and maintenance of the services and related capital improvements.

Each agency wishing to provide services as part of the Regional Transportation System shall be required to enter into a Service Provider IGA that describes the services to be provided, including routes, schedules, and equipment.

13. **Records and Audit Rights.** Each Member's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by NAIPTA or a funding agency to substantiate charges and claims related to this Restated Master IGA shall be open to inspection and subject to audit and/or reproduction by authorized representatives of NAIPTA, the FTA, and the Auditor General of the State of Arizona ("**Auditors**"), as applicable to the extent necessary to adequately permit evaluation and verification of the performance of the work, and to conduct and prepare all audits and reports required by law. Auditors shall be afforded access, at reasonable times and places, to all of a Member's records and personnel, pursuant to the provisions of this Section, throughout the terms of this Agreement, and for a period of five (5) years after last or final payment.

14. **Mediation.**

14.1. **Dispute Resolution.** If a dispute arises out of or relates to this agreement and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure.

14.2. **Mediation Venue and Procedure.** Mediation will take place in Flagstaff, Arizona, be self-administered and be conducted under the CPR Mediation Procedures established by the CPR - Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties.

14.3. **Commencement of Mediation.** Either Party may refer the dispute to mediation by sending by U.S. mail, certified and return receipt requested, to the other Party or Parties a written notice (the "**Mediation Notice**") calling on the other Party or Parties to proceed to mediation. The Party or Parties who have received a Mediation Notice shall contact the Party calling for mediation seven (7) days from receipt of the Notice to confirm receipt of the Mediation Notice and to begin the mediator selection process.

14.4. **Mediator Selection.** Unless the Parties agree otherwise, the Parties shall select the mediator(s) from the roster of attorney mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. If the Parties are unable to agree upon a mediator within ten business days of the confirmation of receipt of Mediation Notice, each Party shall independently inform the Director of the Alternative Dispute Resolution Program of the Coconino County Superior Court (the "**Director**") of three attorney mediators from that roster that are acceptable

to the Party, and further, inform the Director of any preference as to matters such as whether co-mediation is preferable, mediation style, subject matter expertise, or other factors pertinent to the case. The Director shall then select one or more attorney mediators from the Parties' lists or such other attorney mediator(s) from the above noted roster as the Director may deem, in the Director's sole discretion, appropriate under the circumstances.

14.5. **Fees and Costs.** Each Party agrees to bear its own fees and costs in mediation. The Parties shall enter into a written agreement with the mediator(s) regarding the mediator(s)' fees and expenses before the first mediation session. The Parties shall share equally the mediators' fees and mediation expenses.

14.6. **Subsequent or Contemporaneous Contracts.** The Parties shall include the provisions of this Section 14 in all subcontracts relating to the Services.

14.7. **Participation in Mediation.** The Parties agree to encourage participation in mediation by all relevant parties. The Parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.

14.8. **No Waiver.** This section does not constitute a waiver of the Parties' rights to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

15. **Term.** This IGA shall be for an Initial Term of twenty-five (25) years, commencing on the Effective Date of this Agreement.

16. **Insurance and Indemnification.**

16.1. **NAIPTA Liability Insurance.** NAIPTA shall maintain insurance for activities associated with operating a public transportation system. Insurance provided by NAIPTA will include property, general liability, business/auto transit, public officials' errors and omissions, employment practices liability and umbrella liability at levels deemed appropriate by the NAIPTA Board of Directors. NAIPTA will purchase the insurance policies and keep them on file for all members to review, and provide certificates of insurance naming each member as additional insured. Such insurance shall be in an amount of not less than Thirty Million Dollars (\$30,000,000.00).

16.2. **Member Liability Insurance.** NAIPTA is not responsible or liable for transit operations that member agencies conduct on their own.

16.3. **Additional Insurance.** Service IGA's and Service Provider IGA's may require additional insurance to be maintained against risks arising from or related to the services provided pursuant to such IGA. The requirements of this Section 16 shall not be interpreted or construed to relieve members that currently or in the future elect to provide transportation or transit services under their own auspices, from the obligation to maintain insurances coverage in amounts they deem necessary.

16.4. **Insurance Policies.** Insurance required hereunder shall be in companies rated AA or better in "Best's Insurance Guide."

16.5. **Indemnification.** Each Party to this Restated Master IGA (as "**Indemnitor**") agrees to defend, indemnify and hold harmless the other Parties, and their officers, officials, employees, agents, representatives and directors (collectively the "**Indemnitees**") from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, attorneys' fees and other reasonable costs of defense and any appeals) (collectively "**Claims**"), which may be imposed upon, incurred by or asserted against the Indemnitees, attributable (directly or indirectly) to, or arising in any manner by reason of, the act, omission, negligence, misconduct or other fault of the Indemnitor, or of any agent, officer, servant or employee of the Indemnitor, or anyone for whom Indemnitor may be legally liable in the performance of this Restated Master IGA.

Insurance provisions set forth in this Restated Master IGA are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

17. **Conflict of Interest.** This Agreement is subject to termination for conflict of interest, pursuant to the provisions of A.R.S. § 38-511.

18. **Adherence to Laws.** NAIPTA and all committees, subcommittees and advisory committees appointed by the Board agree that they are subject to and shall adhere to all of the requirements of the Arizona Open Meeting Law (A.R.S. §38-431 et seq.), the Conflicts of Interest Law (A.R.S. § 38-501 et seq.) and the Public Records Law (A.R.S. §39-121 et seq.) as they may from time to time be amended.

19. **General Provisions.**

19.1. **Incorporation of Recitals.** The Recitals are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

19.2. **Entire Agreement.** This Restated Master IGA constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended, except by a written document, signed by authorized representatives of each Party.

19.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

19.4. **Assignability.** This Agreement is nonassignable in whole or in part by any Party hereto without the written consent of all Parties.

19.5. **Modifications.** Except as otherwise specifically provided in this Restated Master IGA, any amendment, modification or variation from the terms of this Restated Master IGA requires the written approval of all Parties.

19.6. **Attorney's Fees.** In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Restated Master IGA, or on account of any breach or default of this Restated Master IGA, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, as determined by the arbitrator or court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable, whether or not such action is prosecuted to judgment.

19.7. **Notices.** All notices or demands required to be given, pursuant to the terms of this Agreement, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express services at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

If to: Coconino County:

County Manager  
219 E. Cherry Ave.  
Flagstaff, Arizona 86001  
Tel: 928-779-6690  
Fax: 928-779-6687

If to Flagstaff:

City Manager  
211 W. Aspen Ave.  
Flagstaff, Arizona 86001  
Tel: 928-779-6504  
Fax: 928-214-2415

If to Northern Arizona University:

Vice President for Administration  
& Finance  
P. O. Box 4088  
Flagstaff, Arizona 86011  
Tel: 928-523-2708  
Fax: 928-523-4230

If to Coconino County Community College  
District:

Vice President for Business and  
Administration  
2800 South Lone Tree Rd.  
Flagstaff, Arizona  
Tel: 928-226-4209  
Fax: 928-226-4501



19.8. **Force Majeure.** No Party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures or power failures.

19.9. **Counterparts.** This Restated Master IGA may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Restated Master IGA shall be deemed to possess the full force and effect of the original.

19.10. **Captions.** The captions used in this Restated Master IGA are solely for the convenience of the Parties, do not constitute a part of this Restated Master IGA and are not to be used to construe or interpret this Restated Master IGA.

19.11. **Severability.** If any term or provision of this Restated Master IGA shall be found to be illegal or unenforceable, then outstanding such illegality or unenforceability, this Restated Master IGA shall remain in full force and effect, and such term or provision shall be deemed to be deleted.

19.12. **Authority.** Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Restated Master IGA, and that the person signing on behalf of each has been properly authorized and empowered to enter this Restated Master IGA. Each Party further acknowledges that it has read this Restated Master IGA, understands it, and agrees to be bound by it.

19.13. **No Third-Party Beneficiaries.** This Agreement shall not create any rights to enforcement of the provisions herein to any person or entity that is not a Party to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Master IGA.

Attest:

\_\_\_\_\_  
Clerk of Board of Supervisors

COCONINO COUNTY,  
a body corporate and politic of the State  
of Arizona limited partnership

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

Its: \_\_\_\_\_

Attest:

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

CITY OF FLAGSTAFF,  
an Arizona municipal corporation

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

Its: \_\_\_\_\_

ARIZONA BOARD OF REGENTS for  
and on behalf of Northern Arizona  
University

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

Its: \_\_\_\_\_

COCONINO COUNTY COMMUNITY  
COLLEGE DISTRICT

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

Its: \_\_\_\_\_

### PROPER FORM AND AUTHORITY

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Coconino County Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Flagstaff City Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Arizona Board of Regents

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Coconino County Community College District

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

NAIPTA General Counsel

**EXHIBIT A**  
**BOUNDARIES OF NAIPTA**  
**LEGAL DESCRIPTION**

**EXHIBIT A**

Five hundred and twenty five square miles, more or less, situated in Coconino County, Arizona, more particularly described as follows;

BEGINNING at the southeast corner of Section 26, Township 20 North, Range 9 East, Gila and Salt River Meridian (G&SRM);

Thence westerly along the south line of Sections 26 through 30, Township 20 North, Range 9 East, G&SRM, the south line of Sections 25 through 30, Township 20 North, Range 8 East, G&SRM, the south line of Sections 25 through 30, Township 20 North, Range 7 East, G&SRM, the south line of Sections 25 through 30, Township 20 North, Range 6 East, G&SRM, and the south line of Sections 25 and 26 Township 20 North, Range 5 East, G&SRM, to the southwest corner of said Section 26, Township 20 North, Range 5 East;

Thence northerly along the west line of Sections 26, 23, 14, 11, and 2, Township 20 North, Range 5 East, G&SRM, to the northwest corner of said Section 2, Township 20 North, Range 5 East;

Thence easterly along the north line of said Section 2 to the southwest corner of Section 35, Township 21 North, Range 5 East, G&SRM;

Thence northerly along the west line of Sections 35, 26, 23, 14, 11, and 2, Township 21 North, Range 5 East, G&SRM, the west line of Sections 35, 26, 23, 14, 11, and 2, Township 22 North, Range 5 East, G&SRM, the west line of Sections 35, 26, 23, and 14, Township 23 North, Range 5 East, G&SRM, to the northwest corner of said Section 14, Township 23 North, Range 5 East;

Thence easterly along the north line of Sections 14 and 13, Township 23 North, Range 5 East, G&SRM, the north line of Sections 18 through 13, Township 23 North, Range 6 East, G&SRM, the north line of Sections 18 through 13, Township 23 North, Range 7 East, G&SRM, to the northeast corner of said Section 13, Township 23 North, Range 7 East;

Thence northerly along the west line of Section 18, Township 23 North, Range 8 East, G&SRM, to the northwest corner of said Section 18;

Thence westerly along the northerly line of Sections 18 through 13, Township 23 North Range 8 East, G&SRM, to the northeast corner of said Section 13;

Thence southerly along the east line of said Section 13 to the northwest corner of Section 18, Township 23 North, Range 9 East, G&SRM;

Thence easterly along the north line of Sections 18 through 14, Township 23 North, Range 9 East, G&SRM, to the northeast corner of said Section 14, Township 23 North, Range 9 East;

Thence southerly along the east line of Sections 14, 23, 26, and 35, Township 23 North, Range 9 East, G&SRM, the east line of Sections 2, 11, 14, 23, 26, and 35, Township 22 North, Range 9 East, G&SRM, and the east line of Sections 2, 11, 14, 23, 26, and 35, Township 21 North, Range 9 East, G&SRM, to the southeast corner of said Section 35, Township 21 North, Range 9 East;

Thence westerly along the south line of said Section 35, Township 21 North, Range 9 East, G&SRM, to the northeast corner of Section 2, Township 20 North, Range 9 East, G&SRM;

Thence southerly along the east line of Sections 2, 11, 14, 23, and 26, Township 20 North, Range 9 East, G&SRM, to the southeast corner of said Section 26, Township 20 North, Range 9 East, and the POINT OF BEGINNING.

All shown on the attached Exhibit A-1, which is made a part hereof by this reference.



MPO  
DESCRIPTIVE TITLE

10-96015  
C.O.F. FILE NO.

# FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION BOUNDARY (525 +/- SQUARE MILES)

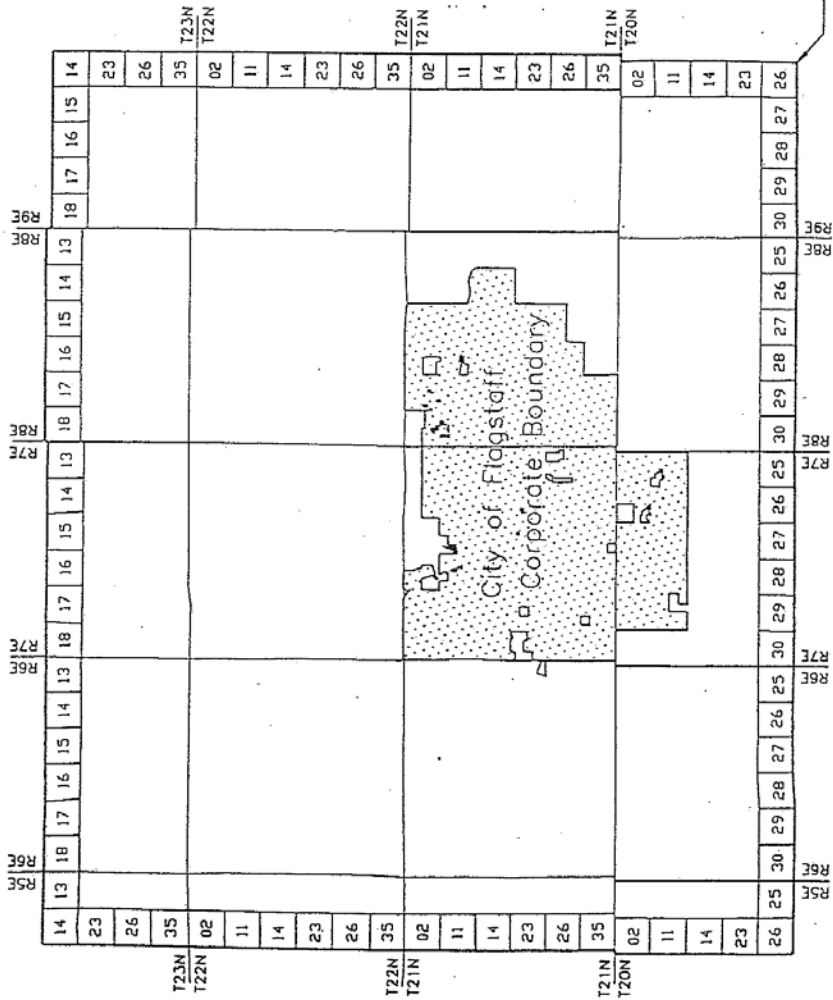
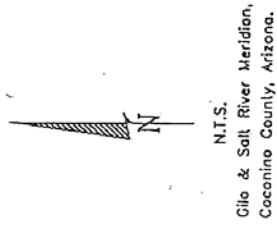


EXHIBIT A-1 CITY OF FLAGSTAFF

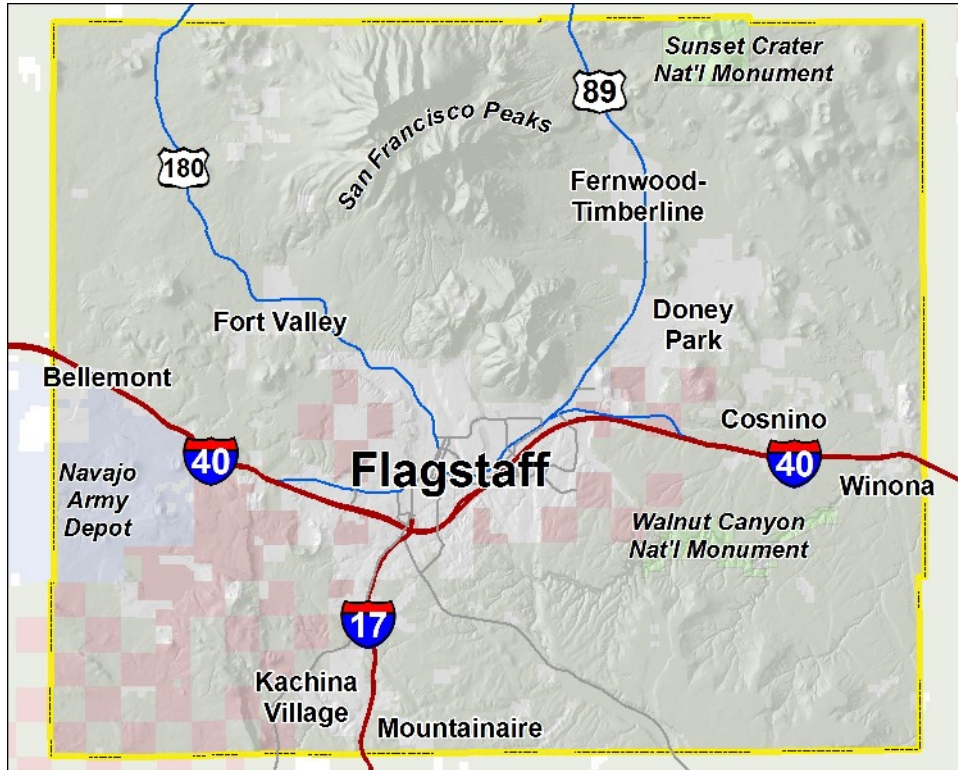
Drawn by:  
R. BLACK

CITY FILE NO. 10-96015

ENGINEERING DIVISION

Date:  
5/14/96

**EXHIBIT B**  
**BOUNDARIES OF NAIPTA**  
**DEPICTION**



PHOENIX 53963-1 31127v7  
PHOENIX 53963-1 31127v7  
PHOENIX 53963-1 31127v7  
PHOENIX 53963-1 31127v7

IN WITNESS WHEREOF, the Parties hereto have executed this Master IGA.

Attest:

Wendy E. Miller  
Clerk of Board of Supervisors

COCONINO COUNTY,  
a body corporate and politic of the State  
of Arizona limited partnership

By: [Signature]

Its: Chairwoman  
Board of Supervisors

Attest:

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

CITY OF FLAGSTAFF,  
an Arizona municipal corporation

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

Its: \_\_\_\_\_

ARIZONA BOARD OF REGENTS for  
and on behalf of Northern Arizona  
University

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

Its: \_\_\_\_\_

COCONINO COUNTY COMMUNITY  
COLLEGE DISTRICT

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

Its: \_\_\_\_\_



**PROPER FORM AND AUTHORITY**

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this 20 day of May, 2013

By: [Signature]

Coconino County Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Flagstaff City Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Arizona Board of Regents

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Coconino County Community College District

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

NAIPTA General Counsel

IN WITNESS WHEREOF, the Parties hereto have executed this Master IGA.

Attest:


\_\_\_\_\_  
Clerk of Board of Supervisors

COCONINO COUNTY,  
a body corporate and politic of the State  
of Arizona limited partnership

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

Its: \_\_\_\_\_

Attest:

  
City Clerk

CITY OF FLAGSTAFF,  
an Arizona municipal corporation

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

Its: City Manager \_\_\_\_\_

ARIZONA BOARD OF REGENTS for  
and on behalf of Northern Arizona  
University

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

Its: \_\_\_\_\_

COCONINO COUNTY COMMUNITY  
COLLEGE DISTRICT

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

Its: \_\_\_\_\_

### PROPER FORM AND AUTHORITY

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Coconino County Attorney

Dated this 21<sup>st</sup> day of May, 2013

By: Michelle D'Andrea

Flagstaff City Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Arizona Board of Regents

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Coconino County Community College District

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

NAIPTA General Counsel

IN WITNESS WHEREOF, the Parties hereto have executed this Master IGA.

Attest:

\_\_\_\_\_  
Clerk of Board of Supervisors

COCONINO COUNTY,  
a body corporate and politic of the State  
of Arizona limited partnership

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

Its: \_\_\_\_\_

Attest:

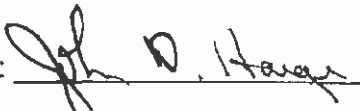
\_\_\_\_\_  
City Clerk

CITY OF FLAGSTAFF,  
an Arizona municipal corporation

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

Its: \_\_\_\_\_

ARIZONA BOARD OF REGENTS for  
and on behalf of Northern Arizona  
University

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

Its: \_\_\_\_\_

COCONINO COUNTY COMMUNITY  
COLLEGE DISTRICT

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

Its: \_\_\_\_\_

**PROPER FORM AND AUTHORITY**

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Coconino County Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Flagstaff City Attorney

Dated this 14<sup>th</sup> day of May, 2013

By: Marta Neumann by Nicholas G. Porter

Attorney for Arizona Board of Regents

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Coconino County Community College District

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

NAIPTA General Counsel

IN WITNESS WHEREOF, the Parties hereto have executed this Master IGA.

Attest:

\_\_\_\_\_  
Clerk of Board of Supervisors

COCONINO COUNTY,  
a body corporate and politic of the State  
of Arizona limited partnership

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

Its: \_\_\_\_\_

Attest:

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

CITY OF FLAGSTAFF,  
an Arizona municipal corporation

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

Its: \_\_\_\_\_

NORTHERN ARIZONA UNIVERSITY,  
an Arizona State University, by the  
Arizona Board of Regents

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

Its: \_\_\_\_\_

COCONINO COMMUNITY COLLEGE

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

Its: President \_\_\_\_\_

### PROPER FORM AND AUTHORITY

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Coconino County Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Flagstaff City Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Attorney for Arizona Board of Regents

Dated this 29<sup>th</sup> day of January, 201\_\_

By:   
Attorney for Coconino Community College

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
NAIPTA General Counsel

### PROPER FORM AND AUTHORITY

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Coconino County Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Flagstaff City Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Arizona Board of Regents

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

Attorney for Coconino County Community College District

Dated this 3rd day of June, 2013

By: 

NAIPTA General Counsel



## 7. B.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

:

Date: 12/28/2020

Meeting Date: 01/05/2021



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#### TITLE:

**Consideration and Adoption of Resolution No. 2021-02:** A resolution for an Intergovernmental Agreement for Emergency Management Mutual Aid Compact between the City of Flagstaff, Coconino County, Northern Arizona University, Community College District, Flagstaff Unified School District, and Northern Arizona Intergovernmental Public Transportation Authority.

#### STAFF RECOMMENDED ACTION:

- 1) Read Resolution No. 2021-02 by title only
- 2) City Clerk reads Resolution No. 2021-02 by title only (if approved above)
- 3) Adopt Resolution No. 2021-02

#### Executive Summary:

Approve the Emergency Management Mutual Aid Compact Intergovernmental Agreement (IGA) for dispatching mutual aid assistance among local agencies and emergency responders to lend assistance across jurisdictional boundaries when needed and to identify the terms and procedures for executing local mutual aid in times of Emergencies.

#### Financial Impact:

The Emergency Management Mutual Aid Compact is to 1) provide the procedures to notify the Providing Parties of the need for emergency assistance; (2) to identify available resources; (3) allow for sharing of radio frequencies and, (4) to provide a mechanism for compensation for resources.

The Requesting Party and the Providing Party shall be responsible for all compensation and insurance coverage of their respective employees and equipment.

#### Policy Impact:

None.

#### Connection to PBB Key Community Priorities/Objectives & Regional Plan:

##### **Priority Based Budget Key Community Priorities and Objectives**

##### Safe and Healthy Community

- Foster a safe, secure, and healthy community.
- Provide public safety with the resources, staff, and training to respond to community needs.

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

On March 17, 2015 City Council entered in an Arizona Mutual Aid Compact with the State of Arizona and the Arizona Department of Emergency and Military Affairs which established authorities, procedures, and intent to participate in mutual aid responses beyond the scope of local and regional jurisdiction's capabilities.

**Options and Alternatives:**

1. Approve the IGA.
2. Decline the IGA which impacts the local agencies and emergency responder's ability to lend assistance across Jurisdictional boundaries.

**Background/History:**

The AZ Mutual Aid Compact (AZMAC) approved by City Council in March of 2015 established authorities, procedures, and intent to participate in mutual aid responses beyond the scope of local and regional jurisdiction's capabilities. The AZMAC supports mutual aid coordination from the local, the state, and federal governments . It is guided by the policies of the National Incident Management System and the Arizona Revised Statutes.

This Local Mutual Aid Agreement similarly defines the participating Parties the emergency management terms and procedures, which will be used among Participating Parties for dispatching mutual aid assistance to any affected area in accordance with local ordinances, resolutions, emergency plans or agreements. The Agreement elements include; common definitions, procedures for requesting mutual aid, reimbursement procedures, workman's compensation treatment and standard protections afforded to the participants.

**Key Considerations:**

In times of critical Emergency response, this Emergency Management Mutual Aid Compact will serve as the written request for assistance required to facilitate the County and NAU acting with legal authority within the city limits of Flagstaff.

Local mutual aid involves sharing resources and services between Jurisdictions or organizations. Mutual aid occurs routinely to meet the resource needs identified by the requesting organization.

This arrangement provides assistance before, during, and after an Emergency event to facilitate the rapid mobilization of personnel, equipment, and supplies. This assistance can include the daily dispatch of law enforcement, emergency medical services (EMS), and fire service resource between local communities, as well as the movement of resources within a state or across state lines when larger-scale incidents occur. This aid will provide essential assistance to fill mission needs.

**Community Benefits and Considerations:**

This Local Mutual Aid Agreement permits the automatic dispatch and response of requested resources without incident-specific approvals or consideration of entity boundaries. This Agreement helps facilitate access to potentially needed resources, both prior to and following incidents or planned events. The Agreement is critical under conditions when time is of the essence to save lives, prevent human suffering, or mitigate property damage following an incident.

---

**Attachments:**     Res. 2021-02  
                             Emergency Management Mutual Aid IGA

## **RESOLUTION NO. 2021-02**

### **A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF NORTHERN ARIZONA UNIVERSITY, THE CITY OF FLAGSTAFF, COCONINO COUNTY, COCONINO COUNTY COMMUNITY COLLEGE DISTRICT, FLAGSTAFF UNIFIED SCHOOL DISTRICT, NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY**

#### **RECITALS:**

WHEREAS, this Agreement is made under the authority of Arizona Revised Statutes Section 11-952 as a joint exercise of powers; and

WHEREAS, the Parties desire to enter into this Agreement to define the resources, their purpose, and the responsibilities of the Parties in conjunction with the project or resource commonly referred to as Emergency Management Mutual Aid Compact; and

WHEREAS, the purpose of the Emergency Compact among local agencies and emergency responders is to lend assistance across Jurisdictional boundaries when needed and to identify the terms and procedures for executing Local Mutual Aid in times of Emergencies; and

WHEREAS, in times of critical Emergency response, this Emergency Management Mutual Aid Compact will serve as the written request for assistance required to facilitate the County and NAU acting with legal authority within the city limits of Flagstaff; and

WHEREAS, this Compact is to (1) provide the procedures to notify the Providing Parties of the need for emergency assistance; (2) to identify available resources; (3) allow for sharing of radio frequencies and, (4) to provide a mechanism for compensation for resources; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interest of the Party, that the undertaking will benefit the public.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

##### **SECTION 1. In General.**

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental Agreement, which shall become effective upon the date first executed by both parties ("Effective Date").

##### **SECTION 2. Effective Date.**

This resolution shall be immediately effective upon adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of January, 2021.

---

MAYOR

ATTEST:

---

CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

Exhibits:  
IGA

**INTERGOVERNMENTAL AGREEMENT  
EMERGENCY MANAGEMENT MUTUAL AID COMPACT**

**THIS INTERGOVERNMENTAL AGREEMENT** (hereafter “Agreement”) dated \_\_\_\_\_, 2020 between the **ARIZONA BOARD OF REGENTS, a body corporate with perpetual succession pursuant to the laws of the State of Arizona, for and on behalf of NORTHERN ARIZONA UNIVERSITY** (hereafter “NAU”), **CITY OF FLAGSTAFF** (hereafter “City”), **COCONINO COUNTY** (hereafter “County”), **COCONINO COUNTY COMMUNITY COLLEGE DISTRICT** (hereafter “Community College”), **FLAGSTAFF UNIFIED SCHOOL DISTRICT** (hereafter “District”), and **NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY** (hereafter “Mountain Line”) is to permit the Parties to participate in an Emergency Management Mutual Aid Compact pursuant to Arizona Revised Statutes (“A.R.S.”) and rules of the applicable legislative or other governing bodies as provided herein. NAU, City, County, Community College, District, and Mountain Line may be referred to individually as Party or collectively as Parties.

**RECITALS**

- A. WHEREAS, the Parties desire to enter into this Agreement to define the resources, their purpose, and the responsibilities of the Parties in conjunction with the project or resource commonly referred to as Emergency Management Mutual Aid Compact; and
- B. WHEREAS, the City has authority to enter into this Agreement pursuant to Arizona Revised Statutes (“A.R.S.”) §§ 11-952 and 41-2632 and the Flagstaff City Charter, Article I, Section 3; and
- C. WHEREAS, NAU has authority to enter into this Agreement pursuant to A.R.S. §§ 11-952 and 15-1625 and Arizona Board of Regents Policy 3-808.
- D. WHEREAS, Coconino County has authority to enter into this Agreement pursuant to A.R.S. 11-952 and 41-2632.
- E. WHEREAS, Community College has authority to enter into this Agreement pursuant to A.R.S. 11-952 and 41-2632.
- F. WHEREAS, The District has authority to enter into this Agreement pursuant to A.R.S. 11-952, 15-213, 15-341, 15-342, and 41-2632.
- G. WHEREAS, Mountain Line has authority to enter into this Agreement pursuant to A.R.S. 11-952.

NOW THEREFORE, in consideration of the mutual obligations and covenants set forth herein, the Parties agree as follows:

## **AGREEMENT**

### **1. Purpose.**

The purpose of this Agreement is to define for the participating Parties the emergency management terms and procedures, which will be used among participating Parties for dispatching mutual aid assistance to any affected area in accordance with applicable local ordinances, resolutions, emergency plans or agreements. This Agreement shall be construed in accordance with the laws of the State of Arizona.

- a. The purpose of the Emergency Compact among local agencies and emergency responders is to lend assistance across Jurisdictional boundaries when needed and to identify the terms and procedures for executing Local Mutual Aid in times of Emergencies.
- b. In times of critical Emergency response, this Emergency Management Mutual Aid Compact will serve as the written request for assistance required to facilitate the County and NAU acting with legal authority within the city limits of Flagstaff.
- c. Local Mutual Aid involves sharing resources and services between Jurisdictions or organizations. Mutual Aid occurs routinely to meet the resource needs identified by the requesting organization.
- d. This arrangement provides assistance before, during, and after an Emergency event to facilitate the rapid mobilization of personnel, equipment, and supplies. This assistance can include the daily dispatch of law enforcement, emergency medical services (EMS), and fire service resource between local communities, as well as the movement of resources within a state or across state lines when larger-scale incidents occur. This aid will provide essential assistance to fill mission needs.

### **2. Scope.**

The scope of this Compact is to (1) provide the procedures to notify the Providing Parties of the need for emergency assistance; (2) to identify available resources; (3) allow for sharing of radio frequencies and, (4) to provide a mechanism for compensation for resources.

### **3. Definitions.**

- Arizona Board of Regents is a body corporate with perpetual succession pursuant to the laws of the State of Arizona acting for and on behalf of Northern Arizona University.
- Automatic Mutual Aid means the automatic dispatch and response of requested resources without Incident specific approvals. These agreements are usually basic contracts; some may be informal accords.

- Backfill means replacement of the Requesting Party's personnel who perform the regular duties of other personnel while they are performing eligible emergency work.
- Compact means this document, the Emergency Management Mutual Aid (Compact).
- Emergency or Emergencies means any disaster, emergency, or contingency situation, which requires a collaborative effort among multiple Jurisdictions.
- Exercise is the exercising of adopted emergency plans utilizing the Homeland Security Exercise and Evaluation Program (HSEEP).
- Incident means an occurrence, natural or manmade, that necessitates a response to protect life or property. In this document, the word "incident" includes planned events as well as Emergencies and/or disasters of all kinds and sizes.
- Jurisdiction means an entity, including the Parties to this Compact which (1) have the authority to act, within a defined geographical area especially in times of Emergency and (2) is a Party to this Agreement.
- Local Mutual Aid are agreements between neighboring Jurisdictions, agencies, or organizations that involve a formal request for assistance and generally cover a larger geographic area than Automatic Mutual Aid.
- Director is the Director of Coconino County Emergency Management.
- National Incident Management System (NIMS) is a systematic, proactive approach to guide all levels of government, non-government organizations (NGOs), and the private sector to work together to prevent, protect against, mitigate, respond to, and recover from the effects of Incidents. NIMS provides stakeholders across the whole community with the shared vocabulary, systems, and processes to successfully deliver the capabilities described in the National Preparedness System. NIMS provides a consistent foundation for dealing with all Incidents, ranging from daily occurrences to Incidents requiring a coordinated Federal response.
- Political Subdivision means any county, incorporated city or town, fire district, or educational institution, irrigation, power, electrical, agricultural improvement, drainage, and flood control districts, and other tax levying public improvement districts.
- Providing Party means the Jurisdiction providing aid in the event of an Emergency.
- Requesting Party means the Jurisdiction requesting aid in the event of an Emergency.
- Resource Management is a system for identifying available resources at all Jurisdictional levels to enable timely, efficient, and unimpeded access to resources needed to prepare for, respond to, or recover from an Incident.
- Resource Personnel means equipment, teams, supplies, and facilities available or potentially available for assignment to Incident operations and for which status is

maintained. Resources are described by kind and type and may be used in operational support or supervisory capacities at an Incident or at an Emergency operations center.

- Self-deployed means to respond to an Emergency without being requested by the Requesting Party.

**4. Guiding Policy.**

- Arizona Revised Statute (A.R.S.), Title 26, Military Affairs and Emergency Management.
- Arizona Administrative Code (A.A.C.), Title 8, Emergency and Military Affairs.
- National Incident Management System (NIMS), Third Edition, October 2017.

**5. Procedures for Requesting Assistance.**

- a. A Requesting Party that needs assistance in excess of its own resources due to an Emergency is authorized to request assistance from any Party to this Agreement. However, when making such requests, consideration shall be given to, the geographical proximity of other Jurisdictions with that of the Jurisdiction requesting assistance. All requests for assistance from the State of Arizona must be coordinated through the Coconino County Emergency Operations Center.
- b. Requests should specify what the Emergency is, what resources are needed and the estimated period of time during which such Local Mutual Aid shall be required, if known. Requesting Parties should use the Resource Request form provided in Appendix A.

**6. Providing Party's Assessment of Availability of Resources and Ability to Render Assistance.**

Subject to the terms of this Agreement, the Providing Party shall make reasonable efforts to assist the Requesting Party. In all instances, the Providing Party shall render such Local Mutual Aid as it is able to provide consistent with its own service needs at the time, taking into consideration the Providing Party's existing commitments within its own Jurisdiction. The Providing Party shall be the sole judge of what Local Mutual Aid it has available to furnish to the Requesting Party pursuant to this Agreement.

**7. Implementation Plan.**

Each Party should develop an emergency operation plan that includes a process to provide for the effective mobilization of its resources, both public and private, including acceptance of Local Mutual Aid to provide or receive assistance under this Agreement.

**8. Contact List.**

Each Party shall develop a contact list as outlined in Appendix B, which shall be provided to the Director for distribution to all other Parties to this Agreement.

**9. Reimbursement Procedures between Parties.**

- a. If the Providing Party desires reimbursement for the assistance they are providing, then the Requesting Party shall reimburse the Providing Party for all costs incurred in



the mutual assistance, whether an Incident has been declared an Emergency or not. The Providing Party must declare its intent to seek reimbursement as part of its response to the Requesting Party's request for assistance (see Appendix A: Resource Request forms). The Providing Party and the Requesting Party shall agree upon allowable costs for mutual assistance prior to the dispatch of any mutual assistance resources. Unless otherwise negotiated by the Parties involved, the Parties may reference the state allowable costs as defined in A.A.C. Title 8 (as may be amended from time to time). If the assistance is authorized and accepted, then the Requesting Party shall reimburse the Providing Party all allowable costs of labor, equipment, and materials that have actually been expended during the execution of the mission assignment, after receipt of an itemized voucher and documentation is received.

- b. If there has been a declaration of Emergency from the Governor of the State of Arizona, Mayor of the City of Flagstaff, Chair of the Coconino County Board of Supervisors, and/or President of the United States, then the Requesting Party may be eligible for reimbursement for these Local Mutual Aid costs under the state or federal declaration of emergency. See item 10.

#### **10. Reimbursement Procedures from the State of Arizona.**

- a. If the Governor of the State of Arizona, Mayor of the City of Flagstaff, Chair of the Coconino County Board of Supervisors, and/or President of the United States have declared an Emergency, then the Requesting Party can prepare an itemized voucher and documentation of all paid allowable costs including all the cost of the Local Mutual Aid resources reimbursed to any Providing Parties under this Agreement, for submittal to the state for consideration for reimbursement in accordance with A.A.C. Title 8 (as may be amended from time to time). As per A.A.C. Title 8, R8-2-301, subparts 1, 12 & 15, only state agencies and Political Subdivisions are eligible to receive reimbursement under a Governor's Declaration.
- b. The Parties acknowledge that the State of Arizona is not liable for any claim arising from an Emergency for which the applicant receives funds from another source (A.A.C. Title 8, R8-2-312). Self-deployed resources will not be reimbursed.

#### **11. Personnel Compensation and Insurance.**

The Requesting Party and the Providing Party shall be responsible for all compensation and insurance coverage of their respective employees and equipment.

#### **12. Immunity.**

The Parties shall have such immunity as provided by applicable state or federal law.

#### **13. Indemnification.**

Each Party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other Parties (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of 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

Indemnities are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. This Agreement is between Governmental entities.

#### **14. Effective Date and Term.**

- a. Effective Date. This Agreement will become effective for each Party after approval by its governing body if applicable (the "Effective Date").
- b. Term. Except as otherwise provided in this Agreement, this Agreement will remain in effect for a period of five years, unless extended or terminated by action of the Parties.

#### **15. Termination and Renewal.**

- a. Termination. Any Party may withdraw from this Agreement without cause upon thirty (30) days written notice to the other Parties.
- b. Renewal. This Agreement may be renewed for two (2) additional five (5) year periods, subject to agreement by the Parties. For the City of Flagstaff, the City Manager shall be authorized to approve such renewals.

#### **16. ADA.**

Each Party shall comply with applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 United States Code. 12101-12213) and all applicable federal regulations under the Act, including 28 Code of Federal Regulation Parts 35 and 36.

#### **17. Non-Discrimination.**

The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration (Executive Order 13465 – Employment Eligibility Verification, E-Verify; 73 FR 67704), nondiscrimination (Executive Order 11246), and affirmative action. The Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

#### **18. Compliance with Laws.**

Each Party shall comply with all federal and state laws, rules, regulations, standards and Executive Orders, as applicable, without limitation to those designated within this Agreement. Any changes in the governing laws, rules and regulations during the terms of this Compact shall apply but do not require an amendment.

**19. Workers' Compensation.**

Each Party herein shall comply with the provisions of A.R.S §23-1022(E) by posting the public notice required. As provided for in A.R.S. §23-1022(D), an employee of a public agency who works under the Jurisdiction or control of or within the Jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or contract entered into between the public agencies is deemed to be an employee of both public agencies. However, the primary employer is solely liable for the payment of Workers' Compensation benefits for the purposes of this Agreement. As such, each Party shall maintain Workers' Compensation insurance coverage on all of its own employees providing services pursuant to this Agreement.

**20. Insurance.**

Each Party shall bear the risk of its own actions, as it does with all its operations, and shall determine for itself an appropriate level of insurance coverage and maintain such coverage. Nothing in this Agreement shall be construed as a waiver of any limitation on liability that may apply to a Party.

**21. Non-appropriation.**

Every payment obligation of the Parties under this Agreement is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the legislature resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by the Parties at the end of the period for which funds are available. No liability shall accrue to the Parties in the event this provision is exercised, and the Parties shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**22. No Third-Party Beneficiaries.**

Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of any Party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

**23. Entire Agreement.**

This document constitutes the entire Agreement between the Parties pertaining to the subject matter hereof. This Agreement shall not be modified, amended, altered or extended except through a written amendment signed by the Parties.

**24. Jurisdiction.**

Nothing in this Agreement shall be construed as otherwise limiting or extending the legal Jurisdiction of any Party. Nothing in this Agreement is intended to confer any rights or remedies to any person or entity that is not a Party.

**25. Conflict of Interest.**

The requirements of A.R.S. § 38-511 apply to this Agreement. The Parties 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 this Agreement or any extension is in effect, an employee, agent or consultant of a Party with respect to the subject matter of this Agreement.

**26. Supervision and Control.**

Management of an Emergency shall remain with the Jurisdiction in which the Emergency occurred. Supervision and control of Providing Parties' personnel and equipment shall be in accordance with NIMS. The Requesting Party will be responsible for providing supplies and services, such as food, shelter, gasoline and oil, for on-site use of equipment and for the personnel providing assistance. All equipment and personnel used pursuant to this Agreement shall be returned to the Providing Party upon being released by the Requesting Party or on demand of the Providing Party for such return.

**27. Severability: Effect on Other Agreements.**

It is expressly understood that this Agreement shall not supplant existing agreements between any of the Parties, which do provide for the exchange or furnishing of certain types of services on a compensated basis.

**28. Severability.**

If any provision of this Agreement is held to be invalid or unenforceable, then the remaining provisions shall continue to be valid and enforceable to the full extent permitted by law.

**29. Responsibility of the Arizona Department of Emergency and Military Affairs.**

Nothing within this Agreement limits or restricts the duties and obligations the State of Arizona may have to respond to the Emergency of any Party.

**30. Execution Procedure.**

Execution of this Agreement shall be as follows:

This Agreement, which will be designated as "EMERGENCY MANAGEMENT MUTUAL AID COMPACT," shall be executed in counterparts by the governing body or authorized signatory, if applicable, of each Party. Upon execution, the counterpart will be filed with the Secretary of State and be provided to the Director. This Agreement will be effective between all Parties who execute this Agreement even if it is not executed by all eligible Jurisdictions.

**31. Dispute Resolution.**

The Parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.

**32. Record Retention.**

Pursuant to A.R.S. §§ 35-214 and 35-215, as applicable, the Parties shall retain all records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by any Party to the Agreement and the Auditor General of the State of Arizona at reasonable times.

[Signatures on Following Pages]

**ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF  
NORTHERN ARIZONA UNIVERSITY**

\_\_\_\_\_  
Name: Rita Hartung Cheng

Title: President

Date: \_\_\_\_\_

**REPRESENTING ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF  
NORTHERN ARIZONA UNIVERSITY:**

The undersigned counsel for Northern Arizona University has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature: \_\_\_\_\_

Name: Michelle G. Parker

Title: General Counsel

Date: \_\_\_\_\_

**CITY OF FLAGSTAFF**

\_\_\_\_\_  
Name: Paul Deasy

Title: Mayor

Date: \_\_\_\_\_

**REPRESENTING CITY OF FLAGSTAFF:**

The undersigned counsel for the City of Flagstaff has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature:\_\_\_\_\_

Name: Sterling Soloman

Title: City Attorney

Date:\_\_\_\_\_

## COCONINO COUNTY

\_\_\_\_\_  
Name:

Title: Chair, Board of Supervisors

Date: \_\_\_\_\_

### REPRESENTING COCONINO COUNTY:

The undersigned counsel for the Coconino County has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## COCONINO COMMUNITY COLLEGE

\_\_\_\_\_  
Name:

Title: President

Date: \_\_\_\_\_

### REPRESENTING COCONINO COUNTY COMMUNITY COLLEGE DISTRICT:

The undersigned counsel for the Coconino County Community College District has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_



**FLAGSTAFF UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
Name:

Title: Superintendent

Date: \_\_\_\_\_

**REPRESENTING FLAGSTAFF UNIFIED SCHOOL DISTRICT:**

The undersigned counsel for the Flagstaff Unified School District has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## **MOUNTAIN LINE**

\_\_\_\_\_  
Name: Heather Dalmolin

Title: CEO and General Manager

Date: \_\_\_\_\_

### **REPRESENTING MOUNTAIN LINE:**

The undersigned counsel for NAIPTA has reviewed the Agreement and determined that the Agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council

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**Co-Submitter:** Rebecca Sayers

**Date:** 12/28/2020

**Meeting Date:** 01/05/2021



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**TITLE:**

**Consideration and Adoption of Resolution No. 2021-04:** A resolution authorizing an Intergovernmental Agreement between the City of Flagstaff and Flagstaff Unified School District (FUSD) for Community-Wide After School Programs.

**STAFF RECOMMENDED ACTION:**

- 1) Read Resolution No. 2021-04 by title only
- 2) City Clerk reads Resolution No. 2021-04 by title only (if approved above)
- 3) Adopt Resolution No. 2021-04

**Executive Summary:**

Approve the Intergovernmental Agreement (IGA) with FUSD for the Community-Wide After School program, which FUSD provides primarily in concert with and through assistance from the FACTS Program ("FACTS") and the Coconino Coalition for Children and Youth ("CCCY").

FUSD and the City wish to enter into this Agreement regarding the City's grant of funds for the Fiscal Year 2021, through the District as the fiscal agent for the After School Programs, to be for After School Programs implementation costs and operational and administrative costs, including the salary of the FACTS Program's Executive Director and the CCCY Executive Director, both of whom function as full-time employees of FUSD.

**Financial Impact:**

Contribution to FUSD for the After School Program is on a reimbursement basis in the amount of \$291,988 (FUSD \$272,319 and Coalition \$19,669) annually. The funds disbursed by the City under this IGA shall be used only for costs associated with the After School Programs.

FUSD agrees to serve as the administrator and fiscal agent for the After School Program. The funds are budgeted in Fiscal Year 2020-2021 in account number 001-09-402-1311-1-4273.

**Policy Impact:**

None.

**Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

## **Priority Based Budget Key Community Priorities and Objectives**

Safe and Healthy Community - Foster a safe, secure, and healthy community.

Inclusive and Engaged Community - Ensure city facilities, services, and programs are accessible for all residents.

Livable Community - Provide amenities and activities that support a healthy lifestyle.

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

Yes, on 11/17/2015 Council approved the prior IGA which expired on 6/30/2020.

## **Options and Alternatives:**

1. Approve the IGA for the After School Program
2. Not Approve the IGA for the After School Program

## **Background/History:**

The Community-Wide After School Programs ("After School Programs") have been created to provide children and youth with life skills, enrichment and academic support in a safe and drug-free environment and to assist the Flagstaff community in developing resilient youth who are less likely to engage in high risk behaviors and who are more likely to become healthy, well-rounded adults, able to contribute to society in meaningful ways. The After School Programs have particular focus for the latchkey child who has no adult at home before or after the regular school day.

## **Key Considerations:**

The City of Flagstaff has supported the development, implementation, and sustainment of a community-wide afterschool initiative since fiscal year (FY) 1999-2000. In FY 2008-09, the City funded FACTS at \$364,420, in FY 2009-10 it was \$319,757, in FY 2010-11 it was \$249,819, then FY 2011-12 was \$247,319 until FY 2016-17. Since FY 2016-17, the amount was increased to \$272,319.

This fiscal year 2020-2021 funding to FUSD is in the amount of \$272,319, so no increase from the previous IGA.

This agreement covers related afterschool programs for the Fiscal Year 2021. The Agreement may be renewed for a maximum of four (4) additional one (1) year terms, subject to annual budget appropriations.

## **Community Benefits and Considerations:**

Those who benefit from the After School program include:

- Children - Safety, recreation, expanded horizons
- Families - peace of mind, focus on work responsibilities
- Employers/Workforce - Limits distractions, decreases absenteeism, late arrivals and early departure

## **Community Involvement:**

The After School Program has grown in terms of both funding and services to the community. Alliance agencies, as well as numerous other non-profit organizations, are involved, and the advisory committee for the FUSD After School Program has made strides in attaining active involvement from the business community and Coconino County.

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**Attachments:**     Res. 2021-04  
                             FUSD Community Wide After School Program IGA

## **RESOLUTION NO. 2021-04**

### **A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE FLAGSTAFF UNIFIED SCHOOL DISTRICT AND THE CITY OF FLAGSTAFF TO PROVIDE COMMUNITY-WIDE AFTER SCHOOL PROGRAMS**

#### **RECITALS:**

WHEREAS, the Flagstaff Unified School District (the "District") and the City of Flagstaff (the "City") desire to enter into an Intergovernmental Agreement ("Agreement") to define the sharing of resources, their purpose, and the responsibilities of the parties in conjunction with the program commonly referred to as Community-Wide After School Programs ("After School Programs"), which the District provides primarily in concert with and through assistance from the Family And Community Teaming for Students Program ("FACTS") and the Coconino Coalition for Children and Youth ("CCCY"); and

WHEREAS, the After School Programs, provided primarily through FACTS and CCCY, have been created to provide children and youth with life skills, enrichment, and academic support in a safe and drug-free environment and to assist the Flagstaff community in developing resilient youth who are less likely to engage in high risk behaviors and who are more likely to become healthy, well-rounded adults, able to contribute to society in meaningful ways. The After School Programs have particular focus for the latchkey child who has no adult at home before or after the regular school day; and

WHEREAS, the District and the City wish to enter into this Agreement regarding the City's grant of funds for Fiscal Year 2021, through the District as the fiscal agent for the After School Programs, to be for After School Programs implementation costs and operational and administrative costs, including the salary of the FACTS Program's Executive Director and the CCCY Program's Executive Director, each of which function as full time employees of the District; and

WHEREAS, the City has authority to enter into this Agreement pursuant to Arizona Revised Statute ("A.R.S.") § 11-952 and the Flagstaff City Charter, Article I, Section 3.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

##### **SECTION 1. In General.**

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental Agreement between the Flagstaff Unified School District and the City of Flagstaff, Arizona, attached hereto as Exhibit A.

SECTION 2. Effective Date.

This resolution shall be immediately effective upon adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of January, 2021.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Exhibits:  
IGA

**AGREEMENT**  
**among**  
**FLAGSTAFF UNIFIED SCHOOL DISTRICT and**  
**CITY OF FLAGSTAFF**

**THIS AGREEMENT** (hereafter “Agreement”) is made and entered into effective the 11th day of September, 2020 by and between the CITY OF FLAGSTAFF, a political subdivision of the State of Arizona (hereafter “City”) and FLAGSTAFF UNIFIED SCHOOL DISTRICT (hereafter “District”). The City and District may be referred to in this Agreement individually as “Party” or together as “Parties,” as the case may be.

**RECITALS**

- A. WHEREAS, the Parties are members of a cooperative consortium known as the Alliance for the Second Century (hereafter the "Alliance") through an intergovernmental agreement of the same name dated September 16, 2014 (hereafter the "Alliance IGA"), formed to address area-wide issues in the greater Flagstaff area and better leverage the resources of Alliance members for the benefit of the community; and
- B. WHEREAS, the parties desire to enter into this Agreement to define the sharing of resources, their purpose, and the responsibilities of the parties in conjunction with the program commonly referred to as **Community-Wide After School Programs**, which the District provides primarily in concert with and through assistance from the FACTS Program (“FACTS”) and the Coconino Coalition for Children and Youth (“CCCY”); and
- C. WHEREAS, the Community-Wide After School Programs ("After School Programs"), provided primarily through FACTS and CCCY, have been created to provide children and youth with life skills, enrichment and academic support in a safe and drug-free environment and to assist the Flagstaff community in developing resilient youth who are less likely to engage in high risk behaviors and who are more likely to become healthy, well-rounded adults, able to contribute to society in meaningful ways. The After School Programs have particular focus for the latchkey child who has no adult at home before or after the regular school day and;
- D. WHEREAS, the District and the City wish to enter into this Agreement regarding the City's grant of funds for Fiscal Year 2021, through the District as the fiscal agent for the After School Programs, to be for After School Programs implementation costs and operational and administrative costs, including the salary of the FACTS Program’s Executive Director and the CCCY Program’s Executive Director, each of which function as full time employees of the District; and
- E. WHEREAS, the City has authority to enter into this Agreement pursuant to Arizona Revised Statute (“A.R.S.”) § 11-952 and the Flagstaff City Charter, Article I, Section 3; and
- F. WHEREAS, The District has authority to enter into this Agreement pursuant to A.R.S 11-952, 15-213, 15-341, 15-342, and 41-2632 and Governing Board action of \_\_\_\_\_, 2020.

NOW THEREFORE, in consideration of the mutual obligations and covenants set forth herein, the parties agree as follows:

## **AGREEMENT**

### **1. CITY'S OBLIGATIONS**

- 1.1 Contribution to After School Programs. The City agrees to provide up to Two Hundred Seventy-Two Thousand Three Hundred and Nineteen Dollars (\$272,319.00) to the District for all direct expenditures made for After School Programs. Any payments for the salary of the FACTS Program's Executive Director would come under this area of funding.

City will disburse funds to the District 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 District. Payments will be contingent upon receipt of all reporting requirements of the District under this Agreement. The amount invoiced should be based on actual expenditures with all back up documentation provided.

The funds disbursed by the City under this Agreement shall be used only for the After School Programs described in this Agreement, including preparation for implementation of the After School Programs online and in person to address COVID-19 issues and restrictions. Any modification to quantity or scope of the After School Programs must be approved in writing by the City. The funds shall not be applied to Safe Learning Centers programs as they are considered educational programs instead.

- 1.2 Contribution to CCCY. The City agrees to provide an additional Nineteen Thousand Six Hundred and Sixty-Nine Dollars (\$19,669.00) to the District as soon as practicable following execution of this Agreement, as fiscal agent for the After School Programs, for use in connection with the District's obligations in this Agreement to pay the salary of the CCCY Program's Executive Director position. The District shall cause the CCCY Program's Executive Director to provide leadership in developing and advocating for community-wide strategies dedicated to enhancing the quality of life for all children and youth in the community.

### **2. DISTRICT'S OBLIGATIONS**

- 2.1 After School Programs. The District shall be the host agency for the After School Programs and shall develop and implement comprehensive After School Programs, as well as provide staff qualified to coordinate, implement, and evaluate the After School Programs within the City of Flagstaff.
- 2.2 Fiscal Agent for After School Programs. The District agrees to serve as the fiscal agent for the After School Programs and shall administer payroll for payment of the FACTS Program's Executive Director and the CCCY Program's Executive Director. The District shall fund and provide workers' compensation insurance for each Executive Director, together with such employee benefits customarily provided its employees under the Northern Arizona Public Employees Benefit Trust and Arizona State Retirement Plan. Each Executive Director will be an employee of the District subject to the direction and control of the District. The District shall disburse to the After School Programs all funds received for such programs from the City and other sources that exceed those funds required to pay



the salary of each Executive Director. The District shall disburse these funds as soon as practicable following the end of the District's fiscal year.

- 2.3 Reporting and Overhead. The District shall provide financial reports to the After School Programs pertaining to such transactions. The District shall provide to the City such financial and other operational reports as the City may reasonably request during the term of this Agreement and will provide to the City, within ninety (90) days following termination of this Agreement, an accounting of all funds received and expended during the term of this Agreement. The District shall not charge administrative or overhead fees in connection with its services as fiscal agent for the After School Programs.

### **3. TERM AND TERMINATION**

This Agreement will continue in force and effect until midnight on June 30, 2021, unless sooner terminated as provided in this Agreement. Upon Council approved monetary contributions and mutual written agreement between the City and District, this Agreement may be renewed for a maximum of four (4) additional one (1) year terms, subject to annual budget appropriations. Upon termination of this Agreement for any reason, the District must remit to the City any undistributed portion of the funds received from the City within forty-five (45) days after termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated by any party, without penalty or further obligation, in accordance with the provisions of Arizona Revised Statutes Section 38-511, in the event of the occurrence of any of the circumstances described in Arizona Revised Statutes Section 38-511.

### **4. NOTICES**

Any notice or other communication required or permitted to be given under this Agreement must be in writing and sent by mail or personal delivery to the parties as follows, or to such other address or person as the party may designate in writing:

If to the City:

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

If to the District:

Michael A. Penca  
Superintendent  
Flagstaff Unified School District  
3285 East Sparrow Avenue  
Flagstaff, Arizona 86004

### **5. AUTHORITY**

Each of the parties 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.

### **6. INTEGRATION AND MERGER**

Each of the parties 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 the Agreement addresses.

### **7. WAIVER AND AMENDMENT**

The failure to enforce any condition or covenant of this Agreement will not imply or constitute a waiver of the right to insist upon future performance of the condition or covenant, or of any other provision, nor will any waiver by a 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. Any waiver or amendment of any of the provisions of this Agreement must be in writing and be executed by the party against whom enforcement of the same is sought.

**8. GENERAL INDEMNIFICATION**

To the extent permitted by Arizona law, the District agrees to indemnify, defend, save, and hold harmless the City, its officers, officials, agents, and employees from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, attorney's fees, and costs of claim processing, investigation and litigation (hereinafter collectively referred to as "Claims") that arise out of any actual or alleged bodily injury to any person (including death) or property damage caused or alleged to have been caused, in whole or in part, by the acts, errors, omissions, or negligence of the District or any of District's directors, officers, agents, employees, or volunteers in connection with or incident to the After School Programs and any other actions arising from this Agreement. This indemnity provision shall survive the termination, cancellation, or revocation, whether in whole or in part, of this Agreement.

**9. FORCE MAJEURE**

The parties acknowledge that there may be events that occur during the term of this Agreement that are beyond the control of all Parties, including events of war, natural disasters, acts of terrorism, government acts or orders, epidemics, pandemics, public health emergencies, forest fires, floods and other acts of God ("Force Majeure Event"). These events may result in a temporary modification of services provided and or funding allocation during the event.

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

***SIGNATURE PAGE FOLLOWS***

**City of Flagstaff**

\_\_\_\_\_  
Paul Deasy, Mayor

Dated: \_\_\_\_\_

Attest:

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

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_

**Flagstaff Unified School District**

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Michael A. Penca

Superintendent

Dated:

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Approved as to form:

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Mangum Wall Stoops & Warden, PLLC

Legal Counsel for District

Dated:

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## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

:

Date: 12/28/2020

Meeting Date: 01/05/2021



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### TITLE:

**Consideration and Adoption of Resolution No. 2021-03:** A resolution of the Flagstaff City Council approving an Intergovernmental Agreement (IGA) between the City of Flagstaff and Coconino County establishing maintenance and operation responsibilities and an extended warranty period for a segment of the Sheep Crossing FUTS Trail.

### STAFF RECOMMENDED ACTION:

- 1) Read Resolution No. 2021-03 by title only
- 2) City Clerk reads Resolution No. 2021-03 by title only (if approved above)
- 3) Adopt Resolution No. 2021-03

### Executive Summary:

The Flagstaff Urban Trails System ("FUTS") is a citywide network of shared-use pathways that are used for both recreation and transportation by pedestrians, bicyclists, and other non-motorized users. The Sheep Crossing FUTS Trail was constructed by Kinney Construction Services (KCS) during the summer and fall of 2020. The Sheep Crossing FUTS Trail is a 0.74-mile trail that serves as a connecting portion of the greater 44-mile Flagstaff Loop Trail. It connects the Ponderosa FUTS Trail on the east end, just south of the Ponderosa Trails Subdivision, and the Sinclair Wash FUTS Trail on the west end. This trail utilizes two concrete box culverts for passage under Highway 89A and Interstate 17.

Upon completion of the Sheep Crossing FUTS Trail, the segment that lies within Fort Tuthill Park will be maintained, managed, and operated by the County.

Pursuant to the construction contract between KCS and the City, upon issuance of Notice of Final Acceptance of the trail improvements, there will be a two (2) year period of warranty between KCS and the City. During this two (2) year warranty period, defects in craftsmanship or defective materials will be repaired and replaced by KCS.

### Financial Impact:

The financial impact of this approval will result in the cost savings to the City of Flagstaff for operation and maintenance of the Sheep Crossing FUTS Trail on Ft. Tuthill County Park lands.

### Policy Impact:

No Impact.

## **Connection to PBB Key Community Priorities/Objectives & Regional Plan:**

### **Key Community Priorities || *Safe and Healthy Community***

- Ensure the built environment is safe through the use of consistent standards, rules and regulations, and land use practices

### **Key Community Priorities || *Sustainable, Innovative Infrastructure***

- Utilize existing long-range plan(s) that identify the community's future needs and all associated costs
- Identify smart traffic management, multi-modal transportation, and alternative energy opportunities

### **Key Community Priorities || *Livable Community***

- Provide amenities and activities that support a healthy lifestyle

### **Council Goal || *Transportation and Other Public Infrastructure***

- Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

### **Council Goal || *Environmental and Natural Resources***

- Actively manage and protect all environmental and natural resources.

### **Regional Plan Goal || *Environmental Planning & Conservation***

- Reduce Greenhouse Gas Emissions (E&C.2)

### **Regional Plan Goal || *Community Character***

- Reflect and respect the region's natural setting and dramatic views in the built environment (CC.1)

### **Regional Plan Goal || *Transportation***

- Improve mobility and access throughout the region. (T.1)
- Improve transportation safety and efficiency for all modes. (T.2)
- Increase the availability and use of pedestrian infrastructure, including FUTS, as a critical element of a safe and livable community. (T.5)
- Provide for bicycling as a safe and efficient means of transportation and recreation. (T.6)

### **Flagstaff Strategic Plan || *Work in Partnership to Enhance a Safe and Livable Community***

- Foster a safe, healthy, equitable and accessible community.

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

Council approved the contract with Kinney Construction Services (KCS) on March 17, 2020, for the construction of the Sheep Crossing FUTS Trail.

## **Options and Alternatives:**

1. Approve the IGA to establish the operation and maintenance of the Sheep Crossing FUTS Trail by Coconino County and upon Notice of Final Acceptance to initiate the two (2) year warranty period between the City and KCS against defects in craftsmanship or materials.
2. Reject the IGA.

## **Background/History:**

The Sheep Crossing Trail is a Flagstaff Urban Trails System (FUTS) trail, approximately 0.8 miles in length, 10 feet in width, which connects the Ponderosa FUTS Trail along the west side of Pulliam Drive with the Sinclair Wash FUTS Trail in Ft. Tuthill County Park. This multi-use, non-motorized, aggregate mix trail allows users the opportunity to navigate under Interstate 17, connecting existing trails on the east and west sides of the Interstate, just north of the John Wesley Powell Boulevard and Interstate 17 Interchange. This trail segment is also part of the ultimate alignment of the Flagstaff Loop Trail, a 44-mile system of FUTS, County, and US Forest Service trails that circumnavigates the community and provides a world-class recreational opportunity in proximity to the city.

### Key Considerations:

Flagstaff Urban Trails System ("FUTS") is a citywide network of shared use pathways that are used for both recreation and transportation by pedestrians, bicyclists, and other non-motorized users. Most of the FUTS system is maintained, managed, and operated by the City, but in a few circumstances FUTS segments are maintained by other agencies. Because the west end of the Sheep Crossing FUTS Trail is located within and terminates in a County-managed park, there is benefit to both parties and the community that this segment be maintained, managed, and operated by the County.

### Community Benefits and Considerations:

The Sheep Crossing FUTS Trail acts as a critical connection corridor for multi-use, non-motorized users to have trail connectivity under Interstate 17 from the Ponderosa FUTS Trail (Ponderosa Trails Subdivision) to the Sinclair Wash FUTS Trail at Fort Tuthill County Park. This trail segment is also part of the ultimate alignment of the Flagstaff Loop Trail, a 44-mile system of FUTS, County, and US Forest Service trails that circumnavigates the community and provides a world-class recreational opportunity in proximity to Flagstaff.

**Attachments:** Res.2021.03

IGA

## Context Map

### Vicinity Map

## Presentation

## **RESOLUTION NO. 2021-03**

### **A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY AND THE CITY OF FLAGSTAFF ESTABLISHING MAINTENANCE AND OPERATION RESPONSIBILITIES AND MEMORIALIZING AN EXTENDED WARRANTY PERIOD FOR A SEGMENT OF THE SHEEP CROSSING FUTS TRAIL**

#### **RECITALS:**

WHEREAS, the Flagstaff Urban Trails System (“FUTS”) is a city-wide network of shared-use pathways that is used for both recreation and transportation by pedestrians, bicyclists, and other non-motorized users; and

WHEREAS, the majority of the FUTS system is maintained, managed, and operated by the City of Flagstaff (“City”), but in a few circumstances FUTS segments are maintained by other agencies or private parties; and

WHEREAS, the Sheep Crossing FUTS Trail was constructed by Kinney Construction Services (“KCS”) during the summer and fall of 2020. The Sheep Crossing FUTS Trail connects the Ponderosa FUTS Trail on the east end, just south of the Ponderosa Trails Subdivision, and the Sinclair Wash FUTS Trail on the west end; and

WHEREAS, the Sheep Crossing FUTS Trail is a 0.74-mile trail and serves as a connecting portion of the greater 44-mile Flagstaff Loop Trail. This trail utilizes two concrete box culverts for passage under Highway 89A and Interstate 17; and

WHEREAS, the west end of the Sheep Crossing FUTS Trail is located within and terminates in Fort Tuthill Park, which is owned and operated by Coconino County (“COUNTY”); and

WHEREAS, upon completion of the Sheep Crossing FUTS Trail, the segment that lies within Fort Tuthill Park will be maintained, managed, and operated by the COUNTY; and

WHEREAS, pursuant to the construction contract between KCS and the City, upon issuance of Notice of Final Acceptance of the trail improvements by the City, there will be a two (2) year period of warranty between KCS and the City. During this two (2) year warranty period, defects in craftsmanship or defective materials will be repaired and replaced by KCS; and

WHEREAS, the parties are authorized to enter into this Agreement pursuant to A.R.S. § 11-952.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. In General.

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental



Agreement between Coconino County and the City of Flagstaff, Arizona, attached hereto as Exhibit A.

SECTION 2. Effective Date.

This resolution shall be immediately effective upon adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of January, 2021.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Exhibits:  
Exhibit A - IGA

**INTERGOVERNMENTAL AGREEMENT  
SHEEPS CROSSING FUTS MAINTENANCE  
Between  
CITY OF FLAGSTAFF  
and  
Coconino County, Fort Tuthill County Park**

This Intergovernmental Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between City of Flagstaff ("CITY"), a political subdivision of the State of Arizona, with offices at 211 W. Aspen Ave., Flagstaff, Coconino County, Arizona, and Coconino County ("COUNTY"), a political subdivision of the State of Arizona, with offices at 219 E. Cherry Avenue, Flagstaff, Coconino County, Arizona.

**RECITALS**

- A. WHEREAS**, the Flagstaff Urban Trails System ("FUTS") is a city-wide network of shared-use pathways that is used for both recreation and transportation by pedestrians, bicyclists, and other non-motorized users; and
- B. WHEREAS**, the majority of the FUTS system is maintained, managed, and operated by the City of Flagstaff ("City"), but in a few circumstances FUTS segments are maintained by other agencies or private parties; and
- C. WHEREAS**, the Sheep Crossing FUTS Trail was constructed by Kinney Construction Services ("KCS") during the summer and fall of 2020. The Sheep Crossing FUTS Trail connects the Ponderosa FUTS Trail on the east end, just south of the Ponderosa Trails Subdivision, and the Sinclair Wash FUTS Trail on the west end; and
- D. WHEREAS**, the Sheep Crossing FUTS Trail is a 0.74-mile trail and serves as a connecting portion of the greater 44-mile Flagstaff Loop Trail. This trail utilizes two concrete box culverts for passage under Highway 89A and Interstate 17; and
- E. WHEREAS**, the west end of the Sheep Crossing FUTS Trail is located within and terminates in Fort Tuthill Park, which is owned and operated by Coconino County ("COUNTY"); and
- F. WHEREAS**, upon completion of the Sheep Crossing FUTS Trail, the segment that lies within Fort Tuthill Park will be maintained, managed, and operated by the COUNTY; and
- G. WHEREAS**, pursuant to the construction contract between KCS and the City, upon issuance of Notice of Final Acceptance of the trail improvements, by the City, there will be a two (2) year period of warranty between KCS and the City. During this two (2) year warranty period, defects in craftsmanship or defective materials will be repaired and replaced by KCS.

H. **WHEREAS**, the parties are authorized to enter into this Agreement pursuant to A.R.S. § 11-952.

NOW, THEREFORE in consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

**1. Recitals**

The Recitals set forth above are incorporated into the terms and conditions of this Agreement.

**2. Purpose**

The purpose of the Agreement is to memorialize that upon Notice of Final Acceptance by the CITY, the COUNTY will be responsible for the operation, management, and maintenance of the Sheep Crossing FUTS Trail that lies within Fort Tuthill Park. Additionally, pursuant to the construction contract entered into between the CITY and KCS, KCS warrants that the Sheep Crossing Improvements will be free from construction defects for a period of two (2) years. Should the COUNTY or CITY identify defects in craftsmanship or defective materials during the two (2) year warranty period, the CITY agrees to work with KCS to complete the necessary repair work in accordance with the terms of the warranty provision.

Area of warranty is shown on the legal exhibit attached as Exhibit A.

**3. Duration and Termination of Agreement**

**3.1 Effective Date.** This Agreement shall become effective upon execution by the parties.

**3.2 Duration.** The CITY issued Notice of Final Acceptance to KCS on December 18, 2020. This date establishes the commencement of the two (2) year warranty period, which will expire on December 18, 2022. The expiration of the warranty period will also serve as the termination date of this Agreement. The COUNTY'S responsibility for operation, management, and maintenance of the Sheep Crossing FUTS Trail will survive the termination of this Agreement and remain the responsibility of the COUNTY in perpetuity.

**4. Warranty Periods**

**4.1 Contractor Warranty Period.** Pursuant to Section 108.8 Guarantee and Warranty Provisions of the construction contract entered into between the CITY and KCS, as amended, KCS warrants that the Sheep Crossing Improvements will be free from defects for a period of two (2) years from the date the CITY determines upon inspection that the Sheep Crossing Improvements have been constructed in accordance with all approved plans and regulations and accepted by the CITY ("Contractor Warranty Period"). CITY will be responsible for enforcing the Contractor Warranty Period pursuant to the terms of the construction contract.

**4.2 Road Access.** The COUNTY will cooperate with CITY in providing access to CITY and KCS, to all Fort Tuthill park roads for the purposes of this Agreement. The COUNTY will ensure that all CITY and KCS maintenance vehicles are given ready access to Fort Tuthill. If necessary, the CITY will apply for a COUNTY Temporary Construction Easement to complete the work to repair any defects in craftsmanship or defects in materials.

**5. Force Majeure and Liability for Own Employees**

**5.1 Force Majeure.** CITY, and their agents, officials and employees, shall not be liable to the COUNTY 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, strike, labor difficulty, fire, flood, windstorm, government regulation or requirement, other than those imposed by CITY.

**5.2 Liability of Own Employees.** Each party shall remain solely and exclusively responsible for the employee benefits, wage and disability payments, pensions and workers' compensation claims for its employees. In addition, each party shall be solely and exclusively responsible to pay for any damage to its equipment, personal protective equipment, and/or medical expense incurred by any of its employees in connection with this Agreement.

**6. Dispute Resolution**

**6.1 Mediation.** If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will take place in Flagstaff, Arizona, be self-administered, and be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 3664 Madison Avenue, New York, New York 10017, with the exception of the mediator selection provisions, unless other procedures are mutually agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators designated under the auspices of the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.

**6.2 Legal Action.** 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 Arizona Statutes and/or the Arizona Rules of Civil Procedure.

**6.3 Venue and Attorney's Fees.** This Agreement shall be governed by Arizona law. Venue will be proper in Coconino County, Arizona. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to recover its costs including reasonable attorneys' fees, reasonable associated fees including but not limited to expert witness fees, and court costs from the non-prevailing party.

## **7. Notices**

Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given shall be in writing and sent to the address given below for the party to be notified, or to such other address notice of which is given. Notices are effective upon receipt or if mailed, upon the sooner of confirmation of receipt or three business days following deposit, postage pre-paid, by first class, US Mail.

### **If to City of Flagstaff:**

City Manager and Grants and Contracts Office  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

### **If to COUNTY:**

Cynthia Nemeth, Parks and Recreation Director  
Coconino County Parks and Recreation  
2446 Fort Tuthill Loop  
Flagstaff, Arizona 86005

## **8. General Provisions**

**8.1 Status of Employees.** Employees of the respective parties shall not be considered or regarded as employees or agents of the other party. CITY and the COUNTY agree that each shall retain and have exclusive control, sole responsibility, and authority over their respective employees and agents.

**8.2 Employee notice.** Each party shall comply with the notice provisions of A.R.S. § 23 - 1022(e). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the incident command protocol in place, and said party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employee.

**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. This Agreement may be modified or amended only by written agreement signed by or for both parties and any modification or amendment will become effective on the date so specified.

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

**8.6 Compliance with Applicable Legal Authorities.** Each party shall be responsible for its own compliance with all applicable federal, state, county or local ordinances, statutes, charters, codes, rules, regulations, or any other governmental requirements including, but not limited to, the rules and regulations of the Arizona Department of Health Services.

**8.7 No Partnership.** This Agreement shall not be construed to create any partnership, joint venture, or employment relationship between the parties or any employee of the parties. No party shall be responsible for any debts, obligations, accounts, or liabilities of another party based on this Agreement. This Agreement shall not be construed to release any jurisdictional responsibilities of a party.

**8.8 Interpretation.**

**8.8.1** Titles and headings of the paragraphs contained herein are solely for the purpose of convenience and are not intended to in any way affect, control, or limit the meaning or application of any such paragraph.

**8.8.2** Words and expressions used herein shall be applicable according to the context and without regard to the number or gender of such words or expressions.

**8.9 Construction.** This Agreement has been negotiated by the parties and no party has acted under compulsion or duress, economic or otherwise. The parties waive any rule of interpretation, which would construe any provision of this Agreement against any party who drafted this Agreement.

**8.10 No Third-Party Beneficiaries.** Nothing in the provisions or this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

**8.11 Cooperation.** The parties agree to fully cooperate and use their best efforts and good faith in carrying out the spirit and intent of this Agreement.

## **9. Miscellaneous Provisions**

**9.1** Each party warrants that prior to signing this Agreement, all of its internal procedures, rules, and regulations have been complied with. The signing of this Agreement constitutes a binding agreement.

**9.2** Failure of any party to strictly enforce any provision hereunder shall not constitute a waiver of rights to demand strict performance of that or any other provisions hereof at any time hereafter.

**9.3** The terms and conditions of this Agreement are separate and severable. If, for any reason, any court of law or administrative agency should deem any provision hereof invalid or inoperative, the remaining provisions of this Agreement shall remain valid and in full force and effect.

**9.4** Pursuant to A.R.S. § 38-511, either party may cancel this Agreement without penalty or further obligations for conflicts of interest.

**9.5** Each party represents that it shall maintain for the duration of this Agreement sufficient policies of public liability insurance covering all of its obligations undertaken in the implementation of this Agreement.

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

**City of Flagstaff**

**Coconino County**

\_\_\_\_\_  
Paul Deasey, Mayor

\_\_\_\_\_  
Elizabeth Archuleta, Chair  
Board of Supervisors

Attest:

Attest:

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

\_\_\_\_\_  
Clerk of the Board

### **Attorney Certificate**

The foregoing Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

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Attorney for City of Flagstaff

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Date

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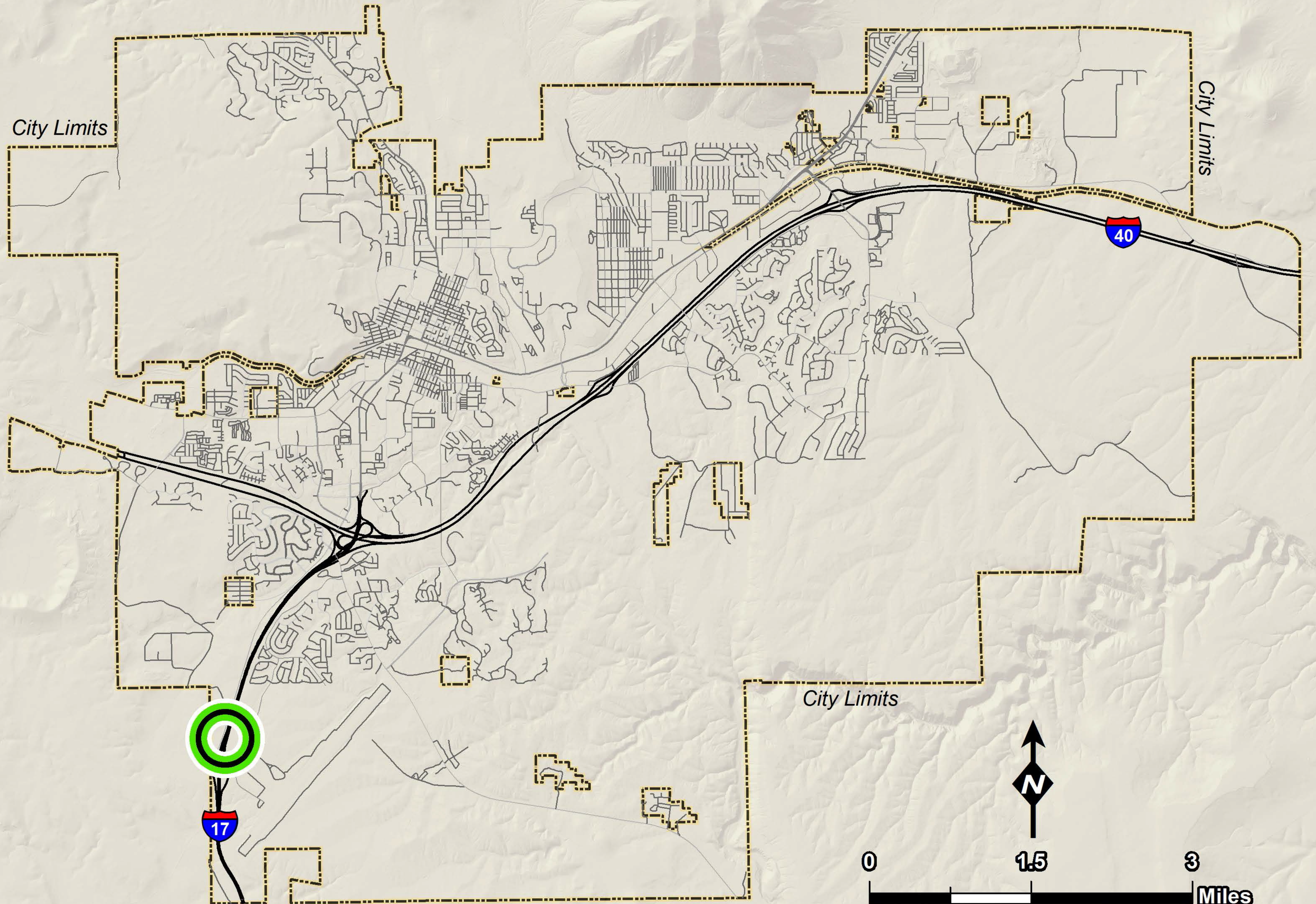
Attorney for Coconino County

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Date

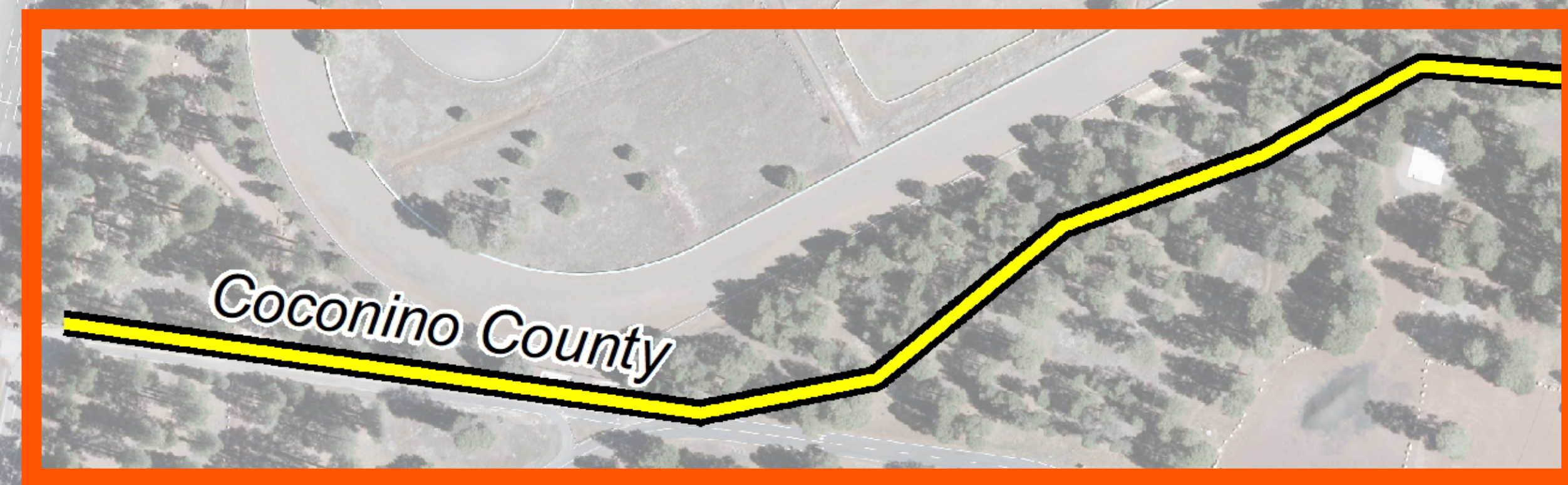


# Sheep Crossing FUTS Trail

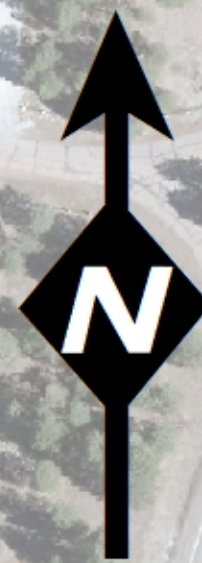




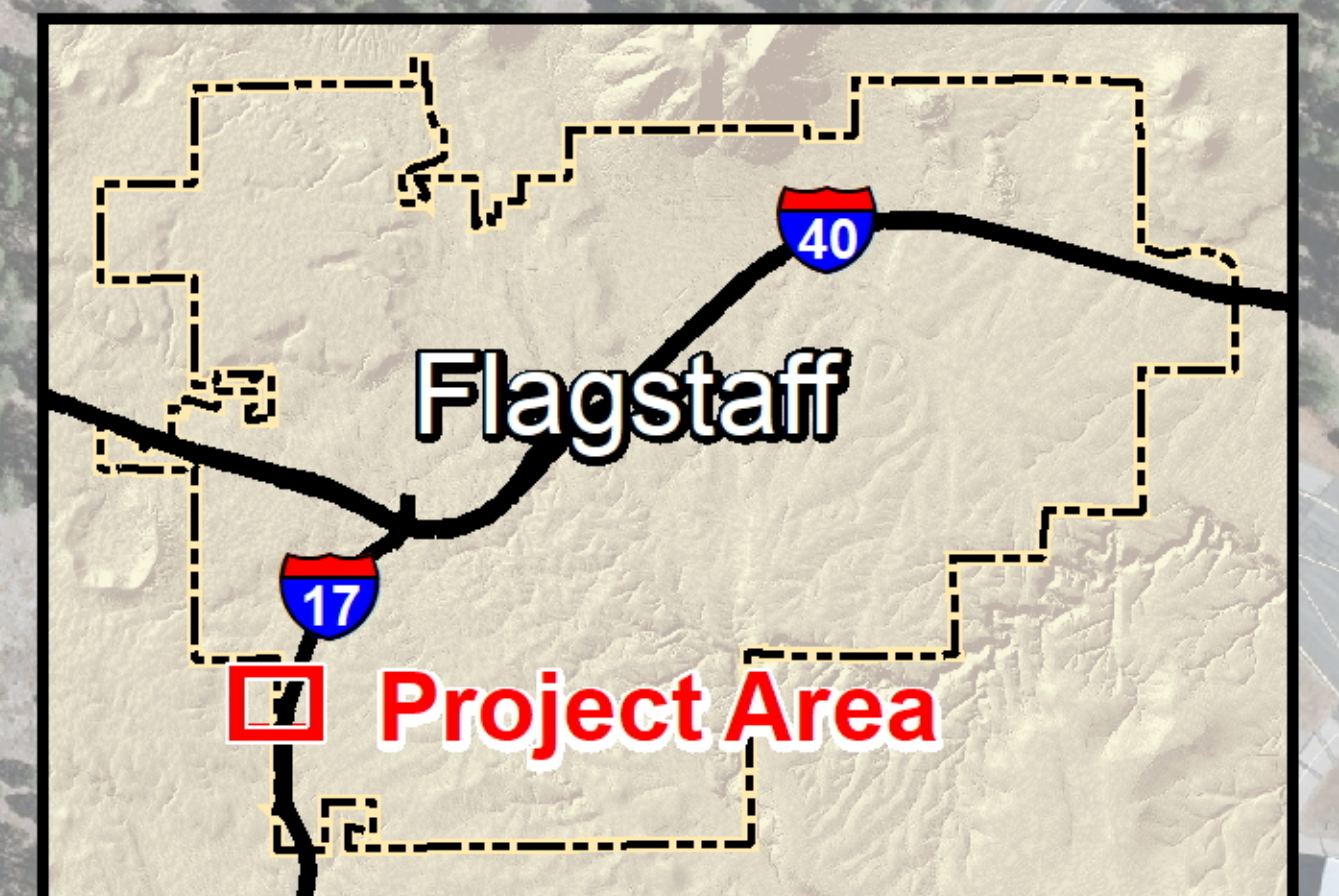
# Sheep Crossing FUTS Trail



Fort Tuthill  
County Park



0 750 1,500 Feet





# Sheep Crossing FUTS Trail

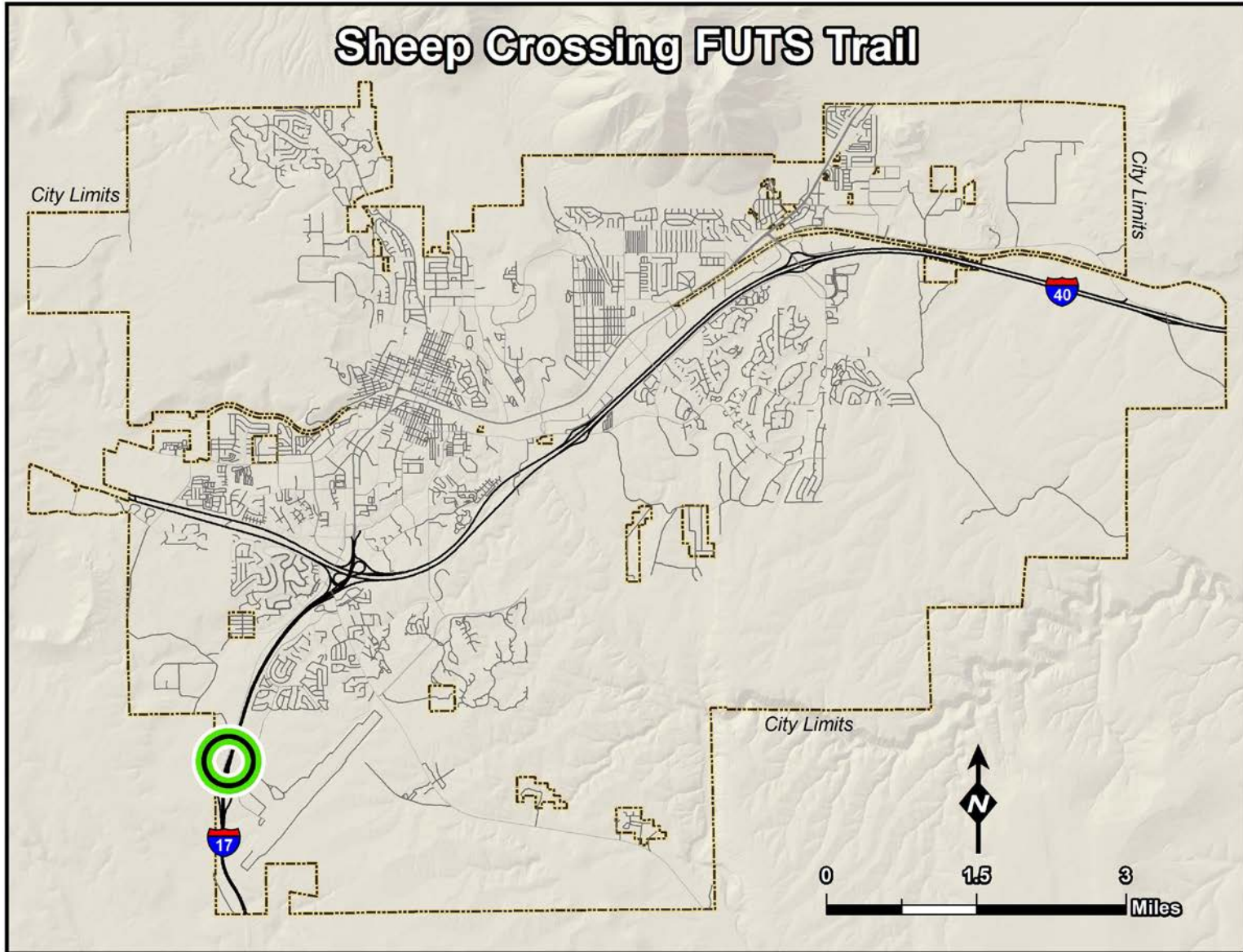
## IGA with Coconino County





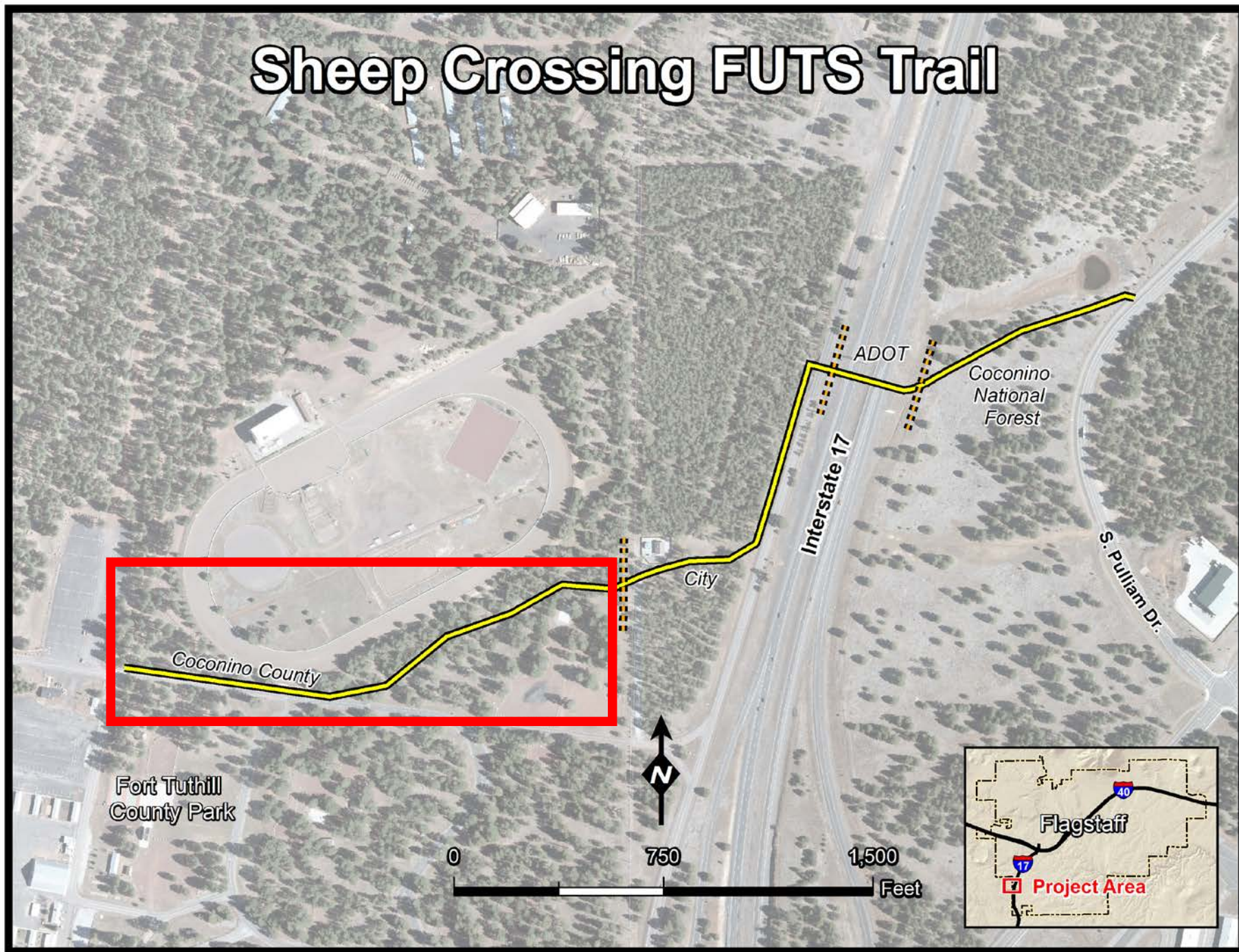


# Context Map





# Sheep Crossing FUTS Trail





# Sheep Crossing FUTS IGA

- Between City and Coconino County
- Memorializes a two (2) year warranty between the City and Kinney Construction Services (KCS)
  - Warranty covers defects in craftsmanship or materials
  - Effective date December 18<sup>th</sup>, 2020
- County will operate and maintain the County portion of the Sheep Crossing FUTS Trail



# Western Portal





# Interstate Tank Bench





# Looking West Through Tunnel





# Eastern Portal







# Sheep Crossing FUTS Trail

## SPECIAL THANKS TO...

- US Forest Service
- US Army Corps
- ADOT
- Coconino County
- Kinney Construction
- Adams Trenching
- Turner Engineering
- EnviroSystems
- Franchise Utilities
- City Staff
  - *Wastewater*
  - *Stormwater*
  - *Engineering*
  - *Real Estate*
  - *Planning*
  - *Legal*
- City Council
- Our Community

**9. A.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 12/28/2020  
**Meeting Date:** 01/05/2021



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**TITLE**

**City Manager Report**

**STAFF RECOMMENDED ACTION:**

Information Only

**EXECUTIVE SUMMARY:**

These reports will be included in the City Council packet for regularly scheduled Council meetings, excluding Work Session meetings. The reports are intended to be informational, covering miscellaneous events and topics involving the City organization.

**INFORMATION:**

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**Attachments:** City Manager Report  
Capital Projects Report

## **City Manager's Report**

December 31, 2020

Council and Colleagues, **Happy New Year!**

These reports will be included in the City Council packet for regularly scheduled Council meetings, excluding Work Session meetings. The reports are intended to be informational, covering miscellaneous events and topics involving the City organization. Every month we include a Capital Projects Update which is appended to this Report. It is very informative. Also, starting in the 2021, these reports will include employee recognitions as a regular feature, noting awards, working anniversaries, retirements, special accomplishments, and the like.

Well then, in no particular order...

### **Fire Department**

Council may recall a rather horrific reporting, earlier this summer, involving child abuse that ultimately took the life of a young boy. After Child Protective Services became involved, the remaining three siblings went into a foster home. Captain Sanders with our Flagstaff Fire Department (FFD) became aware of this fostering arrangement through his girlfriend. Captain Sanders and his girlfriend subsequently decided to adopt this foster family for Christmas and do a small fundraiser. In just a few short days, several members of the Flagstaff Fire Department had raised \$3,000 for the family! The family expressed gratitude and repeatedly thanked the Department. We are so proud of this generosity by such caring individuals.

On the subject of thanks, the FFD also received a thank you note from a community member for the gift of warmth this winter. This community member was able to acquire free wood from the Shultz Pass site when they had been unsuccessful in being able to find any other options. Again, thanks to care and outreach by our firefighters.

### **Human Resources**

Human Resources has finalized the set-up of the new performance evaluation system, PERFORM. They have provided training to all City staff and the system will be going live during the month of January.

Human Resources staff have presented the recommendations from the compensation study on pay structures to Leadership and the Employee Advisory Committee. This is very much a work-in-progress and it will be circling back to Council in the near future. Stay tuned.

Human Resources is partnering with Payroll on the implementation of a timekeeping system called KRONOS. These new systems represent technological upgrades that will greatly assist our processes and allow for better efficiencies.

## **Police Department**

This time of year, we offer our remembrance of Officer Stewart who gave his life in the line of duty on December 27, 2014. Tyler Stewart was one of two officers with the Flagstaff Police Department who have given their life protecting our community. He had been an officer for less than a year when he answered the call that cost him his life. Officer Stewart is indeed in our thoughts and our hearts.

Officers delivered toys to families in need as part of the Law Enforcement Toy Drive (co-sponsored by the Flagstaff Law Enforcement Officers Association and the Department). We received \$11,000 in monetary donations along with hundreds of toys from the community! We spread holiday joy to 400 children from 150 different families.

Staff worked to get toys delivered to Supai via helicopter. Supai families were greatly impacted by COVID-19 and the lack of tourism, so the need for holiday cheer was especially high this year. Great work by the elves in uniform!

The Flagstaff Police Department (FPD) Recruitment Team is working on new recruitment initiatives to attract qualified applicants to the Department. Recruitment is down, as was recently reported to the Council, so these initiatives are greatly appreciated.

Officer Matt Schmidt, who is assigned to public housing, teamed up with the Housing Authority to welcome a new family to the Brannen home neighborhood. In meeting the family, he was able to give them a warm welcome, hand out some police swag, and provide his direct contact information. The walk thru and welcome are a trend we are seeking to continue with new residents to further community policing initiatives in the neighborhoods. Thanks, Officer Schmidt!

## **Public Works**

Parks and Sustainability are partnering on a pilot project for a 196 square foot greenhouse as part of the Mayor's Monarch Pledge 2021. All of the materials needed including the display of geothermal, solar, and electric for heating choices are considered, documented, and reviewed for efficiencies to bring this project to the Community as a do-it-yourself. The project will provide both a seed germination location for Parks as well as an educational opportunity for Sustainability to share with the public regarding the importance of milkweed and other pollinator plants.

Parks and Streets staff assisted, along with ParkFlag and the Downtown Business Alliance (DBA), with assembling four (4) gazebos located at Heritage Square. A big thank you to the entire *Expanded Use of Rights-of-Way* (EUROW) team on the efforts in place to continue to assist downtown businesses by allowing for social distancing and outside seating. Of note, the gazebos held up well during the recent snow/wind event that brought some impressive gusts into the area.





The signs and markings group is preparing for the re-naming of a downtown street to WC Riles. This work includes signpost installations, sign fabrication, and a logistics plan for a timely change out scheduled for early January 2021.

The metal recycling contractor has removed 170.43 tons, 14 loads from the Landfill!



The Joe C. Montoya Community and Senior Center was the staging area for the *Adopt a Grandparent* program.

### **Sustainability**

The Sustainability Commission will hold its next meeting on Thursday, January 28, 2021, 4:30 – 6:30 pm.

The City Council passed Resolution 2020-70, signing onto The *We Are Still In Coalition's* "All In" Climate Statement. Local Press Coverage and statement from former Mayor Evans can be found here: <https://www.signalsaz.com/articles/city-affirms-commitment-to-global-climate-action-on-the-fifth-anniversary-of-the-paris-agreement/>



Individuals and small family groups have been busy cleaning up adopt and avenue locations as well as the FUTS and washes in our community. Of note, WL Gore offers its employees 8 hours of paid leave to volunteer in our community. This particular Community Steward volunteer, proudly shown in the photo, spent his 8 hours cleaning up the washes near both local WalMart Stores. He collected 16 bags of litter. Thanks Will!

Some quick updates on energy use:

- 65% of Residential Energy Rebates has been distributed this fiscal year.
- The Arizona Public Service (APS) Solar Communities project at the Northern Arizona Center for Entrepreneurship and Technology (NACET) has encountered a slight problem. The solar structure is complete and received the green tag from the City. However, our construction dock caught an

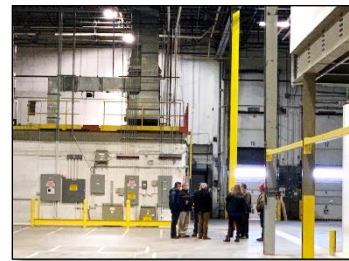
error in the compatibility between the inverters and the transformer. APS has worked diligently with the construction dock to come up with a solution that minimizes the delay and any disruptions to the site and building. Due to the incompatibility, APS will need to set a new transformer. Staff are awaiting a timeline for the fix. Stay tuned.

- Staff are finalizing the outreach plan for launching *Solar United Neighbors*, the solar renewable energy co-op.

### **Recent Meetings to Note**

The Government Affairs Committee for the Coconino Plateau Water Advisory Council met on Dec 22<sup>nd</sup> and discussed a very draft proposed legislative bill pertaining to Rural Management Areas (RMAs). I serve as Co-Chair for the Government Affairs Committee with Deputy Manager Joanne Keene of Coconino County. This proposal would see some administration of these RMAs at the local level rather than at the state level. Much more will be reported on this as it moves forward through the legislative process.

On December 29<sup>th</sup> we met with a consortium of individuals who represent a successful light-industrial corporation that is interested in expanding its operations into the largely vacant Walgreens facility here in Flagstaff. The details of this possible endeavor cannot be publicly provided at this time, but hopefully we will have something to report in the near future. Stay tuned.



Human Resource Director Jeanie Gallagher and I will be having a continued discussion regarding the Compensation Study with the Employee Advisory Council (EAC) on Wednesday, January 6<sup>th</sup>.

On Dec. 15<sup>th</sup> the Rio de Flag city staff team met with representatives of the Burlington Northern Santa Fe (BNSF) Railroad to further our discussions related to mitigation requirements for the project. City Council will receive an update on this project in the near future.

I have had recent one-on-one meetings with Councilmember Aslan, Councilmember McCarthy, and Councilmember Salas. These meetings have occurred monthly, with some exceptions. I meet weekly with Mayor Deasy and Councilmember Shimoni. I would like to structure ongoing meetings with our other newly elected council members and will be reaching out (with the assistance of Jason Cook) to arrange meeting times that work. Look for this, and thanks.

### **Capital Improvements**

As noted in the introductory paragraph, attached is the monthly Capital Improveents Update. Please give it a read ... good stuff.

That's it for now. Onward and upward ...





## **COMMUNITY DEVELOPMENT DIVISION**

### **ENGINEERING SECTION**

#### Monthly Capital Projects Report December 2020

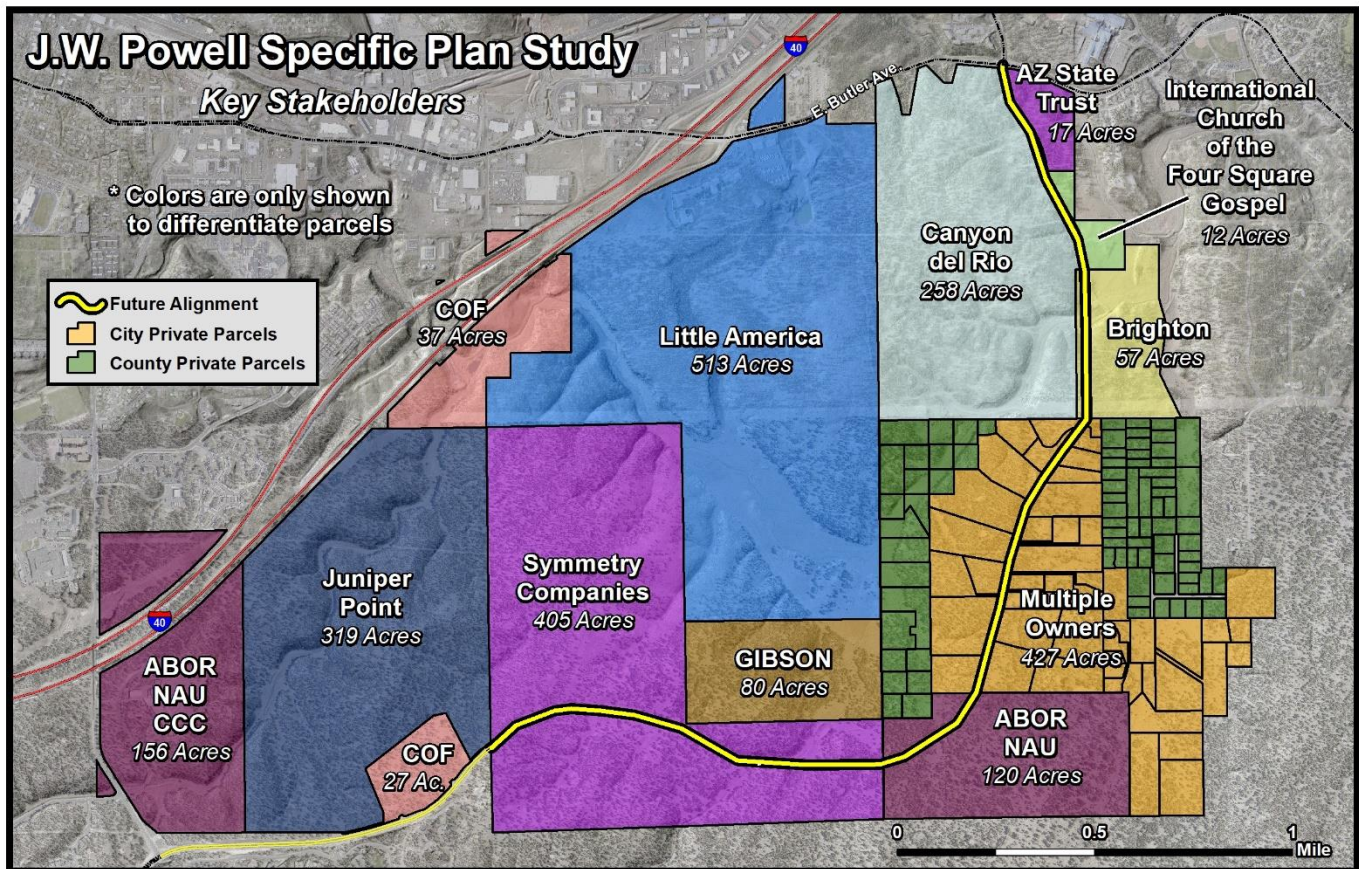
## J.W. Powell Specific Plan Study (PLANNING PHASE)

FUND: GENERAL GOVERNMENT & TRANSPORTATION TAX

**Description** – The purpose of the John Wesley Powell Specific Plan Study (Study) is to develop a specific plan to guide the future private development of public infrastructure, utilities and facilities. Phase 1 of the project is the conceptual design of the future public infrastructure (roads), public utilities and facilities location analysis. The conceptual design is required to meet the full City infrastructure standards including street improvements, potable water, sanitary sewer mains, storm drain systems, street lighting and associated appurtenances. Phase 1 of the Study includes a sanitary sewer system master plan for the area. A water system master plan was previously developed for the area. Phase 2 of the Study is development of the planning elements necessary to gain City Council approval of a Specific Plan.

### **Project Update:**

- City Staff is working with Peak Engineering, Swaback, and BetaPr to cultivate the focused public outreach materials and discuss timelines for focused public outreach meetings.
- City Staff will be presenting at a Friends of the Rio meeting in mid-December.
- City Staff and Peak Engineering met to discuss the transition from Phase 1 to Phase 2 as well as the scope of Phase 2. Phase 2 scope will be reviewed in mid-December with Phase 2 work potentially starting in the summer of 2021. Phase 1 should be completed late spring 2021.



*Proposed alignment of new J.W. Powell Boulevard and Fourth Street; denoted by yellow line*

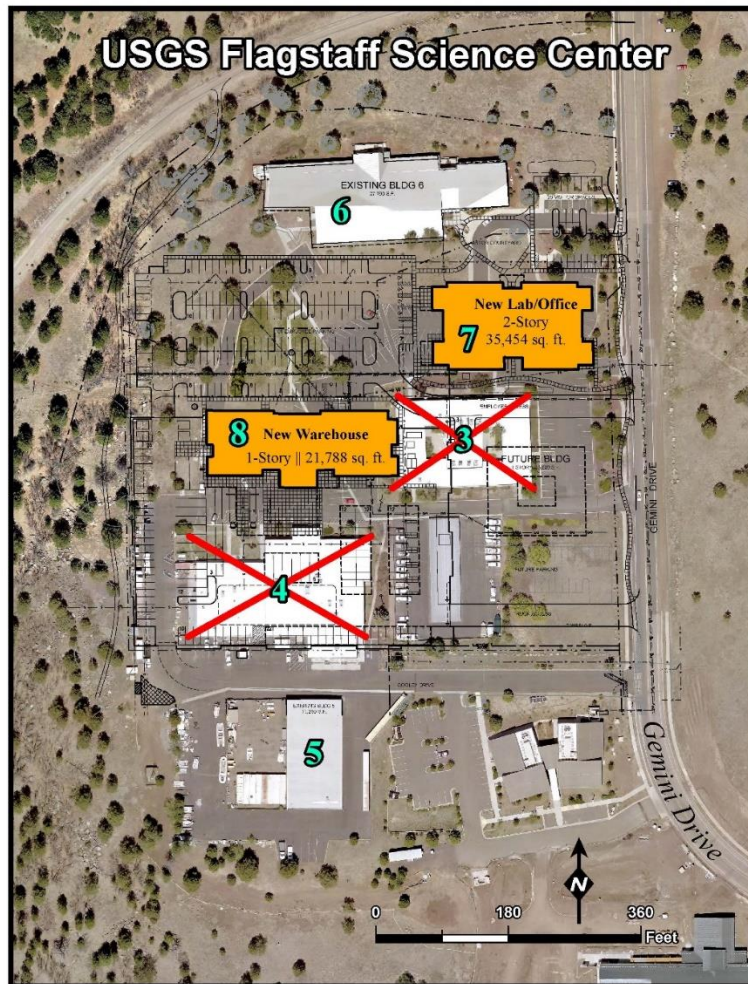
## USGS Flagstaff Science Center Campus - Build to Suit (DESIGN PHASE)

FUND: GENERAL GOVERNMENT

**Description** – This project will bring new improvements to the USGS Flagstaff Science Center Campus, located just south of Buffalo Park. There will be two existing buildings demolished (buildings 3 and 4), and two new buildings constructed (buildings 7 and 8). One of the new buildings will be a new lab and office facility while the second building will be a new warehouse. These two new buildings will require a minimum certification from the U.S. Green Building Council's Leadership in Energy and Environmental Design (USGBC) of "Green Building Rating System" of "LEEDTM Silver for New Construction (NC)."

### **Project Update:**

- City Staff met this week with the Government Services Administration (GSA) and USGS to discuss the fiber network as it pertains to the USGS Science Center Campus.
- City Staff is working to draft Request for Statement of Qualifications (RSOQs) to procure a design-build contractor.



*USGS Flagstaff Science Center Campus.  
Buildings to be constructed are shown in orange.  
Buildings 3 and 4 (shown with red a X) will be demolished.*



## **City of Flagstaff Municipal Court** (CONSTRUCTION PHASE)

FUND: GENERAL GOVERNMENT

**Description** – The City of Flagstaff Municipal Court Project is a 40,000 SF facility that will provide full user services to the City Court, the City Prosecutor’s Office, and the public. It is located two blocks north of the existing Court facility, at 101 W. Cherry. Amenities include: four court rooms, one hearing room, administrative staff offices for the Court and Prosecution, in-custody detention and processing, and customer service facilities

### **Project Update:**

- KCS continues to work to complete punch list items.
- Demolition of the old buildings is contingent on franchise utility relocations.



*Flagstaff Municipal Court Facility, looking at the main entrance – northeast corner*

FUND: TRANSPORTATION TAX (SAFETY) & HOUSING [CDBG] ALLOCATION

### Project Update:

- Capital Improvements is assisting Comprehensive Planning.
- Consultant is working on the 90% plans and specifications.



### Conceptual Plan of Proposed Improvements

## **Beulah Boulevard Extension/University Drive Realignment** (DESIGN PHASE)

FUND: TRANSPORTATION TAX (STREETS)

**Description** – This project extends the northern terminus of Beulah Boulevard to connect with University Drive. Furthermore, University Avenue (west of Milton) will be realigned to match up with University Drive (east of Milton). A new roundabout will be constructed where Beulah Boulevard and University Drive will intersect.

### **Project Update:**

- City, in concert with Vintage Partners, began final design of the roadway project this week. The engineering firm completing the design work is Shephard Wesnitzer, Inc. (SWI).
- Final design work should be completed by fall 2021.
- All abatement and demolition are complete on the former Fresquez and former ADOT properties.

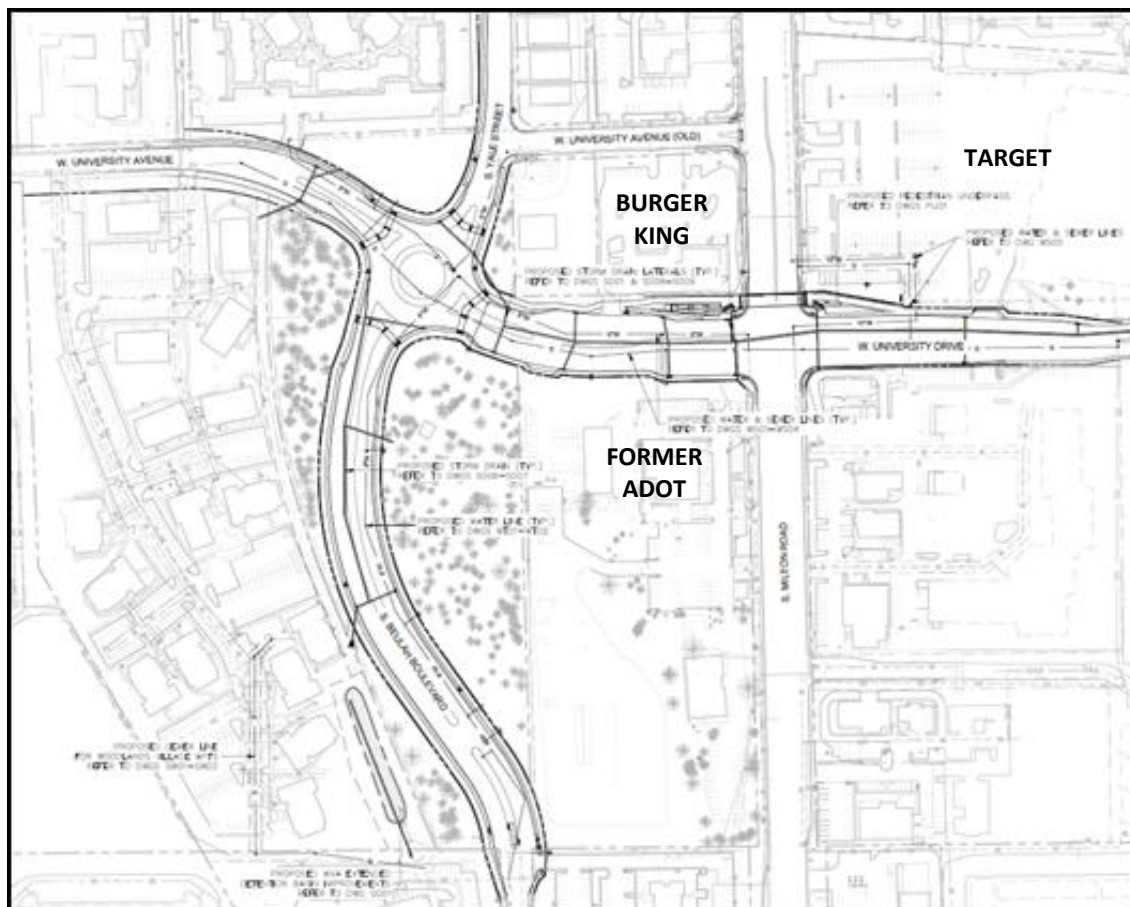


*Former ADOT buildings have been demolished and removed.  
Photo taken looking west from Milton Rd. and University Dr. intersection.*





*Former Fresquez buildings have been demolished and removed.  
Pictured above is where the former residence was located.*



*Extent map of new Beulah and University Realignment – taken from 30% plans.*

## **Quiet Zone Modifications (Elimination of Wayside Horns)** (PLANNING PHASE)

FUND: TRANSPORTATION TAX (STREET OPERATIONS)

**Description** – The City Council considered a citizen petition in July 2017 regarding the Quiet Zone and the sound level of the wayside horns on the eastside of town at the Steves and Fanning crossings. The wayside horns are operated by the City at both crossings and are an approved supplemental safety measure used in the absence of the train mounted horn. The other 3 crossings in Flagstaff that are a part of the Quiet Zone utilize One Way streets (Beaver and San Francisco) and a non-traversable median (Ponderosa Parkway) to satisfy the supplemental safety measure requirement for the Federal Railroad Administration’s requirements for Quiet Zones and therefore do not require wayside horns.

### **Project Update:**

- In response to the petition we measured the sound levels and the aiming of the wayside horns. After the wayside horns were confirmed to follow all regulatory standards, the City moved on to pursue other supplemental safety measures to eliminate the wayside horns. Efforts by City staff are ongoing in working towards solutions in collaboration with BNSF, Arizona Corporation Commission-Railroad Safety Group, ADOT, and various roadway consultants.
- Staff is currently preparing a CCR to update the Council on the detail of these supplemental safety measures and what we hope to accomplish on the eastside of town.



*Fanning Railroad Crossing*



## **Sheep Crossing FUTS Trail** (CONSTRUCTION PHASE)

FUND: TRANSPORTATION TAX (FUTS)

**Description** – The Sheep Crossing FUTS Trail connects the Ponderosa FUTS Trail on the east end, just south of the Ponderosa Trails Subdivision, and the Sinclair Wash FUTS Trail on the west end. The western portion of the trail is in Fort Tuthill County Park and intersects the County’s Soldiers Trail. Furthermore, this 0.74-mile trail is a connecting portion of the greater 44-mile Flagstaff Loop Trail. This trail utilizes two existing concrete box culverts for passage under Highway 89A and Interstate 17.

### **Project Update:**

- Kinney Construction Services (KCS) received substantial completion on 17 November.
- Final walkthrough occurred on 1 December and KCS is working to complete final touches and closeout paperwork.
- Notice of Final Acceptance will likely be issued in mid-December. The Notice of Final Acceptance will establish the beginning of the warranty period between the City and KCS.



*Looking west at the eastern portal.  
Note Interstate 17 above the tunnel and the drainage tunnel to the right of the FUTS tunnel.*





*Eight-foot bench facing Interstate Tank on the USFS portion of the trail.*



*Looking west through the tunnel. Note the interior lighting and heated weep drain frost protection conduit.*



*Looking west out the western portal. Note the FUTS safety fence at right and trench drain at left.*



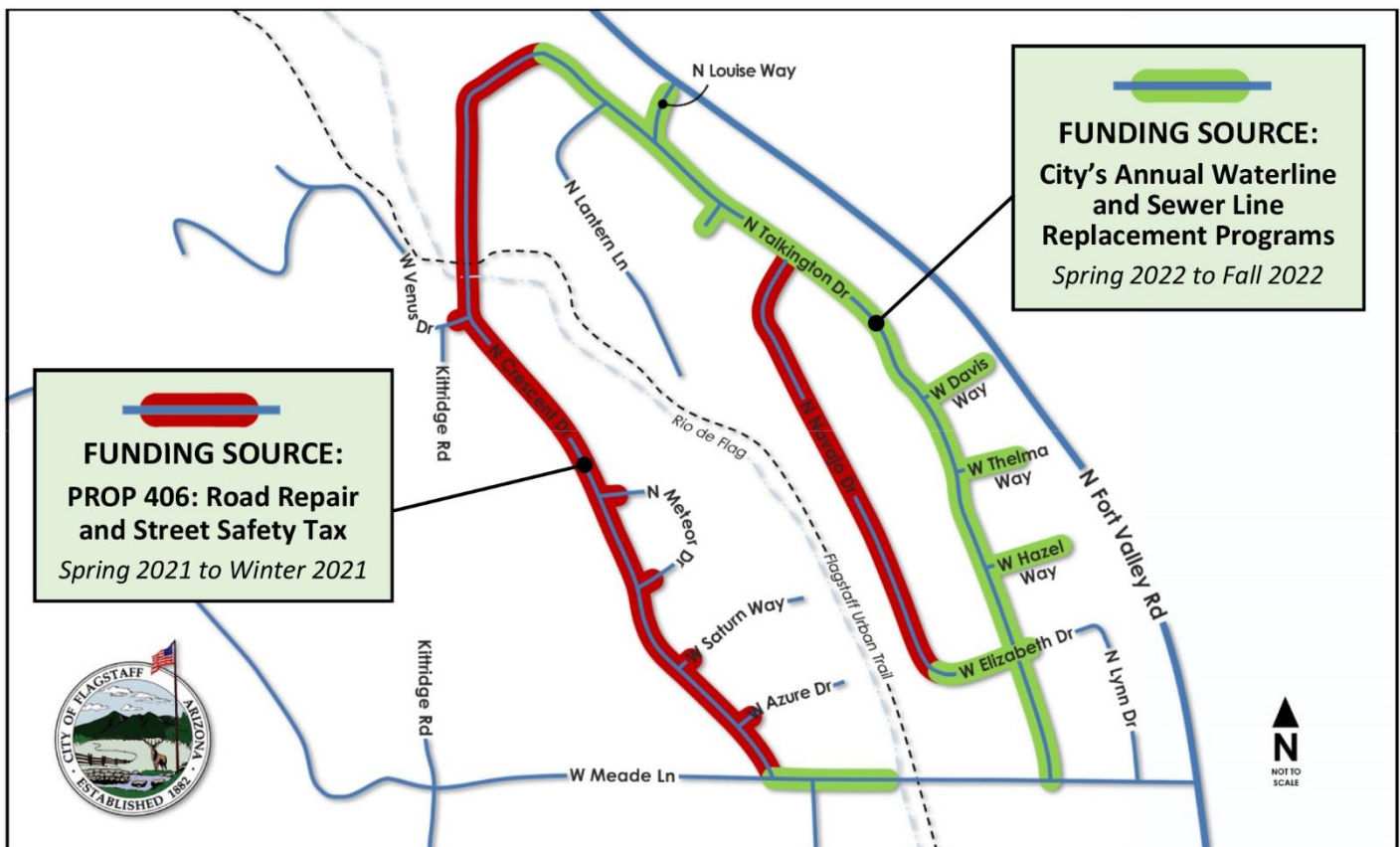
## **Coconino Estates Improvements Phase II** (DESIGN PHASE)

FUND: ROAD REPAIR & STREET SAFETY & ANNUAL WATERLINE AND SEWER LINE REPLACEMENT PROGRAMS

**Description** - This is a utility and roadway improvements project located on several streets in the Coconino Estates neighborhood as seen in the map below. Improvements on the streets generally consist of replacing all existing utility and roadway infrastructure. The utility improvements include replacing the existing water and sewer mains, water and sewer services, fire hydrants, and manholes. The roadway improvements include replacing the existing asphalt roadway, replacing rolled curb with vertical curb, constructing driveway ramps at driveway entrances, and replacing select sidewalk only where it currently exists on Crescent Drive. Sidewalk will NOT be installed where it does not currently exist. For additional information visit the Project website at [www.coconinoestates.com](http://www.coconinoestates.com)

### **Project Update:**

- A Project Presentation Video was posted to the Project website in lieu of conducting the typical community open house meeting ([www.coconinoestates.com](http://www.coconinoestates.com)).
- Final II (100%) Plans are currently being reviewed by City Staff.
- The Project will be advertised in winter 2020 with construction to start spring 2021.
- The City will not permit the successful contractor to utilize the same construction yard as is being used for the Coconino Estates Phase I project near Thorpe Park.



*Coconino Estates Improvements Phase II Project Limits – Funding - Schedule Map*



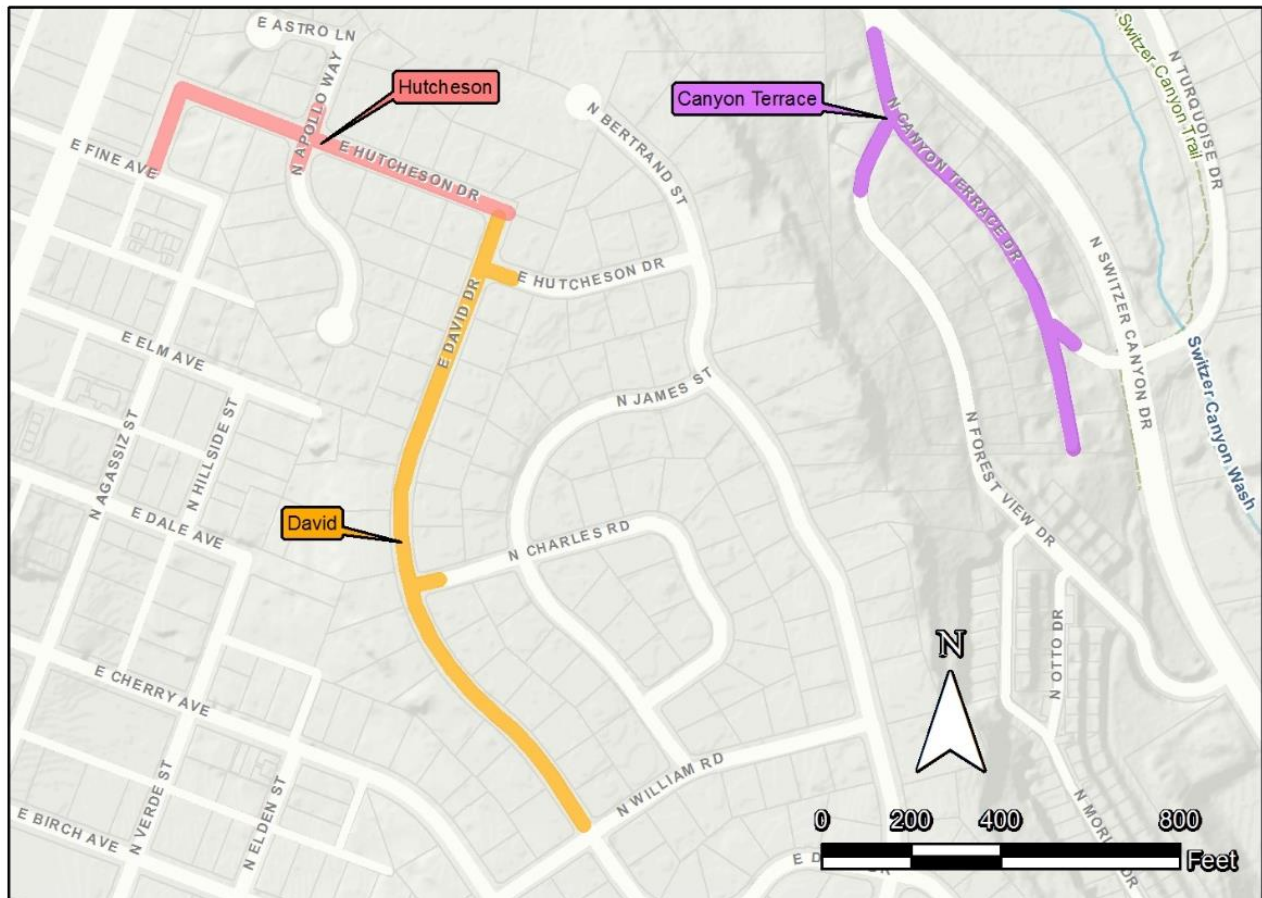
## **West Flag Improvements** (DESIGN PHASE)

FUND: ROAD REPAIR & STREET SAFETY

**Description** - This is a utility and roadway improvements project located on Hutcheson Drive, David Drive, and Canyon Terrace Drive as seen in the map below. Improvements on the streets generally consist of replacing all existing utility and roadway infrastructure. The utility improvements include replacing the existing water and sewer mains (except for on David Drive), water and sewer services, fire hydrants, and manholes. The roadway improvements include replacing the existing asphalt roadway, replacing rolled curb with vertical curb on David Drive, and replacing select edge improvements (sidewalk, curb and gutter, etc.).

### **Project Update:**

- The project was bid as one project this past spring but was pulled at the end of the bidding process given the economic and funding source uncertainties due to the COVID Pandemic.
- It was decided to split the Project into two separate Projects consisting of Hutcheson/David and Canyon Terrace.
- The two projects are anticipated to be advertised mid December 2020 through the end of January 2021.
- March 2, 2021 is the targeted Council Meeting for the consideration of award for both Projects.



*West Flag Improvements Project Limits Map*

## **Coconino Estates Improvements Phase I** (CONSTRUCTION PHASE)

FUND: ROAD REPAIR & STREET SAFETY

**Description** - This is a utility and roadway improvements project located in the Coconino Estates neighborhood on Beal Road from Rockridge to Fort Valley, Navajo Drive from Navajo Road to Murray, Whipple Road from Navajo Drive to McMillan, and Navajo Road from Navajo Drive to Fort Valley. Improvements on the streets generally consist of replacing existing infrastructure with new, including water and sewer mains, water and sewer services, fire hydrants, storm drains, streetlights, the entire asphalt roadway, and defective select edge improvements (curb & gutter, sidewalk, etc.), except for Whipple Road which will only receive a new water main. There will also be new infrastructure added consisting of underground electric lines for streetlighting and sidewalk on both sides of the street where it does not currently exist on Beal Road, Navajo Drive south of Beal, and on Navajo Road. For additional information visit the Project website at [www.coconinoestates.com](http://www.coconinoestates.com)

### **Project Update:**

#### **Navajo Road (Construction Zone #1)**

- Completed utility improvements include new water and sewer mains, water and sewer services, and underground electric conduit.
- Completed roadway improvements include new curb and gutter, sidewalks, driveways, asphalt roadway, and utility adjustments.
- The installation of streetlights and one driveway with heated driveway issues remains.
- Landscape restorations are scheduled for spring 2021.

#### **Navajo Drive (Construction Zone #2)**

- Completed the re-compaction of the existing sewer main trench from Navajo Road to Havasupai.
- Water and sewer main, water and sewer service, and electric conduit installation continues.

#### **Traffic Impacts**

- Navajo Road is now open to all traffic; however, temporary shoulder closures will occur as miscellaneous clean-up operations and streetlight installation continues.
- Mountain Line bus route #5 will resume its normal route down Navajo Road.
- Navajo Drive from Hopi Drive to Beal Road is closed to thru traffic, with detours posted around the closure.
- The City and Eagle Mountain Construction have coordinated with and will accommodate the Neighborhood Christmas Luminarias event on December 13, by patching trenches with asphalt and cleaning up the site to make it safe for walkers prior to the event, Navajo Drive will remain closed to thru vehicular traffic for the event.

#### **Spruce Trees at 510 W. Beal Road**

- The City hired a Professional Arborist to investigate the possibility of saving the trees, and in his professional opinion the westerly tree may be saved by narrowing the new sidewalk to a 3' width across a portion of the frontage of this parcel, however the easterly tree must be removed.

#### **Thorpe Park Annex Restoration**

- Eagle Mountain Construction has removed the fence around the southwest portion of the Thorpe Park Annex and City Parks Crews installed boulders around this portion of the site. The existing asphalt in this area is expected to be removed around the beginning of January, pending weather conditions.





*Dale Ave. / Mogollon St. intersection looking west  
Removed fencing and installed boulders around the southwest portion of the Thorpe Park Annex*



*Navajo Rd. / Navajo Dr. intersection looking west  
Preparing the roadway for asphalt patching over trenches for a clean site prior to the Neighborhood Luminarias Event*





Current road closures and detours



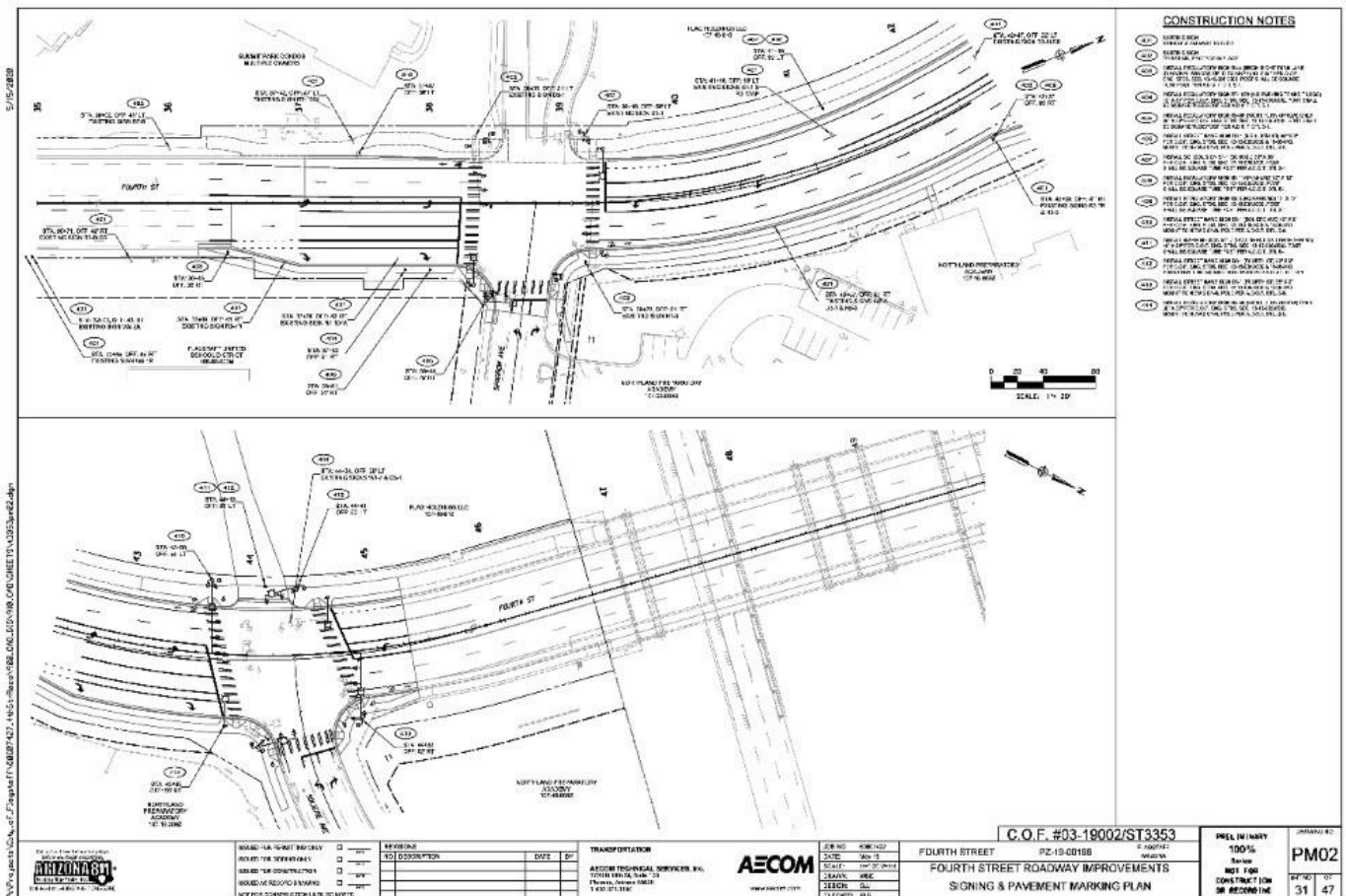
## Fourth Street Reconstruction (CONSTRUCTION PHASE)

FUND: TRANSPORTATION TAX (RENEWED TAX)

**Description** – The project is on Fourth Street from the Soliere Avenue intersection, southerly to just past the Sparrow Avenue intersection. The work will construct a new pavement section with two northbound and two southbound lanes and a center turn lane, northbound dedicated right-turn lanes from Fourth Street onto Sparrow Ave. and onto Soliere Avenue, new streetlights, new traffic signals at Soliere Avenue, new fire hydrants, new 12" water main and new 8" water main, curb and gutter and new sidewalk. The reconstruction work will connect with the recently completed bridge replacement project.

### Project Update:

- Project was awarded to RTR Paving at the December 8<sup>th</sup> Special City Council Meeting.
- RTR Paving was the low bidder, with a low bid of \$1,699,908
- Project construction is anticipated to start in early 2021.



Fourth Street Reconstruction Overview Plan

## **Lockett/Fourth Roundabout** (DESIGN PHASE)

FUND: HSIP GRANT

**Description** – Project consists of the design and construction of a new roundabout at the Lockett-Cedar-Fourth Street intersection. Project funded by an HSIP Grant, with supplementary funding from City of Flagstaff. Project design and construction to be administered by ADOT. The new roundabout will improve safety for vehicles, pedestrians and bicyclists in this busy intersection.

### **Project Update:**

- Project design and construction to be administered by ADOT.
- Design efforts have kicked off with AZTEC as the design lead.
- Design completion is targeted for late 2021 and construction is anticipated in 2022.



*Existing Lockett-Cedar-Fourth Intersection*



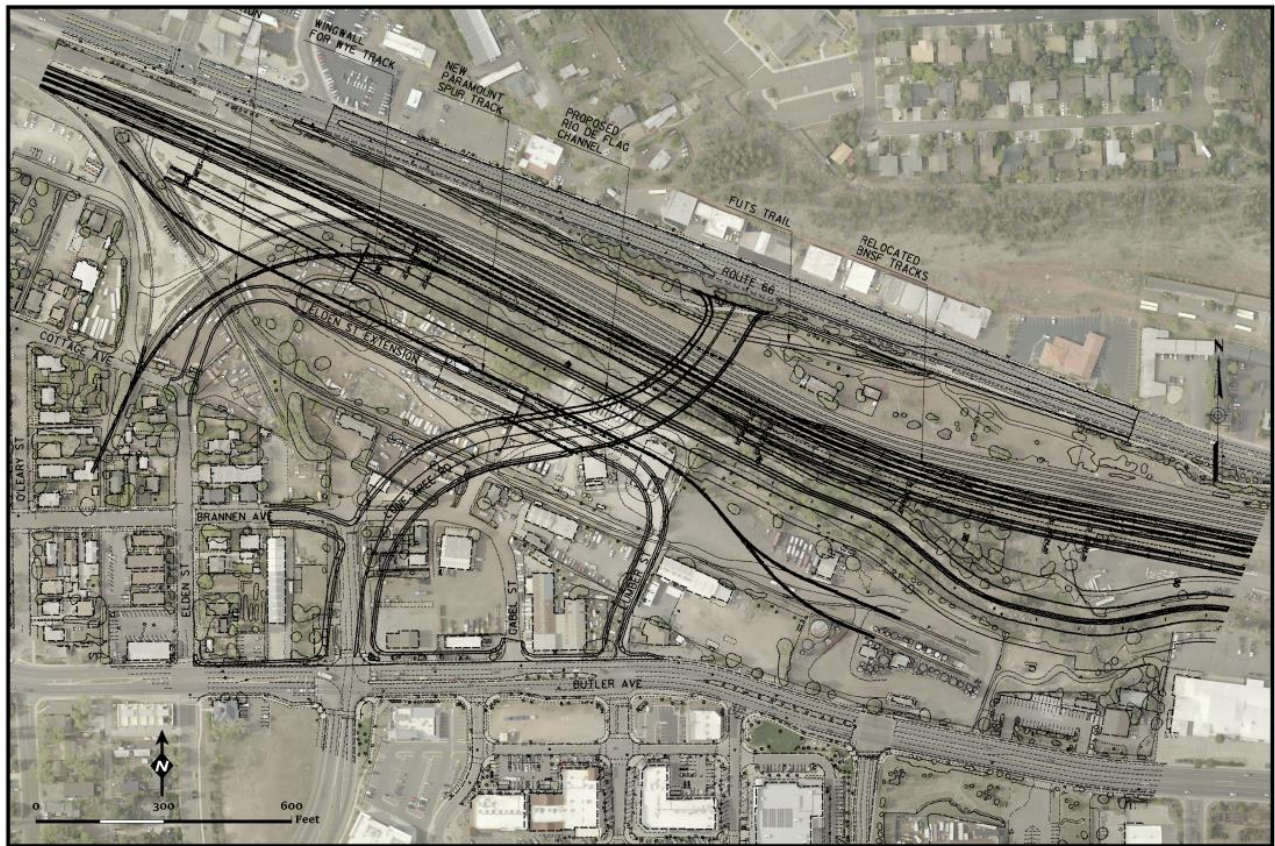
## **Lone Tree Overpass Project** (Design Phase)

FUND: TRANSPORTATION

**Description** - The Lone Tree Overpass Project will provide a grade-separated crossing over the future Rio de Flag drainage and the BNSF Railway corridor from Butler Avenue to Route 66. Funding for this project is provided through voter approved bonds as designated in the 2018 Proposition 420.

### **Project Update:**

- The City is negotiating scope and fee for the first design-phase contract with the selected Design-Build team.
- A design-phase contract is anticipated to be presented to Council for approval on February 2, 2021.



*Lone Tree Overpass Concept Design*



## **Library Entrance** (DESIGN PHASE)

FUND: BBB - BEAUTIFICATION

**Description** – Project to bring Library Entrance into ADA compliance with new handicap ramp and new overall vision for the entrance. Public art will be incorporated into project and an artist is being brought onto the design team. Project includes upgrades to landscaping, handicap parking, parking lot, and hardscape.

### **Project Update:**

- Artist contract was awarded at Dec. 1 City Council Meeting.
- WLB Group is working on conceptual plans for entrance.
- Project Team continues to work on incorporating feedback from the *Commission on Inclusive and Adaptive Living* and other stakeholders.



*Library Entrance Project-Existing Conditions*



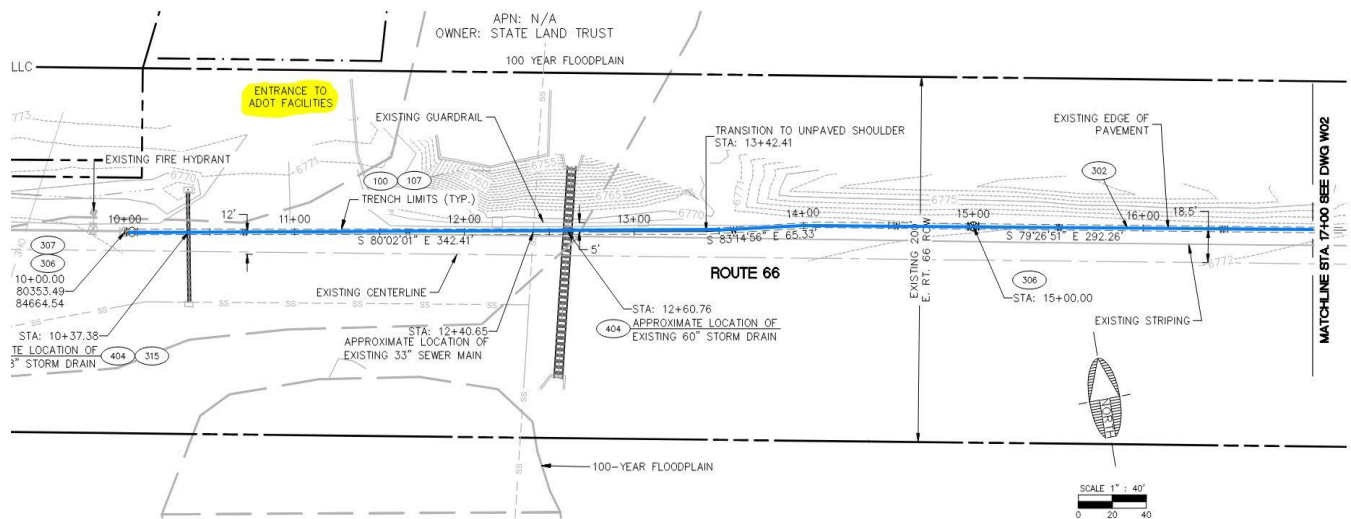
## East Route 66 and El Paso Flagstaff Waterline Extension (DESIGN PHASE)

FUND: AGING INFRASTRUCTURE

**Description** – A utility improvements project that extends the 12" ductile iron waterline approximately 2,450 linear feet from approximately the intersection of Test Dr. and Rt. 66 to the intersection of El Paso Flagstaff Rd. The waterline extension continues north, up El Paso Flagstaff Rd towards the Wildcat Treatment plant, with approximately 1,600 linear feet of new 8" ductile iron waterline. The project also calls for a repave of El Paso Flagstaff Rd. for the extents of the waterline extension.

### **Project Update:**

- A second civil plan submittal was submitted to the City for review on the week of 11/30
- Capital Staff is working with the Real Estate Manager to secure easements on State land for the new waterline
- Plans are being coordinated with the proposed Industrial Park to the east, a private development project, to allow them water access and to mitigate future pavement cuts into the new road
- Tentative construction schedule is to construct the waterline extension along Rt. 66 and El Paso Flagstaff Road during winter of 2020-21 followed by the paving of El Paso Flagstaff Road in the spring of 2021



*Current civil plan set in review, blue line represents the starting point of the waterline extension that begins just west of the ADOT facilities driveway and Rt 66 intersection.*

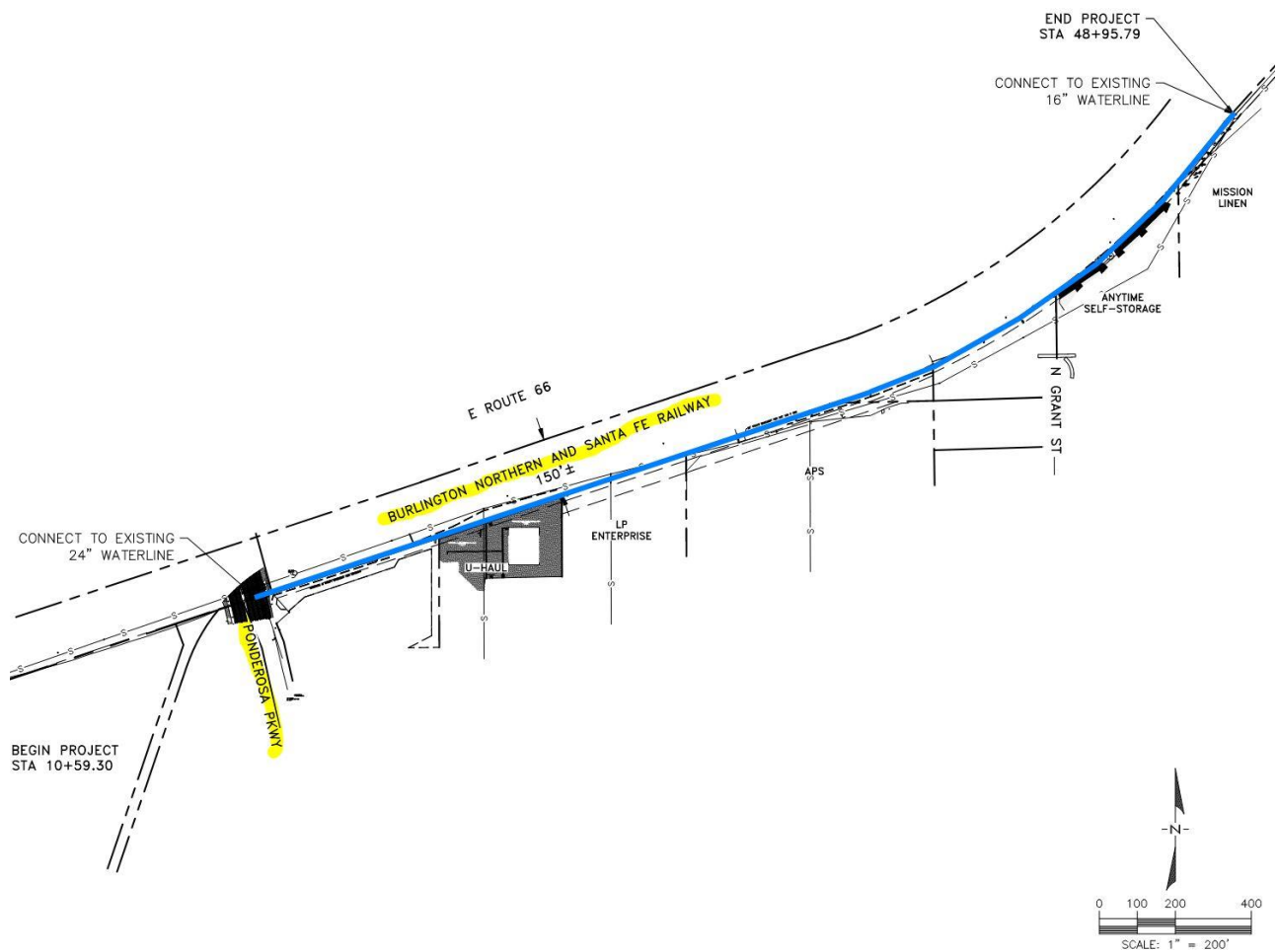
## **Huntington Waterline Replacement** (CONSTRUCTION PHASE)

FUND: AGING INFRASTRUCTURE

**Description** - The Project consists of installing 3,000 LF of new 16" ductile iron waterline, and associated roadway improvements. Included in the project will be new water services, fire hydrants and air release valves. The existing waterline in this area is over 60 years old. This project is part of the City's ongoing aging water infrastructure replacement program.

### **Project Update:**

- Plans have received approval from the City and ADEQ to construct
- A bid package has been sent to our Purchasing Department for advertising
- Current working schedule has a proposed start of construction in late February of 2021



*Vicinity Map of improvements, blue line represents the new 16" waterline*

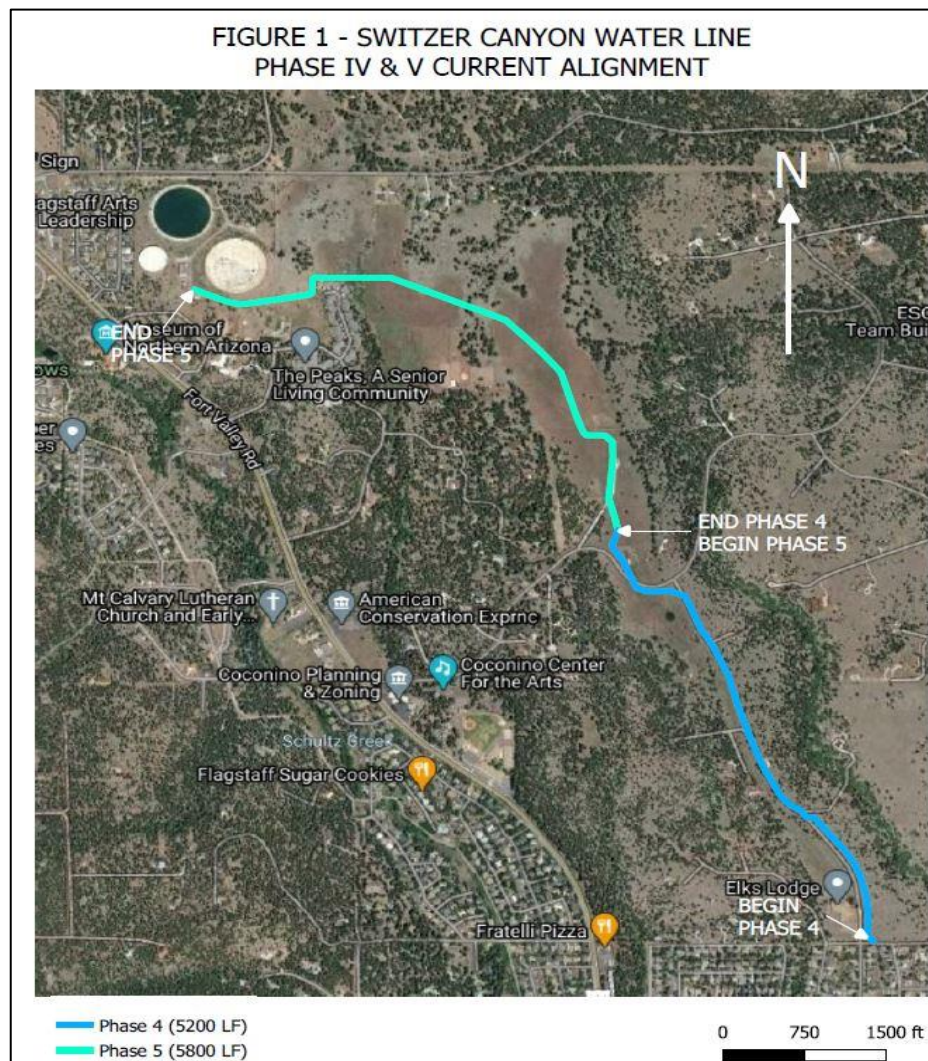
## Switzer Canyon Transmission Main Phase IV & V (Design Phase)

FUND: AGING INFRASTRUCTURE

**Description** – The Project consist of installing two new transmission mains, 24" and 16", that will complete the distribution system, zone A and B, from the Downtown area to the City Reservoirs near Cheshire. The length of Phase IV and V is approximately 11,000 feet. The project is within City limits and the urban distribution service area within the County. Included in the project will be the two water mains with appurtenances, new bundled water meter/service locations and fire hydrants.

### **Project Update:**

- Property acquisition is underway with legal descriptions, environmental clearances and site assessments.
- Phase V is in the planning phase to define the final alignment.
- Construction of Phase IV is anticipated for 2021
- Construction of Phase V is anticipated for 2022
- 90% level plans were submitted by Turner Engineering for City review of Phase IV
- Staff anticipates presenting the out of City water services request to the City Council on January 19<sup>th</sup> for final approval.





## **Fir Avenue Waterline Replacement** (CONSTRUCTION PHASE)

FUND: AGING INFRASTRUCTURE

**Description** - The Project consists of installing 3,000 feet of new 8" DIP, 100 feet of new 6" DIP and associated roadway improvements. Included in the project will be new water services, fire hydrants and Air Release Valves. The project is in the Mount Elden Park Subdivision, north of Flagstaff Medical Center. The project is approximately three blocks of Fir Avenue and one block of Mesa Avenue.

### **Project Update:**

- The scope of work for the project has been substantially completed as of November 6, 2020.
- Contractor has completed the punch list work and City staff is verifying. Fire Flows of the new hydrants have been completed and are acceptable.
- The contractor has provided watering measures of the seeded areas to ensure restoration and stabilization occurs as planned.
- New infrastructure will reduce failures of the existing water system resulting in flooding of private properties downstream of Fir Avenue and Mesa Drive.
- New infrastructure will also reduce the costly operation and maintenance of the existing water system by minimizing the frequency of breaks and material failures.



*Restoration efforts for Fir Avenue, between Marion Drive and Beaver Street.*



## **Industrial Waterline Replacement** (CONSTRUCTION PHASE)

FUND: AGING INFRASTRUCTURE

**Description** - A utility improvements project on E. Industrial Drive from approximately Steves Boulevard to N. Caden Court. The improvements consist of replacing approximately 2,050 feet of 16" ductile iron waterline, associated paving for the waterline trench, removal and replacement of curb, gutter and valley gutter. The existing waterline in this area is over 60 years old. This project is part of the City's ongoing aging water infrastructure replacement program.

### **Project Update :**

- A letter of substantial completion has been issued
- Capital Staff is working through As-builts and ADEQ testing results
- The Contractor is working this week to complete all items on the final punch list; striping, valve adjustments & hydroseeding of disturbed soils
- A final walkthrough has been scheduled for the week of 12/14



*Industrial Drive ready for striping and valve adjustments, Industrial Dr. looking east*



## **Summit Waterline Replacement** (CONSTRUCTION PHASE)

FUND: AGING INFRASTRUCTURE

**Description** - Approximately 3,300 ft of new waterline, water services, fire hydrants, and pavement reconstruction. The City intends to replace the water infrastructure and pavement on: S. Walnut Street from Santa Fe Avenue to Coconino Avenue; S. Sycamore Street from Santa Fe Avenue to Grand Canyon Avenue; S. Spring Street from Montvale Avenue to Grand Canyon Avenue; W. Summit Avenue from Santa Fe Avenue to end; and W. Santa Fe Avenue from Walnut Street to Thorpe Road. Waterline only will be installed on W. Montvale Avenue from Santa Fe Avenue, to end. The existing waterlines in this area range from 58 to more than 90 years old. This project is part of the City's ongoing aging water infrastructure replacement program.

### **Project Update:**

- Project is in winter shutdown.
- Walnut St and Sycamore St have been paved.
- All underground work is complete.
- Final pavement to be installed in Spring 2021.
- Select replacement of sidewalk panels and curb and gutter.



*Summit Water Project-Trenches patched for winter*

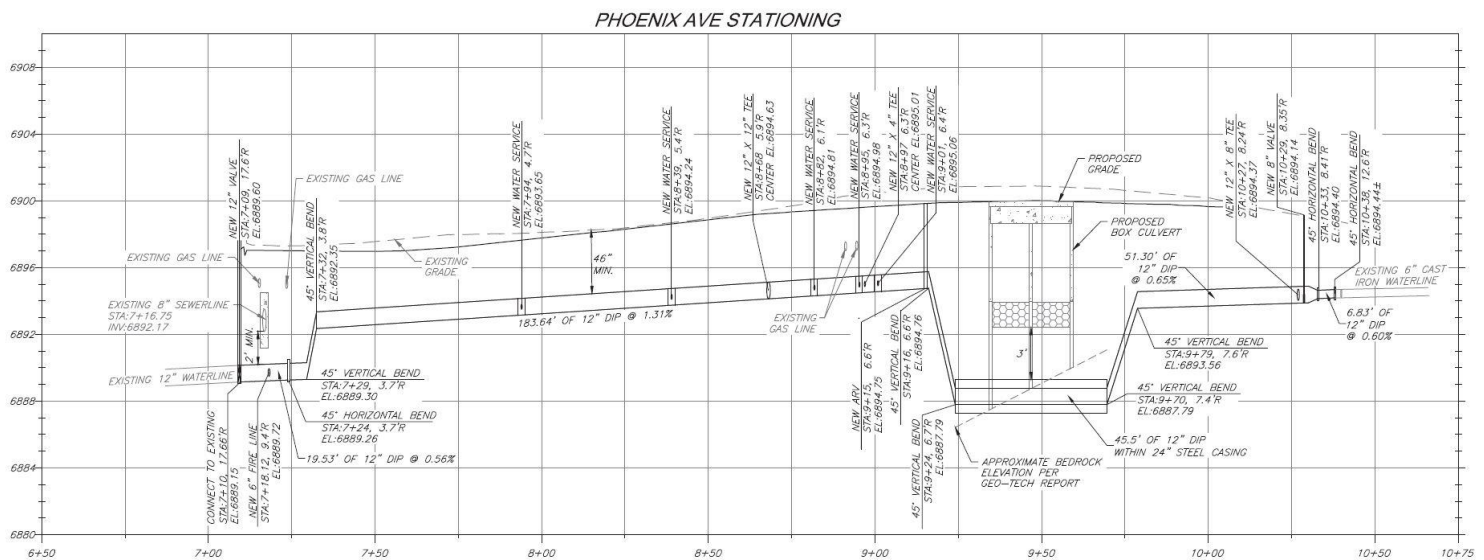
## Phoenix Avenue Bridge and Waterline Replacement (DESIGN PHASE)

FUND: STORMWATER & AGING INFRASTRUCTURE

**Description** - The project will replace the Rio de Flag box culvert (which runs beneath Phoenix Avenue and the Zani building, and functions as the Phoenix Ave bridge) with the appropriate conveyance structure and will upsize the current waterline to a 12" waterline in Phoenix Avenue from Mikes Pike to Beaver Street. Phoenix Avenue will be reprofiled and lowered to achieve a standard street section, roadway surface drainage issues will be addressed, edge improvements will be made as needed and the roadway will be repaved. The existing waterline in this area is over 114 years old. This project is part of the City's ongoing aging water infrastructure replacement program.

### Project Update:

- First review of the Civil Plans has been completed with review comments being sent back to the consulting Design Engineer for modifications/revisions.
- A meeting was held in late September with City Staff and the consulting Structural Engineer to discuss plans for rehabilitating the beam under Zani.
- A meeting was held in Late September with City Staff and the consulting Design Engineer to discuss strategy on construction logistics to mitigate impacts to businesses in the area.
- Construction is targeted to begin in spring of 2021.



*Proposed cross-section of Phoenix Ave. showing new 12" DIP waterline and box culvert*

## **Rio de Flag Flood Control Project** (DESIGN PHASE)

FUND: STORMWATER & AGING INFRASTRUCTURE

**Description** - Design consists of channel improvements along both the Rio de Flag and Clay Avenue Wash channels, and the construction of an underground concrete confluence structure. The channelization of Clay Avenue Wash channel will begin at an upstream inlet structure transitioning into an open rectangular concrete channel and then transitioning into an underground reinforced concrete box channel ending at the confluence on Clay Avenue Wash and Rio de Flag, total length is approximately 5,000 feet. The channelization of the Rio de Flag channel will begin at an upstream inlet structure transitioning into an underground reinforced concrete box channel with an open earthen channel above (composite channel) and then transitioning into the underground confluence structure. From the confluence structure, the Rio de Flag channel will be re-routed out of the Southside, along the BNSF railroad tracks, then transitioning into an open trapezoidal channel with riprap placed on invert and side slopes. Work includes widening and deepening by large scale excavation, grading, and compacted fill; disposal of excess excavated material; installing over 1 mile of underground reinforced concrete box channel, riprap slope protection, critical underground concrete confluence hydraulic structure, drainage culverts, many utility relocations, landscaping and mitigation planting, asphalt concrete paving, access ramps, safety railing and appurtenant work. Construction methods will include hard rock excavation during grading and utility excavation, groundwater dewatering, shoring, environmental cleanup and disposal and cut slope and trench stabilization.

### **Project Update:**

#### **100% Construction Plans**

- The City's consultant (Shephard Wesnitzer, Inc.) and the US Army Corps consultant (Tetra Tech) continue to coordinate on project design items including the channel crossing on ADOT right-of-way at the Milton Road and Butler Avenue intersection, utility relocations, and design of the project on BNSF Railway property.
- On December 2, Council awarded an engineering contract Change Order to Shephard Wesnitzer, Inc. for substantial completion of the utility relocation design, right-of-way documents, composite channel design, and survey tasks.
- Several public involvement items have been created and posted to the project website, including:
  - Photo simulations and video for the Flood Wall, Composite Channel, Open Channel (Clay Wash) and Open Channel (Lower Reach).
  - A virtual meeting room that has project exhibits and information.
  - A Southside Community Interview video.
  - The link and web address for the Rio de Flag Public Information page is <https://www.flagstaff.az.gov/4189/Rio-De-Flag-Flood-Control>.

#### **Property acquisition status - Phase I**

- The City's consultant (Shephard Wesnitzer, Inc.) and the US Army Corps consultant (Tetra Tech) continue to refine the project property acquisition exhibits in anticipation of property appraisals.

#### **BNSF Railway**

- A technical team meeting was held on November 19 with US Army Corps of Engineers, BNSF Railway and City staff. Items discussed were the project mitigation items and the real estate agreement.
- A follow-up meeting is scheduled for December 17. Agenda items include BNSF's presentation of engineering details and cost estimating of the mitigation items, and developing a path forward for the establishment of the Construction and Maintenance agreement.

#### **Internal & external meetings**

- Staff held weekly meetings for daily issues related to the project.



- Staff presented the December Council update at the December 8 Work Session.
- On December 2, staff held a meeting between the US Army Corps Real Estate group and the project engineers to advance the property acquisition items and general design coordination.
- On December 1, Mayor Coral Evans and Vice Mayor Adam Shimoni hosted a meeting and tour for the US Army Corps LA District Commander Colonel Julie Balten and her staff. Topics of discussion included the importance of the flood control project to the safety and economic security of our community, the severe impacts of flooding on the Southside community and the need to safeguard the overall community from future flooding. BNSF Railway coordination, real estate acquisition and project schedule were also highlighted.



*Mayor Coral Evans and Vice Mayor Adam Shimoni engaging with Colonel Julie Balten, LA District Commander and David Van Dorpe, US Army Corps Deputy Engineer.*



*Mayor Coral Evans explains the importance of the Rio de Flag Project at a location in the Southside neighborhood that is severely impacted by annual flooding.*

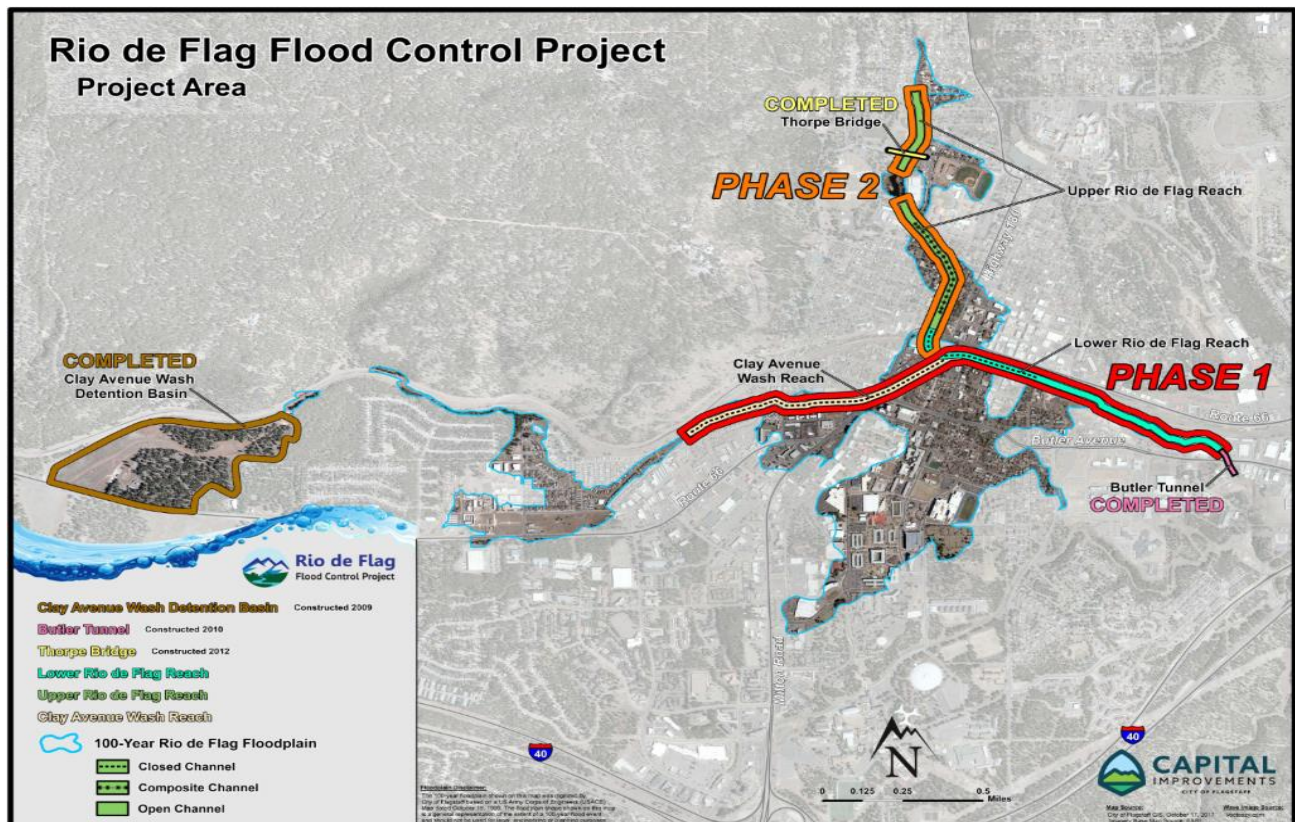


*The group visited the Thorpe Road Bridge over the Rio de Flag. This bridge was constructed in 2012 and is one of the major components completed for the project. L to R: Vice Mayor Adam Shimoni, Mayor Coral Evans, City Engineer Rick Barrett, USACE LA District Commander Colonel Julie Balten, City Project Manager Christine Cameron, USACE Deputy Engineer David Van Dorpe.*





Aspen Avenue in vicinity of City Hall & Library



Rio de Flag Project Location Map

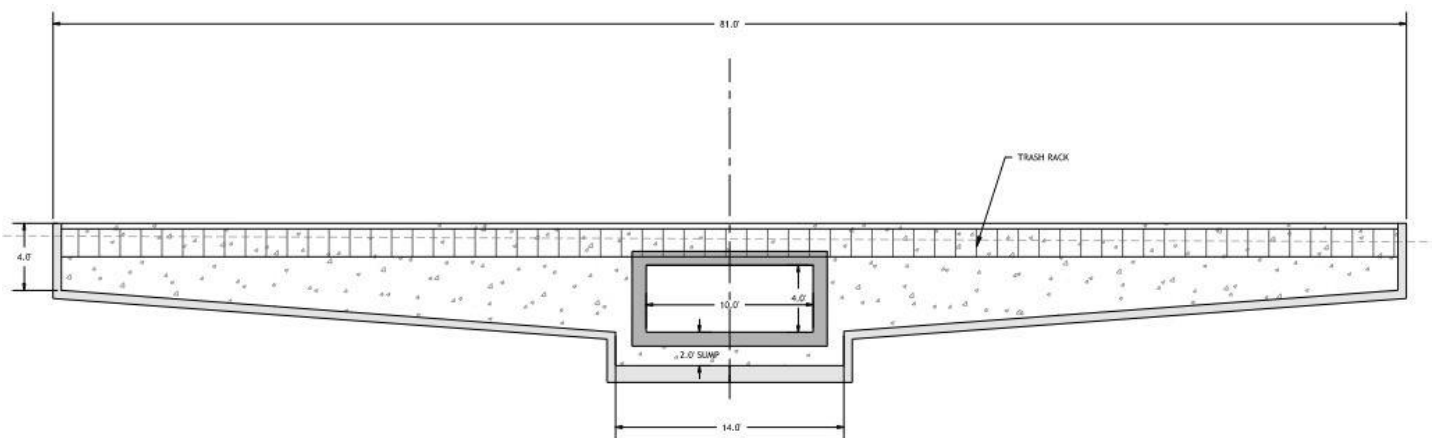
## Steves Boulevard Wash at Soliere (DESIGN PHASE)

FUND: STORMWATER

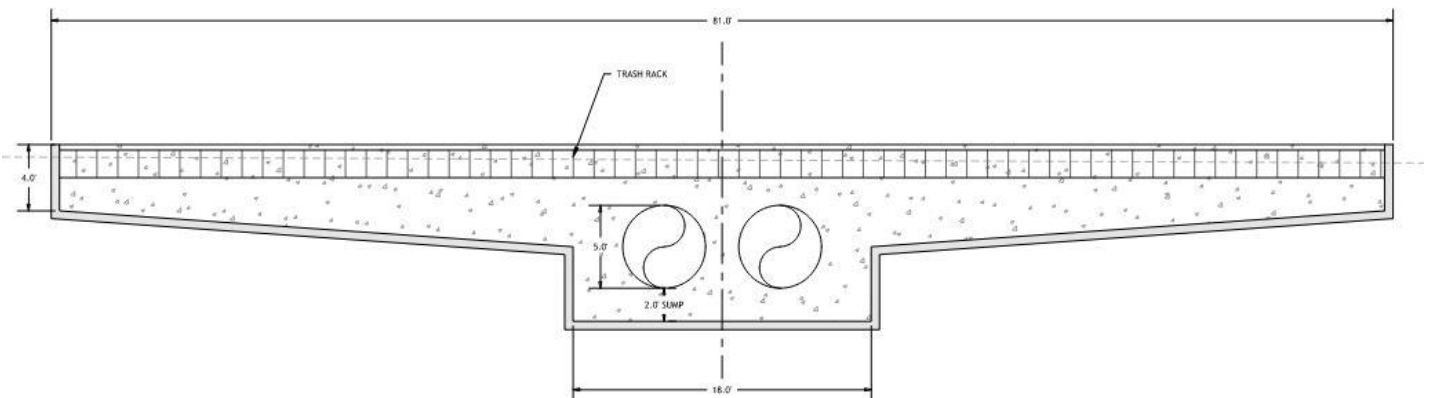
**Description** – This is a stormwater improvements project to eliminate the low water crossing from Steves Boulevard Wash at Soliere Ave. and to mitigate downstream flooding of private property.

### **Project Update:**

- A 30% plan submittal was made by the Design Consultant, Peak Engineering, on the week of 12/7 presenting two stormwater conveyance structure options. Both options would convey stormwater runoff from Steves Boulevard Wash under Soliere Ave., removing the low water crossing, and leaving the roadway profile at its existing elevation.
- A meeting has been scheduled for 12/17 with City Staff and Peak Engineering to discuss both stormwater conveyance structure options.
- A kickoff meeting was held on October 20<sup>th</sup> with Peak Engineering, JE Fuller, and City Staff to discuss scope, project goals, budget and to determine a project schedule.



*Soliere Ave. in section, stormwater conveyance structure **Option #1**: A 10'x4' concrete box culvert*

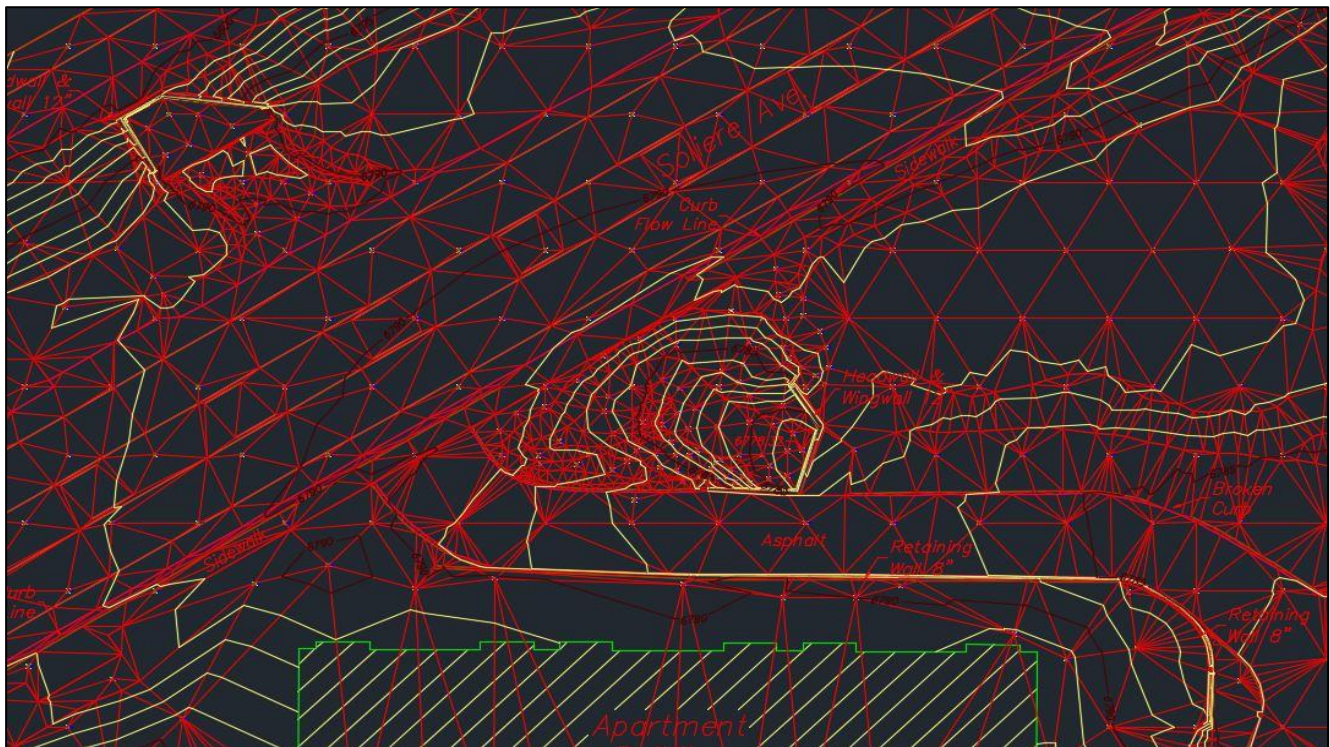


*Soliere Ave. in section, stormwater conveyance structure **Option #2**: Two 60" corrugated metal pipes*





*Google Earth image of existing low water crossing across Soliere Ave. Current condition allows stormwater to discharge from the box culvert and across Soliere Ave. Planned improvements will convey stormwater underneath Soliere Ave.*



*Topographical land survey of existing low water crossing across Soliere Ave.*



## **Wildcat Hill Wastewater Treatment Plant (WHWWTP) Digester Complex** (DESIGN PHASE)

FUND: WATER SERVICES-SEWER

**Description** – Project consists of a two-tank digester complex with a digester control building, piping to connect new/existing systems, boilers, heat exchangers, sludge recirculation system, and gas handling system. The purpose of this project is to significantly increase the Bio-solids handling capacity of the wastewater treatment plant.

### **Project Update:**

- Capital Staff has compiled a RSOQ document for advertising that has been sent to our Purchasing Division
- Delivery method will be a Design-Bid-Build
- Design is targeted for 2021 and construction is anticipated for 2022-2023.



*Existing Wildcat Plant, red circles represent proposed location of the two new digesters*

## **Route 66 ADOT Bridge Replacement Project** (CONSTRUCTION PHASE)

FUND: ARIZONA DEPARTMENT OF TRANSPORTATION

**Description** – Project consists of removing the existing concrete bridge that crosses the Rio de Flag channel and replacing with a precast box girder bridge with precast abutments. Included with the project are roadway approach slabs on either side of the new bridge, channel improvements with bank protection and revegetation mitigation measures. The purpose is to provide a new Route 66 bridge crossing at the Rio de Flag to serve Route 66/Milton.

### **Project Update:**

- The ADOT contractor, FNF Construction, is contracted to complete the work by October 2021.
- Traffic Control, lane closures and detours are in affect when construction is in progress.
- The contractor placed the concrete for the wingwall footing on the northeast side of the bridge, and the contractor placed concrete for the wingwall on the northwest side of the bridge.
- The contractor is working on the southside of Route 66, east and west, to begin the excavation of the wingwalls.
- ADOT continues to update City staff on construction matters and will release information to the public through media releases.
- During the week of December 7<sup>th</sup>, the contractor and ADOT will begin a modifications to the traffic control plans to assist with excavation, trench protection and delivery of materials.



*Wingwall excavation at the northeast side of the new bridge*



*Trench shoring box preparation using a 90 ton crane*

## COVID-19 Updates

## EXECUTIVE SUMMARY:

**INFORMATION:**

**Attachments:** City Presentation  
Coconino County Presentation  
Dr. Engelthaler Presentation



# COVID-19 Update







# Agenda



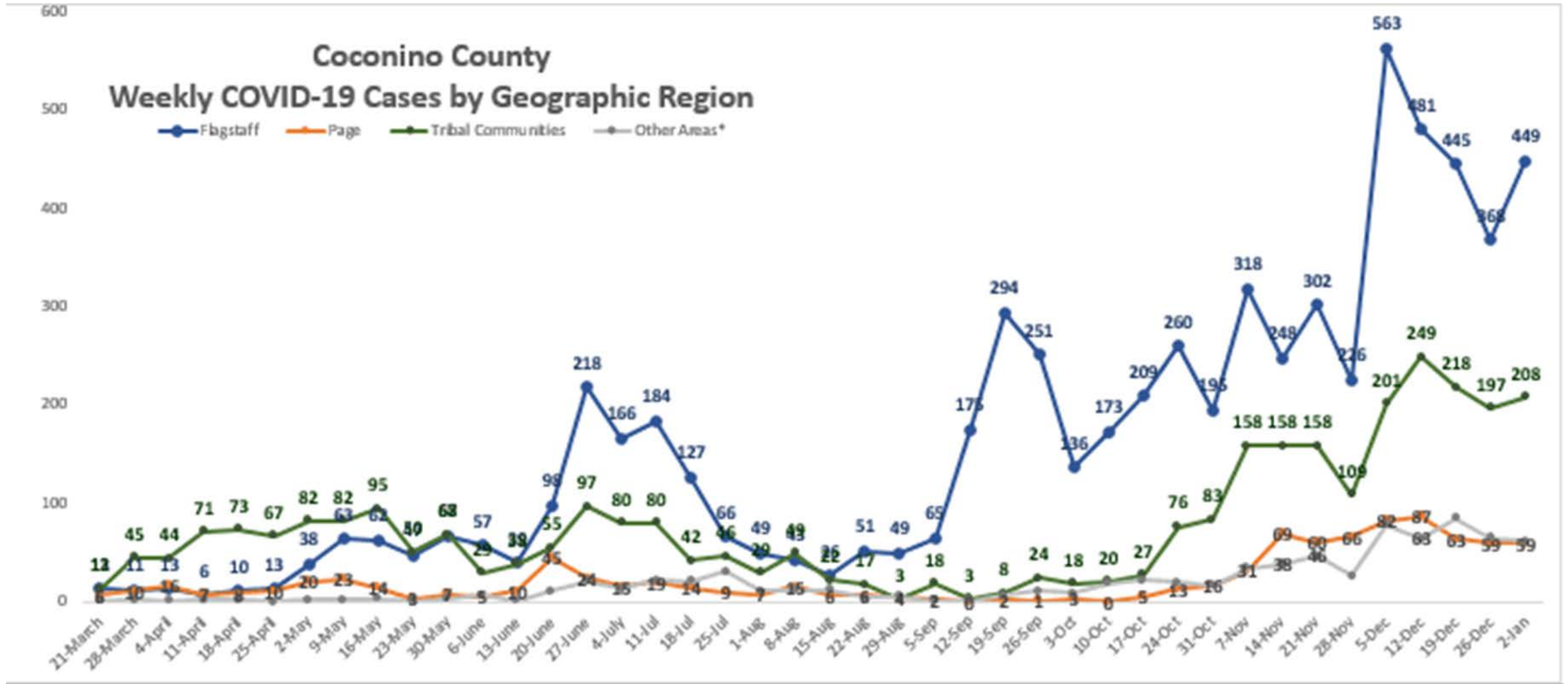
- The Data
  - Coconino County Health and Human Services (CCHHS) dashboard
  - Arizona Department of Health Services (ADHS) business operations dashboard
  - Northern Arizona Healthcare (NAH) hospital census
  - Navajo Nation
  - Hopi Tribe
- Indigenous Nations Update
- Coconino County Health and Human Services
- Northern Arizona University
- Dr. Engelthaler Update

# The Data





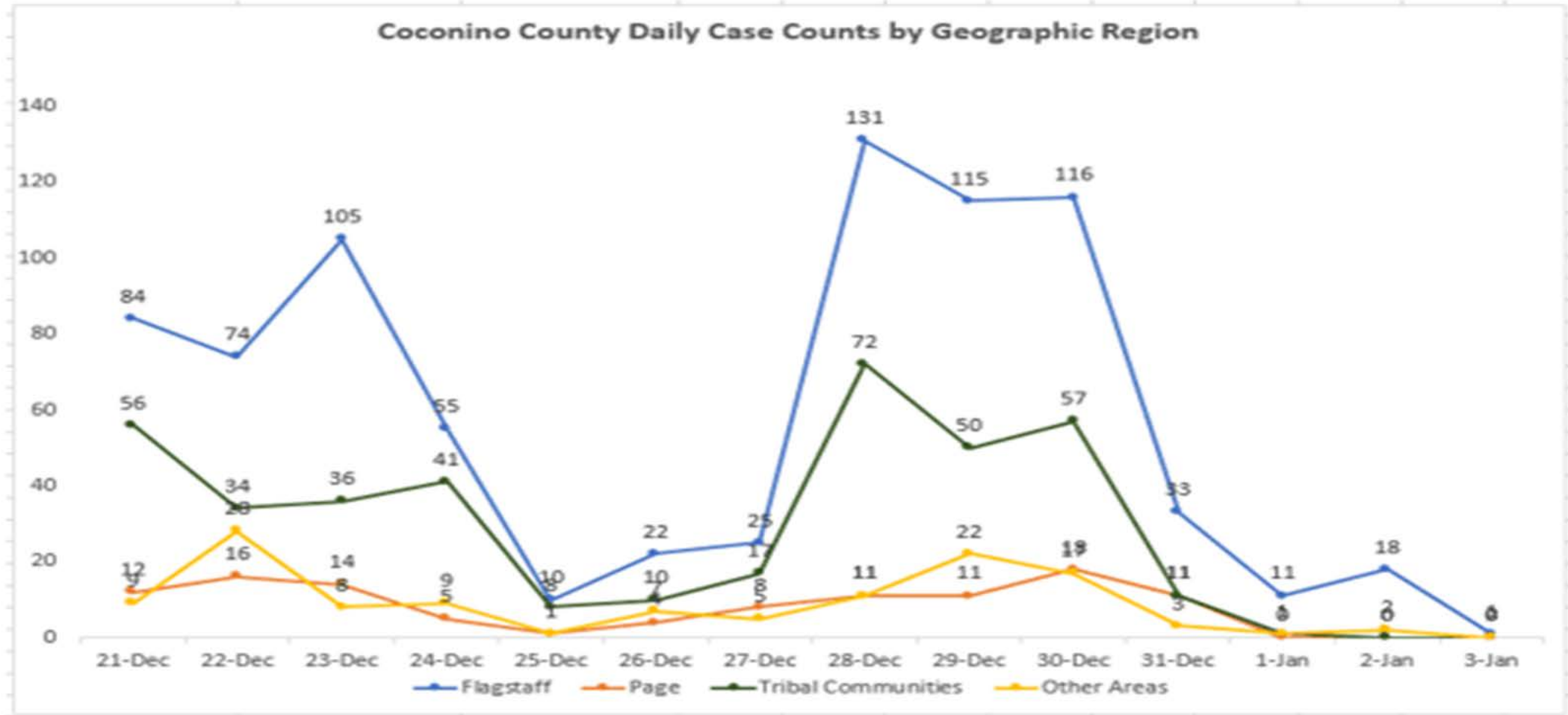
# CCHHS: COVID-19 Weekly Cases







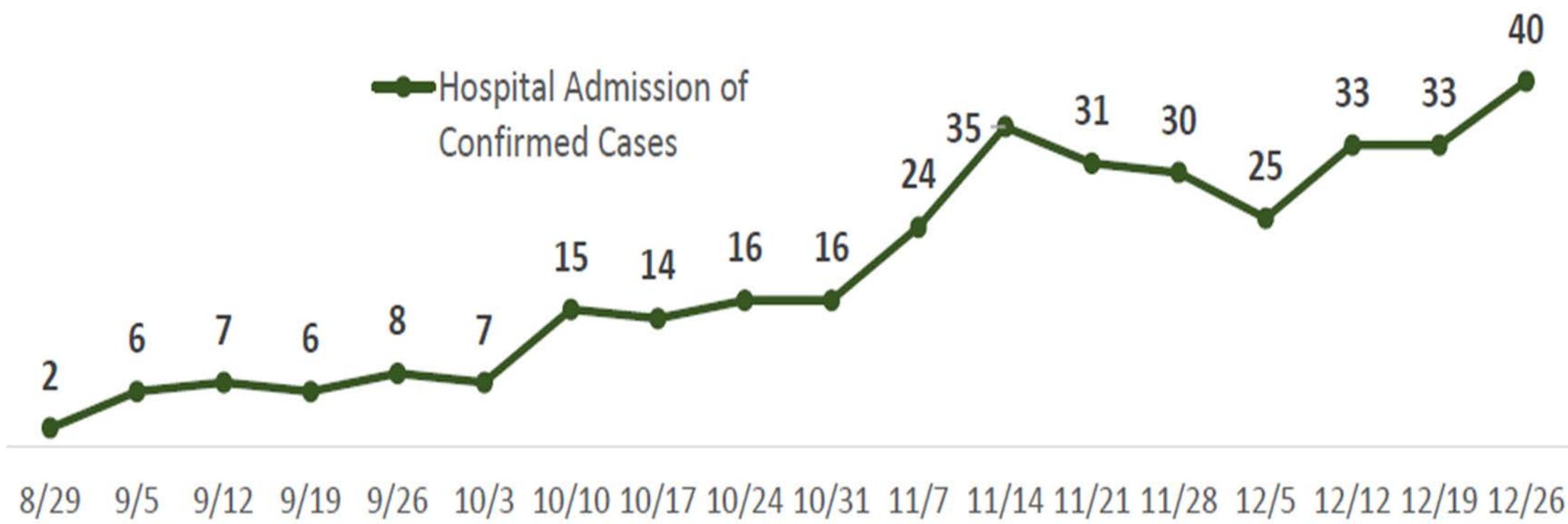
# CCHHS: COVID-19 Daily Cases





# CCHHS: Hospital Admissions

## Weekly Case Counts Among Coconino County Residents:





# CCHHS: Hospital Admissions

## Hospitalizations

(not all hospitals are currently reporting hospitalization data to Coconino County):

	Banner Page Hospital	Flagstaff Medical Center	Tuba City Regional Healthcare
Adult ICU Bed Availability (N)	1	3	2
Adult ICU Bed Availability (%)	33%	7%	20%
Emergency Department Bed Availability (N)	7	10	30
Emergency Department Bed Availability (%)	78%	28%	100%
Med/Surg Bed Availability (N)	2	28	0
Med/Surg Bed Availability (%)	11%	19%	0%

CCHHS School  
Update report as of  
January 4, 2021

\*Hospital bed availability is determined based on bed availability as well as standard staffing schedules. Additional beds may be available that are not currently staffed.

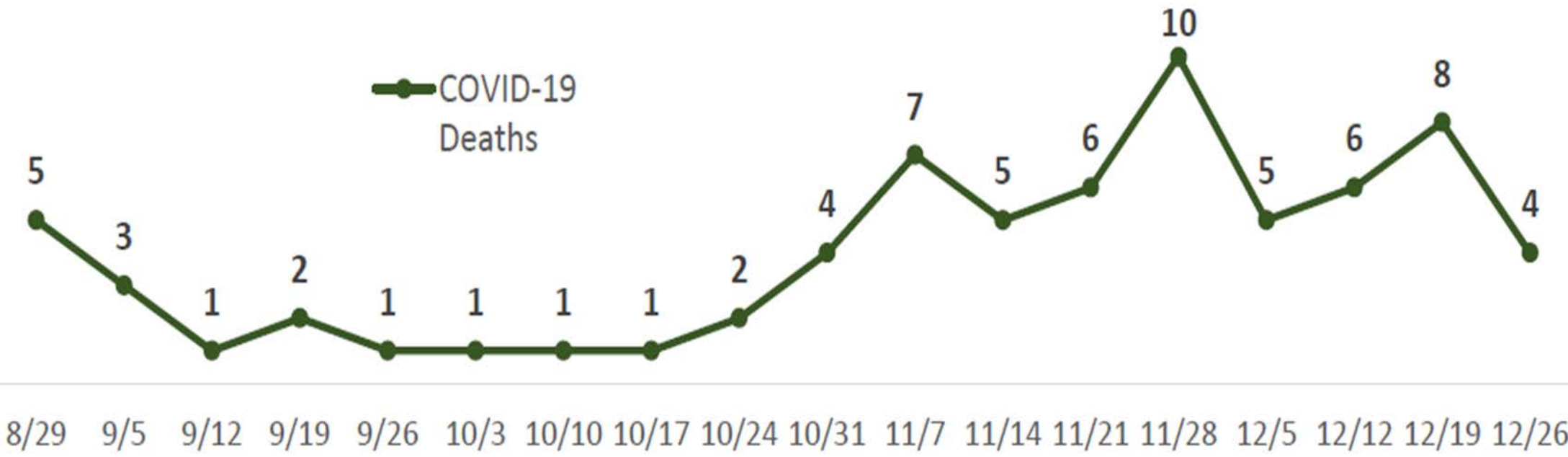




# CCHHS: COVID-19 Related Deaths



Weekly COVID-19 Deaths Among Coconino County Residents:





# CCHHS: Community Transmission

## Community Transmission

- Coconino County has a current **incidence rate of 465.5 per 100,000, percent positivity of 14.4%\***, and **COVID-19-Like-Illness incidence (CLI) of 25.5%\*\***.
- Coconino County is currently at a **substantial\*\*\*** level of community transmission.

Benchmarks	Minimal	Moderate	Substantial
Cases	<10 cases/100,000	10-100 cases/100,000	>100 cases/100,000
Percent Positivity	<5%	5-10%	>10%
COVID-19-Like-Illness	<5%	5-10%	>10%



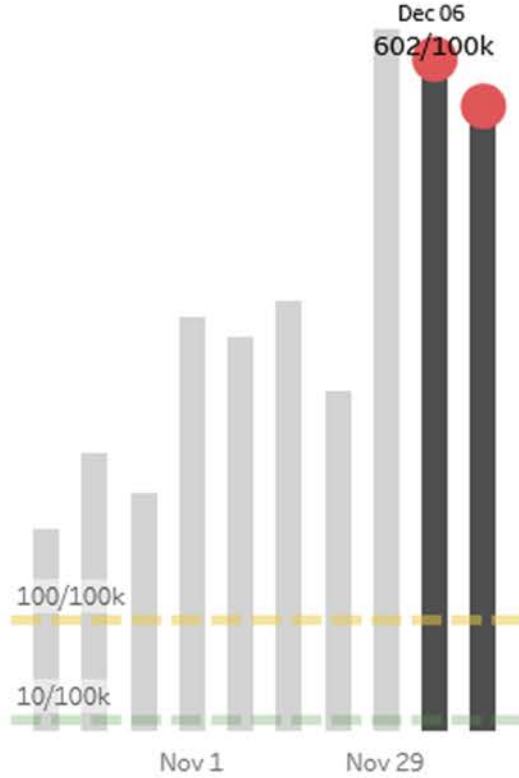
# ADHS Dashboard



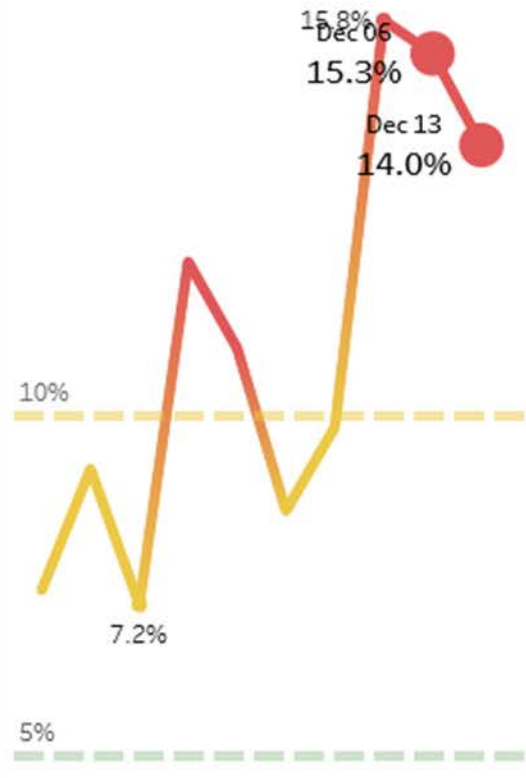
Showing data for **Coconino County** (Northern Region)

Business Reopening Status: **Substantial**

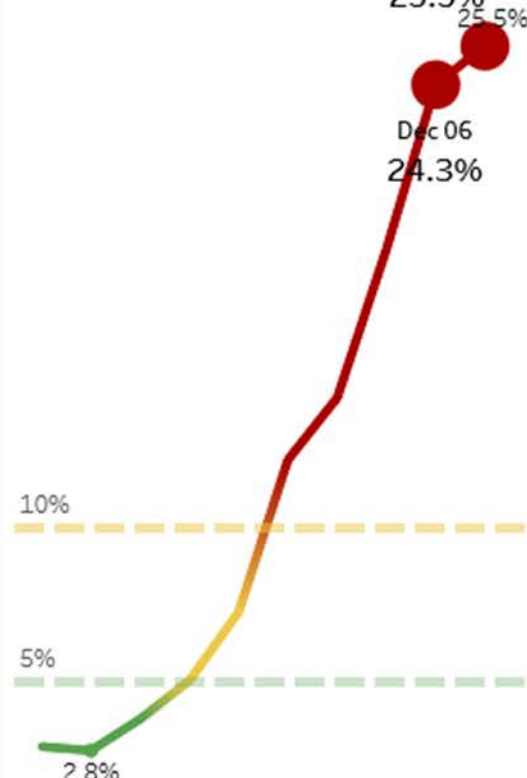
1) Cases per 100,000 individuals



2) Percent positivity



3) Hospital visits for COVID-like illnesses in the region

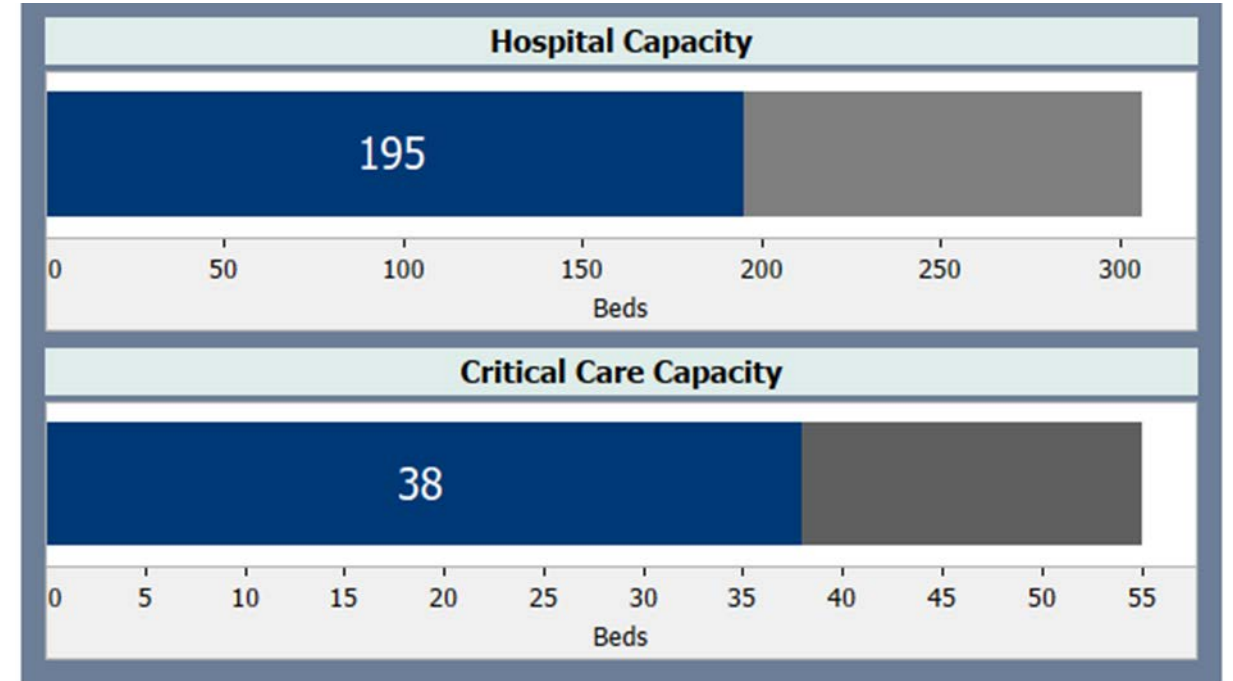
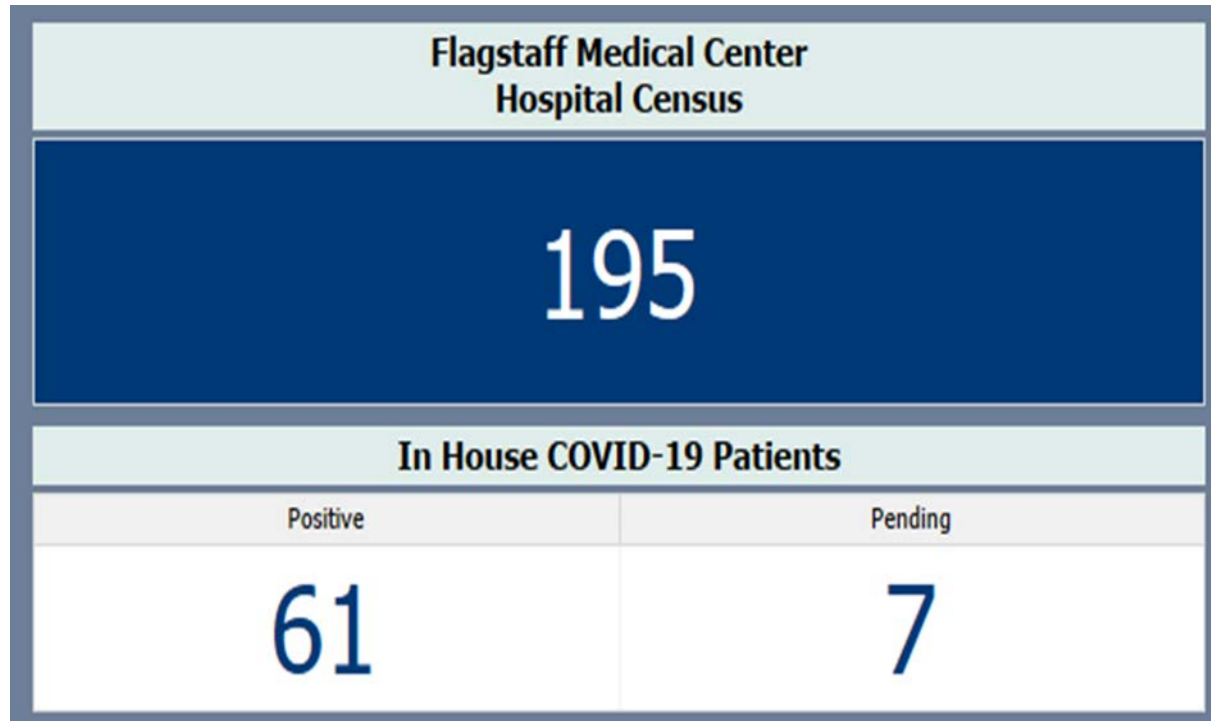


Data as of  
December 31,  
2020





# NAH: Hospital Census



Data as of January 4, 2021



# Indigenous Nations Data

## Navajo Nation

	Difference in 17 days	Current Week 1/3/21	Previous Week 12/17/20
Total Tested	+ 17,896	205,373	187,477
Negative Cases	+ 13,663	167,308	153,645
Confirmed Positive Cases	+ 3,333	23,728	20,395
Recoveries	+ 1,343	12,191	10,848
Deaths	+ 87	819	732



# Indigenous Nations Data

## Hopi Tribe

	Difference in <u>15</u> days	12/29/20 KUYI Radio FB	12/14/20 KUYI Radio FB
Total Tested	+ 658	7,054	6,396
Negative Cases	+ 453	6,037	5,584
Positive Cases	+ 153	906	753
Hopi Tribal members	+ 169	777	608



# Indigenous Nations Update





# Indigenous Nations Update

## • Navajo Nation

- The Public Health Emergency Order (Stay at Home/Shelter in Place) was extended.
- The IHS Navajo Area has received 11,800 doses of vaccine and another 11,700 has been set aside to provide second doses to those individuals.
- Indian Health Service (HIS) is prioritizing administration of the vaccine to health care personnel in clinical settings and residents of long-term-care facilities.
- Navajo Tribal Utility Authority (NTUA) has completed CARES Act funded projects that have brought electricity to 713 homes so far, exceeding goal of 510 homes.
- NTUA continues to make progress with water cistern projects, residential solar unit installations, watering point improvements, and broadband and cellular tower projects.

**Information on Navajo Nation website:**

Navajo Nation website <https://www.navajo-nsn.gov/>

Nez/Lizer Facebook <https://www.facebook.com/NezLizer2018/>



# Indigenous Nations Update

- Hopi Tribe
  - Executive Stay at Home Order
  - Hopi reports as of 12/29, the cumulative positive COVID-19 cases of Hopi Tribal members has increased.
  - Hopi Jr & Sr High School has canceled our winter season sports for the 2020-2021 school year.

## Information on Hopi Tribe Website:

CARES Act Committee <https://www.hopi-nsn.gov/hopi-tribe-cares-act-committee/>

Hopi Tribe Website <https://www.hopi-nsn.gov/>

Hopi Tutuveni <https://www.hopi-nsn.gov/news/hopi-tutuveni/>



# Coconino County Health and Human Services Update



# Northern Arizona University Update



# Dr. Engelthaler Update





# Council Questions





KIM MUSSELMAN, IC COVID RESPONSE-  
HHS INTERIM DIRECTOR

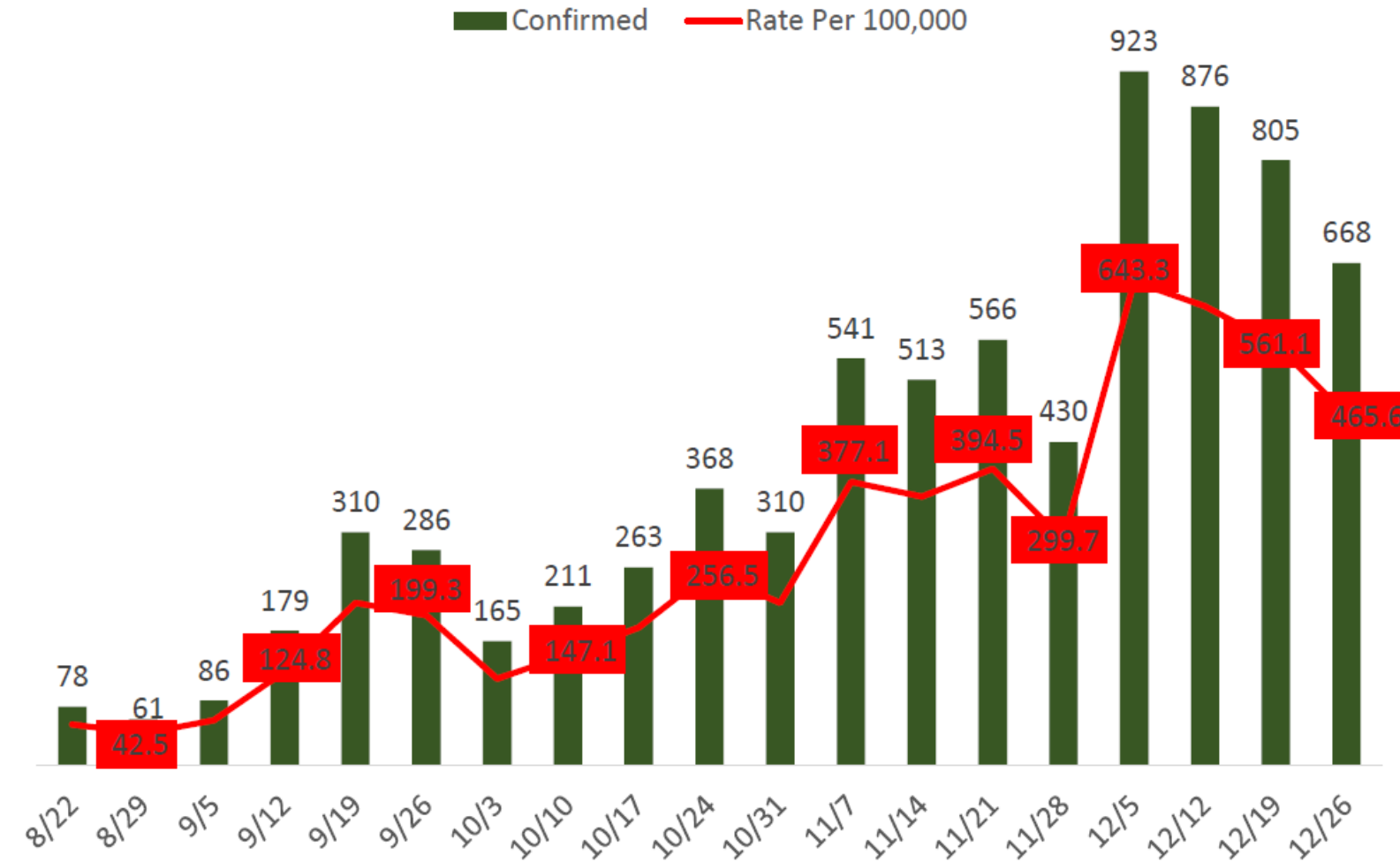
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1.5.2020

# Coconino County COVID-19 Data



## Weekly Case Counts Among Coconino County Residents:



Confirmed & Probable Cases as of 1.3.21:  
**11,587**

Flagstaff: 6,675

86001: 2,751

86004: 2,671

86005: 889

86011: 364

Tribal Communities – 3,209

Page – 921

Williams – 332

Grand Canyon Village/Tusayan - 102

Other Areas – 348

**Cumulative Percent positive: 14.4%**

Negative Tests: 75,672

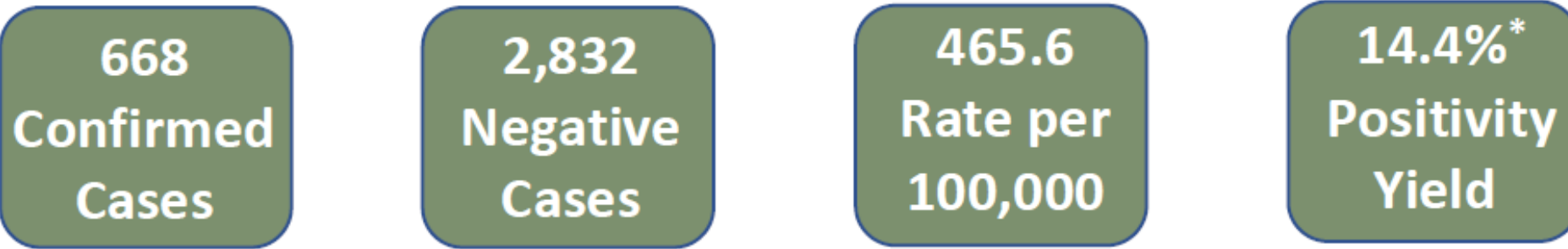
COVID-19 Deaths: 201 (2% of total Cases)

Hospitalizations

Total: 877

Current: 20

## Cases Reported Week 52 (December 20 - December 26, 2020):



### Community Transmission

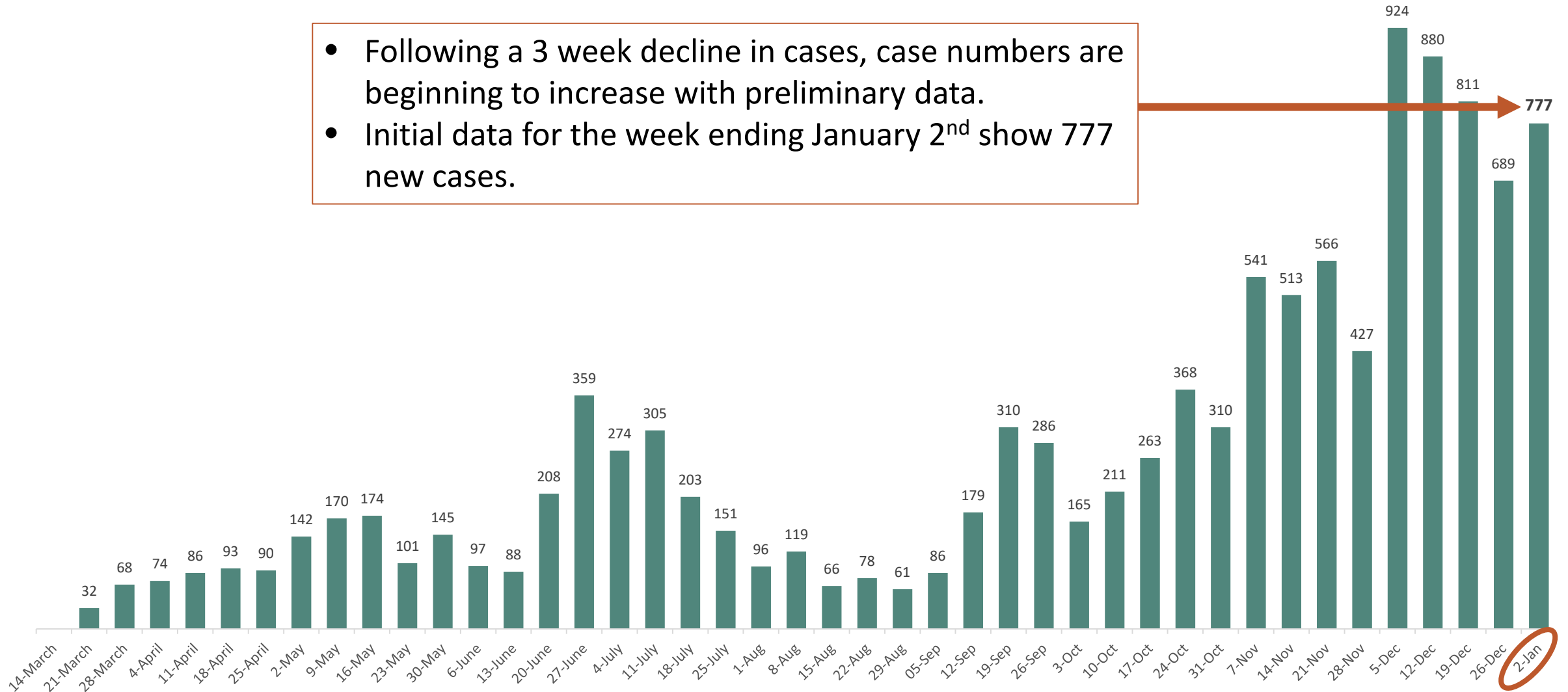
- Coconino County has a current **incidence rate** of **465.5 per 100,000**, **percent positivity** of **14.4%\***, and **COVID-19-Like-Illness incidence (CLI)** of **25.5%\*\***.
- Coconino County is currently at a **substantial\*\*\*** level of community transmission.

Benchmarks	Minimal	Moderate	Substantial
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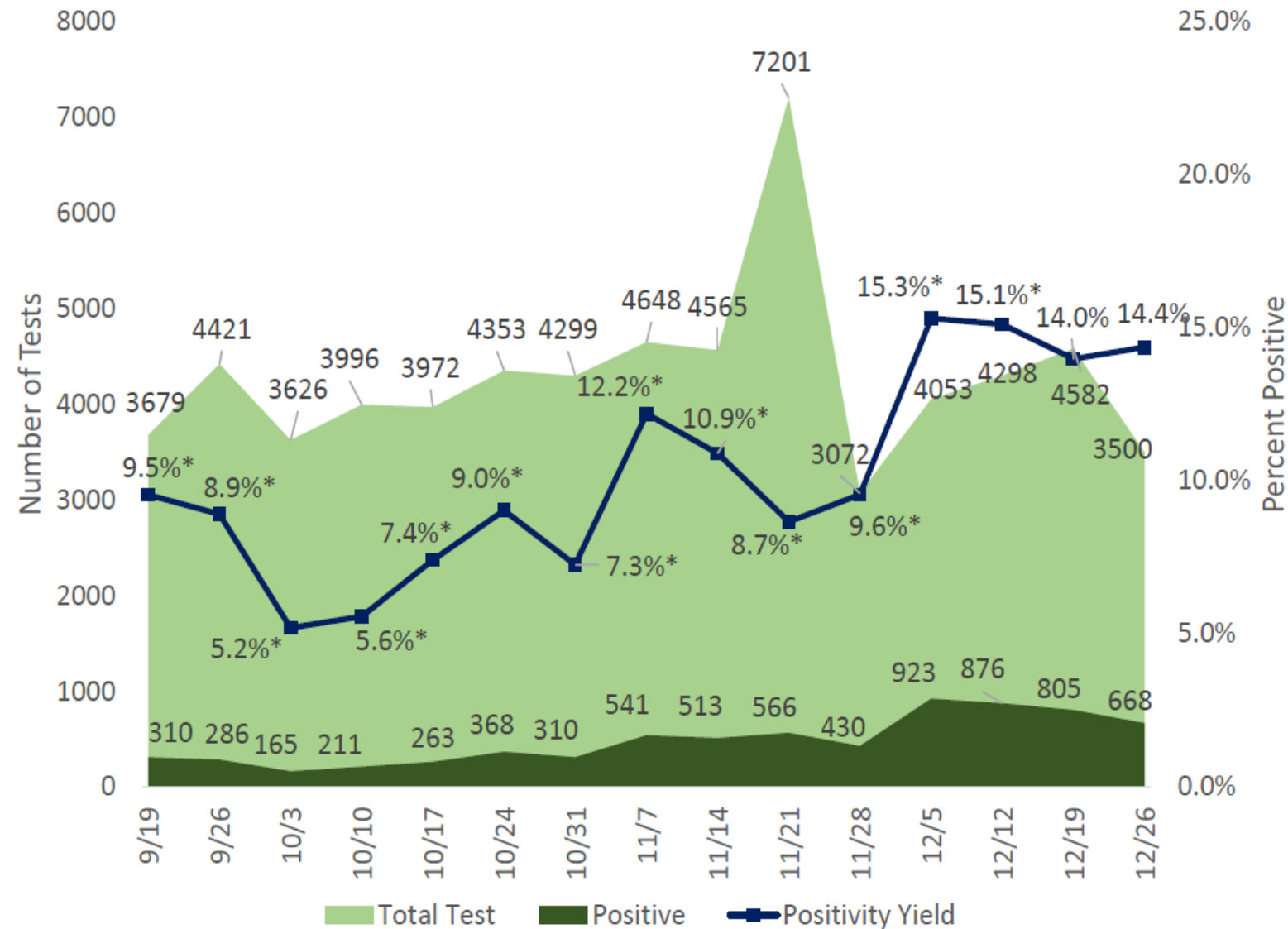


# Coconino County COVID-19 Weekly Cases

- Following a 3 week decline in cases, case numbers are beginning to increase with preliminary data.
- Initial data for the week ending January 2<sup>nd</sup> show 777 new cases.



# COVID-19 TESTING BY WEEK:



\*Percent positivity was calculated using only ELR data due to insufficient reporting.

Coconino  
County  
Testing by  
Week

# Testing Operations

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- Fort Tuthill Operations are continuing in partnership with ASU Saliva Testing
  - Fort Tuthill Testing Hours: Mon-Fri 10am-3pm, Sat 8am-12pm (Saliva testing only)
  - Saliva Testing and NP Testing
  - There will be no NP Swabbing at Fort Tuthill on January 7<sup>th</sup>, and one day/week when CCHHS staff are providing mobile testing events in outlying communities.
- NAU Testing Resumes Wednesday, January 6<sup>th</sup> at NAU Field House 9a-2p Mon-Sat
- Upcoming Events:
  - January 7<sup>th</sup> – Tusayan at the IMAX Theater from 9:00am – 1:00pm. CCHHS and ASU will be hosting the event and provide NP swabs/Saliva testing.
  - January 15<sup>th</sup> – Williams – location and time TBD. CCHHS and ASU will provide NP swabs/Saliva testing.
  - January 21<sup>st</sup> – Page – location and time TBD. Canyonlands, CCHHS, and ASU will be hosting the event and providing NP/Saliva testing.

# COVID-19 Vaccine Update

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# COVID-19 Vaccine Update

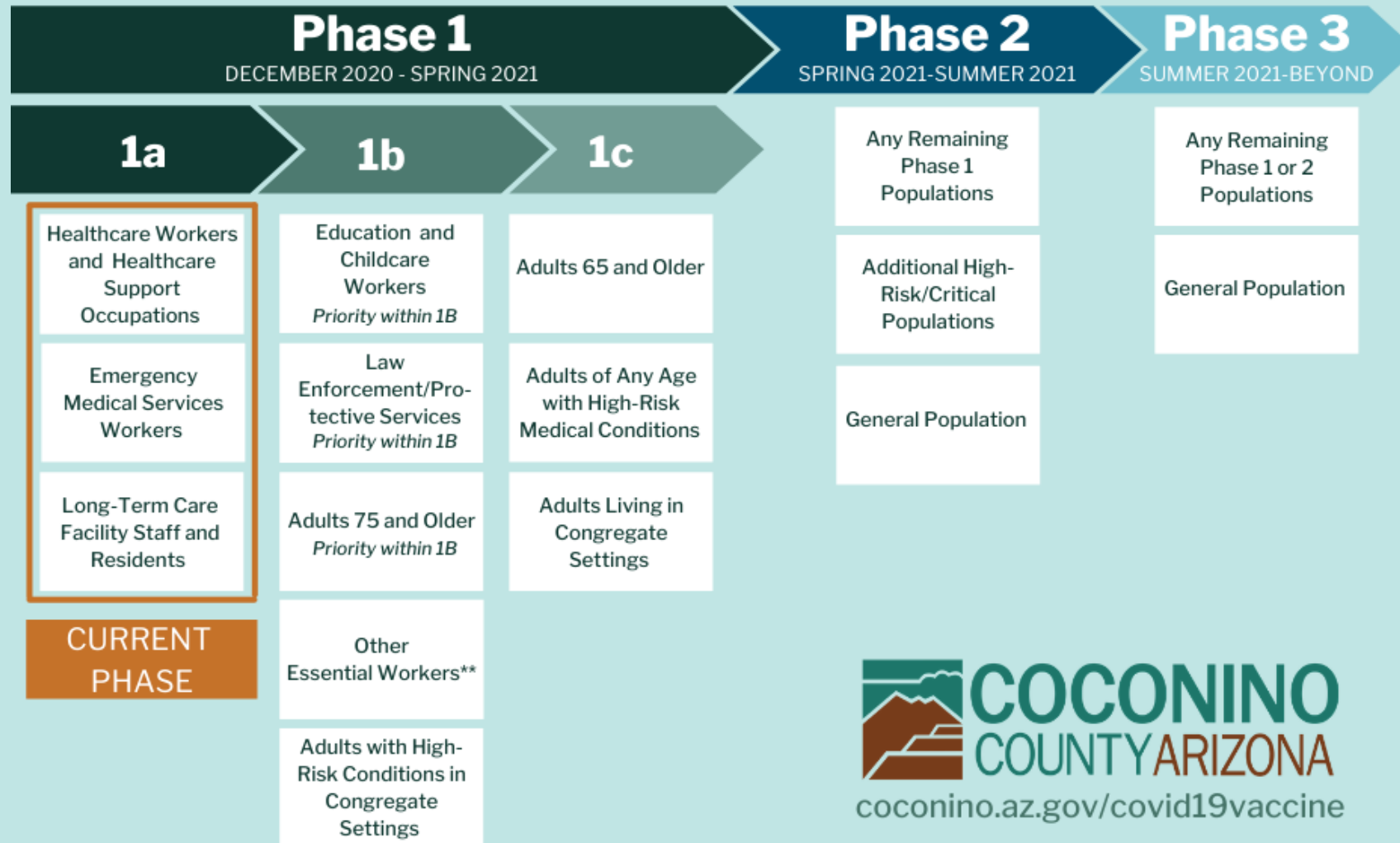
## **Coconino County CCHHS staff have begun priority Phase 1a vaccination efforts at Fort Tuthill (1/4/21)**

- Vaccines for CCHHS Staff: Pre-Opening Vaccine Event
  - 52 HHS Clinic and Testing Site Staff were vaccinated last week (12/30 & 12/31) during a 'pre-vaccination event'
  - The purpose of the event was to ensure the vaccine site and procedures are ready to receive up to 1000 registrants in priority group 1a during the week of January 4<sup>th</sup>
- Priority group 1a Vaccinations Update:
  - 1000 individuals are registered for vaccination the week of Jan. 4<sup>th</sup>
  - NAH has vaccinated over 1,010 staff
  - Page Banner and NCHC are also vaccinating staff and other healthcare workers, data reporting is being updated
- One tray (975 doses) of the Pfizer vaccine became available and was ordered this week
- Coconino County's total allocation: Increased to just over 8,600 for Phase 1a (First doses, with second doses guaranteed)
- Ordering will continue to be available weekly
- To date, 7275 vaccines have been ordered.

# COVID-19 Vaccine & Executive Order Update

- In preparation for Phase 1b, Coconino County is looking at partnering with local pharmacies to assist with the administration of vaccines for Phase 1b.
- Governor Ducey released [Executive Order 2020-62 - Ensuring Efficient Administration of COVID-19 Vaccine](#)
  - EO Requires the county to prominently display vaccination information
  - To comply with this EO, Coconino County will roll out a new dashboard displaying the number of vaccines administered in Coconino County on the COVID-19 webpage next week.
  - Dashboard will include the current Phase of vaccinations, and overview of Phase populations.
- Priority groups continue to be refined and redefined by ACIP and VAPAC committees.
  - This week essential government services have been moved up to Phase 1b.
  - Due to limited vaccine supply and other extenuating factors, we anticipate there will be additional prioritization within Phase 1 b populations
  - Priority groups are determined based on the highest level of risk.

# Potential Coconino County COVID-19 Vaccine Prioritization



*\*Distribution groups and timelines of phases shown are tentative. This information is subject to change due to future vaccine distribution guidance recommendations, FDA approval of vaccines, and vaccine allocation/availability.*

*\*\*Power and utility workers; food and agriculture-related occupations; transportation and moving material occupations; state and local government workers providing critical services; other essential workers.*

# COVID-19 Vaccine Phase

## By Arizona County

County	Phase Vaccinating	Total Vaccines Administered	Vaccination Rate* (per 100,000)
Apache	Phase 1A	136	189
Cochise	Phase 1A	2,067	1,580
Coconino	Phase 1A	1,946	1,321
Gila	Phase 1B	543	984
Graham	Phase 1A	151	392
Greenlee	Phase 1A	133	1,281
La Paz	Phase 1A	96	434
Maricopa	Phase 1A	60,803	1,392
Mohave	Phase 1A	2,808	1,294
Navajo	Phase 1A	1,306	1,157
Pima	Phase 1A	20,335	1,946
Pinal	Phase 1B	2,694	592
Santa Cruz	Phase 1A	326	613
Yavapai	Phase 1A	1,970	847
Yuma	Phase 1A	2,089	908
Statewide	--	101,030	1,405

**NOTE:** Doses administered in the last 24 hours may not be included in this report.

Updated: 1/5/2021



# PPE Blitz: Update

---

- Coconino County is hosting a PPE Blitz for Healthcare, First Responder and School Communities on **Friday, January 22, 2021 from 9:00AM – 2:00PM**
  - Following receipt of additional PPE from ADHS, partners were notified of availability of free PPE to stabilize their operations and supplement their current inventory.
- Partners received order forms for PPE including:
  - Eye protection (glasses/goggles)
  - Face Shields
  - Gloves
  - Disposable Gowns
  - Reusable Gowns
  - Masks – Surgical, N95, KN95, Cloth



# COVID-19 - The Update

Jan 5, 2021

**Dave Engelthaler, PhD, MS**

Director, TGen North

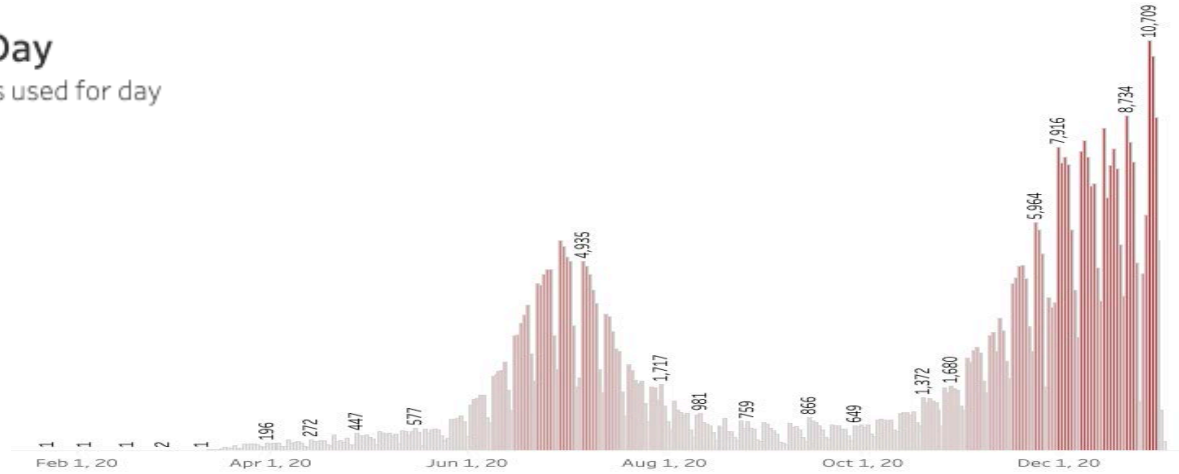
Translational Genomics Research Institute

# The State of COVID (1/4/2021)

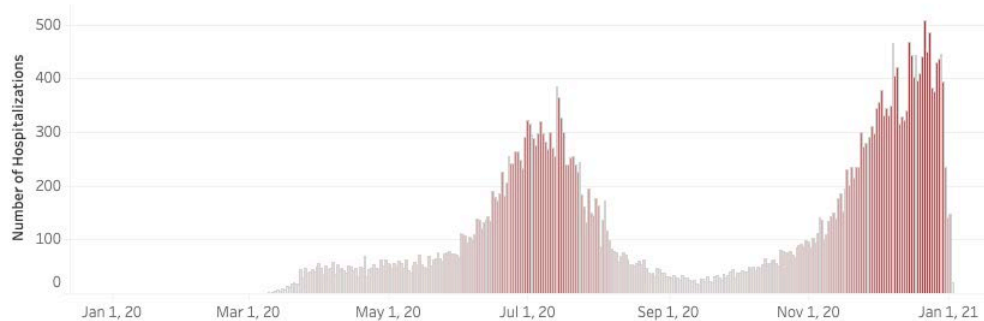


## COVID-19 Cases by Day

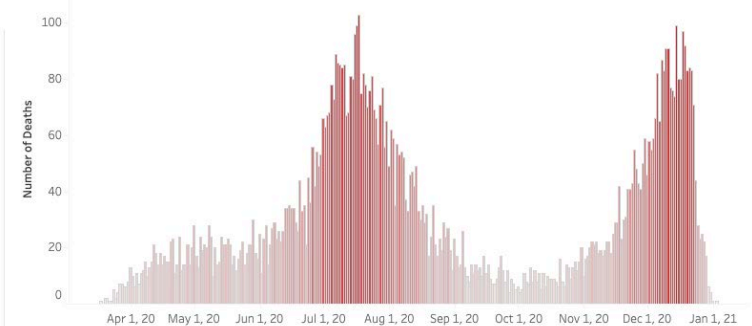
Date of specimen collection is used for day



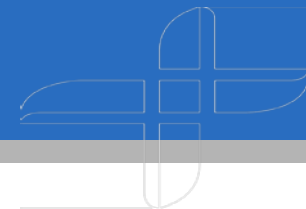
## Number of COVID-19 Cases that are Hospitalized by Date of Hospitalization



## COVID-19 Deaths by Date of Death



# COVID Fatalities - AZ (1/4/2021)

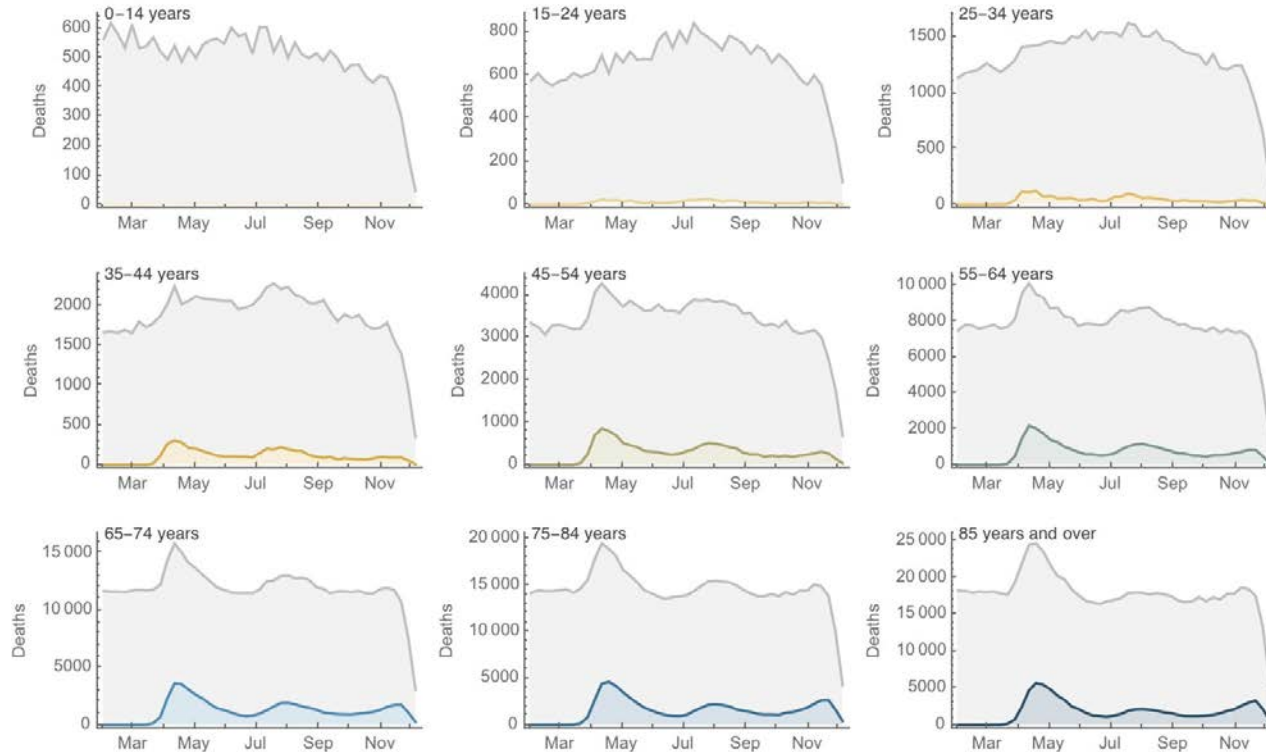
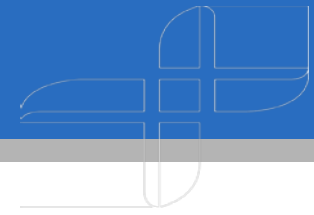


Age Group	# of Fatalities	Case Fatality Rate	% of Total Deaths
<20	15	0.017%	0.17%
20-44	452	0.18%	4.99%
<45	467	0.14%	5.15%
45-54	582	0.70%	6.42%
55-64	1339	2.00%	14.77%
>65	6673	9.12%	73.62%
<b>TOTAL</b>	<b>9064</b>	<b>1.70%</b>	<b>100%</b>

The Kids are Alright – The Grandparents are Not!



# COVID and All Cause Mortality



# COVID Impact on Native American: Deaths

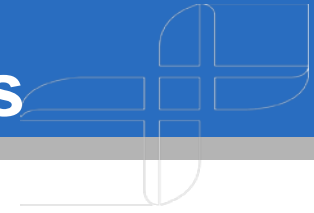
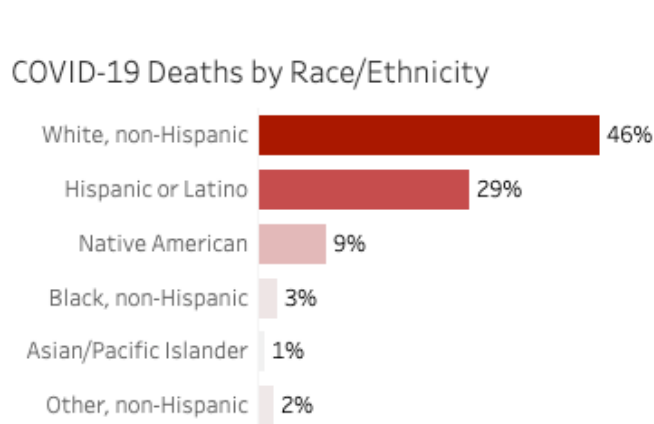
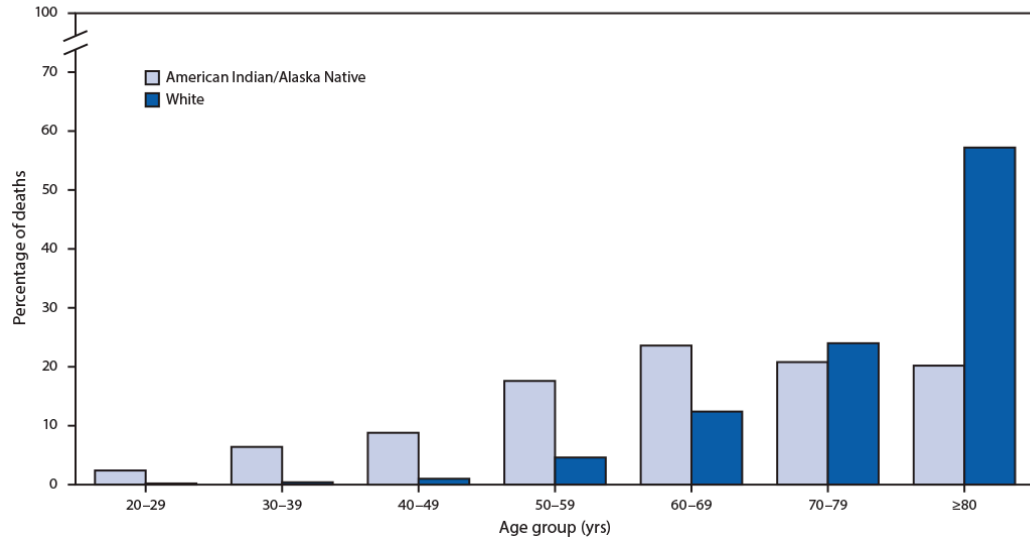


FIGURE. Percentage distribution of COVID-19–associated deaths among American Indian/Alaska Native\* and non-Hispanic White persons aged  $\geq 20$  years, by age group<sup>†</sup> — 14 states,<sup>§</sup> January 1–June 30, 2020

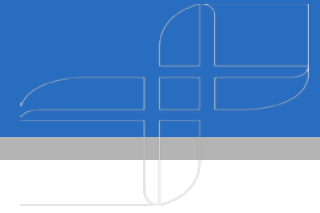


Source: ADHS



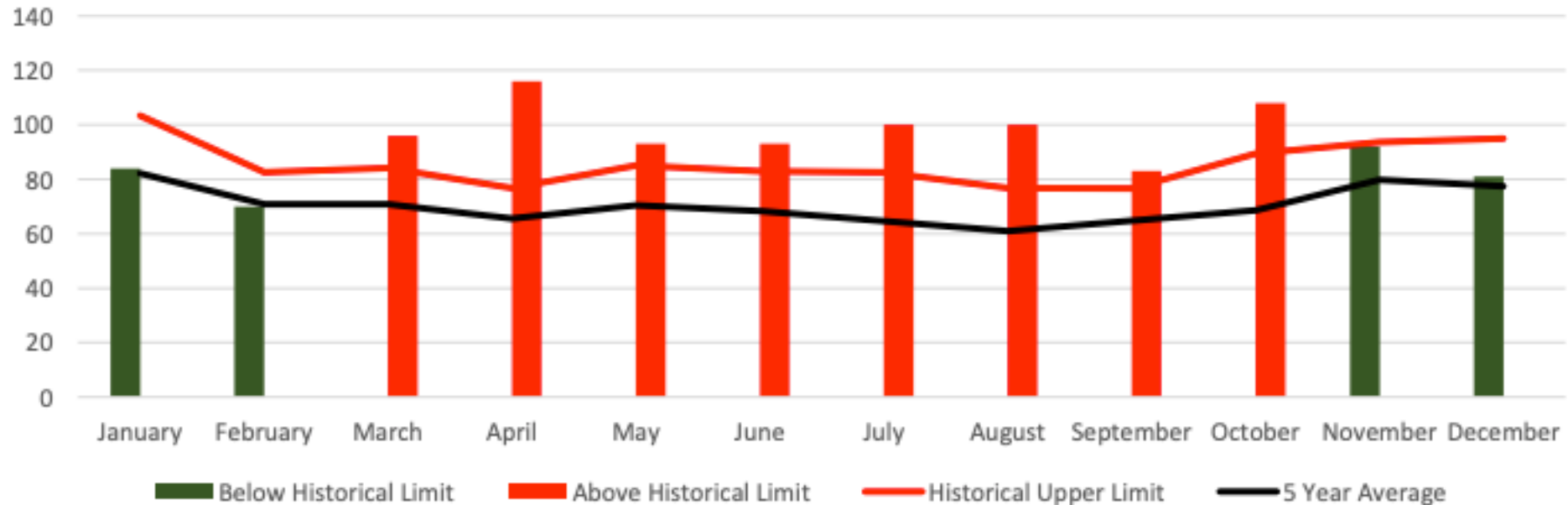
Source: CDC

# Deaths in the Time of COVID

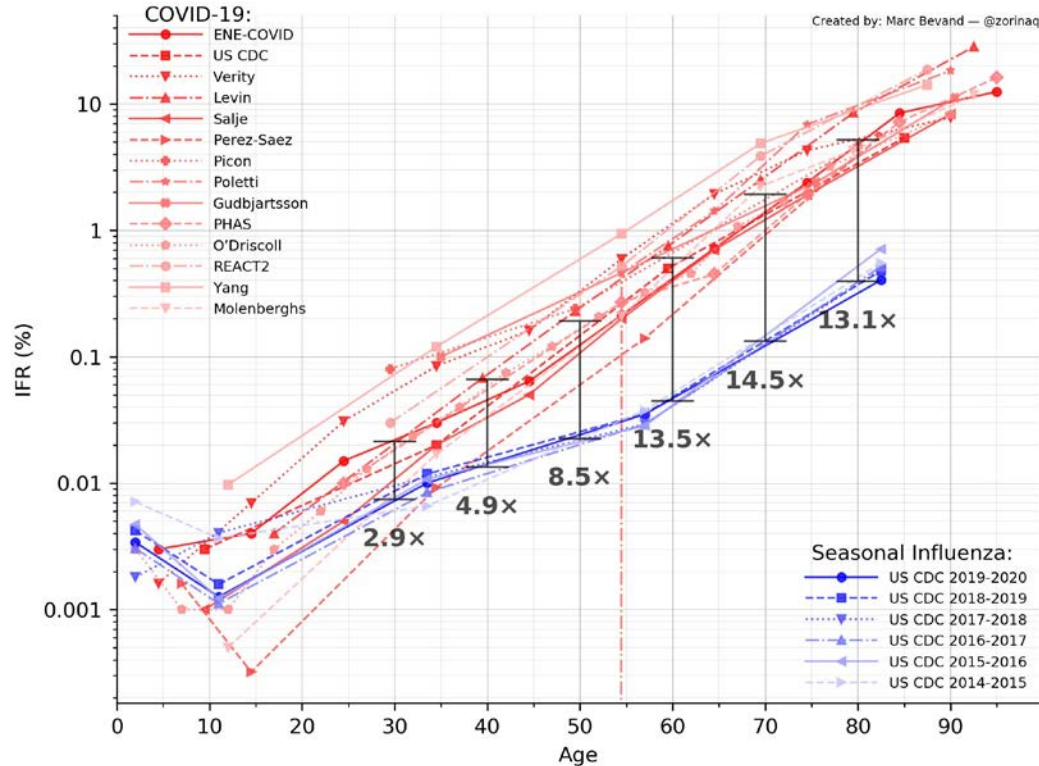
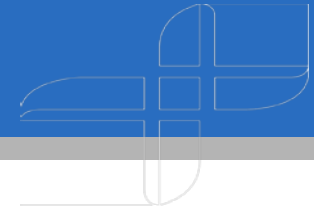


Coconino County

2020 All Deaths Aberration



# COVID vs FLU

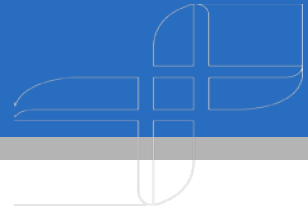


Source: <https://github.com/mbevand/covid19-age-stratified-ifr>

Note: the vertical lines on one COVID-19 IFR curve (Poletti) are caused by the IFR being estimated to be zero for age groups 0-19 and 20-49.



# My Observations

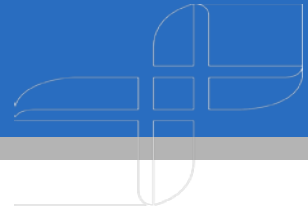


- COVID-19 is evolving and spreading faster than our ability to prevent it, but we still know who we have to protect
  - COVID-19 originally seems to cause serious disease like SARS and spread like the Flu
    - therefore shutdowns, and travel bans seemed appropriate
  - “COVID-20”, first seen in Italy in Feb 2020 then quickly throughout Europe and Americas, spread more like the common cold, allowing cases to grow exponentially
  - “COVID-21”, first seen in UK in Dec 2020, appears to be even more transmissible, and may become the new dominant global strain
- The only successful strategy for human coronaviruses has been to become more transmissible and less pathogenic – this may be happening
- The unseen mental health pandemic has been exacerbated by lockdown responses
- Vaccines will be our only way out of this dark tunnel – effect will be felt soon

# My Recommended Strategy – Prevent Deaths, Limit Harm

- Public Health Emergency Response Maxim:  
*Use the least restrictive means necessary to achieve maximal positive effect*
- Use both Best of Science and Intentional Humanity
  - Use science neither as a punchline nor as a weapon, but rather as a tool to illuminate the best way to serve humanity
- Only a balanced response strategy can work on a population-level
  - Focused Actions: Targeted tactics to stop spread to most vulnerable
  - General Actions: Broad-based tactics to slow spread in general public (not to stop)
- “The ends don’t justify the means” and “the means don’t justify the ends”

# A Role for Everyone

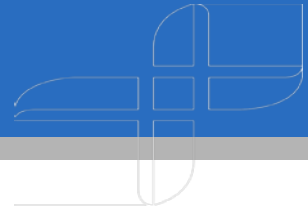


***If you are young and healthy,  
... you should act like you are a possible carrier and do things to limit  
spread to others (mask, distance, get vaccine)***

***If you are elderly or high risk,  
... you should act like, everyone else is a carrier and protect yourself  
(shelter in place, very small social bubble, get vaccine)***

***As we are continuing to work hard to protect each other, let us treat each  
other like we are worth protecting!***

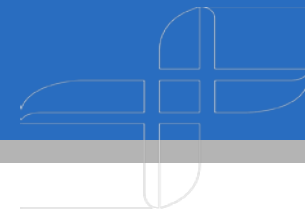
# The Current Big Questions



- Should schools be open?
- What about Surfaces and Fomite Transmission?
- What's up with masks?
- Do we need another lock down?
- What can we forecast for the next six months?
- Will the virus evolve enough to require new vaccines?



# The AZ Genomic First Responders



## COVID Heroes



tgen  
AN AFFILIATE OF City of Hope

