

## FINAL AGENDA

REGULAR COUNCIL MEETING  
TUESDAY  
NOVEMBER 5, 2019

COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
4:30 P.M. AND 6:00 P.M.

### 4:30 P.M. MEETING

*Individual Items on the 4:30 p.m. meeting agenda may be postponed to the 6:00 p.m. meeting.*

1. **CALL TO ORDER**

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

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

2. **ROLL CALL**

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

MAYOR EVANS	
VICE MAYOR SHIMONI	COUNCILMEMBER ODEGAARD
COUNCILMEMBER ASLAN	COUNCILMEMBER SALAS
COUNCILMEMBER MCCARTHY	COUNCILMEMBER WHELAN

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. **APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

5. **PUBLIC PARTICIPATION**

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

*item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

**6. PROCLAMATIONS AND RECOGNITIONS**

- A. Consideration and Approval of Minutes:** City Council Work Session of January 8, 2019; Budget Retreat of January 9, 2019; Regular Meeting of January 15, 2019; and Work Session of September 24, 2019.
- B. Recognition:** Police Officer and Firefighter of the Year/Exchange Club Award
- C. Recognition:** Plug In America "EV City/Municipality" Award

**7. APPOINTMENTS**

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

- A. Consideration of Appointments:** Tourism Commission.

**STAFF RECOMMENDED ACTION:**

Make one appointment to a term expiring January 2021.

- B. Consideration of Appointments:** Housing Commission

**STAFF RECOMMENDED ACTION:**

Make one appointment to a Real Estate and Professional - Lender seat to a term expiring in September 2021.

- C. Consideration of Appointments:** Heritage Preservation Commission.

**STAFF RECOMMENDED ACTION:**

Make one PROFESSIONAL appointment to a term expiring December 2021.

Make one HISTORIC PROPERTY OWNER appointment to a term expiring December 2022.

Make one AT LARGE appointment to a term expiring December 2022.

**8. 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 Purchase through a Cooperative Purchase**

**Contract:** To purchase one (1) 2019 International CV515 SFA Barricade Traffic Control Truck.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for one (1) 2019 International CV515 SFA Barricade Traffic Control Truck from RWC Group in the amount of \$99,341.29 through cooperative purchase contract #CTR041813.
2. Authorize the City Manager to execute the necessary documents

**B. Consideration and Approval of Purchase through a Cooperative Purchase**

**Contract:** To purchase one (1) 2020 International HV513 SFA Heavy Plow Truck from the RWC Group, LLC through a cooperative purchase contract with the Arizona Department of Administration, State Procurement Office in the amount of \$270,949.24.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for one (1) 2020 International HV513 SFA Heavy Duty plow truck from RWC Group in the amount of \$270,949.24 through cooperative purchase contract #CTR041813 with the Arizona Department of Administration, State procurement office.
2. Authorize the City Manager to execute the necessary documents.

**C. Consideration and Approval of Purchase through a Cooperative Purchase**

**Contract:** To purchase two (2) 2020 International HV507 SFA Heavy Plow Trucks from the RWC Group, LLC through a cooperative purchase contract with the Arizona Department of Administration, State Procurement Office in the amount of \$463,405.36.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for two (2) 2020 International HV507 SFA Heavy Duty plow truck from RWC Group, LLC in the amount of \$463,405.36 through cooperative purchase contract #CTR041813 with the Arizona Department of Administration, State procurement office
2. Authorize the City Manager to execute the necessary documents.

**D. Consideration and Approval of Purchase through a Cooperative Purchase**

**Contract:** To purchase one (1) 2020 International MV607 SBA Asphalt Pothole Patch Truck.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for one (1) 2020 International MV607 Asphalt Pothole Patch Truck from RWC Group in the amount of \$188,016.86 through cooperative purchase contract #CTR041813.
2. Authorize the City Manager to the necessary documents

- E. **Consideration and Approval of a Grant Agreement:** Between the City of Flagstaff and the Governor's Office of Highway Safety for Driving Under the Influence/Impaired Driving Enforcement and Equipment Grant #2020-405d-013.

**STAFF RECOMMENDED ACTION:**

Approve the acceptance of the Grant from the Governor's Office of Highway Safety in the amount of \$50,918.00, for the Flagstaff Police Department to increase staffing in an attempt to reduce injury motor vehicle collisions caused by impaired drivers. The funds will also be used to purchase an Intoxilyzer 9000, a laser printer 19000, and a handheld 2D barcode reader.

- F. **Consideration and Approval of Final Plat** Request by Brookfield Communities, Inc. for Final Plat approval for Woodshire on Butler Condominiums, a 50-unit residential condominium subdivision. The approximately 4.06-acre site is located at 2989 E. Butler Avenue in the HC, Highway Commercial zone and 3001 E. Butler Avenue in the HR, High-Density Residential zone; both are in a Resource Protection Overlay (RPO) zone. **(Subdivision of approximately 4.06 acres into 50 lots located at 2989 and 3001 E. Butler Avenue)**

**STAFF RECOMMENDED ACTION:**

Staff recommends approving the final plat with no conditions and authorizing the Mayor to sign both the plat and City/Subdivider Agreement when notified by staff that the documents are ready for recording.

9. **ROUTINE ITEMS**

- A. **Consideration and Adoption of Ordinance No. 2019-34:** An ordinance of the City Council of the City of Flagstaff, relating to the financing of certain projects, specifically approving publication of notice of proposed lease of land and buildings from, and lease-purchase back of such land and buildings to, the City and request for bids in connection therewith; authorizing the acceptance of a bid with respect thereto; approving the sale and execution and delivery of Certificates of Participation in a lease-purchase agreement to provide the necessary financing therefor; approving the form and authorization the execution and delivery of necessary agreements, instruments and documents related to the sale and issuance of the certificates; delegating authority to the Management Services Director of the City to determine certain matters and terms with respect to the foregoing; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance and ratifying all actions taken to further this ordinance; providing for severability, authority for clerical corrections, and establishing an effective date **(Certificate of Participation Debt Authorization - Municipal Court Facilities)**

**STAFF RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-34 by title only for the final time
- 2) City Clerk reads Ordinance no. 2019-34 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-34

- B. Consideration and Adoption of Ordinance No. 2019-35:** An ordinance of the City Council of the City of Flagstaff, (1) providing for the sale and issuance of City of Flagstaff, Arizona General Obligation Bonds, Series 2019 and for the annual levy of a tax for the payment of the bond; (2) approving the form and authorizing the execution and delivery of necessary agreements, instruments and documents related to the sale and issuance of the bonds; (3) delegating authority to the Management Services Director of the City to determine certain matters and terms with the respect to the foregoing; (4) adopting continuing disclosure procedures in connection with issuance of obligations of the City; and (5) authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance and ratifying all actions taken to further this; providing for severability, authority for clerical corrections, and establishing an effective date **(General Obligation Debt Authorization - Public Safety Communication Equipment and Municipal Court Facilities)**

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-35 by title only for the final time
- 2) City Clerk reads Ordinance no. 2019-35 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-35

- C. Consideration and Adoption of Ordinance No. 2019-33:** An ordinance of the City Council of the City of Flagstaff, approving the form and authorizing the execution and delivery of a loan agreement with the Water Infrastructure Financing Authority of Arizona from its Clean Water Revolving Fund program; delegating the determination of certain matters relating thereto to the Management Services Director of the City; providing the transfer of certain moneys and making certain covenants and agreements with respect thereto and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by such loan agreement; providing for severability, authority for clerical corrections, and establishing an effective date **(Water Infrastructure Loan Authorization - Flagstaff Watershed Protection Project)**

**STAFF RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-33 by title only for the final time
- 2) City Clerk reads Ordinance no. 2019-33 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-33

- D. Consideration and Adoption of Ordinance No. 2019-30:** An ordinance of the City Council of the City of Flagstaff, dedicating certain City property as public right-of-way within the area of John Wesley Powell Boulevard and Shamrell Boulevard; delegating authority to complete the transactions and establishing an effective date.

**STAFF RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-30 by title only for the final time
- 2) City Clerk reads Ordinance No. 2019-30 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-30

- E. Consideration and Adoption of Resolution No. 2019-49 and Ordinance No. 2019-32:** A Resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "Case No. PZ-19-00094 Updates to Zoning Code 2019 –Miscellaneous Part 1"; and, an Ordinance of the City Council of the City of Flagstaff, Coconino County, Arizona, amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code (Ordinance No. 2011-20), for the purpose of modifying chapters, divisions, and sections of Title 10, Flagstaff Zoning Code, including the sections of Division 10-20.30: Common Procedures, Division 10-20.40: Permits and Approvals, Division 10-30.60: Site Planning Design Standards, Division 10-40.30: Non-Transect Zones, Division 10-40.40: Transect Zones, Division 10-40.60: Specific to Uses, Division 10-50.30: Building Height, Division 10-50.40: Encroachments, Division 10-50.50: Fences and Screening, Division 10-50.60: Landscaping Standards, Division 10-50.100: Sign Standards, Division 10-50.90: Resource Protection Standards, and Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, to resolve conflicts, incorporate technical corrections and clarity, and to add new, and modify existing, requirements, provisions, and definitions.

**STAFF RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2019-49
- 2) Read Ordinance No. 2019-32 by title only for the final time
- 3) City Clerk reads Ordinance No. 2019-32 by title only (if approved above)
- 4) Adopt Ordinance No. 2019-32

- F. Consideration and Adoption of Resolution No. 2019-48 and Ordinance No. 2019-31:** A Resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "Case No. PZ-19-00095 Updates to Zoning Code 2019 - Accessory Dwelling Units"; and, an Ordinance of the City Council of the City of Flagstaff, Coconino County, Arizona, amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code (Ordinance No. 2011-20), for the purpose of modifying chapters, divisions, and sections of Title 10, Flagstaff Zoning Code, including the sections of Division 10-40.60: Specific to Uses, and Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, to resolve conflicts, incorporate technical corrections and clarity, and to add new and modify existing requirements, provisions, and definitions.

**STAFF RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2019-48
- 2) Read Ordinance No. 2019-31 by title only for the final time
- 3) City Clerk reads Ordinance No. 2019-31 by title only (if approved above)
- 4) Adopt Ordinance No. 2019-31

**RECESS**

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

**RECONVENE**

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

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### **10. ROLL CALL**

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

MAYOR EVANS

VICE MAYOR SHIMONI

COUNCILMEMBER ASLAN

COUNCILMEMBER MCCARTHY

COUNCILMEMBER ODEGAARD

COUNCILMEMBER SALAS

COUNCILMEMBER WHELAN

### **11. PLEDGE OF ALLEGIANCE**

### **12. PUBLIC PARTICIPATION**

### **13. CARRY OVER ITEMS FROM THE 4:30 P.M. AGENDA**

### **14. REGULAR AGENDA**

#### **A. Consideration and Adoption of Resolution No. 2019-53 and Ordinance No.**

**2019-36:** A resolution of the Flagstaff City Council declaring as a public record that certain document filed with the City Clerk and entitled "*Animal Keeping Code Amendments*;" and an ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, Title 6, Police Regulations, Chapter 3, Animal Keeping, by referencing that certain document entitled "*Animal Keeping Code Amendments*"; providing for repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.

#### **STAFF RECOMMENDED ACTION:**

##### At the November 5, 2019 Council Meeting:

- 1) Read Resolution No. 2019-53 by title only
- 2) City Clerk reads Resolution No. 2019-53 by title only (if approved above)
- 3) Read Ordinance No. 2019-36 by title only for the first time
- 4) City Clerk reads Ordinance No. 2019-36 by title only (if approved above)

##### At the November 19, 2019 Council Meeting:

- 5) Adopt Resolution No. 2019-53
- 6) Read Ordinance No. 2019-36 by title only for the final time
- 7) City Clerk reads Ordinance No. 2019-36 by title only (if approved above)
- 8) Adopt Ordinance No. 2019-36

15. **DISCUSSION ITEMS**

A. **2019 Public Works-Streets Snow Operations Readiness Update**

B. **Schultz Creek Trailhead Community Survey Results, Update, and Future**

**Direction:** Staff will share the results of a community surveys that requested input on how the 20-acre City of Flagstaff property in the Schultz Creek area (3620 W Schultz Pass Rd., Parcel # 30047004), zoned as open space, could be developed and managed. Staff will request direction from City Council on development and management of the parcel.

16. **COUNCIL LIAISON REPORTS**

17. **FUTURE AGENDA ITEM REQUESTS**

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

A. **Future Agenda Item Request (F.A.I.R.):** A request by Councilmember McCarthy to place on a future agenda a discussion as to when and how the City might negotiate an agreement to disallow short term rentals such as through development agreements or rezoning agreements.

B. **Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Aslan to place on a future agenda a discussion about reasonable restrictions on the uses of potable water.

18. **CITY MANAGER REPORT**

A. **City Manager Report**

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

20. **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 \_\_\_\_\_, 2019.

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

6. A.

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 11/01/2019  
**Meeting Date:** 11/05/2019



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**TITLE**

**Consideration and Approval of Minutes:** City Council Work Session of January 8, 2019; Budget Retreat of January 9, 2019; Regular Meeting of January 15, 2019; and Work Session of September 24, 2019.

**STAFF RECOMMENDED ACTION:**

Approve the minutes of the City Council Work Session of January 8, 2019; Budget Retreat of January 9, 2019; Regular Meeting of January 15, 2019; and Work Session of September 24, 2019.

**EXECUTIVE SUMMARY:**

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

**INFORMATION:**

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**Attachments:** [01.08.2019.CCWS](#)  
[01.09.2019.CCBR](#)  
[01.15.2019.CCRM](#)  
[09.24.2019.CCWS](#)

## MINUTES

### 1. Call to Order

Mayor Evans called the Work Session of the Flagstaff City Council held January 8, 2019, to order at 6:01 p.m.

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

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### 2. Pledge of Allegiance and Mission Statement

The Council and audience recited the pledge of allegiance and Councilmember Odegaard read the Mission Statement of the City of Flagstaff.

#### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

### 3. **ROLL CALL**

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

PRESENT:

ABSENT:

MAYOR EVANS  
VICE MAYOR SHIMONI  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER ODEGAARD  
COUNCILMEMBER SALAS  
COUNCILMEMBER WHELAN

Others present: City Manager Barbara Goodrich; Assistant City Attorney Christina Rubalcava

#### **4. Public Participation**

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

Marie Norton addressed Council with concerns about a new student housing development near Pinnacle Pines. She expressed concern about the lack of adequate parking for the facility and the impact that it could have on the surrounding neighborhood. She requested that the Council look closer at the development and request a traffic impact analysis.

#### **5. Review of Draft Agenda for the January 15, 2019 City Council Meeting**

*Citizens wishing to speak on agenda items not specifically called out by the City Council may submit a speaker card for their items of interest to the recording clerk.*

Councilmember McCarthy noted that there are four positions to fill on the Heritage Preservation Commission with only three available applicants. He asked if there had been outreach done to get additional applicants. City Clerk Stacy Saltzburg stated that the position had been advertised and the commission had been doing outreach as well.

Councilmember Whelan requested information regarding the Planning and Zoning Commission recommendation for Item 9B.

Councilmember Whelan also requested information about who would benefit from the utility easement referenced in Item 9C.

#### **6. The City of Flagstaff and Northern Arizona University Neighborhood Liaison Update.**

Neighborhood Liaison Valeria Chase provided a PowerPoint presentation that covered the following:

AN OVERVIEW OF ACCOMPLISHMENTS FOR OUR NEIGHBORHOOD LIAISON  
DURING YEAR ONE  
NEIGHBORHOOD LIAISON IS BORN  
STUDENT OUTREACH  
NEIGHBORHOOD OUTREACH  
COMMUNITY MANAGER OUTREACH  
PROFESSIONAL DEVELOPMENT

INTERNATIONAL TOWN & GOWN ASSOCIATION  
COMMUNITY WELCOME 2018  
COMMUNITY WELCOME 2019  
PARTNERSHIPS  
PARTNERSHIP HIGHLIGHT  
CURRENT INITIATIVES

Vice Mayor Shimoni stated that the community is being challenged by NAU and their growth, the more transparency that can be given to the public is greatly appreciated. He asked if there was a social media campaign. Ms. Chase explained that she is an office of one and is reluctant to start something that she cannot dedicate appropriate time to. She has begun working with NAU and City Communications about internship opportunities that could help in this regard. The Office of Student Life as well as the City of Flagstaff Facebook pages are well followed and information is shared through those outlets.

Vice Mayor Shimoni asked about the long-term goals of the program and the cost to the City. Ms. Chase stated that she frequently receives feedback throughout the year that shifts the direction of her workplan. Her current initiatives are student workshops, updating websites, the off-campus student survey, and quarterly newsletters.

Assistant to the City Manager Cliff Bryson explained that the Neighborhood Liaison is a joint position between the City and NAU with each covering 50% of the costs; Flagstaff's obligation is \$30,000 each year.

Councilmember Whelan offered that she appreciated Ms. Chase's willingness to meet with Council to hear thoughts and ideas about her program. She encouraged Ms. Chase to continue to celebrate the students of NAU, the citizens of Flagstaff, and all the contributions they each bring to Flagstaff.

Mayor Evans thanked Ms. Chase for her work. She believes that it is important that her position is co-managed as it allows both agencies to have a joint partnership to build up the program. As someone who lives in an impacted community, she has seen a difference in the Southside with trash, noise complaints, and other things. She indicated that this has been the first semester in over eight years that she has not personally received complaints from her neighbors. Residents feel that they are being listened to and have someone to go to when they have issues.

Councilmember Odegaard stated that the University Heights neighborhood appreciated Ms. Chase attending their recent meeting to listen to their comments and concerns. It is about the students recognizing that they are part of the community and changing the thought process for everyone to work together.

Councilmember Salas thanked Ms. Chase for her work and helping students see Flagstaff as their home away from home. She encouraged finding more ways to outreach with students such as through local businesses and non-profits.

7. **Discussion:** Reestablish the conversation about Thorpe Park with regards to future use as a park, affordable housing, and the community building.

Councilmember Whelan stated that the reason she requested that this come back to Council is to support the process of finding common ground. She stated that the Flagstaff Open Space Parks and Recreation group worked hard to create a plan for a passive park at the Mogollon location and she would not want to see that plan dropped. There has also been discussion about using the space as a community space as well as possible homes along Dale. She asked if it would be possible to have it all, the park, housing, garden, and community center. She would like for the project to be put back into the community's hands for input and design. It would be an excellent platform for the Beautification and Public Arts commission to bring in possible ideas. The neighborhood is very concerned and untrustworthy of working with the City and she asked them to keep an open mind. It is not intended to be a take-over of the land but the creation of something that will help community members.

The following individuals addressed Council concerning Thorpe Park:

- Roabie Johnson
- Charlie Silver
- Janice Busco
- Lance Diskin
- Maria Castillo
- Mary Anne Cullen
- Jim David
- Norm Killip
- Rose Houk

The following comments were received:

- Flagstaff needs affordable housing and parks but these are two separate issues that should not be combined.
- Adding housing to this site threatens all parks, it will set a precedent.
- It is documented that the land is protected as a park.
- Just because the public works yard has been on this property for decades does not mean it should not return to a park.
- It is a bad precedent to cannibalize City parks.
- There is land already purchased for affordable housing elsewhere.
- The Parks and Recreation Commission should be looking at the land and offering a recommendation.
- Please do not cut away park land.
- The land is deeded in perpetuity for a park and the citizens trust that the City will keep it that way.
- The public has more and better information and documentation on this issue than the City does.
- This is a good idea in the wrong location.
- This project is directly contiguous to the Rio de Flag and it is not likely to be consistent with the JLUS land study.
- Development in this area will increase the sky glow at the base of the

- observatory.
- It is a bad precedent to eat up park lands for public housing.
  - A community and a neighborhood is a place with a school, a park, and housing and year after year the issue keeps coming up that it is a good idea but not in the right place; it is disheartening.
  - Affordable housing in Flagstaff is a real need for families.
  - If more housing is built in that area it will put more traffic into an already high traffic area.
  - Any time park land is usurped for another purpose; the community will never get it back.
  - The issue should be further discussed and vetted with the community to make decisions collectively.
  - The old rock building could be used as a multi-purpose facility that the whole community could benefit from.
  - The park was created with a voter approved bond and it should stay a park for that reason.
  - No one wants housing, they want playgrounds, trails, and wildlife observation.

Mayor Evans asked about the park being deeded in perpetuity to the City. Mr. Solomon stated that staff heavily researched the item and determined that the land was purchased in 1923 with no restrictions on use. In 1924 the City recorded a plat depicting city park that includes the Mogollon property and the dedication language did not include the streets and alleys around the park. In the 1940s the City sold property within that depicted area for residential subdivision. The City bond election in 1947 approved the construction of the public works yard. In 1949, the first zoning code was adopted in Flagstaff so the argument that people could rely on zoning to determine uses is not a solid argument. In 1957 there was an ordinance passed by Council to restrict Thorpe Park for park, recreation, and museum purposes. In 2012 voters approved a bond question for the use of funds of the sale of that property to help pay for the new public works yard. The City did not have an intent to dedicate all the property back to the public and the actions of the City throughout the 30s and 40s indicated that this was not the intent. The City can amend their ordinances and codes should that be the desire.

Mayor Evans expressed frustration about the numerous conversations and proposals about possible locations for housing and the constant feedback about the locations being inappropriate. Councilmember Whelan agreed adding that there should be opportunities to do both, provide park space and housing.

Vice Mayor Shimoni stated that there should be a way to find a way to integrate housing in a way that the community is involved in the development of what the neighborhood will look like. There are a lot of different models that can accomplish a multi-use project.

Councilmember Salas stated that she would like to see if there are models from other parks that have utilized areas of park property for affordable housing. It is important that this be a public process with appropriate staff and commissions involved. She is interested in furthering the discussion but without the component of housing.

Councilmember Aslan offered that the area is the wrong location for housing because it has been dedicated as park land for many decades. He wants to protect trails, parks, and open space and there is little of that left on the Thorpe property because most of it is dedicated to ball fields and soccer fields. This is an opportunity for taking the space which was inappropriately allowed to be used as a public works yard and restore it to its intended use instead of losing another piece of open space for development. This is about telling future generations about Flagstaff's values. He indicated that he is not supportive of moving the conversation forward.

Councilmember Odegaard stated that he approved the scattered sites project and Milltown but he does not feel that there would be enough housing at the Mogollon location to bring a developer in to partner with the City to build. He is supportive of the discussion about the park without the housing element.

Councilmember McCarthy stated that he envisions the area as a park that is different from any other park. He is not supportive of promoting the area as mixed use with housing.

Mayor Evans stated that the issue of affordable housing is not new. The movement on the park began in 1922 and discussions about affordable housing began in 1928. There are families in the community that cannot afford to live in Flagstaff, and they are leaving. The conversations have always been about having one thing or another but not both. When the issue came up in 2016 people were afraid of another massive project like the Hub; that is not the proposal for this property. The area on Dale is currently a parking lot; it could be returned to its natural state or six units could be built to keep six families in the community. This is an opportunity to uphold the use of the park and add another element to address a community need. She is supportive of continuing the conversation.

There is not majority support to move the item forward as presented for additional discussion.

**8. Discussion:** Condemnation of property in the general area of 703 Blackbird Roost for affordable housing.

Mayor Evans stated that the area has very limited affordable housing available. According to State statutes the City can condemn the property for the purpose of affordable housing. Taking this action does not mean that the owner of the property does not get paid, they would be compensated for the fair market value of the property. She asked Council to consider moving the item forward for future discussion.

The following individuals addressed Council concerning condemnation of the property:

- Rick Lopez
- Miriam Meza
- Maria Castillo

The following comments were received:

- I do not support condemning the property for affordable housing.
- The property will yield millions to the owner because of what has been developed along the surrounding corridor
- The costs associated with moving the property out of the floodplain will be astronomical.
- The City does not owe the owner of the property any type of zoning so there is leverage on what the property can be used for.
- The City owns land but every time someone comes along and wants to put affordable housing on it the conversation goes south; it will be no different with this property.
- It would be good to create affordable housing for families and children.
- Think with your hearts, mind, and feelings that this is an issue that is valuable and justified.

A written comment card in support of condemnation of the property was submitted by Alejandra Becerra.

Mayor Evans asked for Council support to look into the possibility of condemnation and allow for the analysis of costs association with moving forward. It is just about having a conversation and allowing staff the ability to gather information.

Vice Mayor Shimoni stated that he feels that it is an important topic with mixed feelings, but it should be discussed openly with the public. Flagstaff is in dire need of housing and this may be a possible step toward addressing that need.

Councilmember McCarthy stated that the property is zoned for mobile home housing which historically has been used for affordable housing. He is concerned that if the Council does not do something with the property it will sit vacant for a long time. He has concerns with eminent domain, but he will support the discussion moving forward and having some preliminary work done by staff to provide information.

Councilmember Aslan stated that eminent domain is not something that should be used lightly, and he is open to having a discussion about what the options might be.

There was a majority of Council supportive of moving the item forward for further discussion.

## **9. Public Participation**

None

## **10. Informational Items To/From Mayor, Council, and City Manager; future agenda item requests**

Councilmember Whelan shared that the Stronger as One Coalition continues to meet and they are looking at mental illness and suicide rates and how to aid in those challenges. They are doing good work and are excited about their program.

Councilmember McCarthy stated that he and Councilmember Odegaard attended an Eagle Scout Court of Honor and it was great to honor those scouts and their success.

Councilmember Odegaard requested additional information on the Planning and Zoning Commission agenda for the meeting on January 9, 2019. He expressed concern about a letter included in the packet that indicates approval before the commission hears the item. Ms. Goodrich acknowledged Councilmember Odegaard's concern and stated that the letter is a standard practice that provides the commission the letter that would be submitted on their behalf should they issue approval. Staff is discussing including the word "draft" on the document to better communicate that intention.

Councilmember Salas thanked staff for their help getting the new councilmembers up to speed on procedures and information. She requested that the new members of Council get an opportunity to meet with Division Directors and tour the various City facilities.

Councilmember Salas also reported that she attended the graduation of the Recovery Court and it was inspiring to see the process and hearing the graduates share their stories and testimonials. The program is a great example of community collaboration to make Flagstaff better and help residents succeed.

Councilmember Whelan offered thanks to the staff who are working to keep the streets clear and clean.

Ms. Goodrich offered gratitude to the Streets, Police, and Fire Departments for their work keeping the community safe during the three community events last week.

Ms. Goodrich reminded the Council about the budget retreat scheduled for the next day. She explained that there will be a Planning and Zoning Commission meeting beginning at 4:00 p.m. that same day and due to the number of people expected to attend they are unable to move the meeting to a different location. She indicated that Council will need to work through lunch in order to finish in enough time for the commission to meet.

Mayor Evans reported that she and Vice Mayor Shimoni attended the Pinecone Drop on New Year's Eve; she thanked the staff who made the event possible.

Mayor Evans also requested a CCR about the new Pinnacle Pines development, its zoning and why it is not a development that comes before Council for consideration. Councilmember McCarthy added that it would be helpful for Council to get an update on significant developments coming forward. Ms. Goodrich stated that she will work with staff to provide the requested information. She also reminded Council and the public that a development report is posted on the City's website that gives information about all the development activity throughout Flagstaff.

**11. Adjournment**

The Flagstaff City Council Work Session of January 8, 2019, adjourned at 8:46 p.m.

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MAYOR

ATTEST:

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CITY CLERK

## MINUTES

### 1. CALL TO ORDER

Mayor Evans called the Budget Retreat of the Flagstaff City Council held January 9, 2019, to order at 9:00 a.m.

### NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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

### 2. ROLL CALL

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

PRESENT:

ABSENT:

MAYOR EVANS  
VICE MAYOR SHIMONI  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER ODEGAARD  
COUNCILMEMBER SALAS  
COUNCILMEMBER WHELAN

Others present: City Manager Barbara Goodrich; City Attorney Sterling Solomon.

### 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

The Council and audience recited the pledge of allegiance and Councilmember Aslan read the Mission Statement of the City of Flagstaff.

### MISSION STATEMENT

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

#### 4. City Council Fiscal Year 2020 Budget Retreat - Division Overview.

Ms. Goodrich began a PowerPoint presentation that covered the following:

AGENDA  
COUNCIL EXPECTATIONS

Finance Director Brandi continued the presentation.

BUDGET CALENDAR

Ms. Goodrich continued

DIVISION PRESENTATIONS  
CITY MANAGER  
    ACCOMPLISHMENTS  
    CHALLENGES  
    PRIORITIES/INITIATIVES  
WHAT ELSE DO YOU NEED TO KNOW?

Mayor Evans requested that the City Manager's Office consider coordination with the Consulate and International Services. A more direct link with the City would be ideal and would provide better service to the community by having a centralized location for people to access their services.

Mayor Evans also asked that the City Manager consider having the Office of Labor Standards do a comprehensive assessment of the impacts of minimum wage and what best practices are. She suggested reaching out to other communities about their best practices to make sure that Flagstaff's small businesses have the information and support that they need. There are no hard facts about what the impact is and how to move forward successfully.

Vice Mayor Shimoni asked about affordable housing, immigration, and town and gown. Ms. Goodrich offered that the City is always watching for available sites for affordable housing and staff is also bringing various legislative initiatives forward that request that the State process their LITHC applications more than one time per year. Staff is also looking for incentives for developers that make it beneficial to include affordable housing in their projects.

With regard to immigration, the Police Department policies have not changed. The law is always followed and someone's status is not a reason for stopping them. Inquiring about a person's status is done only when required by law. The Police Department continues to build relationships with the community.

For town and gown, there are a number of committees that the City participates in with NAU. Assistant Vice President for Community Relations Emily Allen attends Council meetings and she participates in almost every meeting where there is an intersection between the City and NAU. Neighborhood Liaison Valeria Chase's work program is another example of the collaboration between NAU and the City.

Councilmember Whelan stated that she would like there to be a bottom up approach with employee compensation and merit. There are people who have been with the organization for six or seven years that are making the same salary as someone just coming into the organization. The situation needs to be addressed because it is important to retain employees long term.

Councilmember Whelan added that she is also very concerned with the unfunded pension liability and the amount of resources that is taking from the organization.

Councilmember Salas stated that she would like to consider the ongoing efforts of existing business organizations and have a more collaborative multi-sector approach toward increasing economic vitality.

Human Resources Director Shannon Anderson continued the presentation.

HUMAN RESOURCES  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
WHAT ELSE DO YOU NEED TO KNOW?

Councilmember Odegaard asked about the medical insurance rates. Ms. Anderson stated that there is an anticipated 2% increase in medical insurance rates.

Councilmember Whelan asked that mental health and first aid training be added to the training offered to employees.

Councilmember Salas suggested looking at the idea of a productivity incentive program to provide opportunity for bonus or salary adjustments for performance and productivity. She also requested information about increasing employee training and succession planning to allow employees opportunity to grow within the organization.

Vice Mayor Shimoni suggested more involvement with the youth and more internship opportunities.

Mr. Solomon continued the presentation.

CITY ATTORNEY  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES

City Prosecutor Brent Harris continued the presentation.

CHALLENGES  
PRIORITIES/INITIATIVES  
WHAT ELSE DO YOU NEED TO KNOW?

Court Administrator Jessica Cortes continued the presentation.

MUNICIPAL COURT

ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
WHAT ELSE DO YOU WANT TO KNOW?

A break was held from 10:42 a.m. through 10:50 a.m.

Management Services Director Rick Tadder continued the presentation.

MANAGEMENT SERVICES  
ADMINISTRATION  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
INFORMATION TECHNOLOGY  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
PURCHASING  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
REVENUE  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
FINANCE  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
WHAT ELSE DO YOU WANT TO KNOW?

Council briefly discussed employee retention in Management Services, the opportunity for the use of interns, and appropriate network protections.

Fire Department Chief Mark Gaillard continued the presentation.

FIRE DEPARTMENT  
SECTIONS  
OPERATIONS  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
COMMUNITY RISK REDUCTION  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
SUPPORT SERVICES/ADMINISTRATION  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES

## WHAT ELSE DO YOU NEED TO KNOW?

A break was held from 12:02 p.m. through 12:15 p.m.

Council discussed fleet upgrades for the Fire Department and partnerships with NAU for training and on campus responses. They also discussed employee retention and the level of service provided to the community in comparison with fees and sales taxes.

Interim Police Chief Dan Musselman continued the presentation.

### POLICE DEPARTMENT

#### SECTIONS

##### PATROL

- ACCOMPLISHMENTS

- CHALLENGES

- PRIORITIES/INITIATIVES

##### CRIMINAL INVESTIGATIONS

- ACCOMPLISHMENTS

- CHALLENGES

- PRIORITIES/INITIATIVES

##### COMMUNITY RELATIONS/CRIME PREVENTION

- ACCOMPLISHMENTS

- CHALLENGES

- PRIORITIES/INITIATIVES

##### SUPPORT SERVICES

- ACCOMPLISHMENTS

- CHALLENGES

- PRIORITIES/INITIATIVES

##### COMMUNICATIONS

- ACCOMPLISHMENTS

- CHALLENGES

- PRIORITIES/INITIATIVES

## WHAT ELSE DO YOU NEED TO KNOW?

Council discussed the current staffing at the Police Department and community relations efforts. They discussed how specialized training has helped in areas of mental health and cultural sensitivity.

Interim Community Development Director Dan Folke continued the presentation.

### COMMUNITY DEVELOPMENT

#### SECTIONS

##### ADMINISTRATION

- ACCOMPLISHMENTS

- CHALLENGES

- PRIORITIES/INITIATIVES

##### ENGINEERING

- ACCOMPLISHMENTS

- CHALLENGES

- PRIORITIES/INITIATIVES

CAPITAL IMPROVEMENTS  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
PLANNING AND DEVELOPMENT SERVICES  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
HOUSING  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES

Council discussed the addition of a Dark Skies Enforcement Specialist and the development of the Housing Commission described in the recent bond question to prepare for the 2020 election. They also discussed public participation and outreach to the community, and incentives to include affordable housing in new developments.

Public Works Director Andy Bertelsen continued the presentation.

PUBLIC WORKS  
SECTIONS  
ADMINISTRATION  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
FACILITIES MAINTENANCE  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
FLEET MANAGEMENT  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
PARKS  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
RECREATION  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
STREET MAINTENANCE AND REPAIRS  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
SOLID WASTE  
ACCOMPLISHMENTS  
CHALLENGES  
PRIORITIES/INITIATIVES  
SUSTAINABILITY

ACCOMPLISHMENTS  
 CHALLENGES  
 PRIORITIES/INITIATIVES  
 ENVIRONMENTAL MANAGEMENT  
 ACCOMPLISHMENTS  
 CHALLENGES  
 PRIORITIES/INITIATIVES  
 WHAT ELSE DO YOU NEED TO KNOW?

The Council discussed the Climate Action and Adaptation Plan and how to continue with implementation efforts.

Economic Vitality Director Heidi Hansen continued the presentation.

ECONOMIC VITALITY  
 SECTIONS  
 AIRPORT  
 ACCOMPLISHMENTS  
 CHALLENGES  
 PRIORITIES/INITIATIVES  
 COMMUNITY INVESTMENT  
 ACCOMPLISHMENTS  
 CHALLENGES  
 PRIORITIES/INITIATIVES  
 LIBRARY  
 ACCOMPLISHMENTS  
 CHALLENGES  
 PRIORITIES/INITIATIVES  
 TOURISM AND VISITOR SERVICES  
 ACCOMPLISHMENTS  
 CHALLENGES  
 PRIORITIES/INITIATIVES  
 WHAT ELSE DO YOU NEED TO KNOW?

The Council discussed the City's social media presence and efforts to encourage Flagstaff to shop local and keep sales tax dollars in the community. They discussed the airport and possible efforts to offset the carbon footprint of air travel as well as the importance of advocating to keep Amtrak running through Flagstaff. They also discussed the possibility of recruiting different colleges and universities to come to Flagstaff.

## **5. PUBLIC PARTICIPATION**

Steve Finch addressed the Council and stated that many other communities are dealing with the increased cost of living and he is working to bring them to Flagstaff to discuss their experiences and how they have been able to deal with the increases in minimum wage and retaining their employee base.

**6. ADJOURNMENT**

The Flagstaff City Council Budget Retreat of January 8, 2019, adjourned at 3:34 p.m.

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MAYOR

ATTEST:

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CITY CLERK

## MINUTES

### 1. CALL TO ORDER

Mayor Evans called the meeting of the Flagstaff City Council held January 15, 2019, to order at 4:30 p.m.

### NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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

### 2. ROLL CALL

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

PRESENT:

ABSENT:

MAYOR EVANS  
VICE MAYOR SHIMONI  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER ODEGAARD  
COUNCILMEMBER SALAS  
COUNCILMEMBER WHELAN

Others present: City Manager Barbara Goodrich; City Attorney Sterling Solomon.

### 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

The Council and audience recited the pledge of allegiance and Councilmember Aslan read the Mission Statement of the City of Flagstaff.

## MISSION STATEMENT

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

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

None

### 5. **PUBLIC PARTICIPATION**

*Public Participation enables the public to address the Council about an item that is not on the agenda. 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.*

Janine Kelley addressed Council regarding a recent challenge with her water bill. She also expressed concern and frustration about her phone number being mistakenly attached to two court cases which resulted in a number of unwanted calls even after asking them to remove her number.

David Lash, Betsy Klein, and Matt Francis each addressed the Council requesting that they pass ordinance or resolution banning wildlife killing contests.

### 6. **PROCLAMATIONS AND RECOGNITIONS**

#### A. **Proclamation:** Human Trafficking Awareness Month

Council came to the podium to read and present the proclamation.

#### B. **Recognition:** NAU's Gold Axe Recipients

Council recognized Daniel'le DeVoss, Mellisa Yin, and Laura Garcia for their achievement of receiving NAU's Gold Axe.

### 7. **APPOINTMENTS**

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

**A. Consideration of Appointments: Heritage Preservation Commission.**

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Coral Evans to appoint Jill Hough to the Professional designation with a term expiring December 2021.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Charlie Odegaard to appoint Caitlin Kelly to the Historic Property Owner designation with a term expiring December 2020.

**Vote:** 7 - 0 - Unanimously

**Moved by** Mayor Coral Evans, **seconded by** Councilmember Austin Aslan to appoint Jerry McLaughlin to the At Large designation with a term expiring December 2021.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Jamie Whelan to switch the designations of Caitlin Kelly and Jerry McLaughlin to reflect Caitlin Kelly as At-Large and Jerry McLaughlin as Historic Property Owner.

**Vote:** 7 - 0 - Unanimously

**B. Consideration of Appointments: Planning and Zoning Commission.**

**Moved by** Vice Mayor Adam Shimoni, **seconded by** Councilmember Jim McCarthy to appoint Eric Nolan to a term expiring December 2021.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to appoint David Zimmerman to a term expiring December 2021.

**Vote:** 7 - 0 - Unanimously

**C. Consideration of Appointments: Board of Adjustment.**

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Charlie Odegaard to appoint Lisa Bergstrom to a term expiring May 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Charlie Odegaard, **seconded by** Vice Mayor Adam Shimoni to appoint John Brinkman to a term expiring May 2022.

**Vote:** 7 - 0 - Unanimously

**D. Consideration of Appointments:** Transportation Commission.

**Moved by** Councilmember Regina Salas, **seconded by** Vice Mayor Adam Shimoni to appoint Nick Kraft to a term expiring April 2021.

**Vote:** 7 - 0 - Unanimously

**E. Consideration of Appointments:** Tourism Commission.

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Adam Shimoni to appoint Terry Madeksza to a term expiring January 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Jamie Whelan to appoint Steve Finch to a term expiring January 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Regina Salas, **seconded by** Vice Mayor Adam Shimoni to appoint Maggie Thom to a term expiring January 2021.

**Vote:** 7 - 0 - Unanimously

**Moved by** Mayor Coral Evans, **seconded by** Councilmember Charlie Odegaard to appoint Jennifer Rolley to a term expiring January 2022.

**Vote:** 7 - 0 - Unanimously

**8. LIQUOR LICENSE PUBLIC HEARINGS**

**A. Consideration and Action on Liquor License Application:** Shelby Lapsley, Sunnyside Chevron, 2205 N. 4th Street, Series 09 (liquor store - all spirituous liquor), Owner Transfer.

Mayor Evans opened the public hearing for both licenses.

Sgt. Collin Seay addressed the Council with a brief explanation of the licenses.

Mayor Evans stated that she is concerned about the change in business model that will allow for the sale of shooters and 40s. She indicated that there has been significant work in the Fourth Street corridor to combat some of the issues with public intoxication and many of the stores in the area have pulled those products from their shelves. She stated that she will be voting no on a recommendation for approval.

Councilmember Odegaard echoed Mayor Evans' comments and expressed disappointment with the intent to sell the single serve items. He will be voting yes on a recommendation for approval but hopes that the owner will work with the City to assist in the effort and realize the importance of the issue in the community.

Councilmember Whelan offered that simply taking the alcohol away will not take away the problem. She encouraged the owner to empower the employees to say no when it is appropriate.

There being no public comment Mayor Evans closed the public hearing.

**Moved by** Councilmember Jamie Whelan, **seconded by** Councilmember Regina Salas to forward the application to the State with a recommendation of approval.

**Vote:** 4 - 3

NAY: Councilmember Austin Aslan  
Mayor Coral Evans  
Vice Mayor Adam Shimoni

- B. Consideration and Action on Liquor License Application:** John Kennelly, "Historic Brewing Company Barrel & Bottle House", 110 S. San Francisco Street, STE C, Series 12 (restaurant), New License.

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Jamie Whelan to forward the application to the State with a recommendation of approval.

**Vote:** 7 - 0 - Unanimously

**9. CONSENT ITEMS**

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

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Regina Salas to approve the Consent Agenda as presented.

**Vote:** 7 - 0 - Unanimously

- A. Consideration and Approval of a Cooperative Purchase Contract:** To purchase a Type VI Wildland Engine built to the Flagstaff Fire Department Specs from SNF, Inc. (dba BFX Fire Apparatus).

STAFF RECOMMENDED ACTION:

Approve the purchase of a Type VI Wildland Engine from SNF, Inc. (dba BFX Fire Apparatus) in the amount of \$169,259 through cooperative purchase contract #GS-30F-0025V with the U.S. General Services Administration.

- B. Consideration and Approval of Purchase through an Invitation For Bids Process (IFB):** Purchase of Three (3) F-350 truck and chassis only trucks to the Flagstaff Fire Department Specs.

STAFF RECOMMENDED ACTION:

Approve the purchase of the three (3) truck and chassis only F-350's from Peoria Ford in the amount of \$113,527.65

**10. ROUTINE ITEMS**

- A. Consideration of Appointments:** On-Call Magistrates for the Flagstaff Municipal Court.

**Moved by** Mayor Coral Evans, **seconded by** Councilmember Charlie Odegaard to approve the appointments of Rebecca Plevel, Amy Criddle and Matthew Mansfield as On-Call Magistrates.

**Vote:** 7 - 0 - Unanimously

- B. Consideration and Adoption of Ordinance No. 2018- 46:** An annexation ordinance extending and increasing the corporate limits of the City of Flagstaff by annexing certain land totaling approximately 1.87 acres located at 5595 N. Dakota Street, and establishing city zoning for said land as Highway Commercial, HC. (**Annexation of property to facilitate the redevelopment of a retail sales convenience store with fuel sales.**)

**Moved by** Councilmember Charlie Odegaard, **seconded by** Councilmember Jim McCarthy to read Ordinance No. 2018-46 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, STATE OF ARIZONA, PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARIZONA REVISED STATUTES, BY ANNEXING CERTAIN LAND TOTALING APPROXIMATELY 1.87 ACRES LOCATED AT 5595 N. DAKOTA STREET, WHICH LAND IS CONTIGUOUS TO THE EXISTING CORPORATE LIMITS OF THE CITY OF FLAGSTAFF, AND ESTABLISHING CITY ZONING FOR SAID LAND AS HIGHWAY COMMERCIAL, HC*

**Moved by** Councilmember Jamie Whelan, **seconded by** Councilmember Jim McCarthy moved to adopt Ordinance No. 2018-46.

**Vote:** 7 - 0 - Unanimously

- C. Consideration and Adoption of Ordinance No. 2018-44:** An ordinance of the Flagstaff City Council approving an Intergovernmental Agreement between the State of Arizona and the City of Flagstaff and authorizing the acquisition of a utility easement for the design and construction of a sewer line relocation located along Milton Rd. just north of McConnell Dr.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Charlie Odegard to read Ordinance No. 2018-44 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE CITY OF FLAGSTAFF AND AUTHORIZING THE ACQUISITION OF A UTILITY EASEMENT FOR THE DESIGN AND CONSTRUCTION OF A SEWER LINE RELOCATION LOCATED ALONG MILTON RD JUST NORTH OF MCCONNELL DR*

**Moved by** Councilmember Jamie Whelan, **seconded by** Councilmember Regina Salas to adopt Ordinance No. 2018-44.

**Vote:** 7 - 0 - Unanimously

### **RECESS**

The 4:30 p.m. portion of the January 15, 2019, Regular Council Meeting recessed at 5:24 p.m.

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

### **RECONVENE**

Mayor Evans reconvened the Regular Meeting of January 15, 2019, at 6:01 p.m.

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

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**11. ROLL CALL**

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

PRESENT:

ABSENT:

MAYOR EVANS  
VICE MAYOR SHIMONI  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER ODEGAARD  
COUNCILMEMBER SALAS  
COUNCILMEMBER WHELAN

Others present: City Manager Barbara Goodrich; City Attorney Sterling Solomon.

**12. PLEDGE OF ALLEGIANCE**

The Council and audience recited the pledge of allegiance.

**13. PUBLIC PARTICIPATION**

Councilmember Aslan stated that there were Boy Scouts in the audience working on one of their merit badges.

Paul Kulpinski addressed Council and provided them with a proposal for expanding high quality preschool in Flagstaff. He requested an opportunity to formally present the proposal to the Council at a future meeting.

Anthony Garcia addressed Council about finding ways to incorporate public art into large scale developments coming into town. He asked the Council to consider the idea as a FAIR agenda topic for the future.

Greg Westbrook addressed Council with concerns about the Campus Advantage development coming in near Pinnacle Pines. He is particularly concerned with the lack of parking and the challenges that may cause the surrounding neighborhoods.

Mayor Evans stated that Item 16C is being removed from the agenda; it will come back to Council at a later meeting.

**14. CARRY OVER ITEMS FROM THE 4:30 P.M. AGENDA**

None

**15. REGULAR AGENDA****A. Consideration of Assignments: City Council Liaison Assignments****Flagstaff Metropolitan Planning Organization (3 liaisons & 1 alternate)**

The Council assigned Mayor Evans, Councilmember McCarthy, and Councilmember Odegaard as the liaisons with Councilmember Salas as the alternate.

**Northern Arizona Intergovernmental Public Transportation Authority (2 liaisons & 2 alternates)**

The Council assigned Councilmember McCarthy and Councilmember Whelan as the liaisons with Vice Mayor Shimoni and Councilmember Aslan as the alternates.

**Northern Arizona Municipal Water Users' Association (1 liaison)**

The Council assigned Councilmember Whelan as the liaison and Vice Mayor Shimoni as an alternate.

**Audit Committee (1 liaison)**

The Council assigned Councilmember Odegaard as the liaison.

**Economic Collaborative of Northern Arizona Executive Board (1 liaison)**

The Council assigned Mayor Evans as the liaison and Councilmember Salas as the alternate.

**Northern Arizona Council of Governments (1 liaison & 1 alternate)**

The Council assigned Councilmember Whelan as the liaison and Councilmember Odegaard as the alternate.

**Self-Insurance Trust Fund Board (1 liaison)**

A Council representative was not assigned at this time because the Board is currently inactive.

**Colorado Plateau Water Advisory Council (1 liaison & 1 alternate)**

The Council assigned Mayor Evans as the liaison and Councilmember Aslan as the alternate.

**Sister Cities (1 liaison)**

The Council assigned Councilmember Salas as the representative and Vice Mayor

Shimoni as the alternate.

**Joint Land Use Study Policy Committee (2 liaisons)**

The Council assigned Councilmember McCarthy and Councilmember Salas.

**16. DISCUSSION ITEMS**

**A. Discussion and Possible Direction: 2019 State of Arizona Legislative Trip and 2019 Federal Legislative Trip.**

Assistant to the City Manager Cliff Bryson stated that staff is in the process of planning the 2019 state and federal lobbying trips. The tentative dates for the federal trip is the week of March 5, 2019, either Tuesday through Thursday or Wednesday through Friday. At Council's direction, the City's Federal Lobbyist Bob Holmes will begin setting meetings with the appropriate officials.

Mr. Bryson stated that on February 19, 2019, Council will review the draft agenda and talking points. Staff is also looking for direction on who will be attending the trip so travel arrangements can be made.

Mayor Evans stated that historically the Mayor attends with one Councilmember from the old Council and one Councilmember from the newly elected Council. This helps keep the historical knowledge in play. The talking points are divided among those in attendance to help everyone stay on point with the approved Council message. Councilmember McCarthy went two years ago and Councilmember Odegaard went last year.

Councilmember Whelan expressed her interest in going and the Council was supportive of her attending.

Mayor Evans stated that since Councilmember Whelan is attending she would like to have the Vice Mayor stay in Flagstaff for this trip to ensure proper coverage at the Council meeting.

Councilmember Aslan stated that he was interested in attending but had to check with his family's schedule. Councilmember Salas stated that if Councilmember Aslan is unable to attend, she would be willing to attend. Those attending agreed that Tuesday through Thursday is preferable.

Mr. Bryson continued stating that the state lobbying trip is currently scheduled for the upcoming Friday, January 18, 2019. Ms. Goodrich expressed concern about the quick turnaround on talking points for Friday and proposed that the Council consider rescheduling to make sure there is a consensus on messaging and better opportunity to schedule and coordinate with the various members of the delegation.

The Council agreed that having more time to prepare is appropriate and asked staff to coordinate a more appropriate time in the future.

Mr. Bryson stated that he will bring information back to a future Work Session to discuss with the Council.

**B. Discussion and Possible Direction: City Council Rules of Procedure**

City Clerk Stacy Saltzburg stated that when there is a new Council elected it is customary to allow the Council body to review their Rules of Procedure and identify any areas of desired adjustment. In addition to the general review staff would like direction on the disposition of F.A.I.R. items that were brought forward by a previous Councilmember and staff is also suggesting the codification of the process by which the Vice Mayor is selected.

Councilmember Odegaard stated that he would like for the Councilmember who brought the F.A.I.R. item forward to be present at the Council meeting to discuss why they asked for that item. a F.A.I.R. request.

Councilmember Whelan agreed with Councilmember Odegaard and added that there be time to review the F.A.I.R. items remaining from prior Councilmembers before they get removed from the queue. Councilmember McCarthy also agreed.

Mayor Evans suggested that the remaining F.A.I.R. items be listed as needing a sponsor from the current Council to continue moving the item through the queue. After 30 days if the item is not sponsored, they will be removed from the queue.

Council agreed to require the requesting Councilmember to be present at the meeting when their item is discussed as well as placing the items remaining from the prior Council on a list seeking sponsorship for a 30-day period.

Mayor Evans discussed her desire to change the requirement of needing two Councilmembers in support of a F.A.I.R. item to three in support. Her rationale is that only requiring two means that everything will be discussed even if there is not a possibility of ultimately receiving majority support; this significantly increases the workload of staff and the Council when the result is that it does not go any further than a discussion. By increasing to three the items can still be discussed but it is closer to a majority and possibility of future action. The Council agreed to changing the Rules of Procedure to reflect a F.A.I.R. item requiring three Councilmembers in support to move forward.

Councilmember McCarthy requested that the process to ask for a F.A.I.R. item to be expedited be modified to allow the Council to determine the priority of the queue based on majority support. The Council agreed to this modification.

Mayor Evans asked that the Vice Mayor selection process be included in the Rules of Procedure to reflect the historical practice of appointing the highest vote getter at the prior election as Vice Mayor.

Council discussed a couple of different possibilities with regard to the Vice Mayor selection process and determined that the historical practice should be codified in

the Rules of Procedure.

Mayor Evans requested a new provision in the Rules of Procedure related to Council and members of the press video recording and taking pictures at or near the dais. She proposed that all pictures and video recording be done behind the presentation counter or lectern. There is a safety issue with people approaching the dais and it can be a distraction when done by Council as well. Council agreed to the addition of this provision.

Councilmember McCarthy indicated that the current rules state that upon vote of a majority of Council they can call a Special Executive Session; he suggested that the rule indicate that the City Manager may call a Special Executive Session. Mr. Solomon stated that the City Attorney's Office, in partnership with the City Manager, have the authority to call an Executive Session; this is in addition to an Executive Session called by a majority of Council.

Councilmember McCarthy asked about clarifying when items not acted on at a Regular Meeting have to come back for action. The rules indicate that they come back at the next meeting and he suggested clarifying the next Regular Meeting because typically the next meeting is a Work Session which is not a voting meeting. Mr. Solomon stated that by keeping the language as it is, it allows for flexibility on when to bring the item back. A Special Meeting can be called for the next week in connection with the Work Session or it can wait until the next Regular Meeting depending upon the urgency of the item.

Councilmember McCarthy requested that the Pledge of Allegiance be formally added to the 6:00 p.m. agenda. It is currently only listed in the Rules of Procedure at the 4:30 p.m. portion of the meeting but the practice has been that it is done at both sessions. Council agreed to the addition of the Pledge of Allegiance at the 6:00 p.m. meeting.

Councilmember Whelan asked to simplify the process of removing a requested F.A.I.R. item. The requester should be able to remove their own F.A.I.R. item if the item has not yet been presented on an agenda. Ms. Goodrich clarified that the process is already set up that way and there has to be consensus to remove an item only after it has received the support of three Councilmembers.

Councilmember McCarthy requested that if an item is pulled before it comes on an agenda that the City Manager notify the Council that there has been a request to remove the item. This would allow another Councilmember to take on sponsorship if they were wanting the item to come forward. Council agreed with the clarification being added to the rules.

Ms. Saltzburg stated that she will incorporate the Council direction and bring back a draft for review and consideration by the Council.

**C. Discussion and Possible Direction: Commission Recommendation Process**

Item postponed to a future meeting.

**17. COUNCIL LIAISON REPORTS**

None

**18. FUTURE AGENDA ITEM REQUESTS**

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

- A. Future Agenda Item Request (F.A.I.R.):** A request by Mayor Evans to place on a future agenda a discussion to reengage the conversation about a Code of Ethics for the City Council.

At least three Councilmembers were supportive of moving the item forward to a future agenda.

- B. Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Putzova to place on a future agenda a discussion about developing a policy to prioritize water uses in times of shortage, in the context of public investment, and for community planning.

Councilmember Whelan offered to be the sponsor on the F.A.I.R. item with the departure of former Councilmember Putzova.

At least three Councilmembers were supportive of moving the item forward to a future agenda.

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

Councilmember Salas stated that she attended the Flagstaff Police Department promotion ceremony and thanked the Department for the invitation.

Councilmember Odegaard requested a F.A.I.R. item to discuss ways that the City could leverage something with a developer to create public art space in their development.

Councilmember Aslan reported that his wife had an opinion article published in the newspaper recently about climate change and its effects on wildlife.

Councilmember Whelan reported that she was excited to be invited to Flagstaff High School to participate in a student youth group.

Councilmember Whelan requested a F.A.I.R. item to have a discussion about developing a plan and recommendations for zoning for the upcoming work in the Fourth Street, Lone Tree, and I-40 corridors.

Councilmember Whelan also suggested putting posters and stickers about human trafficking in all City facilities.

Ms. Goodrich stated that the Sustainability Program will be walking neighborhoods and placing tags on trash cans reminding people what is recyclable in Flagstaff. She also reported that interviews for the Indigenous Coordinator were completed and the panel is hopeful to have some good news on filing that position in the next few weeks.

Ms. Goodrich also offered that there is an opportunity to schedule a Council presentation on the Launch proposal brought forward by Mr. Kulpinski during public participation. The presentation will provide staff and the Council more information for consideration for the February Budget Rretreat.

Mayor Evans reported that she participated in a tour of NAU and indicated that it was interesting to better understand the numbers and concept of growth at the University. She is looking forward to sharing that presentation with others in the community.

Mayor Evans requested a F.A.I.R. item to discuss the correlation between sales tax dollars on a vehicle purchase in Flagstaff and what those dollars specifically fund from a tangible perspective.

## 20. **ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held January 15, 2019, adjourned at 7:47 p.m.

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MAYOR

ATTEST:

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CITY CLERK

### **CERTIFICATION**

I, STACY SALTZBURG, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on January 15, 2019. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 5th day of November, 2019.

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CITY CLERK

## MINUTES

1. Mayor Evans called the Work Session of the Flagstaff City Council held September 24, 2019, to order at 6:01 p.m.

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

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this work session, 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. **Pledge of Allegiance and Mission Statement**

The Council and audience recited the Pledge of Allegiance and Councilmember Aslan read the Mission Statement of the City of Flagstaff.

### **MISSION STATEMENT**

*The mission of the City of Flagstaff is to protect and enhance the quality of life for all.*

3. **Roll Call**

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

PRESENT:

ABSENT:

MAYOR EVANS  
VICE MAYOR SHIMONI (via phone)  
COUNCILMEMBER ASLAN  
COUNCILMEMBER MCCARTHY  
COUNCILMEMBER ODEGAARD  
COUNCILMEMBER SALAS  
COUNCILMEMBER WHELAN

Others present: City Manager Greg Clifton; City Attorney Sterling Solomon.

#### **4. Public Participation**

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

Paul Beier addressed Council representing the Friends of the Rio de Flag. He shared a handout with Council that showed an estimate of costs to compare ACE projects with the possibility of the City working on the Rio de Flag project on their own. He urged Council to evaluate the cost of a “Go-It-Alone” approach for the Rio de Flag project. He mentioned that the Army Corps’ plan does not include abetting the Southside flooding.

Jesse Rodriguez and Sarah Gometiz addressed Council regarding the Climate Strike. They submitted a citizen’s petition from the Climate Strike regarding the City of Flagstaff declaring a climate emergency and proposing that sustainability becomes a stand-alone department.

#### **5. Review of Draft Agenda for the October 1, 2019 City Council Meeting**

*Citizens wishing to speak on agenda items not specifically called out by the City Council may submit a speaker card for their items of interest to the recording clerk.*

Councilmember Odegaard asked about item 8C regarding the Wedge. He mentioned that there is a section of Woody Mountain Road that has a wash during the winter and if the wash would be improved with the Wedge development. The Wedge had previously asked for a waiver regarding continuous improvement across their property line. Councilmember Odegaard would like to see the developer address the wash or learn if the wash is outside the property line.

#### **6. Proclamation: Hunger Action Month followed by Public Comment**

Councilmember Odegaard read the proclamation and Monica Foss and Lina Wallen representing the Family Food Center accepted the award.

Ms. Foss addressed the Council and audience and spoke about the impacts of Hunger Action Month and stated that they are grateful for the community support.

#### **7. Proclamation: Keep Families Free and Together followed by Public Comment**

Mayor Evans read the proclamation.

## 8. Public Participation

None.

## 9. Informational Items To/From Mayor, Council, and City Manager; future agenda item requests

Vice Mayor Shimoni shared that he went to the Arizona Forward gala in Phoenix where the Flagstaff Climate and Adaptation Plan received an award. Vice Mayor Shimoni accepted the award on behalf of the City.

Councilmember Salas reported that she is a member of the Workforce Development Board and their quarterly meeting was last Wednesday. She shared that there is a workforce placement location in Page to help assist people who worked at the Navajo Generating Station. She recognized staff who serve on the Board, such as Business Retention and Expansion Manager John Saltonstall. She also shared that she attended the Arizona Community Foundation's Awards Ceremony.

Councilmember Odegaard shared that he went with Business Attraction Manager Gail Jackson to the International Shopping Centers Conference. He stated that it was very helpful and robust. He is hopeful that one of the businesses he spoke with will move to Flagstaff soon. He also thanked Council regarding their recognition last week regarding the IGA for the Fourth Street bridge.

Councilmember Aslan shared that he is the new liaison for the Sustainability Commission. He also shared that the Festival of Science is ongoing, and he attended the kick-off event at Lowell Observatory. He asked for a FAIR item based off of a discussion from the budget retreat about the formation of a commission that focuses on NAU students. Mayor Evans asked Deputy City Manager Dille if he could share information about the past Town and Gown commission. Mr. Dille stated he would look into it and distribute information to Council regarding the past commission makeup.

Councilmember McCarthy shared that he and City Manager Greg Clifton met with All Aboard Arizona to keep the Southwest Chief, the Amtrak route going from Chicago to Los Angeles through Flagstaff, running. He thanked the other staff members involved. He went to the Peace Day celebration in Heritage Square where he gave a demonstration on where the peace symbol comes from. He also attended the Science Festival in Wheeler Park.

Vice Mayor Shimoni added that he would like to see Councilmember Aslan's FAIR item extended to other colleges such as Coconino Community College. He also asked for a CCR to be sent regarding the pension liability fund specifically around the payment plan and interest potential since there is confusion on if there is interest on that account.

City Manager Clifton thanked Council for their participation in the budget retreat. He also shared that he attended the Board of Supervisors meeting today.

Vice Mayor Shimoni thanked Council and staff for the great discussions at the Budget retreat. He shared that the video from the meeting will be posted online.

Mayor Evans shared that the weekend was very busy for Council. For example, she attended Constitution Day, Festival in the Park, and Peace Day, and that many Council members attended these events as well. She mentioned that she was on the Coconino Workforce Development Board and stepped down as a Board member. She shared that Councilmember Salas is now attending the meetings. Mayor Evans also stated that she attended the Arizona Mayors Education Roundtable addressing education crisis. She suggested that the Decision Theater at ASU could be a useful tool to solve issues. They are willing to bring the theater to Flagstaff for water discussions, budget issues, outreach problems, etc. since it is a versatile tool. She would also like Council to consider an initiative Mayor Rothschild from Tucson has been working with the Tucson Council to ask students who have dropped out of school to reengage with school. She would like Council to consider that and figure out how to work with Flagstaff Unified School District. Deputy City Manager Shane Dille asked if it would be a reasonable topic for the Alliance meeting. Mayor Evans asked if another Councilmember could attend the next Alliance meeting. She also requested a copy of Ordinance 2007-38.

## 10. **Adjournment**

The Flagstaff City Council Work Session of September 24, 2019, adjourned at 6:34 p.m.

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MAYOR

ATTEST:

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CITY CLERK

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Fobar, Deputy City Clerk  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration of Appointments:** Tourism Commission.

**STAFF RECOMMENDED ACTION:**

Make one appointment to a term expiring January 2021.

**Executive Summary:**

The mission of the Tourism Commission is to develop, promote, and maintain Flagstaff as a year-round visitor destination with professional visitor services that will benefit the community economically, environmentally, and socially. The Tourism Commission makes recommendations to the Council concerning expenditure of the tourism portion of the Bed, Board and Booze ("BBB") tax, a 2% local transaction privilege tax. The Tourism Commission consists of seven citizens serving three-year terms. There is currently one seat available. It is important to fill vacancies on Boards and Commissions quickly to allow the Commission to continue meeting on a regular basis.

There are two applications on file for consideration by the Council, they are as follows:

- Lynda Apple (new applicant)
- Chris Verrill (new applicant)

In an effort to reduce exposure to personal information the applicant roster and applications will be submitted to the City Council separately.

**COUNCIL APPOINTMENT ASSIGNMENT:** Councilmember Aslan

**Financial Impact:**

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

**Policy Impact:**

None

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

There is no Council goal that specifically addresses appointments to Boards and Commissions; however, boards and commissions do provide input and recommendations based on City Council goals that may pertain to the board or commission work plan.

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

**Options and Alternatives:**

- 1) Appoint one Commissioner: By appointing members at this time, the Tourism Commission will be at full membership, allowing the group to meet and provide recommendations to the City Council.
- 2) Table the action to allow for further discussion or expand the list of candidates.

**Community Benefits and Considerations:**

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

**Community Involvement:**

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

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**Attachments:**    Tourism Commission Authority

**CHAPTER 2-13  
TOURISM COMMISSION**

**SECTIONS:**

- 2-13-001-0001 CREATION OF THE COMMISSION:
- 2-13-001-0002 COMPOSITION AND TERM OF OFFICE:
- 2-13-001-0003 COMPENSATION OF COMMISSION MEMBERS:
- 2-13-001-0004 ORGANIZATION:
- 2-13-001-0005 MEETINGS:
- 2-13-001-0006 DUTIES:

**2-13-001-0001 CREATION OF THE COMMISSION:**

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There is hereby established a City Tourism Commission. There shall be seven (7) voting members of said Commission who shall meet as hereinafter provided to consider and recommend programs for the expenditure of the tourism portion of the Bed, Board and Booze Tax allocated under Chapter 3-06, Hospitality Industry Tax Revenues.

“Tourism” means the guidance, management, marketing, accommodation, promotion and encouragement of tourists (same meaning as set forth in Section 3-06-001-0001). (Ord. No. 1579, Enacted, 08/02/88; Ord. 2001-27, Amended, 11/20/2001; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016)

**2-13-001-0002 COMPOSITION AND TERM OF OFFICE:**

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The composition of the membership shall consist of:

- A. Seven (7) members to be appointed by the City Council. Each member shall serve for three (3) years, on a staggered term basis.
- B. The City Manager or the Manager’s designee shall be an ex officio member of the Commission. The member shall have no voting privileges.

The City Manager shall be responsible for staff support of the Tourism Commission.

The Council shall fill vacancies for the unexpired term of any of the members of the Commission.

A member’s term in office shall commence with the first regular Commission meeting following the appointment and terminate with the regular Commission meeting at which the successor takes office. No voting member of the Commission may be appointed to more than two (2) consecutive full terms. (Ord. No. 1579, Enacted, 08/02/88; Ord. No. 1674, Amended, 09/18/90; Ord. 2001-27, Amended, 11/20/2001; Ord. No. 2006-09, Amended 04/10/2006; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016)

**2-13-001-0003 COMPENSATION OF COMMISSION MEMBERS:**

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Members of the Commission shall serve without compensation.

(Ord. No. 1579, Enacted, 08/02/88)

## **2-13-001-0004 ORGANIZATION:**

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The Commission shall elect a Chairperson from among its members. The term of the Chairperson shall be one year with eligibility for reelection. Commission members may not serve more than two (2) consecutive terms as Chairperson. The Council representative shall not be eligible for the Chair.

(Ord. No. 1579, Enacted, 08/02/88)

## **2-13-001-0005 MEETINGS:**

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A. The Commission shall hold at least one (1) regular meeting per month, which shall at all times be open to the public. The time and place of said meeting shall be posted in accordance with the applicable Arizona State Statutes.

A quorum consisting of a minimum of four (4) voting members shall be required to conduct business.

B. The Chairperson of the Commission shall meet with the Chairpersons of the Economic Development Commission and the Beautification Commission at least once per month. The purpose of the meeting is for coordination of the three (3) commissions only. The intent is not to create another commission. The meeting shall at all times be open to the public. The time and place of said meeting shall be posted in accordance with applicable Arizona State Statutes.

C. If a member is absent for three (3) meetings within a twelve (12) month period, excused or unexcused, that member may be replaced by the City Council. (Ord. No. 1579, Enacted, 08/02/88; Ord. 2001-27, Amended, 11/20/2001; Ord. 2014-28, Amended, 11/18/2014)

## **2-13-001-0006 DUTIES:**

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The duties of the Commission shall be to:

A. Prepare a Five (5) Year Master Plan. The Five (5) Year Plan shall be used as a guideline for future programs. Said Plan shall be presented to the Council prior to April 1st of each year.

B. Develop and present to City Council an Annual Plan outlining the Commission's program recommendations for the upcoming fiscal year. Said plan shall be presented to the Council prior to April 1st of each year.

C. Make recommendations to the City Council concerning the annual budgetary allocation of the tourism portion of the Bed, Board and Booze Tax to include, but not be limited to:

1. Providing funding to the qualified, established public or private agency to administer, on a contract basis, tourism programs as required.
2. Developing and implementing a marketing plan. Major elements of the marketing plan will include, but not be limited to, developing a specific image for Flagstaff, identifying target market segments, and implementing a promotional plan directed to target market segments.
3. Establishing visitor information center(s) to include, but not be limited to, a high profile location, easy visitor access, adequate staffing, a toll-free telephone number for visitor information, and develop other facilities as needed to benefit visitors and the community.

4. Establishing an educational program to include, but not be limited to, scholarships for hospitality education at Northern Arizona University.
5. Promoting activities that enhance the community's image and the overall quality of life.
6. Retaining of appropriate staff to implement approved programs.

D. Perform any additional duties as determined by the City Council related to tourism activities. (Ord. No. 1579, Enacted, 08/02/88; Ord. 2015-22, Amended, 01/05/2016)

## 7. B.

### CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Stacy Fobar, Deputy City Clerk  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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#### TITLE:

**Consideration of Appointments:** Housing Commission

#### STAFF RECOMMENDED ACTION:

Make one appointment to a Real Estate and Professional - Lender seat to a term expiring in September 2021.

#### Executive Summary:

The Housing Commission consists of thirteen (13) voting members; twelve (12) members appointed by the City Council and one (1) representative from the Flagstaff Housing Authority Board of Commissioners. The Commission serves as an advisory board to City Council regarding housing policies, needs, and programs in Flagstaff. There are currently two Building and Real Estate Professional seats: one for a developer and one for a lender. At this time there are no applications for the developer seat. Staff will bring the developer appointment back to Council once applications are received.

The authority for the commission requires that the members shall be appointed into one of three professional categories: Building and Real Estate Professionals (6 members requiring at least one builder, one developer, one realtor, one lender, and one residential multi-family/property management representative); Low Income Housing Experts (3 members); and Community Representatives (3 members).

There are two (2) Building and Real Estate Professional applications for lenders on file for consideration by the Council. They are as follows:

- Karen Flores - Lender (new applicant)
- Erin Moore - Lender (new applicant)

In an effort to reduce exposure to personal information, the applicant roster and applications will be submitted to the City Council separately.

**COUNCIL APPOINTMENT ASSIGNMENT:** Councilmember McCarthy for Lender seat.

**Financial Impact:**

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

**Policy Impact:**

None.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

There is no Council goal that specifically addresses appointments to boards and commissions; however, boards and commissions do provide input and recommendations based on City Council goals that may pertain to the board or commission work plan.

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

None.

**Options and Alternatives:**

- 1) Appoint one Commissioner: By appointing members at this time, the Housing Commission will be at near full membership, allowing the group to meet and provide recommendations to the City Council.
- 2) Table the action to allow for further discussion or expand the list of candidates.

**Community Benefits and Considerations:**

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

**Community Involvement:**

INFORM: The vacancies were posted on the City's website and multiple social media posts were made. An article was printed in the Arizona Daily Sun along with a printed advertisement calling for members. Additionally, outreach was done through the online community forum and through word of mouth.

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**Attachments:**    [Housing Commission Authority](#)

**ORDINANCE NO. 2019-25**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 2, *BOARDS AND COMMISSIONS*, BY ADDING A NEW CHAPTER 2-25, CREATING A HOUSING COMMISSION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the Council has an Affordable Housing goal to "Support development and increase the inventory of public and private affordable housing for renters and home-owners"; and

WHEREAS, the Regional Plan includes goal NH.3. "Make available a variety of housing types at different price points, to provide housing opportunity for all economic sectors"; and

WHEREAS, affordable/workforce housing is integral to the community regional quality of life and sustainability; and

WHEREAS, the creation of the Housing Commission will assure that an open, inclusive, and transparent process is utilized in the discussion, prioritization, and presentation of recommendations that address the community's housing needs.

**ENACTMENTS:**

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

SECTION 1. In General.

Flagstaff City Code, Title 2, *Boards and Commissions*, is hereby amended by adding a new chapter to read as follows:

**CHAPTER 2-25  
FLAGSTAFF HOUSING COMMISSION**

**2-25-001-0001 CREATION OF COMMITTEE**

A Housing Commission is hereby created.

**2-25-001-0002 MEMBERS AND OFFICERS**

The Housing Commission shall have thirteen (13) voting members; twelve (12) members appointed by the City Council and one (1) representative from the Flagstaff Housing Authority Board of Commissioners. All members shall reside within the Flagstaff City limits.

A. Members shall be appointed to fit into one of the professional categories listed below, however, the members identified as required must be appointed. Any member may satisfy

more than one (1) of the below qualifications and any "professional" category may be filled by a person who is retired from that profession.

1. Building and Real Estate Professionals (6 members)
  - a. Builders (required)
  - b. Developers (required)
  - c. Architects
  - d. Land Use Experts
  - e. Realtors (required)
  - f. Lenders (required)
  - g. Residential Multi-Family/Property Management Representative (required)
  - h. Other Building or Real Estate Professional
2. Low Income Housing Experts (4 members)
  - a. Housing Nonprofits
  - b. Low Income Representatives
  - c. Flagstaff Housing Authority Board of Commissioners member (required)
  - d. Other Low Income Housing Expert
3. Community Representatives (3 members)
  - a. General Public
  - b. Private Business Representatives
  - c. Workforce Representatives
  - d. Neighborhood Associations
  - e. HOA Representatives

- B. Appointed members shall have an interest in housing and be committed to represent not only their specific areas of expertise, but also the community at large.

#### **2-25-001-0003 TERMS AND OFFICERS**

- A. Appointments to the Housing Commission from the Housing Authority Board of Commissioners shall be for no longer than the remaining term of the appointing Commission's designee. Terms of all other appointees shall be for three years except for the first appointments creating staggered terms as follows: The City Council shall appoint four members for three year (3) terms, four members for two (2) year terms, and four members for one (1) year terms. After the initial appointment all terms thereafter will be three (3) year terms.
- B. The Commission shall, during its first meeting, elect a chairperson and a vice-chairperson from and by the voting membership of the Commission to serve one-year terms. A chairperson may serve no more than two consecutive terms as chairperson (exclusive of a term as vice-chairperson). Upon the conclusion of a second consecutive term as chairperson, such commission member shall be ineligible to serve as either chairperson or vice-chairperson until a calendar year has expired.

#### **2-25-001-0004 ELIGIBILITY**

Any resident of the City of Flagstaff shall be eligible for appointment by the City Council to the

Committee, in accordance with the membership requirements outlined above, and shall serve at the pleasure of the City Council and without compensation.

#### **2-25-001-0005 PURPOSE AND DUTIES**

- A. The Housing Commission serves as an advisory board to City Council, makes recommendations with respect to housing policies, needs, and programs in Flagstaff, and furnishes the Council with information through the Housing Director.
- B. The Housing Commission shall:
1. Examine funding sources available for housing in Flagstaff, make recommendations to City Council on potential funding sources, including bond measures, and provide oversight of any funds approved by the electorate for housing purposes.
  2. Make recommendations on the creation and implementation of housing and housing policies and programs for the benefit of Flagstaff and its citizens.
  3. Make recommendations regarding the prioritization of the community's housing needs.
  4. Make recommendations regarding how affordable market rate housing can be responsibly stimulated through changes in the City Code as well as other potential solutions.
  5. Examine and make recommendations regarding increasing the affordability of housing in Flagstaff.
  6. Explore alternative models of housing and make recommendations to Council.
  7. Advise and assist the City Council on ways to educate the community on housing, including the role housing plays as infrastructure in Flagstaff.
  8. Upon request, serve as a resource on implementation of housing policy and programs.
- C. To further assist the Commission in carrying out its duties, the Commission may request the assistance of technical experts and/or employees and agents of the City and other entities.

#### **2-25-001-0006 MEETINGS; ATTENDANCE**

- A. The Commission shall meet no less than quarterly from the first month following the initial appointment of Commission members.
- B. The Housing Commission shall not conduct any business at a meeting unless a quorum is present. A quorum shall consist of a simple majority of the voting membership of the Commission, excluding current vacancies.
- C. Official business shall be conducted pursuant to the Board and Commission Members' Rules and Operations Manual adopted by Resolution No. 2016-33 of the City Council, as may be amended from time to time, and in accordance with meeting procedures, if any, adopted by the Commission insofar as they are not in conflict with the Board and Commission Members' Rules and Operations Manual. In the event of any such conflict, the provisions of the Board and Commission Members' Rules and Operations Manual shall prevail.

SECTION 2. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

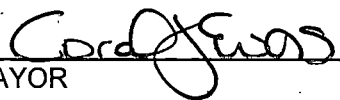
SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

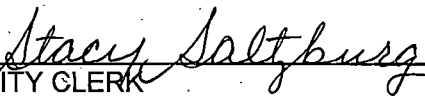
SECTION 4. Effective Date.

This ordinance shall become effective thirty (30) days following adoption by the City Council.


PASSED AND ADOPTED by the City Council of the City of Flagstaff this 2<sup>nd</sup> day of July, 2019.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Fobar, Deputy City Clerk  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration of Appointments:** Heritage Preservation Commission.

**STAFF RECOMMENDED ACTION:**

- Make one PROFESSIONAL appointment to a term expiring December 2021.
- Make one HISTORIC PROPERTY OWNER appointment to a term expiring December 2022.
- Make one AT LARGE appointment to a term expiring December 2022.

**Executive Summary:**

The Heritage Preservation Commission consists of seven citizens serving three-year terms. Two positions represent historic owners, two positions represent the professional industry, and three positions are at-large seats. The Heritage Preservation Commission locates sites of historic interest in the City, advises the City Council on all matters relating to historic preservation, and reviews development projects in the downtown design review district. There is one professional seat appointment available at this time. It is important to fill vacancies on Boards and Commissions quickly to allow the Commission to continue meeting on a regular basis.

There are three applications on file for consideration by the Council, they are as follows:

- Harris Abernathy (new applicant) - Professional
- David Hayward (current historic property owner member)
- Charles Webber (current professional member)

In an effort to reduce exposure to personal information the applicant roster and applications will be submitted to the City Council separately.

**COUNCIL APPOINTMENT ASSIGNMENT:** Councilmember Odegard, Vice Mayor Shimoni, Councilmember Whelan

**Financial Impact:**

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

**Policy Impact:**

None

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

There is no Council goal that specifically addresses appointments to Boards and Commissions; however, boards and commissions provide input and recommendations based on City Council goals that may pertain to the board or commission work plan.

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

None

**Options and Alternatives:**

1) Appoint one Commissioner to a professional seat: By appointing members at this time, the Tourism Commission will be at full membership, allowing the group to meet and provide recommendations to the City Council.

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

**Background/History:**

In 2016 Council eliminated all specialty appointments for Boards and Commissions. Due to the various state and grant requirements the specialty appointments had to be re-instated on the Heritage Preservation Commission. The Heritage Preservation Commission consists of two historic property owners, two industry professionals, and three at-large members. It will be up to the Council to make the determination of whether an applicant is qualified for a particular seat.

**Community Benefits and Considerations:**

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

**Community Involvement:**

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

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**Attachments:**    [HPC Authority](#)  
                          [Members by Category](#)

**CHAPTER 2-19**  
**HERITAGE PRESERVATION COMMISSION**

SECTIONS:

- 2-19-001-0001 ESTABLISHMENT OF THE COMMISSION
- 2-19-001-0002 MEMBERSHIP
- 2-19-001-0003 TERMS AND OFFICERS
- 2-19-001-0004 MEETINGS
- 2-19-001-0005 POWERS AND DUTIES

**2-19-001-0001 ESTABLISHMENT OF THE COMMISSION:**

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There is hereby created a commission to be known as the Heritage Preservation Commission. (Ord. 2010-35, Amended, 11/16/2010)

**2-19-001-0002 MEMBERSHIP:**

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A. The membership of the commission shall consist of seven (7) voting members. Additional members may be appointed in the future, if and when additional Historic Design Review Districts beyond the first district are created, to represent those additional districts and help develop and adopt design guidelines for those districts.

1. At least two (2) members must be professionals in the areas of architecture, history, architectural history, planning, or archaeology.
2. At least two (2) members shall be owners of locally designated historic properties or properties listed on the National Register of Historic Places.
3. At least three (3) members shall be from the general community.
4. Any member may satisfy more than one (1) of the above qualifications and any "professional" category may be filled by a person who is retired from that profession.

B. Appointed members shall have an interest in the history of the community and heritage preservation and be committed to represent not only their specific areas of expertise, but also the community at large. (Ord. 2005-08, Amended, 04/05/2005; Ord. 2007-07, Amended, 02/06/2007; Ord. 2010-35, Amended, 11/16/2010; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016; Ord. 2016-33, Amended, 09/20/2016)

**2-19-001-0003 TERMS AND OFFICERS:**

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A. Terms of appointment shall be three years, or until a successor is appointed.

B. A chairperson and vice-chairperson shall be elected from and by the voting membership of the Commission to serve one-year terms. A chairperson may serve no more than two consecutive terms as chairperson (exclusive of a term as vice-chairperson). Upon the conclusion of a second, consecutive term as chairperson, such commission member shall be ineligible to serve as either Chairperson or Vice-Chairperson until a calendar year has expired. (Ord. 2010-35, 11/16/2010)

**2-19-001-0004 MEETINGS:**

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The Commission shall at a minimum hold at least one (1) regular meeting quarterly, but shall normally hold monthly meetings.

A quorum shall consist of four (4) voting members of the Commission. (Ord. 2005-08, Amended 04/05/2005; Ord. 2010-35, Amended, 11/16/2010; Ord. 2016-30, Amended, 07/05/2016)

**2-19-001-0005 POWERS AND DUTIES:**

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A. The Commission may recommend to the City Council that properties be designated landmarks or historic design review districts, subject to the procedures and requirements of the adopted land use regulations and/or development code of the City of Flagstaff. See Title 10, Chapter 30 of the City Code for Purpose, Applicability, Procedures and Requirements.

B. The Commission shall increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.

C. The Commission shall advise and assist owners of landmarks or historic structures on physical and financial aspects of preservation, renovation, rehabilitation, and reuse.

D. The Commission shall make recommendations to the City Council concerning the utilization of federal, state, local or private funds to promote the preservation of landmarks and historic districts within the City.

E. The Commission may recommend acquisition of landmark structures by the City where:

1. Preservation is essential to the purposes of the Land Development Code;
2. Private preservation is not feasible, and where either imminent demolition is pending or, for a period in excess of one year, required maintenance of said

structures according to City Building Codes has not been accomplished due to deficiencies of ownership affecting maintenance; and

3. Where preservation of said structures is related to some other existing plan or report.

F. The Commission shall review and make decisions on any development application for a Certificate of Appropriateness and require the same plans to be submitted to the Development Review Board, plus applicable elevation drawings.

G. The Commission shall develop and adopt design guidelines for historic and non-historic structures within designated design review districts, or individual historic structures or landmarks, to assist property owners and developers in preservation, renovation, rehabilitation, and reuse of historic structures and others within designated districts. If there is more than one designated district, the Commission shall develop appropriate design guidelines for each district. The design guidelines, and major amendments thereto, shall be subject to a public hearing before the Commission, including notification of the property owners within the district to which they would apply, per procedures outlined in Section 10-30.30 of the City Code.

H. The Commission shall carry out other such duties as determined by the City Council; and present other recommendations the City Council deems pertinent. (Ord. 1857, Enacted, 02/07/1995; Ord. 1997, Amended, 06/15/1999; Ord. 2010-35, Amended, 11/16/2010)

HPC Members

<b>Members by Category</b>		
<b>Professional</b>	<b>Historic Property Owner</b>	<b>At-Large</b>
Emily Dale	David Hayward	Jonathan Day
Jill Hough	Caitlin Kelly	
Charlie Webber - Expired	Jerry McLaughlin	

<b>Applicants for Professional Seats</b>	<b>Applicants for Historic Owner Seat</b>
Harris Abernathy	David Hayward
Charlie Webber	

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Scott Overton, Streets Section Director  
**Co-Submitter:** Emily Markel  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Approval of Purchase through a Cooperative Purchase Contract:** To purchase one (1) 2019 International CV515 SFA Barricade Traffic Control Truck.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for one (1) 2019 International CV515 SFA Barricade Traffic Control Truck from RWC Group in the amount of \$99,341.29 through cooperative purchase contract #CTR041813.
2. Authorize the City Manager to execute the necessary documents

**Executive Summary:**

Public Works – Streets Section is responsible for delivering a high level of service maintaining the community’s transportation network. Traffic Control is a critical function to the safe and efficient delivery of the programming. In the event of needed lane closures or modifications from the regular traffic engineered controls, Streets employees will deploy certified traffic control.

Over the years various approaches have been utilized and for the most part we have provided traffic control using pickup trucks and any temporary signage and cones stored in the regular beds. After evaluation, discussion with regional partners and input from our Streets crews this truck and body was identified as a safe and effective method of providing the swift deployment of traffic control for multiple scenarios.

This piece of equipment will be outfitted with proper signage and cones needed to provide significant traffic control on roadways. The unit also includes an overhead sign board to provide directional arrow of movement to provide additional safety to our road workers.

**Financial Impact:**

This equipment purchase was approved in FY20 and is funded with Highway User Revenue Funds (HURF) Acct# 040-060-161-0614-6-4401 for a budgeted amount of \$110,000.

**Policy Impact:**

City of Flagstaff traffic volumes on major roads and arterials can be significant, and the traveling public expects clear traffic control when operating motor vehicles in work zones. Our operators and maintenance workers have professional training in the deployment of traffic control and this equipment investment will enhance the service delivery and safety of all involved.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Transportation and Public Infrastructure - Deliver quality community assets and continue to advocate and implement a highly performing multi-model transportation system.

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

No

**Options and Alternatives:**

1. Approve the equipment purchase for (1) 2019 International CV515 SFA Barricade Traffic Control Truck from RWC Group in the amount of \$99,341.29.
2. Do not approve the purchase.

**Key Considerations:**

The safe deployment of traffic control is essential in delivering continued maintenance on our roadway infrastructure. Keeping our employees and citizens safe in active traffic is important. The traveling public using various modes needs clear direction in the work zone and this piece of equipment is not only stocked with varying types of traffic control but will be used daily by work crews establishing work zones and safety corridors.

**Expanded Financial Considerations:**

This equipment purchase was approved in FY20 as a roll over purchase from the approved FY19 budget. It is funded with Highway User Revenue Funds (HURF) Acct# 040-060-161-0614-6-4401 for a budgeted amount of \$110,000.

Originally planned and funded in FY19 the purchase was approved as a carry forward into the FY20 budget. Further input and evaluation of final bed layout and design was desired. The result of this due diligence is the current design and layout presented in this proposal.

**Community Benefits and Considerations:**

As our community has developed and our road network has become more complicated, we have continued to evaluate best practices in traffic control management. Our current practice of setting up traffic control from a pickup is not ideal. Our professional operators and maintenance workers are putting themselves in active traffic situations and the safety of establishing the traffic control is difficult.

The Streets section embraces a culture of safety, the feedback from our work groups and employees has been positive and the general consensus is that this piece of equipment will

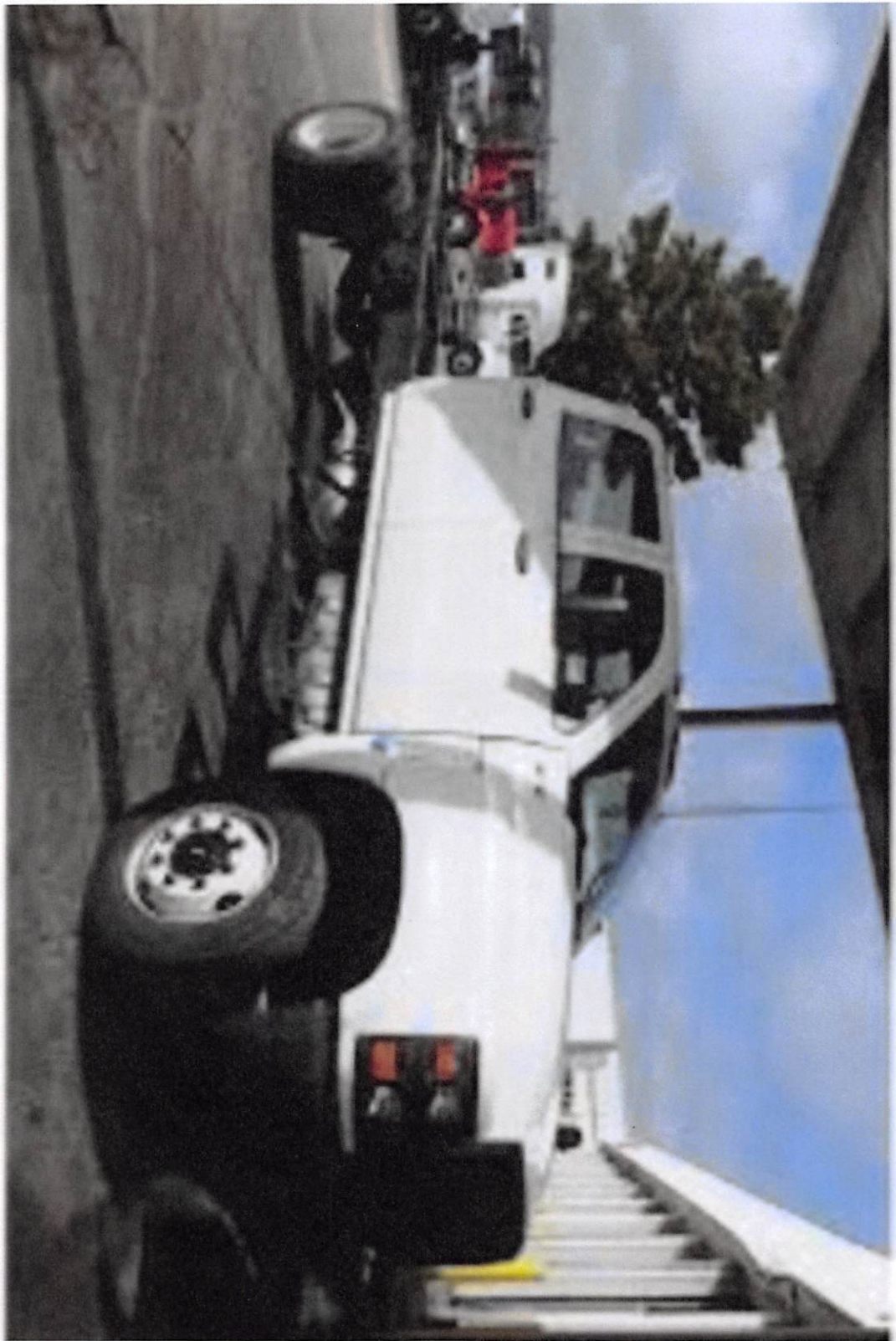
provide a safer work environment and will result in lower negative interactions with the public as temporary traffic measures are implemented.

**Expanded Options and Alternatives:**

1. Deny the requested action and continue our current practice of providing traffic control management using a pickup that is not specifically designed for this task. This would result in a saving of HURF funds programed for fleet capital and would be returned to the HURF fund balance for reconsideration of expenditure.
2. Request staff to repackage the purchase and utilize a different procurement method or means to secure the vehicle.

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**Attachments:**    [Equipment Images](#)  
                          [Co-Op Contract COF](#)  
                          [Exhibit A: Specifications and Cost](#)  
                          [Co-op Bid Pricing](#)  
                          [Equipment Price Breakdown](#)  
                          [Exhibit B: Offer & Acceptance](#)  
                          [Exhibit B: RFP with Co-op Language](#)

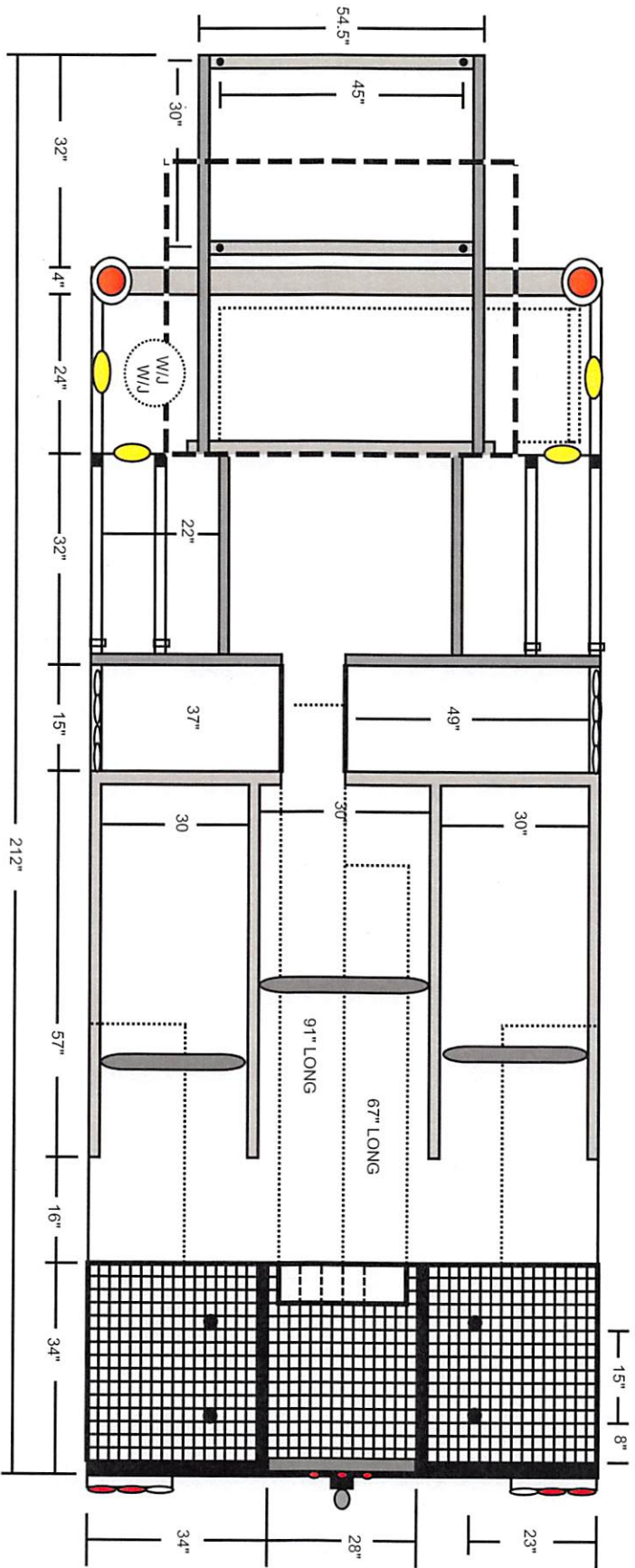


9/9/2019

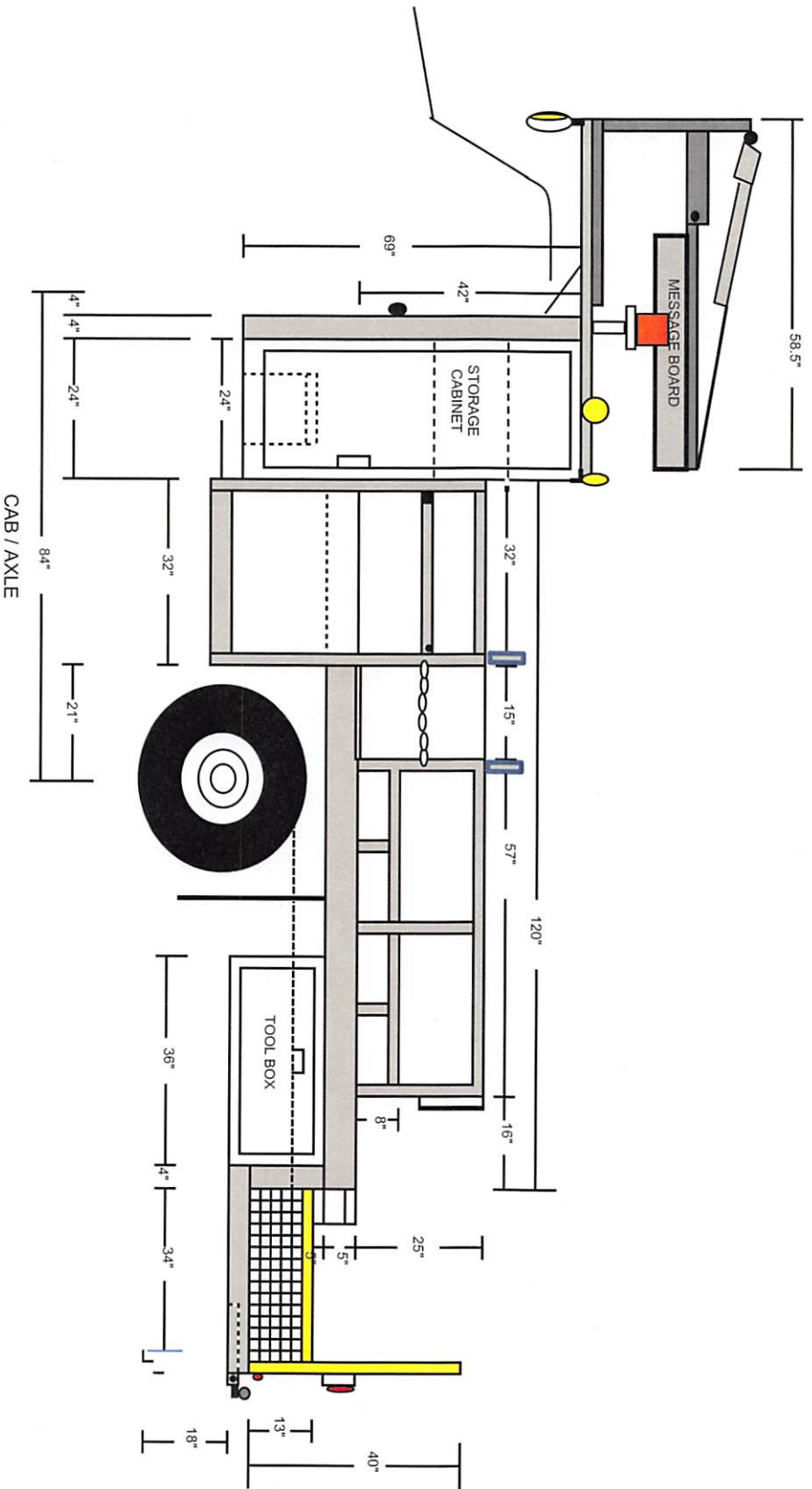
TOP VIEW

DRAWING 1 2047-19Q

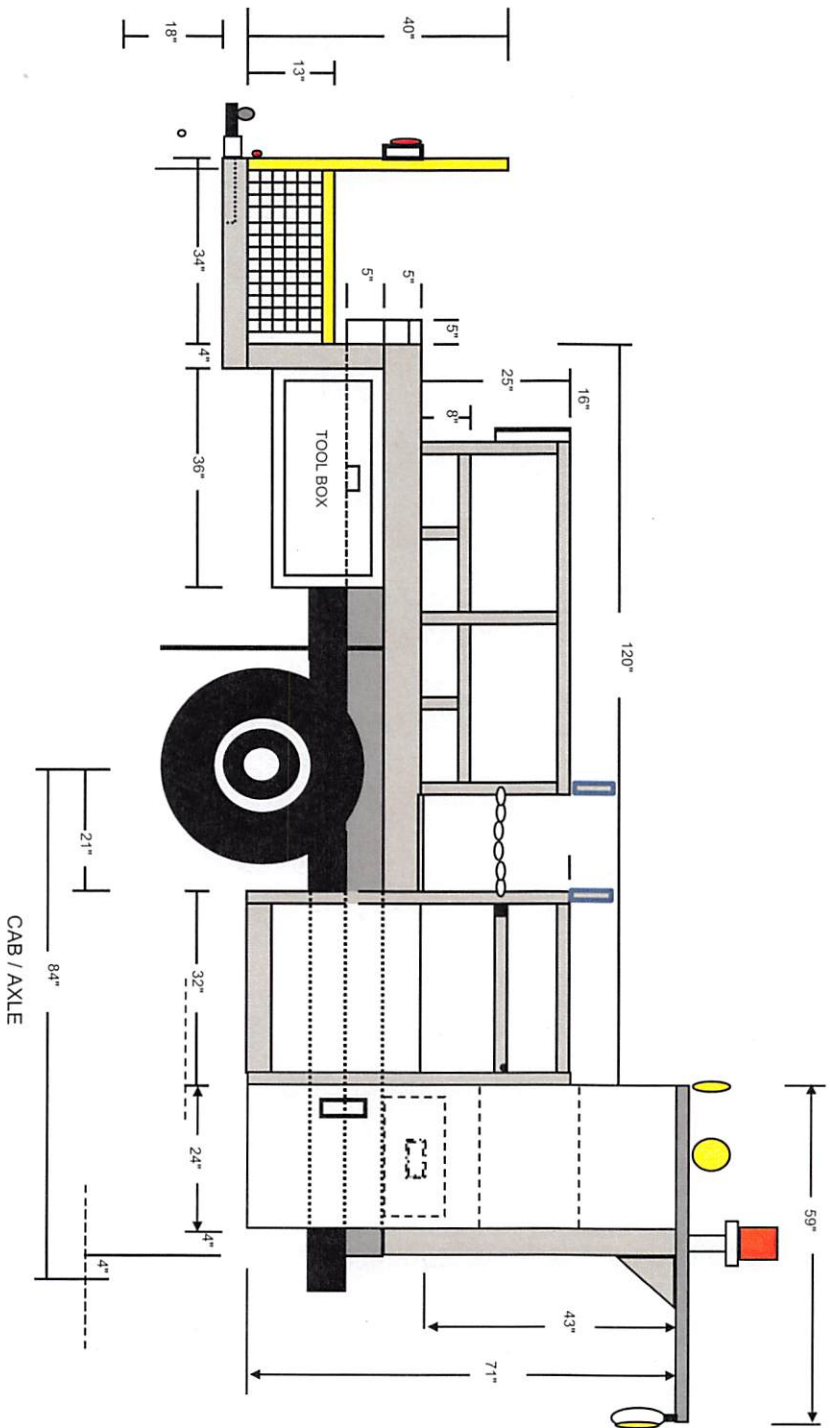
# "BARRICADE TRUCK BODY"



# "BARRICADE TRUCK BODY"



**"BARRICADE TRUCK BODY"**



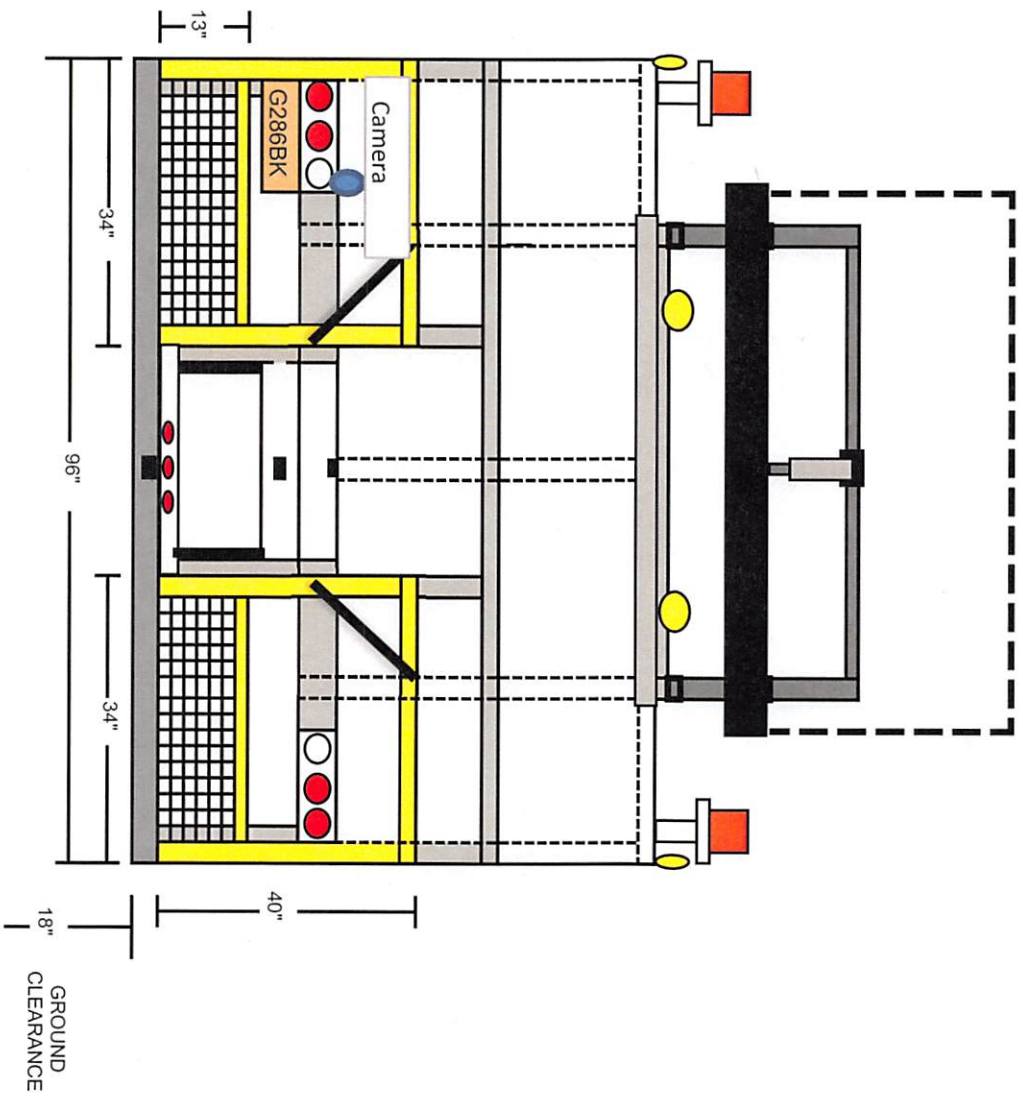
STORAGE  
CABINET

9/9/2019

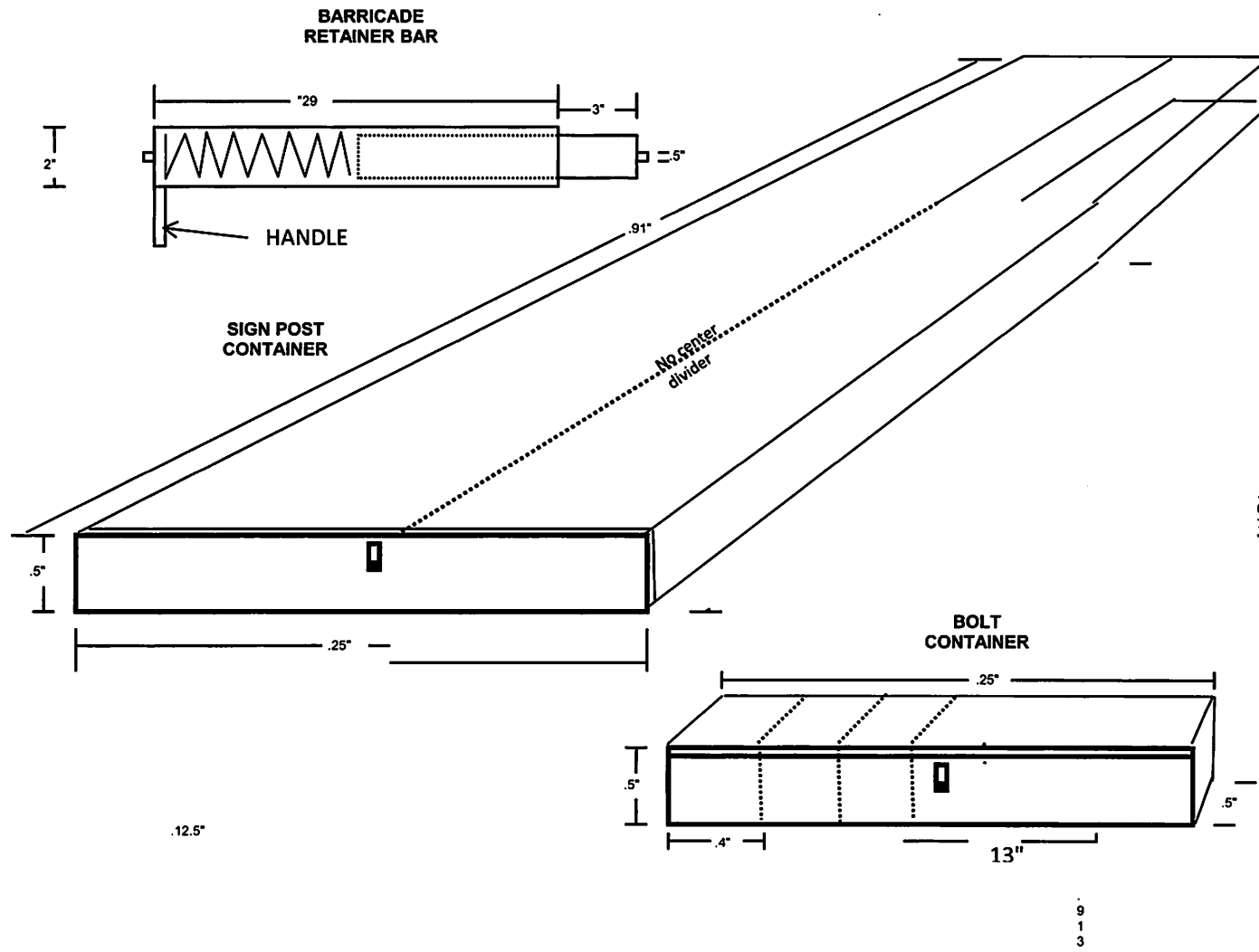
REAR VIEW

DRAWING 4 2047-19Q

**"BARRICADE SUPPORT TRUCK BODY"**



# "BARRICADE TRUCK BODY"



## COOPERATIVE PURCHASE CONTRACT

Contract No. 2020-37

This Cooperative Purchase Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and RWC International, LTD, an Arizona Limited Liability Company ("Contractor").

### RECITALS:

- A. Contractor has a Local Government Purchasing Cooperative Contract CTR041813 with Arizona Department of Administration State Procurement Office to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and
- B. Pursuant to section 3.14 of the Agency Contract, the City has authority to utilize the Agency Contract to enter into a cooperative purchase contract with Contractor as a Co-Op Buyer.

### AGREEMENT:

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

1. Materials and or Services Purchased: Contractor shall provide to City the materials as specified in the Purchase Order(s) submitted by the City in accordance with the Agency Contract. The materials being purchased through the Agency Contract are as follows:

#### **Public Works Vehicles:**

- (1) Barricade Truck**
- (1) 10-Wheel Snowplow Truck**
- (2) 6-Wheel Snowplow Truck**
- (1) Patch Truck**

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options selected by the City for each vehicle, as specified in the Purchase Order(s) submitted to Contractor and Exhibit A attached hereto and incorporated by reference.
3. Payment: Payment to the Contractor for the materials described above shall be one million, twenty-one thousand seven hundred and twelve dollars and seventy-five cents (**\$1,021,712.75**) made in accordance with the price list and terms set forth in the Agency Contract.
4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents attached as Exhibit B are incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract.
5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance

under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties.

RWC INTERNATIONAL, LTD:

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

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

CITY OF FLAGSTAFF

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A**  
**SCOPE OF WORK (attached)**

**EXHIBIT B  
AGENCY CONTRACT**

**RFP from STATE OF ARIZONA including AMENDMENT and OFFER & ACCEPTANCE  
(attached)**



# **CV515 SFA**

Sales Proposal For:  
**CITY OF FLAGSTAFF**

Presented By:  
**RWC Group**

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**Prepared For:**

CITY OF FLAGSTAFF  
 Mike Stress  
 211 WEST ASPEN AVE.  
 FLAGSTAFF, AZ 86001-  
 (928)779 - 7619  
 Reference ID: N/A

**Presented By:**

RWC Group  
 Mary R Wilson  
 600 North 75th Avenue  
 PHOENIX AZ 85043 -  
 (602)307-1050

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.

**Model Profile**  
**2019 CV515 SFA (CV515)**

<b>AXLE CONFIG:</b>	4X2
<b>APPLICATION:</b>	Stake Flat
<b>MISSION:</b>	Requested GVWR: 23500. Calc. GVWR: 23500 Calc. Start / Grade Ability: 40.40% / 3.41% @ 55 MPH Calc. Geared Speed: 90.1 MPH
<b>DIMENSION:</b>	Wheelbase: 199.00, CA: 83.80, Axle to Frame: 63.00
<b>ENGINE, DIESEL:</b>	{International 6.6} EPA 2017, 350HP @ 2700 RPM, 700 lb-ft Torque @ 1600 RPM, 2900 RPM Governed Speed, 350 Peak HP (Max)
<b>TRANSMISSION, AUTOMATIC:</b>	{Allison 2700 RDS} 5th Generation Controls, Close Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Park Pawl, with 23,500-lb GVW and 26,000 GCW Max, On/Off Highway
<b>AXLE, FRONT NON-DRIVING:</b>	{Dana Spicer D-800N} I-Beam Type, 8,000-lb Capacity
<b>AXLE, REAR, SINGLE:</b>	{Dana Spicer S16-130} Single Reduction, 15,500-lb Capacity, 190 Wheel Ends Gear Ratio: 4.88
<b>CAB:</b>	Conventional 6-Man Crew Cab
<b>TIRE, FRONT:</b>	(2) 225/70R19.5 Load Range H CROSSTRAC HA3 (CONTINENTAL), 649 rev/mile, 75 MPH, All- Position
<b>TIRE, REAR:</b>	(4) 225/70R19.5 Load Range H CROSSTRAC HA3 (CONTINENTAL), 649 rev/mile, 75 MPH, All- Position
<b>SUSPENSION, REAR, AIR, SINGLE:</b>	{International IROS} 15,500-lb Capacity, 5.3" Ride Height, with Shock Absorbers
<b>PAINT:</b>	Cab schematic 100CX Location 1: 9219, Winter White (Std) Chassis schematic N/A

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
CV51500	Base Chassis, Model CV515 SFA with 199.00 Wheelbase, 83.80 CA, and 63.00 Axle to Frame.	4671/2886	7557	\$46,219.00

**AXLE CONFIGURATION**

1ANA	AXLE CONFIGURATION {Navistar} 4x2 <u>Notes</u> : Pricing may change if axle configuration is changed.	0/0	0	\$0.00
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**ENGINE**

12GAD	ENGINE, DIESEL {International 6.6} EPA 2017, 350HP @ 2700 RPM, 700 lb-ft Torque @ 1600 RPM, 2900 RPM Governed Speed, 350 Peak HP (Max) <u>Includes</u> : OIL FILTER, ENGINE Spin-On Type	0/0	0	\$0.00
12XZD	RADIATOR Aluminum; 3-Row, Down Flow, Front to Back System, 730 SqIn Louvered, with 578 SqIn Charge Air Cooler, with In-Tank Transmission Cooler	0/0	0	\$0.00
12TTM	FAN DRIVE Viscous Screw On Type, Rear Tether, Electronically Controlled	0/0	0	\$0.00
12VGC	AIR CLEANER Single Element, with Water Separator	0/0	0	\$0.00
12XBL	BLOCK HEATER, ENGINE 120V/800W	0/0	0	\$100.00
12WZB	EMISSION COMPLIANCE Low NOx Idle Engine, Complies with California Clean Air Regulations; Includes "Certified Clean Idle" Decal on Hood	0/0	0	\$62.00
12VHB	FEDERAL EMISSIONS {International 6.6} EPA, OBD and GHG Certified for Calendar Year 2019	0/0	0	\$0.00
12WUS	GOVERNOR Electronic Road Speed Type; with 65 MPH Default	0/0	0	\$0.00
12WGG	THROTTLE, HAND CONTROL Engine Speed Control for PTO; Electronic Controlled, On/Off Switch Mounted on Dash, with Steering Wheel Button Control	0/0	0	\$430.00

**TRANSMISSION**

13AXH	TRANSMISSION, AUTOMATIC {Allison 2700 RDS} 5th Generation Controls, Close Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Park Pawl, with 23,500-lb GVW and 26,000 GCW Max, On/Off Highway	0/0	0	\$1,922.00
13XAL	PTO LOCATION Customer Intends to Install PTO at Left Side of Transmission	0/0	0	\$0.00

**REAR AXLES, SUSPENSIONS**

14AJE	AXLE, REAR, SINGLE {Dana Spicer S16-130} Single Reduction, 15,500-lb Capacity, 190 Wheel Ends . Gear Ratio: 4.88	0/12	12	\$207.00
14TBM	SUSPENSION, REAR, AIR, SINGLE {International IROS} 15,500-lb Capacity, 5.3" Ride Height, with Shock Absorbers	0/79	79	\$1,340.00
14899	SUSPENSION AIR CONTROL VALVE Pressure Release Control In Cab	0/0	0	\$163.00

**FRONT AXLES**

2AJL	AXLE, FRONT NON-DRIVING {Dana Spicer D-800N} I-Beam Type, 8,000-lb Capacity	0/0	0	\$39.00
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<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
<b>FRONT SUSPENSIONS</b>				
3ADA	SUSPENSION, FRONT, SPRING Parabolic Taper Leaf, Shackles Type, 8,000-lb Capacity, with Shock Absorbers	0/0	0	\$92.00
<b>CABS, COWLS, BODIES</b>				
16196	CAB Conventional 6-Man Crew Cab <u>Includes</u> : DOME LIGHT, CAB with OFF/DOOR/ON Settings; Located in Overhead Console : READING LIGHT, CAB Located in Overhead Console : STEP (4) One Step Per Door : STORAGE POCKET, DOOR (2) Full Length, Driver and Passenger Door	336/230	566	\$2,309.00
16XCP	AIR BAG, FRONT, DRIVER SIDE	0/0	0	\$0.00
16XCR	AIR BAG, FRONT, PASSENGER SIDE	0/0	0	\$736.00
16XDE	AIR BAG, SIDE, DRIVER Seat Mounted, Outboard Side-Impact Airbag	0/0	0	\$100.00
16XDG	AIR BAG, SIDE, PASSENGER Seat Mounted, Outboard Side-Impact Airbag	0/0	0	\$100.00
16XDH	AIR BAG, SIDE CURTAIN Roof Mounted, for Front and Rear Outboard Seating Positions for Driver and Passenger Sides	0/0	0	\$150.00
16XZA	AIR CONDITIONER with Heater, Single Zone	0/0	0	\$0.00
16VKD	CAB INTERIOR TRIM Classic, for Crew Cab <u>Includes</u> : SUN VISOR (2) Vinyl	0/0	0	\$0.00
16CEM	COLOR, INTERIOR Dark Ash	0/0	0	\$0.00
16HCT	GAUGE CLUSTER English Speedometer, Includes English Odometer; Includes 3.5" Monochromatic Display with Personalization, Warning Messages and Vehicle Information	0/0	0	\$0.00
16BBA	GLASS, ALL WINDOWS Solar Absorbing, Tint	0/0	0	\$0.00
16ACB	MIRROR, INSIDE REAR VIEW with Manual Tilt	0/0	0	\$25.00
16SPS	MIRRORS (2) Manual Folding and Extending, Power Adjust, Heated, Turn Signal Indicator Located in Mirror, Black Heads and Arms, for 96" Load Width	0/0	0	\$380.00
16KVU	SEAT, DRIVER High Back with Integral Headrest, 10-Way Power Adjustable, Cloth, Manual Adjust Lumbar	0/0	0	\$234.00
16LVT	SEAT, TWO-MAN PASSENGER High Back with Integral Headrest in Outboard Position, Center Fold-Down Armrest with Storage, Lockable Storage in Seat Cushion, Cloth, with Recline	0/0	0	\$225.00
16KZB	SEAT, REAR BENCH, Cloth	0/0	0	\$908.00
16XCT	WINDOW, POWER (4) in Left and Right Doors, Front and Rear	0/0	0	\$496.00
<b>FRAMES</b>				
1CGH	FRAME RAILS High Strength Low Alloy Steel (50,000 PSI Yield), Straight Top Flange with Contoured Bottom, Height Transitions from 7.375" (187.325mm) to 9.125" (231.775mm) to 7.625" (193.675mm); Width: 3.079" (78.21mm); Thickness: 0.3125" (7.94mm); 383.3" (9735.8mm) Max OAL	81/121	202	\$0.00
1LRZ	BUMPER, FRONT Contoured, Steel, Painted Black	0/0	0	\$0.00
1570	TOW HOOK, FRONT (2) Frame Mounted	13/-1	12	\$84.00
1LEG	LICENSE PLATE HOLDER Includes Upper & Lower Mounting Plate Hardware, Mounted in Existing Holes in Front Bumper	2/0	2	\$29.00
1WEC	WHEELBASE RANGE 185" (470cm) Through and Including 236" (600cm)	10/30	40	\$379.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
<b>BRAKES</b>				
4198	BRAKE SYSTEM, HYDRAULIC {Bosch} Split System, with Four Channel ABS, Traction Control, Hydromax Brake Booster and Master Cylinder	0/0	0	\$0.00
4JNR	BRAKES, FRONT, HYDRAULIC DISC Quadraulic; Four 64mm Diameter Pistons	0/0	0	\$0.00
4NNM	BRAKES, REAR, HYDRAULIC DISC Quadraulic; Four 64mm Diameter Pistons	0/0	0	\$0.00
4GBJ	BRAKE, PARKING {Bosch} DSSA Type, 12" x 3"; for Hydraulic Brake Chassis; Foot Operated in Cab; Differential Mounted	0/0	0	\$0.00
4EVD	DUST SHIELDS, FRONT BRAKE for Hydraulic Brakes	0/0	0	\$0.00
4EVE	DUST SHIELDS, REAR BRAKE for Hydraulic Brakes	0/0	0	\$0.00
4SBX	AIR COMPRESSOR {YOOSUNG} 7.1 CFM, with Clutch	81/-2	79	\$350.00
4VKM	AIR TANK LOCATION (1) Mounted Outside Left Rail, Perpendicular to Rail, Behind Battery Box	14/6	20	\$232.00
<b>STEERING</b>				
5PSS	STEERING GEAR {Bosch S2 8014 Plus} Power	0/0	0	\$0.00
5708	STEERING COLUMN Tilting	0/0	0	\$0.00
5CBG	STEERING WHEEL 4-Spoke; 15" Dia., Black	0/0	0	\$0.00
<b>DRIVELINES</b>				
6DGA	DRIVELINE SYSTEM {Dana Spicer} SPL100, for 4x2/6x2	10/37	47	\$0.00
<b>EXHAUST SYSTEMS</b>				
7BLL	EXHAUST SYSTEM Horizontal, Frame Mounted Right Side, Under Rail, for Single Exhaust	0/0	0	\$0.00
7SDS	ENGINE EXHAUST BRAKE for International 6.6 Engine	0/0	0	\$0.00
7XAA	MANUAL REGEN Capability	0/0	0	\$250.00
<b>ELECTRICAL SYSTEMS</b>				
8002	ELECTRICAL SYSTEM 12-Volt for CV Model <u>Includes</u> : HAZARD SWITCH Push On/Push Off, Located on Top of Steering Column Cover : HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever : PARKING LIGHT PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light : TURN SIGNAL SWITCH Self-Cancelling with Lane Change Feature : WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature, Integral with Turn Signal Lever	0/0	0	\$0.00
8GJA	ALTERNATOR {Denso SC2} Brush Type, 12 Volt 150 Amp. Capacity	0/0	0	\$0.00
8THB	BACK-UP ALARM Electric, 102 dBA	5/1	6	\$120.00
8VVB	BATTERY BOX Steel, with Plastic Cover, 2 Battery Capacity, Parallel to Rail, 28" Wide, Mounted Left Side Under Cab	0/0	0	\$0.00
8MVZ	BATTERY SYSTEM {VARTA} Maintenance-Free, (2) 12-Volt 1100CCA Total, Top Threaded Stud	0/0	0	\$0.00
8XJV	CLEARANCE/MARKER LIGHTS (5) Amber LED Lights, Flush Mounted on Cab	0/0	0	\$0.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
8XJN	HEADLIGHTS Halogen, Composite Aero Design, Black Trim Bezel, with Daytime Running Lights	0/0	0	\$0.00
8VAY	HORN, ELECTRIC Disc Style	0/0	0	\$0.00
8WBW	JUMP START STUD Remote Mounted	3/0	3	\$168.00
8RNM	RADIO AM/FM/Clock/Bluetooth, Seek/Scan, with 7" Touch Panel Display	1/0	1	\$353.00
8RNU	SPEAKERS (6)	2/0	2	\$37.00
8XJW	STARTING MOTOR 12 Volt	0/0	0	\$0.00
8TUK	STOP, TURN, TAIL & B/U LIGHTS Multi-Function, Sealed, LED Lights for Stop, Turn and Tail, Incandescent Backup Lights, with Rear Reflex Reflector, Includes LED License Plate Light	0/1	1	\$240.00
8XJP	SWITCH, AUXILIARY 1 to 4 Latching Switches with 30-Amp Fuses	0/0	0	\$0.00
8HBW	TRAILER BRAKE CONTROL Integrated	5/14	19	\$270.00
8TRA	TRAILER CONNECTION SOCKET Mounted at Rear of Frame, Wired for Turn Signals Combined with Stop, Compatible with Trailers That Use Combined Stop, Tail, Turn Lamps	7/-1	6	\$94.00

**FRONT END**

9WAY	FRONT END Tilting, Fiberglass, with Three Piece Construction	0/0	0	\$0.00
9WAC	BUG SCREEN Mounted Behind Grille	11/-1	10	\$131.00
9WBS	FENDER EXTENSIONS Molded in Black	0/0	0	\$0.00
9HBZ	GRILLE Molded in Dark Gray	0/0	0	\$0.00
9AAB	LOGOS EXTERIOR Model Badges	0/0	0	\$0.00

**SPEEDOMETER, TOOLS, MISC**

10060	PAINT SCHEMATIC, PT-1 Single Color, Design 100	0/0	0	\$0.00
10761	PAINT TYPE Base Coat/Clear Coat, 1-2 Tone	0/0	0	\$0.00
10XAX	GVWR WEIGHT CLASSIFICATION Class 6 (19,501-26,000 lbs)	0/0	0	\$4,394.00

**FUEL TANKS**

15SZN	FUEL TANK Top Draw, Plastic, Rectangular, 17" Tank Depth, 40 US Gal (151L), Includes Auxiliary Draw Port and Fuel Filler Assembly, Mounted Between Frame Rails and Behind Rear Axle	0/0	0	\$0.00
15WDZ	DEF TANK 6.75 US Gal (26L) Capacity, Frame Mounted Outside Right Rail, Under Cab	0/0	0	\$0.00

**WHEELS, TIRES - FRONT**

27DTX	WHEELS, FRONT {Accuride 50180} DISC; 19.5x6.75 Rims, Powder Coat Steel, 4-Hand Hole, 8-Stud, 275mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs	0/0	0	\$0.00
7789445436	(2) TIRE, FRONT 225/70R19.5 Load Range H CROSSTRAC HA3 (CONTINENTAL), 649 rev/mile, 75 MPH, All-Position	0/0	0	\$18.00

**WHEELS, TIRES - REAR**

28DTX	WHEELS, REAR {Accuride 50180} DUAL DISC; 19.5x6.75 Rims, Powder Coat Steel, 4-Hand Hole, 8-Stud, 275mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs	0/0	0	\$0.00
7789445436	(4) TIRE, REAR 225/70R19.5 Load Range H CROSSTRAC HA3 (CONTINENTAL), 649 rev/mile, 75 MPH, All-Position	0/0	0	\$36.00

**Total of Product Features****\$63,422.00**

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	Cab schematic 100CX Location 1: 9219, Winter White (Std) Chassis schematic N/A			

**Services Section:**

**WARRANTY**

40131	WARRANTY Standard for CV515, Effective with Vehicles Built December 3, 2018 or Later, CTS-3000A	0/0	0	\$0.00
	<b>Total of Service Features</b>			<b>\$0.00</b>
	<b>Total Component Weight:</b>	<b>5252/3412</b>	<b>8664</b>	
	<b>Total List Price Including Options:</b>			<b>\$63,422.00</b>
1	Custom 12' BARRICADE BODY WITH SOLAR TECH MESSAGE BOARD INSTALLED	0/0	0	\$34,637.00
	<b>Total Body Allied:</b>	<b>0/0</b>	<b>0</b>	<b>\$34,637.00</b>
	STATE CONTRACT CTR041813	0/0	0	\$0.00
	<b>Total Goods Purchased:</b>	<b>0/0</b>	<b>0</b>	<b>\$0.00</b>

The weight calculations included in this proposal are an estimate of future vehicle weight. The actual weight as manufactured may be different from the estimated weight. Navistar, Inc. shall not be liable for any consequences resulting from any differences between the estimated weight of a vehicle and the actual weight.

<u>Description</u>	<u>(US DOLLAR)</u>	<u>Price</u>
Total Factory List Price Including Options:		\$63,422.00
Freight	\$1,595.00	
Total Freight:		\$1,595.00
Total Factory List Price Including Freight:		\$65,017.00
Less Customer Allowance:		(\$7,937.20)
Total Vehicle Price:		\$57,079.80
Total Body/Allied Equipment:		\$34,637.00
Total Sale Price:		\$91,716.80
Total Per Vehicle Sales Price:		\$91,716.80
Total Net Sales Excluding Taxes:		\$91,716.80
Arizona Tire Tax, 6 Tires	\$12.00	
Sales Tax, Maricopa County	\$7,612.49	
Total Taxes:		\$7,624.49
Net Sales Price:		\$99,341.29

If applicable, Federal Excise Tax (FET) is included in the net sales price above.

Terms of payment are cash on delivery and prices quoted are FOB Phoenix, AZ (unless otherwise noted).

This quote is good for 30 days. All inventory units are subject to prior sale. Unless otherwise noted, the quote above does NOT include title and licensing charges or Arizona state sales tax.

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle.

**Approved by Seller:**

**Accepted by Purchaser:**

\_\_\_\_\_  
**Official Title and Date**

\_\_\_\_\_  
**Firm or Business Name**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Authorized Signature and Date**

**This proposal is not binding upon the seller without Seller's Authorized Signature**

\_\_\_\_\_  
**Official Title and Date**

**The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.**

**The limited warranties applicable to the vehicles described herein are Navistar, Inc.'s standard printed warranties which are incorporated herein by reference and to which you have been provided a copy and hereby agree to their terms and conditions.**

## Pricing for Medium and Heavy Duty Cab, Chassis, and Buses

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses in the columns below. Column E shall automatically populate the correct contract price utilizing the pre-entered formula.

Make	Model	Manufacturer's Suggested Retail Price (MSRP)	Percentage (%) Off MSRP	Contract Price
International	CV515	\$ 46,219.00	10%	\$ 41,597.10
International	DuraStar	\$ 113,711.00	31%	\$ 78,460.59
International	MV607	\$ 91,707.00	32%	\$ 62,360.76
International	HV 513	\$ 165,553.00	50%	\$ 82,776.50
International	HV507	\$ 92,154.00	32%	\$ 62,664.72
International	HV607	\$ 92,154.00	32%	\$ 62,664.72
International	HV613	\$ 165,553.00	50%	\$ 82,776.50
International	HX515	\$ 207,853.00	50%	\$ 103,926.50
International	HX520	\$ 217,724.00	50%	\$ 108,862.00
International	HX615	\$ 205,714.00	50%	\$ 102,857.00
International	HX620	\$ 216,724.00	50%	\$ 108,362.00
International	RH 613	\$ 192,149.00	50%	\$ 96,074.50
International	LoneStar	\$ 243,590.00	50%	\$ 121,795.00
International	LT625	\$ 203,077.00	50%	\$ 101,538.50
International	RE Bus	\$ 229,650.00	47.5%	\$ 120,566.25
International	CE Bus	\$ 153,592.00	43.5%	\$ 86,779.48
Hino	Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$ 44,563.53
Hino	Hino 155 COE Double Cab Cab & Ch	\$ 58,914.00	17%	\$ 48,898.62
Hino	Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$ 51,427.63
Hino	Hino 195 COE Double Cab Cab & Ch	\$ 67,184.00	17%	\$ 55,762.72
Hino	Hino 238 Cab & Chassis	\$ 73,428.00	17%	\$ 60,945.24
Hino	Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$ 65,007.26
Hino	Hino 258ALP Cvab & Chassis	\$ 80,191.00	17%	\$ 66,558.53
Hino	Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$ 67,606.82

Hino	Hino 268A Cab & Chassis	\$	83,309.00	17%	\$	69,146.47
Hino	Hino 338 Cab & Chassis	\$	91,217.00	17%	\$	75,710.11
					\$	-
					\$	-

**Pricing for Medium and Heavy Duty Cab, Chassis, and Buses Option:**

Instructions: Offerors shall provide information for any additional option packages/add-ons available for Medium and Heavy Duty Cab and Chassis below. Proposed option packages shall only be for Medium and Heavy Duty Cab, Chassis, and Buses proposed on the 'Pricing - Vehicles' tab. Column E shall automatically populate the correct number utilizing the pre-entered formula. Please copy and paste the format for additional space if necessary.

Manufacturer/Make/Model: International CV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 CV515	\$ 46,219.00	10%	\$	41,597.10
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International DuraStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 4300 SBA 4x2	\$ 90,259.00	31%	\$	62,278.71
2 4400 SBA 4x2	\$ 105,569.00	31%	\$	72,842.61
3 4400 SBA 6x4	\$ 113,711.00	31%	\$	78,460.59
4			\$	-
5			\$	-

Manufacturer/Make/Model: International MV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 MV607	\$ 91,293.00	32%	\$	62,079.24
2 MV607 LP	\$ 91,707.00	32%	\$	62,360.76
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International HV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HV507	\$ 92,154.00	32%	\$	62,664.72
2 HV513	\$ 165,553.00	50%	\$	82,776.50
3 HV607	\$ 92,154.00	32%	\$	62,664.72
4 HV613	\$ 165,553.00	50%	\$	82,776.50
5			\$	-

Manufacturer/Make/Model: International HX Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HX 515	\$ 207,853.00	50%	\$	103,926.50
2 HX 520	\$ 217,724.00	50%	\$	108,862.00
3 HX 615	\$ 205,714.00	50%	\$	102,857.00
4 HX 620	\$ 216,724.00	50%	\$	108,362.00
5			\$	-

Manufacturer/Make/Model: International RH Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 RH 613	\$ 192,149.00	50%	\$	96,074.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LoneStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LoneStar	\$ 243,590.00	50%	\$	121,795.00
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LT				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LT625	\$ 203,077.00	50%	\$	101,538.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International RE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Rear Engine Bus	\$ 229,650.00	47.5%	\$	120,566.25
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International CE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Conventional	\$ 153,592.00	43.5%	\$	86,779.48
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: Hino				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$	44,563.53
2 Hino 155 COE Double Cab Cab & Chassis	\$ 58,914.00	17%	\$	48,898.62
3 Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$	51,427.63
4 Hino 195 COE Double Cab Cab & Chassis	\$ 67,184.00	17%	\$	55,762.72
5 Hino 238 Cab & Chassis	\$ 73,428.00	17%	\$	60,945.24
6 Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$	65,007.26
7 Hino 258LP Ccab & Chassis	\$ 80,191.00	17%	\$	66,558.53
8 Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$	67,606.82
9 Hino 358A Cab & Chassis	\$ 83,309.00	17%	\$	69,146.47
10 Hino 338 Cab & Chassis	\$ 91,217.00	17%	\$	75,710.11

## Pricing for Other Medium and Heavy Duty Cab, Chassis, and Buses Products or Services

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses products and services in the columns below.

Description of item or service	List Price	Percentage (%) Off List Price	Contract Price
Software NED-S01 NAVISTAR	\$ 929.50		\$ 599.30
DLB-S01 DIAMOND LOGIC	\$ 908.70		\$ 599.30
DG-DPA5-BT-C1-KIT	\$ 1,571.73		\$ 1,281.02
3886390- INSITE LIT SUBSCRIPTION	\$ 936.00		\$ 792.00
3886388 INSITE LIT	\$ 24.70		\$ 19.06
5298640- HAND HELD COMPUTER	\$ 1,228.88		\$ 1,047.95
EZ-TECH- TOUGHBOOK COMPUTER	\$ 8,476.83		\$ 6,520.64
Training Services Charge at hourly rate	\$ 135.00		\$ 119.00
DVD PLAY SYSTEM	\$5,026.46	10.0%	\$ 4,523.81
ZONAR SECURITY INSPECTION SYSTEM	\$2,079.76	10.0%	\$ 1,871.78
KENWOOD MOBILE TK-8180	\$1,344.48	10.0%	\$ 1,210.03
UPGRADE SPEAKERS	\$600.39	10.0%	\$ 540.35
Kenwood NX-900 Two Way radio and Antenna	\$846.55	10.0%	\$ 761.90
Kenwood TK-7180 with power Tamer	\$1,274.03	10.0%	\$ 1,146.63
Large light gray shoulder rail	\$1,674.75	10.0%	\$ 1,507.28
install caps & covers on wheels	\$562.35	10.0%	\$ 506.12
Tech Package-Diagnostic software,body builder software a	\$8,580.93	10.0%	\$ 7,722.84
			\$ -
Service Max Diagnostic/ NEXIQ	\$1,902.01	10.0%	\$ 1,711.81
Diamond logic builder	\$942.67	10.0%	\$ 848.40
RWC UNIVERSITY ENROLLMENT (ONLINE PORTAL) PER PERSON	\$50.50	50.0%	\$ 25.25
11R22.5 CONTINENTAL TIRE	\$683.43	10.0%	\$ 615.09
			\$ -
			\$ -
KENWOOD NEXTEDGE TWO WAY RADIO	\$991.84	10.0%	\$ 892.66

STEERING STABILIZER BAR	\$1,191.17	10.0%	\$	1,072.06
FIRE BLANKET	\$81.83	10.0%	\$	73.65
CRS SEAT	\$719.98	10.0%	\$	647.98
Motorola Two Radio model TK-690HBK	\$1,943.51	10.0%	\$	1,749.16
AUTOMATIC TIRE CHAINS	\$3,333.34	10.0%	\$	3,000.00
36" TRACKED BARRIERS	\$702.79	10.0%	\$	632.51
CUSTOMER BARRIER POUCH	\$78.05	10.0%	\$	70.25
REI Cellular Router w/antenna	\$1,575.45	10.0%	\$	1,417.90
IMMI CHILD RESTRAIN SEATS	\$4,755.08	10.0%	\$	4,279.58
TOOL BOX	\$415.28	10.0%	\$	373.75
ALLISON TRANSMISSION SOFTWARE	\$2,641.01	10.0%	\$	2,376.91
CUMMINS DIAGNOSTIC SOFTWARE	\$4,070.21	10.0%	\$	3,663.19
BRAUN LIFT UPGRADE	\$264.03	10.0%	\$	237.62
DVD PLAYER 13 SET PACKAGE	\$2,901.53	10.0%	\$	2,611.37
TS INC 2 CAMERA SYSTEM	\$1,422.57	10.0%	\$	1,280.32
CUMMINS 6.7L, EPA, OBD AND GHG CERTIFIED FOR CALENDER 2017	\$840.55	10.0%	\$	756.49
Kenwood Radio, Antenna, Timer XL	\$1,444.44	10.0%	\$	1,300.00
FREEDMAN 48 FAMILYSEATS W/3 CRASH BARRIERS LEVEL 6 CLOTH	\$16,666.67	10.0%	\$	15,000.00
			\$	-
XPR2500 MOTOROLA TWO WAY	\$886.94	10.0%	\$	798.25
24/7/6 CHANNEL (2) Camera 500GB EVENT MARKET	\$2,102.56	10.0%	\$	1,892.31
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
<b>CAMERA SYTEMS- ANGEL TRAX, BUS VISION, PROVISION</b>			\$	-
RWC GROUP			\$	-
ANGEL TRAX SYSTEM (TWO CAMERA SYSTEM)	\$2,582.88	10.0%	\$	2,324.59

ANGELTRAX FOUR CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,587.93	10.0%	\$	3,229.13
ANGELTRAX Four Camera System	\$1,915.24	10.0%	\$	1,723.72
ANGELTRAX SYSTEM (FOUR CHANNEL W/FOUR CAMERAS)	\$3,028.36	10.0%	\$	2,725.53
ANGELTRAX THREE CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,347.77	10.0%	\$	3,012.99
ANGELTRAX TWO CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$2,987.54	10.0%	\$	2,688.78
BUS VISION System	\$4,242.35	10.0%	\$	3,818.12
CoPilot 4-Channel Mobile Digital Video Recorder	\$900.58	10.0%	\$	810.53
EVENT MARKER	\$222.14	10.0%	\$	199.93
Extra Hard Drive	\$198.13	10.0%	\$	178.32
HYBRID QUEST SYSTEM	\$2,165.00	10.0%	\$	1,948.50
INDICATOR SENSOR KIT	\$162.11	10.0%	\$	145.89
PROVISION 4 camera, 8 channel	\$4,190.72	10.0%	\$	3,771.65
RR-MRH8-1000	\$6,496.11	10.0%	\$	5,846.50
	\$0.00	10.0%	\$	-

<b>REI Camera Systems</b>			\$	-
REI / 4 CH HD420 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$1,518.75	10.0%	\$	1,366.87
REI / 4 CH HD420 DVR w/2 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,751.40	10.0%	\$	1,576.26
REI / 4 CH HD420 DVR w/3 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,984.05	10.0%	\$	1,785.64
REI / 4 CH HD420 DVR w/4 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$2,216.70	10.0%	\$	1,995.03
REI / 8 CH HD800 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$2,119.13	10.0%	\$	1,907.22
REI / 8 CH HD800 DVR w/2 Cameras & 320GB Hard Drive	\$2,351.79	10.0%	\$	2,116.61
REI / 8 CH HD800 DVR w/3 Cameras & 320GB Hard Drive	\$2,584.44	10.0%	\$	2,325.99
REI / 8 CH HD800 DVR w/4 Cameras & 320GB Hard Drive	\$2,817.09	10.0%	\$	2,535.38
REI / 8 CH HD800 DVR w/5 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,049.74	10.0%	\$	2,744.76
REI / 8 CH HD800 DVR w/6 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,282.39	10.0%	\$	2,954.15

REI / 8 CH HD800 DVR w/7 Cameras & 320GB Hard Drive	\$3,515.04	10.0%	\$	3,163.54
REI / 8 CH HD800 DVR w/8 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,747.69	10.0%	\$	3,372.92
REI / GPS Receiver	\$193.27	10.0%	\$	173.94
REI / Sensor Harness	\$157.96	10.0%	\$	142.17
REI / Accelerometer	\$161.50	10.0%	\$	145.35
REI / IR Illuminator (for dome cameras needing night vision)	\$45.75	10.0%	\$	41.17
REI / 500 GB Hard Drive Upgrade	\$150.10	10.0%	\$	135.09
REI / 750 GB Hard Drive Upgrade	\$279.78	10.0%	\$	251.80
REI / 1 TB Hard Drive Upgrade	\$365.04	10.0%	\$	328.53
REI / 320 GB SATA Hard Drive, HD Series Mobile DVRs	\$200.53	10.0%	\$	180.48
REI / 500 GB SATA Hard Drive, HD Series Mobile DVRs	\$360.23	10.0%	\$	324.21
REI / 750 GB SATA Hard Drive, HD Series Mobile DVRs	\$480.31	10.0%	\$	432.28
REI / 1 TB SATA Hard Drive, HD Series Mobile DVRs	\$534.35	10.0%	\$	480.91
REI/ 8 CH HD800 DVR W/8 CAMERAS & 750 GB HARD DRIVE INTERNAL/EXTERNAL DELUXE PACKAGE	\$5,042.25	10.0%	\$	4,538.03
REI / VR-3000, AM/FM DVD PLAYER, (8) SPEAKERS,(4) 15" MONITORS MANUAL FLIP DOWN, ALL CABLES	\$3,984.90	10.0%	\$	3,586.41
HD420W DVR w/2 Antennas & 2 Antenna Cables	\$490.46	10.0%	\$	441.41
HD800W DVR w/ 2 Antennas & 2 Antenna Cables	\$670.57	10.0%	\$	603.52
HD420 / DVR, 4 CHANNELL	\$897.11	10.0%	\$	807.40
(4) 500W INVERTERS / VOLTMETER / 4 PORT USB W STORAGE POUCH	\$2,101.36	10.0%	\$	1,891.23
HD 12 channel DVR, 8 cameras, 1TBHD, WIFI GPS, exterior	\$7,318.80	10.0%	\$	6,586.92
12 channel HDS 1200 DVR w/5 cam, 1TB HD WIFI GPS	\$3,788.46	10.0%	\$	3,409.61
6 channel HDS 600 DVR w/4CAM, 500GB HDD WIFI GPS	\$2,859.58	10.0%	\$	2,573.62
REI Router and WI FI antenna	\$1,608.42	10.0%	\$	1,447.58
DVR, 5 camera, 1TB HDGPS, WIFI, extra 1TBHD	\$4,110.27	10.0%	\$	3,699.24
4 Cams, 1TB HDD Sensor cable, WIFI GPS, and panic butto	\$2,599.69	10.0%	\$	2,339.72
6 Cams, 1TB HDD, 1 Stop arm cam, Sensor cable, WIFI GP	\$4,458.55	10.0%	\$	4,012.70
			\$	-

			\$	-
<b>SEON CAMERA SYSTEMS</b>			\$	-
SEON TL4 (1) CAMERA 4-CHANNEL 320GB, 20FT CABLE, GP	\$1,892.43	10.0%	\$	1,703.18
SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$2,166.21	10.0%	\$	1,949.58
SEON TL4 (3) CAMERA 4-CHANNEL 320GB, (2) 20FT CABLE,	\$2,500.02	10.0%	\$	2,250.02
SEON TL4 (4) CAMERA 4-CHANNEL 320GB, (2)50FT CABLE, (	\$2,713.76	10.0%	\$	2,442.38
			\$	-
SEON TLHD (1) CAMERA 5-CHANNEL 320GB, (1) 20FT CABLE	\$2,120.58	10.0%	\$	1,908.52
SEON TLHD (2) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,394.35	10.0%	\$	2,154.92
SEON TLHD (3) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,728.17	10.0%	\$	2,455.35
SEON TLHD (4) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,941.91	10.0%	\$	2,647.72
			\$	-
SEON TX8 (5) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,489.46	10.0%	\$	3,140.52
SEON TX8 (6) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$3,703.20	10.0%	\$	3,332.88
SEON TX8 (7) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$4,067.04	10.0%	\$	3,660.33
SEON TX8 (8) CAMERA 8-CHANNEL 640GB, (3) 30FT CABLE,	\$4,310.80	10.0%	\$	3,879.72
SEON TX8 (4) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,167.65	10.0%	\$	2,850.89
SEON TH6H500 Trooper DVR 6HD Channel 500 GB HD, 4 c	\$2,396.73	10.0%	\$	2,157.06
Seon TX8 5 camera,640gb, GPS, Event marker & 2 camera	\$4,274.11	10.0%	\$	3,846.70
			\$	-
			\$	-
<b>Starter Kit: (Required for all NEW customers)</b>			\$	-
SEON HDD-STB: Include software, docking station & trackball m	\$234.15	10.0%	\$	210.74
SEON HDD-STB-LMK	\$522.34	10.0%	\$	470.10
SEON 1HDD-DOCK (extra docking stations)	\$138.09	10.0%	\$	124.28
			\$	-
<b>Spare Hard Drives (1-3 per 10 systems recommended)</b>			\$	-
SEON TL Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TLHD Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TX Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
SEON DXHD Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
			\$	-
SEON GPS4	\$93.66	10.0%	\$	84.29
SEON LMK	\$300.19	10.0%	\$	270.18

SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$1,561.01	10.0%	\$	1,404.91
SEON TL4 (3) CAMERA 4-CHANNEL 500 GB, (2) 20FT CABLE, (1) 50FT CABLE, GPS, EVENT TAG	\$3,583.12	10.0%	\$	3,224.81
CA-MP4 MOUNTING POST	\$54.04	10.0%	\$	48.63
CHW702E20	\$575.17	10.0%	\$	517.66
Dome camera with 50ft harness (lens TBD)	\$243.76	10.0%	\$	219.38
Dome camera with 20ft harness (lens TBD)	\$213.74	10.0%	\$	192.36
			\$	-
<b>24/7 CAMERA SYSTEMS</b>			\$	-
24/7 6 CHANNEL (3) Camera 500GB,EVENT MARKER	\$3,391.00	10.0%	\$	3,051.90
24/7 6 CHANNEL (4) Camera 500GB,EVENT MARKER	\$3,710.41	10.0%	\$	3,339.37
			\$	-
ROAD RUNNER 4 CAMERA, 1TB, GPS,EVENT MARKER	\$4,005.80	10.0%	\$	3,605.22
16 CHANNEL SOLID STATE 4 CAMERA, GPS, 64GB, SDX MEMORY	\$2,483.93	10.0%	\$	2,235.54
	\$0.00	10.0%	\$	-
			\$	-
<b>RWC GROUP</b>			\$	-
TRANS AIR / FM55 REAR / SMC3L COND / (1) TM21 COMP / 60K BTU SYST	\$9,405.68	51.6%	\$	4,552.35
TRANS AIR / FM55 REAR / 27K DASH / SMC3L COND / (1) TM21 COMP / EC	\$15,510.92	51.6%	\$	7,507.29
TRANS AIR / RT65 / (1) TM21 COMP / EC4.0 / 64K BTU SYSTEM (Quote 150	\$18,045.57	51.6%	\$	8,734.06
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (2) TM21 COMP / 12	\$20,350.01	51.6%	\$	9,849.41
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (1) TM43 COMP / 12	\$25,689.45	51.6%	\$	12,433.70
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (2) SMC3L COND / (2) TM2	\$27,679.12	51.6%	\$	13,396.69
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (2) TM	\$25,369.98	51.6%	\$	12,279.07
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (1) TM	\$30,345.31	51.6%	\$	14,687.13
TRANS AIR / FM55 FRONT & REAR / 27 DASH / / TA93 SIDE / (2) SMC3L CO	\$33,819.59	51.60%	\$	16,368.68
TRANS AIR / FM55 FRONT & REAR / R120 COND / (2) TM21 COMP / 120K B	\$24,456.19	51.6%	\$	11,836.80
TRANS AIR / FM55 FRONT & REAR / R120 COND / (1) TM43 COMP / 120K B	\$29,551.33	51.6%	\$	14,302.84
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (R120 COND / (2) TM21 CO	\$27,505.29	51.6%	\$	13,312.56
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (2) TM21 CO	\$29,532.53	51.6%	\$	14,293.75
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (1) TM43 CO	\$34,261.22	51.6%	\$	16,582.43
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / 27K DASH / R120 COND /	\$36,762.98	51.6%	\$	17,793.28
TRANS AIR /130KBTU/ FM55 FRONT (1) TA93/ (1) TA96 120 ROOF TOP CO	\$36,599.41	51.6%	\$	17,714.12

TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (2) TM21 C	\$23,645.76	51.6%	\$	11,444.55
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (1) TM43 C	\$28,846.61	51.6%	\$	13,961.76
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / 27K DASH / (2) SMC3L COND	\$30,810.43	51.6%	\$	14,912.25
TRANS AIR / (2) RT65 / (2) TM21 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$36,770.03	51.6%	\$	17,796.69
TRANS AIR / (2) RT65 / (1) TM43 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$41,259.10	51.6%	\$	19,969.41
TRANS AIR / (2) RT65 / 40K DASH / (3) TM21 COMP / EC4.0 / 168K BTU SYS	\$49,800.33	51.6%	\$	24,103.36
TRANS AIR / (2) RT65 / 40K DASH / (1) TM21 COMP / (1) TM43 COMP / EC4	\$51,794.69	51.6%	\$	25,068.63
TRANS AIR TA 17 DUCTED	\$38,759.69	51.6%	\$	18,759.69
TRANS AIR / 3 FAN CONDENSER UPGRADE (14" FANS)	\$1,477.57	51.6%	\$	715.14
TRANS AIR / 4 FAN CONDENSER UPGRADE (14" FANS)	\$2,008.46	51.6%	\$	972.09
TRANS AIR / DRIVER SNOUT	\$653.04	51.6%	\$	316.07
TRANS AIR TA55B93963C4C	\$34,246.51	51.6%	\$	16,575.31
TRANS AIR 150 BTU SYSTEM	\$31,903.38	51.6%	\$	15,441.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$40,609.26	51.6%	\$	19,654.88
RE - TRANS AIR / 150K BTU/ (2) RT96 / TRANSIT COMP / NO HEAT / EC4.0	\$46,514.45	51.6%	\$	22,512.99
RE - TRANS AIR / 177K BTU / (2) RT96 / (1) 27K DASH / (1) SMC25 COND / T	\$59,114.40	51.6%	\$	28,611.37
RE - TRANS AIR / 150K BTU/ (1) TA17 / (1) C5 COND / TRANSIT COMP / BA	\$43,420.25	51.6%	\$	21,015.40
RE - TRANS AIR / 130K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / (2) TM	\$24,870.75	51.6%	\$	12,037.44
RE - TRANS AIR / 145K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / TRANS	\$35,368.55	51.6%	\$	17,118.38
RE - TRANS AIR / 172K BTU (1) TA73 / (2) TA93 / 27K DASH / TRANSIT & 10	\$48,972.14	51.6%	\$	23,702.52
RE - TRANS AIR / 130K BTU / (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$31,407.09	51.6%	\$	15,201.03
RE - TRANS AIR / 130K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / (2) TM2	\$26,696.48	51.6%	\$	12,921.09
RE - TRANS AIR / 150K BTU / (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$36,994.39	51.6%	\$	17,905.28
RE - TRANS AIR / 177K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$53,346.37	51.6%	\$	25,819.64
RE - TRANS AIR / 150K BTU/ (1) TA77 / (1) TA96 / (1) TA93 / (2) SC4 / TRANS	\$40,803.38	51.6%	\$	19,748.84
RE - TRANS AIR / 177K BTU / (1) TA77 / (1) TA96 / (1) TA93 / (1) R120 / (1) S	\$47,926.40	51.6%	\$	23,196.38
CE-PROPANE TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$42,411.56	51.6%	\$	20,527.19
CE-CUMMINS TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$40,220.67	51.6%	\$	19,466.81
RE-KL80 DUCTED WITH DRIVERS BLOWER MOTOR (QUOTE 15800)	\$46,041.81	51.6%	\$	22,284.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$37,174.40	51.6%	\$	17,992.41
RE-TRANS AIR 150K BTU (1) TA 77 REAR, (1) TA93 SIDE/ FM-45 EVAP/RO	\$43,788.79	51.6%	\$	21,193.78
CE Propane TA55F55BSC2LPSC2LP, TM-43 w/ driver snout (15	\$20,478.93	51.6%	\$	9,911.80
CE TRANS AIR 130,000 BTU SC4	\$19,797.98	51.6%	\$	9,582.22
CE TRANS AIR 160,000 BTU TM-55 DUCTED	\$37,411.32	51.6%	\$	18,107.08

RE TRANS AIR 192,000 BTU BITZER DUCTED	\$42,283.30	51.6%	\$	20,465.12
			\$	-
			\$	-
			\$	-
			\$	-
BUS AIR (1) IN WALL Rear Evap, Skirt Cond, 3 Fan,(1) TM21 Compressor & In	\$11,745.36	51.6%	\$	5,684.75
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Skirt Cond, 3 F	\$19,732.21	51.6%	\$	9,550.39
BUS AIR (2) IN WALL Front & Rear Evap, (1) Side Mtn Evap, (1) Driver Plenum	\$22,081.28	51.6%	\$	10,687.34
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Roof Cond, 3	\$25,839.79	51.6%	\$	12,506.46
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (1) Side Evap, (2)	\$30,537.94	51.6%	\$	14,780.36
			\$	-
			\$	-
MCC (1)IW1 REAR EVAP, (1) CM3 SKIRT COND, (1) TM-21 COMP	\$9,598.31	51.6%	\$	4,645.58
MCC (2) IW1 FRONT & REAR EVAP, (1) DRIVER PLENUM, (2) CM3 SKIRT	\$21,254.40	51.6%	\$	10,287.13
MCC (2) IW1 FRONT & REAR EVAP, (1) EM2 MID COND,(1) DRIVER PLE	\$23,725.63	51.6%	\$	11,483.20
MCC (2) IW1 FRONT & REAR EVAP,(1) DRIVER PLENUM, (2) K410 ROOF	\$25,050.51	51.6%	\$	12,124.44
MCC (2) IW1 FRONT & REAR EVAP,(1) EM2 MID COND,(1) DRIVER PLEN	\$27,037.82	51.6%	\$	13,086.30
	\$0.00	51.6%	\$	-
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM3 SKIRT COND, (2)	\$26,215.64	51.6%	\$	12,688.37
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM14 SKIRT COND 4	\$43,951.14	51.6%	\$	21,272.35
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (1) CR340 ROOF COND, (	\$42,248.06	51.6%	\$	20,448.06
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, CEILING DUCT	\$42,635.66	51.6%	\$	20,635.66
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, PARCEL RACK	\$54,458.54	51.6%	\$	26,357.93
MCCGB AC353N (1) 150AMP ALT, (1) 05G COMP, CELING DUCTWORK	\$37,190.09	51.6%	\$	18,000.00
MCC Parcel rack AC System	\$46,281.00	51.6%	\$	22,400.00
			\$	-
			\$	-
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$55,359.06	51.6%	\$	26,793.78
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$53,558.84	51.6%	\$	25,922.48
THERMOKING INWALL EVAP,SLC ROOF TOP CONDENSERS,sa-400 CELIN	\$39,922.48	51.6%	\$	19,322.48
			\$	-
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT CONDENSERS, TM21 COMP, 126	\$15,727.04	51.6%	\$	7,611.89
CE / ACC-SPHEROS, (2) EVAP, (2) ROOFTOP COND, TM21 COMP, 126K BT	\$18,708.01	51.6%	\$	9,054.68
CE / ACC-SPHEROS, (3) EVAP, (2) ROOFTOP COND, TM21 COMP, 136K BT	\$20,237.26	51.6%	\$	9,794.83

CE / ACC-SPHEROS, (3) EVAP, (2) SKIRT COND, TM21 COMP, 136K BTU- F	\$17,256.28	51.6%	\$	8,352.04
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TM43 COMP, 126K B	\$21,183.93	51.6%	\$	10,253.02
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, TIE-IN DASH, TM43 COMP	\$19,797.98	51.6%	\$	9,582.22
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, STD ALONE DASH, TM43	\$22,828.28	51.6%	\$	11,048.89
CE / ACC-SPHEROS, (2) EAVP, (2) ROOFTOP COND, STD ALONE DASH, T	\$25,809.26	51.6%	\$	12,491.68
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TIE IN DASH, TM43 C	\$22,778.95	51.6%	\$	11,025.01
			\$	-
			\$	-
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$37,411.32	51.6%	\$	18,107.08
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$39,119.10	51.6%	\$	18,933.64
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65 COMP, 180K BTU- C	\$40,575.52	51.6%	\$	19,638.55
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65/ BITZER COMP, 18	\$42,283.30	51.6%	\$	20,465.12
CC33543 Stand Alone Dash TM16 low profile ducting & with drivers blower	\$42,741.37	51.6%	\$	20,686.82
RW88FW88595943 with Dash stand alone TM16	\$19,142.59	51.6%	\$	9,265.01
ACC- SPHEROS, (2) IN WALLS, MID EVAP, SKIRT COND, DRIVER DASH TM	\$26,819.36	51.6%	\$	12,980.57
ACC- SPHEROS, (2) IN WALLS, MID EVAP, ROOFTOP COND, DRIVER DAS	\$29,800.33	51.6%	\$	14,423.36
			\$	-
			\$	-
			\$	-
TOWING - 36 / UNLIMITED MILES (\$275 PER) 40KMH	\$492.42	12.0%	\$	433.33
TOWING - 48 / UNLIMITED MILES (\$275 PER) 40KMJ	\$580.81	12.0%	\$	511.11
TOWING - 60 / UNLIMITED MILES (\$275 PER) 40KMK	\$707.07	12.0%	\$	622.22
TOWING - 36 / UNLIMITED MILES (\$550 PER) 40KMB	\$694.44	12.0%	\$	611.11
TOWING - 48 / UNLIMITED MILES (\$550 PER) 40KMC	\$820.71	12.0%	\$	722.22
TOWING - 60 / UNLIMITED MILES (\$550 PER) 40KMD	\$1,010.10	12.0%	\$	888.89
			\$	-
EXT VEHICLE COVERAGE- 36 / 50K MILES 40PLB	\$946.97	12.0%	\$	833.33
EXT VEHICLE COVERAGE- 48 / 50K MILES 40PKV	\$1,641.41	12.0%	\$	1,444.44
EXT VEHICLE COVERAGE- 48 / 100K MILES 40PKW	\$2,462.12	12.0%	\$	2,166.67
EXT VEHICLE COVERAGE- 60 / 100K MILES 40PLG	\$2,904.04	12.0%	\$	2,555.56
EXT VEHICLE COVERAGE- 60 / 200K MILES 40PLJ	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 72 / 100K MILES 40PLL	\$3,358.59	12.0%	\$	2,955.56
EXT VEHICLE COVERAGE- 72 / 150K MILES 40PLM	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 84 / 100K MILES 40PLP	\$4,734.85	12.0%	\$	4,166.67

EXT VEHICLE COVERAGE- 84 / 150K MILES 40PLR	\$6,515.15	12.0%	\$	5,733.33
	\$0.00	12.0%	\$	-
STARTER & ALT- 36 / 50K MILES 40KUE	\$75.76	12.0%	\$	66.67
STARTER & ALT- 48 / 50K MILES 40KUK	\$101.01	12.0%	\$	88.89
STARTER & ALT- 48 / 100K MILES 40KUL	\$176.77	12.0%	\$	155.56
STARTER & ALT- 60 / 100K MILES 40KUR	\$227.27	12.0%	\$	200.00
STARTER & ALT- 60 / 200K MILES 40KUT	\$454.55	12.0%	\$	400.00
	\$0.00	12.0%	\$	-
CUMMINS 6.7L FULL ENG / 5YRS / 150K MILES 40SEJ	\$1,830.81	12.0%	\$	1,611.11
CUMMINS 6.7L FULL ENG / 5YRS / 200K MILES 40SEK	\$2,209.60	12.0%	\$	1,944.44
CUMMINS 6.7L FULL ENG / 5YRS / UNLIM MILES 40SEL	\$2,367.42	12.0%	\$	2,083.33
CUMMINS 6.7L FULL ENG / 7YRS / 150K MILES 40SEM	\$2,904.04	12.0%	\$	2,555.56
CUMMINS 6.7L FULL ENG / 8YRS / 150K MILES 40SEN	\$3,409.09	12.0%	\$	3,000.00
CUMMINS 6.7L FULL ENG / 10YRS / 120K MILES 40SEP	\$4,356.06	12.0%	\$	3,833.33
CUMMINS 6.7L FULL ENG / 10YRS / 150K MILES 40SER	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L FULL ENG / 10YRS / 200K MILES 40SES	\$5,176.77	12.0%	\$	4,555.56
CUMMINS 6.7L FULL ENG / 10YRS / UNLIM MILES 40SET	\$5,871.21	12.0%	\$	5,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 150K MI	\$1,388.89	12.0%	\$	1,222.22
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 200K MI	\$1,641.41	12.0%	\$	1,444.44
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / UNLIM M	\$1,767.68	12.0%	\$	1,555.56
CUMMINS 6.7L FULL ENG MINUS MAINT / 7YRS / 150K MI	\$2,462.12	12.0%	\$	2,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / 200K M	\$4,103.54	12.0%	\$	3,611.11
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / UNLIM	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L MAJOR COMPONENTS / 7YRS / 150K MILES	\$694.44	12.0%	\$	611.11
CUMMINS 6.7L MAJOR COMPONENTS / 10YRS / 200K MIL	\$946.97	12.0%	\$	833.33
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 7YRS / 150	\$2,272.73	12.0%	\$	2,000.00
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 8YRS / 150	\$2,872.47	12.0%	\$	2,527.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 12	\$3,724.75	12.0%	\$	3,277.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 15	\$4,198.23	12.0%	\$	3,694.44
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 20	\$4,671.72	12.0%	\$	4,111.11
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / UN	\$5,303.03	12.0%	\$	4,666.67
	\$0.00	12.0%	\$	-
CUMMINS L9 FULL ENG / 5YRS / 150K MILES 40SGY	\$2,367.42	12.0%	\$	2,083.33
CUMMINS L9 FULL ENG / 5YRS / 200K MILES 40SGZ	\$2,840.91	12.0%	\$	2,500.00

CUMMINS L9 FULL ENG / 5YRS / UNLIM MILES 40SHA	\$3,093.43	12.0%	\$	2,722.22
CUMMINS L9 FULL ENG / 7YRS / 150K MILES 40SHB	\$3,156.57	12.0%	\$	2,777.78
CUMMINS L9 FULL ENG / 8YRS / 150K MILES 40SHC	\$3,598.48	12.0%	\$	3,166.67
CUMMINS L9 FULL ENG / 10YRS / 120K MILES 40SMC	\$5,492.42	12.0%	\$	4,833.33
CUMMINS L9 FULL ENG / 10YRS / 150K MILES 40SMD	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG / 10YRS / 200K MILES 40SME	\$6,502.53	12.0%	\$	5,722.22
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 150K MILE	\$1,799.24	12.0%	\$	1,583.33
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 200K MILE	\$2,272.73	12.0%	\$	2,000.00
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / UNLIM MI	\$2,335.86	12.0%	\$	2,055.56
CUMMINS L9 FULL ENG MINUS MAINT / 7YRS / 150K MILE	\$3,219.70	12.0%	\$	2,833.33
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / 200K MIL	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / UNLIM M	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 7YRS / 150K	\$2,840.91	12.0%	\$	2,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 8YRS / 150K	\$3,251.26	12.0%	\$	2,861.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 120K	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 150K	\$5,334.60	12.0%	\$	4,694.44
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 200K	\$5,871.21	12.0%	\$	5,166.67
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / UNL	\$6,691.92	12.0%	\$	5,888.89
Pre Delivery Inspection Rear Engine School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Rear Engine SPED School Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Conventional School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Conventional SPEDSchool Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Cutaway School/MFSAB School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection Cutaway School/SPED School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection - Commercial/Transit to 22 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 25 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 28 FT	\$700.00	10.0%	\$	630.00
Pre Delivery Inspection - Commercial/Transit to 32 FT	\$900.00	10.0%	\$	810.00
Pre Delivery Inspection - Commercial/Transit over 32 FT	\$1,000.00	10.0%	\$	900.00
				#VALUE!
				#VALUE!
Lettering -Vinyl 5-6" BOTH SIDES AND BUMPERS	\$180.00	18.0%	\$	147.60
			\$	-
Transportation costs for New bus from Tulsa OK to Phoenix	\$1,737.12	0.0%	\$	1,737.12

Transportation costs for New bus from Hutchensen, KS to	\$1,350.00	0.0%	\$	1,350.00
Truck only			\$	-
Allison Extended warranty (see attached) for pricing			\$	-
Cab and Chassis International offer on Extended Warranty 50% off of list		50%		#VALUE!
			\$	-

<b>Equipment</b>	<b>MSRP</b>	<b>Options</b>	<b>Total</b>	<b>Contract Discount %</b>	<b>Discount \$</b>	<b>Contract Price</b>	<b>Add Ons</b>	<b>Taxes</b>	<b># of Units</b>	<b>Total</b>
<b>HV507 SFA 6-Wheel Plow</b>	\$ 92,154.00	\$ 54,428.00	\$ 146,582.00	32%	\$ 48,504.24	\$ <b>98,077.76</b>	\$ 115,849.00	\$ 35,551.84	2	\$ <b>463,405.36</b>
<b>HV513 SFA 10-Wheel Plow</b>	\$ 165,553.00	\$ 74,040.00	\$ 239,593.00	50%	\$ 120,921.50	\$ <b>118,671.50</b>	\$ 131,494.00	\$ 20,783.74	1	\$ <b>270,949.24</b>
<b>CV515 SFA Barricade Truck</b>	\$ 46,219.00	\$ 18,798.00	\$ 65,017.00	10%	\$ 7,937.20	\$ <b>57,079.80</b>	\$ 34,637.00	\$ 7,624.49	1	\$ <b>99,341.29</b>
<b>MV607 SBA Patch Truck</b>	\$ 91,707.00	\$ 31,020.00	\$ 122,727.00	32%	\$ 40,870.64	\$ <b>81,856.36</b>	\$ 91,740.00	\$ 14,420.50	1	\$ <b>188,016.86</b>



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:  
Medium and Heavy Duty Cabs, Chassis, and Buses

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

## Attachment 1 Offer and Acceptance Form

**SUBMISSION OF OFFER:** Undersigned hereby offers and agrees to provide Medium and Heavy Duty Cabs, Chassis, and Buses in compliance with the Solicitation indicated above and any Offer indicated by the latest dated version below:

Initial Offer:	1.	Mary Wilson	MRW						
		date	initial						
Revised Offers:	2.	x		3.	x		4.	x	
		date #1	initial	date #1	initial	date #1	initial		
	5.	x		6.	x		7.	x	
		date #4	initial	date #5	initial	date #6	initial		
Best and Final Offer:	8.	1/16/19							
		date	initial						

### RWC Group

Offeror company name  
600 N 75<sup>th</sup> Ave  
Address  
Phoenix, Arizona 85043  
City | State | ZIP  
27-2085725  
Federal tax identifier (EIN or SSN)

*Mary Wilson* Signature of person authorized to sign Offer  
*MRW* Initials

Mary Wilson Truck Sales  
Printed name and title  
Mary Wilson Truck Sales  
Contact name and title  
mwilson@rwcgroup.com 602-307-1037  
Contact Email Address Contact phone number

### CERTIFICATION:

 By signature in the above, Offeror certifies that it:

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

**ACCEPTANCE OF OFFER:** State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by number #8 at the top of this form, and which was dated 1/16/19 (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: CTR041813 The effective date of the Contract is: 1/18/19 Contract awarded 1/18/19  
Date Date

*Nicola Perrera*  
Procurement Officer signature

Nick Perrera  
Statewide Procurement Manager



# Request for Proposal

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Arizona Department of  
Administration  
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## Part 2: Scope, Pricing and Terms and Conditions

### Table of Contents

SECTION 2-A: Scope of Work .....	6
SECTION 2-B: Pricing Document .....	17
1.0 Compensation.....	17
2.0 Pricing .....	18
3.0 Funding .....	19
4.0 Invoicing.....	19
5.0 Payments .....	20
SECTION 2-C: Special Terms and Conditions.....	22
1.0 ..... DEFINITION OF TERMS .....	22
1.1 Acceptance.....	22
1.2 Accepted Offer .....	22
1.3 Arizona Procurement Code; A.R.S.; A.A.C. ....	22
1.4 Arizona TPT.....	22
1.5 Attachment .....	22
1.6 Pricing Document .....	22
1.7 Contract Amendment.....	22
1.8 Contract Terms.....	22
and Conditions .....	22
1.9 Contractor .....	22
1.10 Contractor Indemnitor.....	22
1.11 Co-Op Buyer .....	23
1.12 Eligible Agency.....	23
1.13 Indemnified Basic Claims .....	23
1.14 Instructions to Offerors .....	23
1.15 Order .....	23
1.16 The State's e-Procurement System.....	23
1.17 State .....	23
1.18 State Indemnitees .....	23
1.19 Subcontractor.....	23
1.20 Work.....	24
2.0 ..... CONTRACT INTERPRETATION .....	24
2.1 Usage .....	24
2.2 Contract Order of Precedence.....	24
2.3 Independent Contractor .....	25
2.4 Complete Integration .....	25
3.0 ..... CONTRACT ADMINISTRATION AND OPERATION .....	25
3.1 Term of Contract .....	25
3.2 Contract Extensions.....	25



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

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Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 3.3 Notices and Correspondence..... 25
- 3.4 Signing of Contract Amendments ..... 26
- 3.5 Click-Through Terms and Conditions ..... 26
- 3.6 Books and Records ..... 26
- 3.7 Contractor Licenses ..... 26
- 3.8 Inspection and Testing..... 26
- 3.9 Ownership of Intellectual Property..... 27
- 3.10 Subcontracts..... 27
- 3.11 Offshore Performance of Certain Work Prohibited..... 28
- 3.12 Orders ..... 28
- 3.13 Statewide Contract Provisions ..... 28
- 3.14 Multiple-Use Provisions..... 30
- 3.15 Other Contractors ..... 30
- 3.16 Work on State Premises ..... 30
- 4.0 ..... COSTS AND PAYMENTS ..... 31
  - 4.1 Payments..... 31
  - 4.2 Applicable Taxes ..... 31
- 5.0 ..... CONTRACT CHANGES ..... 31
  - 5.1 Contract Amendments ..... 31
  - 5.2 Assignment and Delegation ..... 31
- 6.0 ..... RISK AND LIABILITY ..... 32
  - 6.1 Risk of Loss ..... 32
  - 6.2 Contractor Insurance..... 32
  - 6.3 Indemnification ..... 34
  - 6.4 Patent and Copyright Indemnification ..... 34
  - 6.5 Force Majeure ..... 35
  - 6.6 Third Party Antitrust Violations..... 35
- 7.0 ..... WARRANTIES..... 35
  - 7.1 Conformity to Requirements ..... 35
  - 7.2 Contractor Personnel ..... 36
  - 7.3 Intellectual Property ..... 36
  - 7.4 Licenses and Permits ..... 36
  - 7.5 Operational Continuity ..... 36
  - 7.6 Performance in Public Health Emergency..... 36
  - 7.7 Lobbying..... 36
  - 7.8 Survival of Warranties ..... 36
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 37
- 9.0 ..... CONTRACT TERMINATION ..... 37
- 10.0 ... CONTRACT CLAIMS ..... 37
  - 10.1 Claim Resolution..... 37
  - 10.2 Mandatory Arbitration..... 37
- 11.0 ... GENERAL PROVISIONS FOR MATERIALS ..... 37
  - 11.1 Applicability ..... 37
  - 11.2 Off-Contract ..... 37



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

Materials .....	37
11.3 Compensation for.....	37
Late Deliveries .....	37
11.4 Indicate Shipping.....	37
Costs on Order .....	37
11.5 Current Products .....	37
11.6 Maintain .....	37
Comprehensive .....	37
Selection.....	37
11.7 Additional .....	37
Products .....	37
11.8 Discontinued .....	38
Products .....	38
11.9 Forced .....	38
Substitutes .....	38
11.10 Recalls.....	38
11.11 Delivery.....	38
11.12 Delivery Time.....	38
11.13 Delivery Locations.....	38
11.14 Conditions at.....	39
Delivery Location.....	39
11.15 Materials.....	39
Acceptance.....	39
11.16 Correcting Defects .....	39
11.17 Returns .....	40
11.18 Order Cancellation.....	40
11.19 Product Safety .....	40
11.20 Hazardous.....	40
Materials .....	40
<b>12.0 ... GENERAL PROVISIONS FOR SERVICES .....</b>	<b>41</b>
12.1 Applicability.....	41
12.2 Comprehensive Services Offering.....	41
12.3 Additional Services .....	41
12.4 Off-Contract Services.....	41
12.5 Removal of Personnel.....	41
12.6 Transitions.....	41
12.7 Accuracy of Work .....	41
12.8 Requirements at Services Location.....	41
12.9 Services Acceptance .....	42
12.10 Corrective Action Required.....	42
<b>13.0 ... DATA AND INFORMATION HANDLING .....</b>	<b>42</b>
13.1 Applicability.....	42
13.2 Data Protection and Confidentiality of Information.....	42
13.3 Personally Identifiable Information.....	43
13.4 Protected Health Information.....	43
<b>SECTION 2-D: Uniform Terms and Conditions .....</b>	<b>44</b>



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Solicitation No.  
**BPM000228**  
Description:

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Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 1.0 ..... DEFINITION OF TERMS ..... 44
  - 1.1 Attachment ..... 44
  - 1.2 Contract ..... 44
  - 1.3 Contract Amendment ..... 44
  - 1.4 Contractor ..... 44
  - 1.5 Days ..... 44
  - 1.6 Exhibit ..... 44
  - 1.7 Gratuity ..... 44
  - 1.8 Materials ..... 44
  - 1.9 Procurement Officer ..... 44
  - 1.10 Services ..... 44
  - 1.11 State ..... 44
  - 1.12 State Fiscal Year ..... 44
  - 1.13 Subcontract ..... 44
- 2.0 ..... CONTRACT INTERPRETATION ..... 44
  - 2.1 Arizona Law ..... 44
  - 2.2 Implied Terms ..... 45
  - 2.3 Contract Order of Precedence ..... 45
  - 2.4 Relationship of ..... 45
  - Parties 45
  - 2.5 Severability ..... 45
  - 2.6 No Parole Evidence ..... 45
  - 2.7 No Waiver ..... 45
- 3.0 ..... CONTRACT ADMINISTRATION AND OPERATION ..... 45
  - 3.1 Records ..... 45
  - 3.2 Non-Discrimination ..... 45
  - 3.3 Audit ..... 45
  - 3.4 Facilities Inspection ..... 45
  - and Materials Testing ..... 45
  - 3.5 Notices ..... 45
  - 3.6 Advertising, Publishing and Promotion of Contract ..... 46
  - 3.7 Property of the State ..... 46
  - 3.8 Ownership of Intellectual Property ..... 46
  - 3.9 Federal Immigration and Nationality Act ..... 46
  - 3.10 E-Verify Requirements ..... 46
  - 3.11 Offshore Performance of Work Prohibited ..... 46
- 4.0 ..... COSTS AND PAYMENTS ..... 46
  - 4.1 Payments ..... 46
  - 4.2 Delivery ..... 46
  - 4.3 Applicable Taxes ..... 46
  - 4.4 Availability of Funds for the Next State fiscal year ..... 47
  - 4.5 Availability of Funds for the current State fiscal year ..... 47
- 5.0 ..... CONTRACT CHANGES ..... 47
  - 5.1 Amendments ..... 47
  - 5.2 Subcontracts ..... 47
  - 5.3 Assignment and Delegation ..... 47



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 6.0 ..... RISK AND LIABILITY ..... 47
  - 6.1 Risk of Loss ..... 47
  - 6.2 Indemnification ..... 47
  - 6.3 Indemnification – Patent and Copyright ..... 48
  - 6.4 Force Majeure ..... 48
  - 6.5 Third Party Antitrust Violations..... 48
- 7.0 ..... WARRANTIES ..... 48
  - 7.1 Liens ..... 48
  - 7.2 Quality ..... 48
  - 7.3 Fitness ..... 49
  - 7.4 Inspection/Testing ..... 49
  - 7.5 Compliance with Laws ..... 49
  - 7.6 Survival of Rights and Obligations after Contract Expiration or Termination ..... 49
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 49
  - 8.1 Right to Assurance ..... 49
  - 8.2 Stop Work Order ..... 49
  - 8.3 Non-exclusive Remedies ..... 49
  - 8.4 Nonconforming Tender ..... 49
  - 8.5 Right of Offset ..... 50
- 9.0 ..... CONTRACT TERMINATION ..... 50
  - 9.1 Cancellation for Conflict of Interests ..... 50
  - 9.2 Gratuities ..... 50
  - 9.3 Suspension or Debarment ..... 50
  - 9.4 Termination for Convenience ..... 50
  - 9.5 Termination for Default ..... 50
  - 9.6 Continuation of Performance Through Termination ..... 50
- 10.0 ... CONTRACT CLAIMS ..... 51
  - 10.1 Contract Claims ..... 51
- 11.0 ... ARBITRATION ..... 51
  - 11.1 Arbitration ..... 51
- 12.0 ... COMMENTS WELCOME ..... 51
  - 12.1 Comments Welcome ..... 51



## Request for Proposal

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### SECTION 2-A: Scope of Work

**DESCRIPTION:** The State of Arizona invites sealed proposals from qualified firms to provide Medium and Heavy Duty Cab and Chassis for Statewide and Eligible Agencies as specified below.

**DUE DATE AND TIME:** Offers shall be received until **3:00 p.m. Arizona MST, 11/28/18.**

Additional information regarding submittal instructions is located within this document in the following sections: Special Instructions to Offerors and Uniform Instructions to Offerors.

### Start of Scope

**Requirements which must be met by vendors to be considered for this award include but are not limited to the following:**

#### 1. GENERAL CONDITIONS AND REQUIREMENTS

- 1.1. All chassis shall be manufacturer's current models in production throughout the term of this contract and shall be services completed by the Contractor before delivery and ready in all respects for use.
- 1.2. All chassis bid and furnished shall meet requirements of applicable Arizona Motor Vehicle laws and all other Federal Motor Vehicle laws (including the Federal Bridge Formula), whether or not such requirements are specified in detail.
- 1.3. The Contractor shall supply a quote sheet within seven (7) calendar days after receiving request from the eligible agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options (including line item cost), applicable tax, delivery cost, total price, and point of contact. For vehicles requiring upfit/modifications, all applicable cost shall be included in quotation or as a separate quotation.
- 1.4. Within fourteen (14) calendar days after receipt of a purchase order, Contractor shall provide the eligible agency copies of the manufacturer's factory order numbers, to confirm vehicles have been ordered. If confirmation of manufacturer's factory order numbers is not received within this timeframe the eligible agency has the option to cancel the order and purchase from another source. The eligible agency may charge the extra cost of procuring the vehicles to the original vendor. This shall be considered a mandatory requirement. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

#### 2. CHASSIS MODELS

The Contractor is encouraged to provide a full line of new Medium and Heavy Duty Cab & Chassis. Contractors shall submit a vehicle specification sheet for each cab & chassis offered, please see Attachment 4. Eligible Agencies throughout the State will have varying needs.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractors shall provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not limited to, models and manufacturer options to meet the needs of an eligible agency.

### 3. CHASSIS UPFIT/MODIFICATION

The Eligible Agency may request the awarded Contractor(s) to upfit/modify any cab and chassis for specific organizational needs. For example, a chassis may require a specialized body (i.e.: dump body, landscape body, etc.). Other cab and chassis may require interior and/or exterior modifications per the Eligible Agency's request. The Eligible Agency shall supply all upfit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the upfit/modification on a quotation to the Eligible Agency for review and acceptance before any work commences.

### 4. WARRANTY

- 4.1. At a minimum, all equipment supplies under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum of the manufacturer's warranty from the date of acceptance. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the eligible agency. The written warranty shall be included with the delivered vehicles to the eligible agency.
- 4.2. Contractors are encouraged to provide the State additional warranty packages that exceed the minimum requirements. Additional package pricing may be listed on Attachment 4.

### 5. CAB AND CHASSIS EQUIPMENT REQUIREMENTS

- 5.1. **Decals** – Decals or markings of any type pertaining to advertisement other than those installed by the manufacturer such as name and model shall not be attached to any vehicle.
- 5.2. **Fluid Requirements** – Contractor shall be responsible for notifying the eligible agency of special fluid requirements that are necessary to maintain standard and extended warranties and service agreements i.e. transmission fluid, anti-freeze, oils and lubricants that must be Original Equipment Manufacturer (OEM) only.
- 5.3. **Service Requirements** – All vehicles shall be completely assembled, serviced, adjusted and all equipment including standard and optional equipment shall be installed and the units made ready for continuous operation. Servicing requirements shall include, but not limited to, the following:
  - Complete lubrication
  - Checking of all fluid levels to insure that they are filled to the manufacturer's recommended capacity
  - Full tank(s) of fuel and DEF (diesel exhaust fluid) if required, less delivery fuel and DEF
  - Engine adjustment to proper operation condition
  - Tire inflation to correct pressure
  - Checking of all mechanical and electrical operations
  - Checking for any appearance defects
  - Cleaning, removal of all unnecessary tags and stickers, washing if necessary
- 5.4. **Special Paint Requirement** – Eligible agencies may require special paint for some vehicles, i.e., special highway yellow and special eligible agency fleet colors. An increase of no more than thirty (30) days over the required delivery time shall be allowed for this requirement.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractors shall indicate on Attachment 4 if there are any quantity requirements or an additional cost for specialty fleet colors. If no information is entered on Attachment 4, it will be understood that there is no quantity requirement or additional cost.

- 5.5. **Special Title Requirement** – There may be a requirement for the title on some vehicles purchased to be titled to other than the ordering eligible agency. The State has programs that require equipment purchased from special funds be returned to the State’s communities. These purchases will be made for authorized political subdivisions.
- 5.6. **Tires** – Any spare tire supplied, optional or standard, shall match the OEM tires and wheels contained on the vehicle. Spare tires shall be full size tire and wheel identical to factory OEM.
- 5.7. **Vehicle Equipment Requirements** – All base vehicles offered shall, at a minimum, include the following;
- All standard factory equipment
  - Automatic transmission
  - Cruise Control
  - Four (4) keys and two (2) keyless entry remotes (if applicable), per vehicle
  - Air conditioning (for non-buses)
  - Basic radio with Bluetooth capability for cell phone connection
  - Cloth seats
  - Rear view mirrors on driver and passenger doors
  - Standard factory tint glass, if available

## 6. TRAINING MATERIALS AND DIAGNOSTIC TOOLS

- 6.1. Training shall be provided by the Contractor for equipment supplied upon request from the eligible agency. Training shall be available for maintenance of engine and other mechanical and electrical functions. Training shall be categorized by Operator Training and Service (or Repair). Training and shall be provided in Attachment 4.
- 6.2. Shop Manuals – Shop manuals shall be provided by electronic, web based and/or hard copy to a requesting eligible agency.
- 6.3. Diagnostic Tools/Subscriptions – The Contractor shall provide a diagnostic scan tool(s), laptop program, and/or yearly subscription for any vehicles offered under this contract for which such device is available, upon request of an Eligible Agency. Cost of initial and any additional diagnostic equipment, yearly subscriptions or programs shall be provided in Attachment 4.

## 7. MANUFACTURER’S CERTIFICATION

- 7.1. The Contractor shall submit proof of Manufacturer certification in response to the qualifications questions located in Section 3 Attachment 2-A, stating that the Contractor is the Manufacturer or a Certified Representative of the Manufacturer, for each Manufacturer they represent under a resultant contract. The Manufacturer’s Certification must be executed by the Manufacturer(s) only, and may not be completed by the Contractor. Dealer agreements shall not be accepted in lieu of a Manufacturer’s Certification.

## 8. CURRENT MODELS

- 8.1. All vehicles shall be the manufacturer’s current models in production at the time of delivery. All vehicles shall be new, unused, equivalent in style and quality to those offered to the general public and meet or exceed all specifications and requirements set forth in this



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

solicitation.

### 9. DEALERSHIP, PARTICIPATING SERVICE AND DELIVERY LOCATIONS

- 9.1. The Contractor may submit, at any time during the contract period, new dealership, participating service and delivery locations that will be used as subcontractors for both product deliveries and drive in service centers under the contract. Requests are to be submitted electronically and shall contain:
- 9.2. The dealer or outlet name
- 9.3. Location (physical address)
- 9.4. Telephone/fax numbers and email information
- 9.5. Key personnel at that location
- 9.6. Approval shall be in the form of a bilateral change order in the State's e-Procurement system, and shall become effective on the date the change order is the 'Sent' status.

### 10. DELIVERY (MINIMUM)

- 10.1. Delivery location shall be identified on the issuing eligible agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the eligible agency of such delays along with revised delivery estimate from factory immediately after it becomes known. If manufacturer has a website available to check order status, this information will be shown in the pricing document.
- 10.2. All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M., unless a time has been agreed upon between the Contractor and eligible agency. The Contractor shall be required to give the ordering eligible agency a minimum of 24 hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.
- 10.3. All vehicles shall be delivered with four (4) keys and if applicable two (2) keyless entry remotes and a full tank(s) of fuel, less delivery.
- 10.4. The following documents shall be provided upon delivery of the vehicles(s):
- 10.5. M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
- 10.6. Warranty Document
- 10.7. Manufacturers unaltered invoice
- 10.8. The retail price label must be affixed to the window of all vehicles delivered
- 10.9. Delayed warranty/in-service start request form (if requested by ordering entity)

### 11. EQUIPMENT INSPECTION

- 11.1. Contractor shall retain title and control of all goods until they are delivered, inspected and accepted. All risk of transportation and related charges shall be the responsibility of the Contractor. The Contractor shall file all claims for visible and concealed damage. The State shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.
- 11.2. Each vehicle delivered shall be subject to a complete inspection by the eligible agency prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Thirty (30) calendar days shall be allowed



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

for this process. If delivered equipment is returned to the Contractor prior to acceptance for any reason, additional periods of thirty (30) calendar days shall be allowed for inspection when subsequent deliveries occur. All corrections shall be made within seven (7) calendar days of reported deficiency. All corrections shall be made without any inconvenience to the State.

### 12. IN-SERVICE NOTIFICATION

12.1. Vehicles not placed in service immediately upon receipt shall be warranted from the date the vehicle is placed in service. The eligible agency shall notify the Contractor in writing of the actual in-service date, on forms to be provided for such purpose upon request by the eligible agency.

### 13. OPTIONAL EQUIPMENT

13.1. All optional equipment and accessories shall be original equipment from the manufacturer and installed at the factory unless otherwise specified.

### 14. RECALL NOTICES

14.1. In the event of any recall notice, technical service bulletin, or other important notification affecting a vehicle purchased from any resultant contract, a notice shall be sent to the eligible agency listed on each applicable purchase order. Each notice shall reference the affected purchase order and vehicle identification number. The contractor shall provide and retrofit at no cost to the State all vehicles purchased under this contract with vehicle safety enhancements as a result of the recall.

### 15. VEHICLE DOCUMENTATION

15.1. The Contractor shall include in each vehicle an owner, operator and maintenance manual. This shall include all standard manufacturer literature normally furnished with the purchase of a new vehicle at the time of delivery.

### 16. FEDERAL TERMS

THE FOLLOWING SPECIAL TERMS AND CONDITIONS SHALL APPLY TO PURCHASES OF ANY VEHICLES PROCURED WITH FEDERAL FUNDS

16.1. BUS TESTING The Contractor (Manufacturer) agrees to comply with 49 U.S.C. §5323 (C) and FTA 's implementing regulation at 49CFR Part 665 and shall perform the following:

- Manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which shall be prior to the recipient's final acceptance of the first vehicle.
- A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such vehicle and the details of that vehicle's configuration and major components.

### 16.2. BUY AMERICA

- The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
- An Offeror may be required to submit an appropriate Buy America certification if federal funds are utilized to procure products and/or services under the contract.

### 16.3. CARGO PREFERENCE REQUIREMENTS

The Contractor agrees:

- To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Preceding Paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- To include these requirements in all subcontracts issued Pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 16.4. CIVIL RIGHTS

- The Contractor is required to comply with Executive Order 99-4 "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.
- The Contractor is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23 CFR
- 710.405 (b) are made applicable by reference and are hereinafter considered part of this Contract.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The Contractor is required to comply with the provisions of Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

### 16.5. CLEAN AIR

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §~ 7401 et.seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.6. CLEAN WATER

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et ~g.
- To report each violation to the Purchaser and understands and agrees that the Purchaser shall, In turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.
- To include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- Withholding for unpaid wages and liquidated damages: The grantee or recipient shall upon its own action or upon written request of an authorized representative of the Department



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

- Subcontractors: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- Payrolls and basic records: Relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or cost anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any cost reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### 16.8. ENERGY CONSERVATION

- The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### 16.9. FEDERAL CHANGES

- Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### 16.10. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

contractual provisions required by DOT, as set forth in FTA Circular 4220.1 C, dated May 1, 1995, are hereby incorporated by reference. Anything, to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests, which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### 16.11. LOBBYING RESTRICTIONS

- Contractors who apply or bid for an award of \$100,000.00 or more shall file the certification required (ATTACHMENT ASSIGN NUMBER) by 49CFR part 20, "New Restrictions of Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### 16.12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 16.13. PRE-AWARD AND POST- DELIVERY AUDIT REQUIREMENTS

- The contractor agrees to comply with 49 U.S.C. § 5323 (1) and FTA's implementing regulation at 49
- C.F.R. Part 663 and to submit the following certifications:
- Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the offeror certifies compliance with Buy America, it shall submit documentation, which lists:
- Component and sub-component parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs.
- The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- Solicitation Specification Requirements: The contractor shall submit evidence that it will be capable of meeting the bid specifications.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit:
- Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or;
- Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

### 16.14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS

- The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §~ 3801 et seq. And U.S. DOT regulations, "Program Fraud Civil Remedies, "49
- C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.
- The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. ~ 5307, the Government reserves the right to impose the penalties of 18
- U.S.C. § 1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 16.15. PRIVACY ACT

- The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### 16.16. STATE AND LOCAL LAW DISCLAIMER



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The use of many of the suggested clauses are not governed by Federal Law, but are significantly affected by State Law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

End of Section 2-A



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-B: Pricing Document

### 1.0 Compensation

- 1.1 Contractor will be compensated for the satisfactorily carrying out its obligations under the Contract by the method indicated by the “●” mark below:

<input checked="" type="radio"/>	<b>DISCOUNT OFF LIST OR CATALOG</b>
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- 1.2 DISCOUNT OFF LIST OR CATALOG. A discount off list or catalog means a percentage discount to be applied to a base price for from one or more contractually-established price lists against published catalogs. The applicable discounts are scheduled the pricing document.
- 1.2.1 Unless specified otherwise in the Pricing Document, base price is the price that is most widely offered to general customers at the time of the Order.
- 1.2.2 The catalogs used to establish base price are specified otherwise in the Pricing Document. If nothing is so specified, then the commercially available catalogs published by Contractor or Subcontractor to a dealer or reseller network for the covered materials or services are to be used.
- 1.2.3 Each catalog must:
- (a) bear the applicable State contract number;
  - (b) list all materials or services Contractor is authorized to sell under the Contract;
  - (c) not contain any items that are excluded from the Contract;
  - (d) provide ordering information and contact information for customer support.
- 1.2.4 Each catalog and its accompanying price list must include for each item:
- (a) a part or model number, if applicable;
  - (b) a complete and accurate description of the item;
  - (c) the manufacturer’s suggested retail price (MSRP) or Contractor’s list price;
  - (d) a stock keeping unit (SKU) number (SKU) , if applicable;
  - (e) the item’s unit of measure (UOM), if applicable; and
  - (f) the quantity in the unit of measure (QUOM), if applicable.
- 1.2.5 Contractor shall provide and maintain concurrent and identical electronic and hardcopy versions of all contracted price lists and catalogs.
- (a) The electronic versions are to be provided as they are available.
    - i. State, at its discretion, may host Contractor's electronic price lists and catalogs directly, or may link through the e-procurement system as a punch-out.
    - ii. Regardless of the number and types of links to Contractor's electronic price lists and catalogs, Contractor shall ensure that all Eligible Agencies and Co-Op Buyers are only able to access one unified set of data.
- 1.3 Contractor shall supply sufficient, current hardcopy catalogs and price lists price lists to applicable Eligible Agencies at Contract commencement, and provide prompt hardcopy notice of any changes to list/catalog holders as they occur. Contractor shall not change State or any Eligible Agency (or any Co-Op Buyer, if applicable) for lists/catalogs or updates.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 2.0 Pricing

- 2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachment 4 Pricing, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.
- 2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.
- 2.1.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.
- 2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.
- 2.2 For the purpose of this contract, "MSRP" shall be defined as an acronym for the Manufacturer's Suggested Retail Price. It represents the Manufacturer's recommended retail selling Price, list Price, published Price, or other usual and customary Price that would be paid by the purchaser for specific commodities and contractual services. It must be available and verifiable by the State.
- 2.3 *Medium and Heavy Duty Cab and Chassis and Available Options.* All pricing shall be a percentage off MSRP. Pricing shall include the following: all profit, administrative charges, Dealer preparation charges, environmental fees, title application and registration fees, plate transfer fees, handling charges, shipping charges, and any other charges or fees necessary to deliver the base vehicle according to the specification, exclusive of taxes. Shipping charges shall be defined as the delivery cost for each vehicle within the county in which the Contractor is located.
- 2.4 *Delivery.* Delivery costs for each county outside the county in which the dealer is located shall be indicated on Attachment 4 Pricing. There shall be no delivery charges for vehicles delivered within the county in which the Contractor is located.
- 2.5 *Supplemental Pricing – All Inclusive.* Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Statement of Work and all aspects of the Contractor's offer as accepted by the State. Details of service not explicitly stated in the Statement of Work or in the Contractor's Offer, but necessarily a part of, are deemed to be understood by the Contractor and included herein. All administrative, reporting or other requirements, all overhead costs and profit and any other costs towards the accomplishment of the requirements in this Contract are included in the pricing provided.
- 2.6 Pricing for any additional products or services shall be in accordance with the information provided in Attachment 4- Pricing,
- 2.7 ***Price Reductions and Sales Promotions.*** Contractor may reduce its contracted price at any time, and will provide documentation listing the original State contract price and the new reduced or promotional price. Promotions or reductions to sell existing inventory/stock and to include special manufacturer assistance are allowable.
- 2.8 **NO ADJUSTMENT.** All prices and rates in the e-Procurement system, or Orders if and to the extent they differ from those in the exhibit, will be valid for the entire term of the Contract, and will not be subject to revision for



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

inflation or any changes to wages, taxes or other costs that Contractor may be obliged to incur that may be higher than those which it contemplated when proposing the relevant price or rate.

## 3.0 Funding

No particular funding considerations apart from paragraph 4.3 of the Uniform Terms and Conditions [Availability of Funds] have been identified as of the Solicitation date.

## 4.0 Invoicing

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Buying Entity’s purchasing tool/process.

4.2 MINIMUM INVOICE REQUIREMENTS. Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the The State’s e-Procurement System PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes (as a separate invoice line item)	●
Upcharge shipping/freight, etc. (as a separate invoice line item)	Materials only
Total invoice amount due	●

4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:

1. Materials or Services that have not been authorized on an acknowledged Order;
2. Expediting, overtime, premiums, or upcharges absent State’s express prior approval; or



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

3. Materials or Services that are the subject of a Contract Amendment or Change Order that has not been fully signed.
- 4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
  - 4.6.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
  - 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
    - (a) are sent to an incorrect address;
    - (b) do not reference the correct State contract number; or
    - (c) are payable to any Person other than the Contractor.
  - 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

## 5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2 JOINT CHECKS OR DIRECT PAY. applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 5.5 PURCHASING CARD. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 AUTOMATED CLEARING HOUSE. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

<https://gao.az.gov/afis/vendor-information>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-C: Special Terms and Conditions

*The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.*

### 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Acceptance** "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
- 1.2 Accepted Offer** If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.  
If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.  
If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
- 1.3 Arizona Procurement Code; A.R.S.; A.A.C.** "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
- 1.4 Arizona TPT** "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>.
- 1.5 Attachment** "Attachment" means any item that:
  1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  2. was attached to an Offer when submitted; and
  3. was included in the Accepted Offer.
- 1.6 Pricing Document** "Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7 Contract Amendment** "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in The State's e-Procurement System is to be construed as being synonymous with "Contract Amendment".
- 1.8 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.10 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

**1.11 Co-Op Buyer**

“Co-Op Buyer” means a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.

**1.12 Eligible Agency**

If the Special Terms and Conditions indicates that the Contract is a “single-agency” contract, then “Eligible Agency” means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a “statewide” contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.

**1.13 Indemnified Basic Claims**

“Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.

**1.14 Instructions to Offerors**

“Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.

**1.15 Order**

“Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:

1. “Release” or “Release Purchase Order” in The State’s e-Procurement System;
2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or
3. “purchase order” for buying by Co-Op Buyers, if co-op buying applies.

**1.16 The State’s e-Procurement System**

“The State’s e-Procurement System” means State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System*.

NOTE (1): Technical Bulletin No. 020 is available online at:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

**1.17 State**

With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co-Op Buyer who has issued the Order.

**1.18 State Indemnitees**

“State Indemnitees” means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

**1.19 Subcontractor**

“Subcontractor” has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 1.20 Work

“Work” means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor’s obligations and duties under the Contract in conformance with the Contract and applicable laws.

## 2.0 Contract Interpretation

### 2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to “Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractors’ respective agents, representatives, and employees” in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*” in every instance;
5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

### 2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

- (a) Contract Amendments;
- (b) the final Solicitation Documents, in the order:
  - (1) Special Terms and Conditions;
  - (2) Exhibits to the Special Terms and Conditions;



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- (3) Uniform Terms and Conditions;
- (4) Scope of Work;
- (5) Exhibits to the Scope of Work;
- (6) Pricing Document;
- (7) Exhibits to the Pricing Document;
- (8) Specifications; and
- (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

**2.3 Independent Contractor**

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

**2.4 Complete Integration**

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

**3.0 Contract Administration and Operation**

**3.1 Term of Contract**

The term of the Contract will commence on the date indicated on the Acceptance and continue for **twelve (12) months unless canceled, terminated, or permissibly extended.**

**3.2 Contract Extensions**

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.

**3.3 Notices and Correspondence**

3.3.1 TO CONTRACTOR. State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding The State's e-Procurement System Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall :

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:

Arizona Department of Administration  
State Procurement Office  
100 N 15th Ave., Suite 402



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Phoenix, AZ 85007

3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

### 3.4 Signing of Contract Amendments

Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;
2. revision to Procurement Officer appointment or contact information; or
3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – are required to give it effect.

### 3.5 Click-Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

### 3.6 Books and Records

3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

### 3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

### 3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor’s administrative communications and records relating to the Contract, are considered work product and Contractor’s property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

(a) “Government Purpose Rights” are:

- i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- ii. the right to release or disclose that work product to third parties for any State government purpose; and
- iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

(b) “Government Purpose Rights” do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- (a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- (b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
- (c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor’s or its affiliates’ ownership of such pre-existing materials.

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

### 3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor’s candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer’s advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer’s written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

**3.11 Offshore Performance of Certain Work Prohibited**

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

**3.12 Orders**

3.12.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.12.5 NO MINIMUMS OR COMMITMENTS. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

**3.13 Statewide Contract Provisions**

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

construed as a “delivery order” sub-type of ID/IQ contract to the extent the Work is Materials, and a “task order” sub-type to the extent the Work is Services.

1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:  
<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>
2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).
3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) “approving” the Order electronically in The State’s e-Procurement System, which will indicate Contractor’s unqualified acceptance of the Order as-issued; or (b) “rejecting” the Order electronically in The State’s e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in The State’s e-Procurement System, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in The State’s e-Procurement System within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State’s e-Procurement System and if it does so the rejection will be void.
6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer’s instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State’s part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor’s obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor’s refusal to do so would be a material breach of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under (3) and (4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

### 3.15 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

### 3.16 Work on State Premises

3.16.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*].



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 4.0 Costs and Payments

### 4.1 Payments

4.1.1 **PAYMENT DEADLINE.** State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2 **PAYMENTS ONLY TO CONTRACTOR.** Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

### 4.2 Applicable Taxes

4.2.1 **CONTRACTOR TO PAY ALL TAXES.** State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.2.2 **TAX INDEMNITY.** Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

## 5.0 Contract Changes

### 5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

### 5.2 Assignment and Delegation

5.2.1 **IN WHOLE.** Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

5.2.2 **IN PART.** Subject to paragraph 3.10 [*Subcontracts*] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 6.0 Risk and Liability

### 6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

### 6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

**MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

#### 1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$ 50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 3. Worker's Compensation and Employers' Liability

Workers' Compensation.....	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

**ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

**NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

**ACCEPTABILITY OF INSURERS:** Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

Procurement Office. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

**SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

**APPROVAL and MODIFICATIONS:** The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

### 6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") 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) (hereinafter referred to as "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 Contractor 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 Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

## 6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence.

Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party’s default unrelated to the occurrence, in which case and to that extent the other party’s normal remedies and the affected party’s obligations would apply undiminished.

## 6.6 Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

## 7.0 Warranties

### 7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State’s acceptance.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- 7.2 **Contractor Personnel** Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State’s authorized representatives upon request.
- 7.3 **Intellectual Property** Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.4 **Licenses and Permits** Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.
- 7.5 **Operational Continuity** Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor’s duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and Delegation*] that expressly recognizes the event.
- 7.6 **Performance in Public Health Emergency** Contractor warrants that it will:
  1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
  2. provide a copy of its current plan to State within 3 (three) business days after State’s written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.
- 7.7 **Lobbying**
  - 7.7.1 PROHIBITION.
    - (a) Contractor warrants that:
      - i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor’s use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
      - ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.
    - (b) Contractor shall implement and maintain adequate controls to assure compliance with (a) above.
    - (c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.
  - 7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State’s benefit or on State’s behalf.
- 7.8 **Survival of Warranties** All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

## 9.0 Contract Termination

No modifications to uniform terms and conditions section

## 10.0 Contract Claims

- 10.1 Claim Resolution** Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.
- 10.2 Mandatory Arbitration** In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

## 11.0 General Provisions for Materials

- 11.1 Applicability** Article 11 applies to the extent the Work is or includes Materials.
- 11.2 Off-Contract Materials** Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.
- 11.3 Compensation for Late Deliveries** Contractor shall have clear, published policies in place regarding late delivery, order cancellation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them
- 11.4 Indicate Shipping Costs on Order** Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)
- 11.5 Current Products** Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract
- 11.6 Maintain Comprehensive Selection** Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.
- 11.7 Additional Products** State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

**11.8 Discontinued Products**

response to State’s request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer’s notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide:

(a) manufacturer’s announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7)

Forced substitutions will not be permitted; Contractor shall obtain State’s prior written consent before making any discretionary substitution for any product covered by the Contract.

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, “recalls” hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product.

**11.9 Forced Substitutes**

Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State’s part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

**11.10 Recalls**

11.11.1 PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller’s dock) Incoterms®2010, with “seller’s dock” meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to “F.o.b. Origin, Contractor’s Facility” under [FAR 52.247-30](#)

**11.11 Delivery**

11.11.2 LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor’s liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to “F.o.b. Destination, Within Consignee’s Premises” under [FAR 52.247-35](#).

11.11.3 PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller’s dock) with no mark-up, which Contractor shall itemize and invoice separately

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

**11.12 Delivery Time**

1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;

**11.13 Delivery Locations**

2. if the Contract is for a single State agency in all its locations, then Contractor shall



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

deliver to any of that agency's location in Arizona;

3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
4. if the Contract is for unrestricted statewide use, then:
  - i. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
  - b) If a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
  - c) if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

### 11.14 Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

### 11.15 Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

### 11.16 Correcting Defects

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials

1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.
3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

### 11.17 Returns

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day
2. reimburse Contractor for:
  - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;
  - (b) the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and,

### 11.18 Order Cancellation

3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup

### 11.19 Product Safety

### 11.20 Hazardous Materials



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 12.0 General Provisions for Services

- 12.1 Applicability** Article 12 applies to the extent the Work is or includes Services.
- 12.2 Comprehensive Services Offering** Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.
- 12.3 Additional Services** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor’s request or proposal in response to State’s request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.
- 12.4 Off-Contract Services** Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, “off-contract service” refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.
- 12.5 Removal of Personnel** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State’s facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
- 12.6 Transitions** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State’s operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State’s representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.
- 12.7 Accuracy of Work** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
- 12.8 Requirements at Services Location** Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

**12.9 Services Acceptance**

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State’s rejection.

**12.10 Corrective Action Required**

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor’s analysis and plans, and Contractor shall make any corrections State instructs and adopt State’s recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

## 13.0 Data and Information Handling

**13.1 Applicability**

Article 13 applies to the extent the Work includes handling of any (1) State’s proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State’s behest.

**13.2 Data Protection and Confidentiality of Information**

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State’s proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State’s confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

### 13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>

### 13.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-D:

# Uniform Terms and Conditions

Version: 9 (7/1/2013)

## 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Attachment** "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2 Contract** "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 Contract Amendment** "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 Contractor** "Contractor" means any Person who has a Contract with the State.
- 1.5 Days** "Days" means calendar days unless otherwise specified.
- 1.6 Exhibit** "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 Materials** "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 Procurement Officer** "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
- 1.11 State** "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12 State Fiscal Year** "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.13 Subcontract** "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

## 2.0 Contract Interpretation

- 2.1 Arizona Law** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.



# Request for Proposal

Solicitation No.  
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- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 3.0 Contract Administration and Operation

- 3.1 Records** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

**3.6 Advertising, Publishing and Promotion of Contract**

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

**3.7 Property of the State**

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

**3.8 Ownership of Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

**3.9 Federal Immigration and Nationality Act**

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

**3.10 E-Verify Requirements**

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

**3.11 Offshore Performance of Work Prohibited.**

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

## 4.0 Costs and Payments

**4.1 Payments**

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

**4.2 Delivery**

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

**4.3 Applicable Taxes**

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does



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not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

**4.4 Availability of Funds for the Next State fiscal year**

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

**4.5 Availability of Funds for the current State fiscal year**

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements

## 5.0 Contract Changes

**5.1 Amendments**

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

**5.2 Subcontracts**

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor’s proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

**5.3 Assignment and Delegation**

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6.0 Risk and Liability

**6.1 Risk of Loss**

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

**6.2 Indemnification**

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively



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referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

**6.3 Indemnification – Patent and Copyright**

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

**6.4 Force Majeure**

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall **not** include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition;

or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

**6.5 Third Party Antitrust Violations**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7.0 Warranties

**7.1 Liens**

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

**7.2 Quality**

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;



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- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness** The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing** The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Compliance with Laws** The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 Survival of Rights and Obligations after Contract Expiration or Termination**
  - 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8.0 State's Contractual Remedies

- 8.1 Right to Assurance** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order**
  - 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender** Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.



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## 8.5 Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9.0 Contract Termination

### 9.1 Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

### 9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

### 9.3 Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

### 9.4 Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

### 9.5 Termination for Default

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

### 9.6 Continuation of

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up



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**Performance Through Termination** to the date of termination, as directed in the termination notice.

## 10.0 Contract Claims

**10.1 Contract Claims** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

## 11.0 Arbitration

**11.1 Arbitration** The parties to this Contract agree to resolve all disputes arising out of or relating to this contract 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 (Title 41).

## 12.0 Comments Welcome

**12.1 Comments Welcome** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Scott Overton, Streets Section Director  
**Co-Submitter:** Emily Markel  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Approval of Purchase through a Cooperative Purchase Contract:** To purchase one (1) 2020 International HV513 SFA Heavy Plow Truck from the RWC Group, LLC through a cooperative purchase contract with the Arizona Department of Administration, State Procurement Office in the amount of \$270,949.24.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for one (1) 2020 International HV513 SFA Heavy Duty plow truck from RWC Group in the amount of \$270,949.24 through cooperative purchase contract #CTR041813 with the Arizona Department of Administration, State procurement office.
2. Authorize the City Manager to execute the necessary documents.

**Executive Summary:**

Public Works - Streets Section is responsible for the timely snow removal and added ice traction response on our local transportation network. Response to snow events is critical to maintain the safest travel possible on city streets. This truck is being considered as a replacement of an existing snowplow truck which has met milestone requirements for replacement and has been recommended and approved by the Fleet Management Committee and for the requested action.

**Financial Impact:**

This equipment purchase was approved in the FY20 budget and is funded with Highway User Revenue Funds (HURF) Acct# 040-060-161-0612-6-4401 for a budgeted amount of \$280,000.00.

**Policy Impact:**

Snow operations are a substantial element of the Streets work program. The city's Snow Operations Manual maps the entire community by zone. Equipment and operators are tasked with the removal of snow from over 700 lane miles of city owned roadways. This operation can last a couple days to over a week depending on the snow event or weather conditions. In addition to plowing we use this equipment to apply traction assistance product. In summer months this truck is used in a dump truck capacity for hauling operations.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Transportation and Public Infrastructure - Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

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

The purchase was considered and approved in the FY20 Budget Cycle.

**Options and Alternatives:**

1. Approve the purchase of one (1) ;2020 International HV513 SFA Heavy& Plow Truck from the RWC Group, LLC through a cooperative purchase contract with the Arizona Department of Administration, State Procurement Office in the amount of \$270,949.24.
2. Do not approve the purchase.
3. Direct staff to re-evaluate the procurement and return with alternatives of new direction.

**Background/History:**

This request is to replace a 1996 International Plow truck. The current condition of the unit has exceeded critical benchmarks of maintenance and replacement over the 24 years to warrant replacement. Fleet services has evaluated the need and concurs with replacement of the unit. Mechanical issues prevent this truck from being reliable and has been utilized in a backup capacity compared to first priority equipment. This unit will likely be sold at auction or re-purposed at the direction of Fleet Services.

**Key Considerations:**

The purchase of this unit is critical for PW-Streets to perform its annual snow operations response.

**Expanded Financial Considerations:**

There are no expanded financial considerations with this purchase. It is proposed to be fully funded in the FY19 budget utilizing highway User Revenue Funds (HURF).

**Community Benefits and Considerations:**

A typical Flagstaff winter season will see multiple snow events produce over 100" of annual snowfall and many nights of freezing temperatures. Our service delivery is of high quality and as timely as possible. Clearing roadways enables our public to move freely around the community and travel safely to their destinations. Our local school routes and transit network are of the highest priority and are maintained throughout the duration of a storm event. This main route truck is a first response vehicle that works predominately on these routes with both plowing and cindering capabilities.

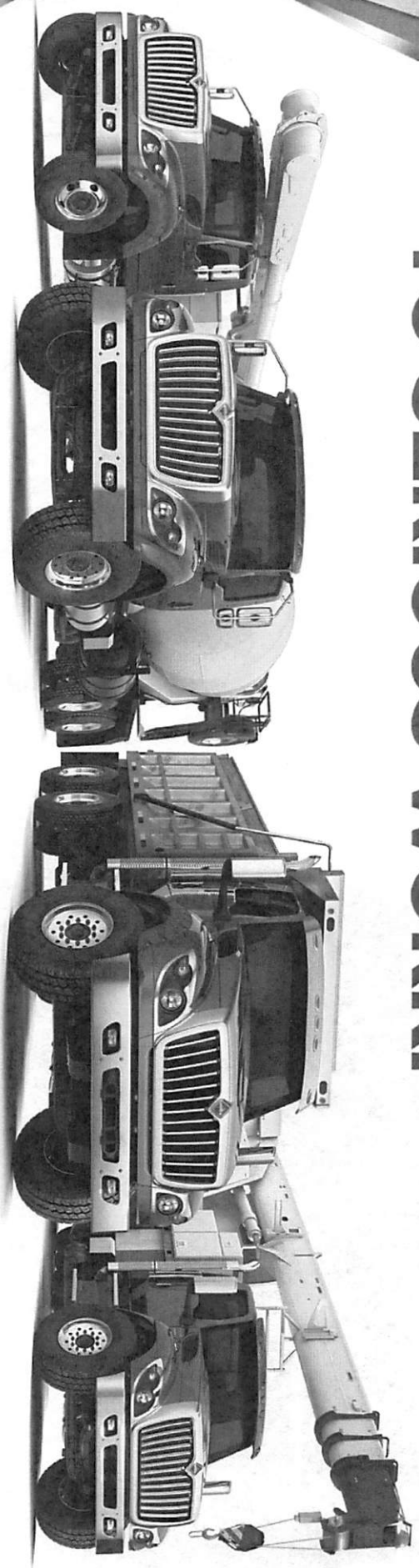
## **Community Involvement:**

Winter Storms are a significant source of citizen interest with the importance of having the tools to perform the duties of the position. Our community stakeholders such as NAIPTA and the local school systems have been able to deliver safe transportation of community member due to the operation efforts of our city response efforts.

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**Attachments:**    [Equipment images](#)  
                          [Co-Op Contract COF](#)  
                          [Exhibit A: Specifications and Costs](#)  
                          [Co-op Bid Pricing](#)  
                          [Equipment Price Breakdown](#)  
                          [Exhibit B: Offer & Acceptance](#)  
                          [Exhibit B: RFP Co-op Language](#)

**A SMARTER APPROACH  
TO SERIOUS WORK.**



**INTRODUCING THE NEW HV SERIES.**

# INTRODUCING THE NEW INTERNATIONAL HV SERIES



IT'S UPTIME™

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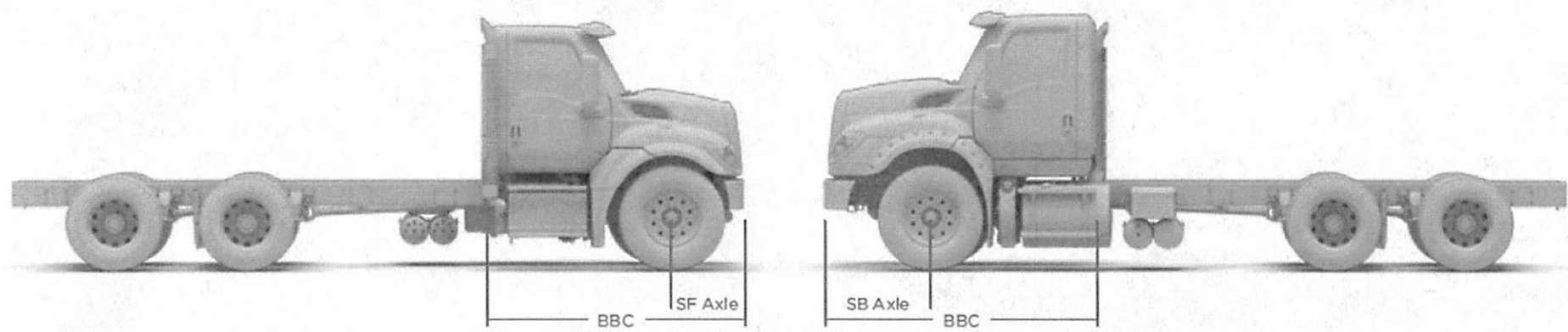


### Model Nomenclature Key

HV507 =

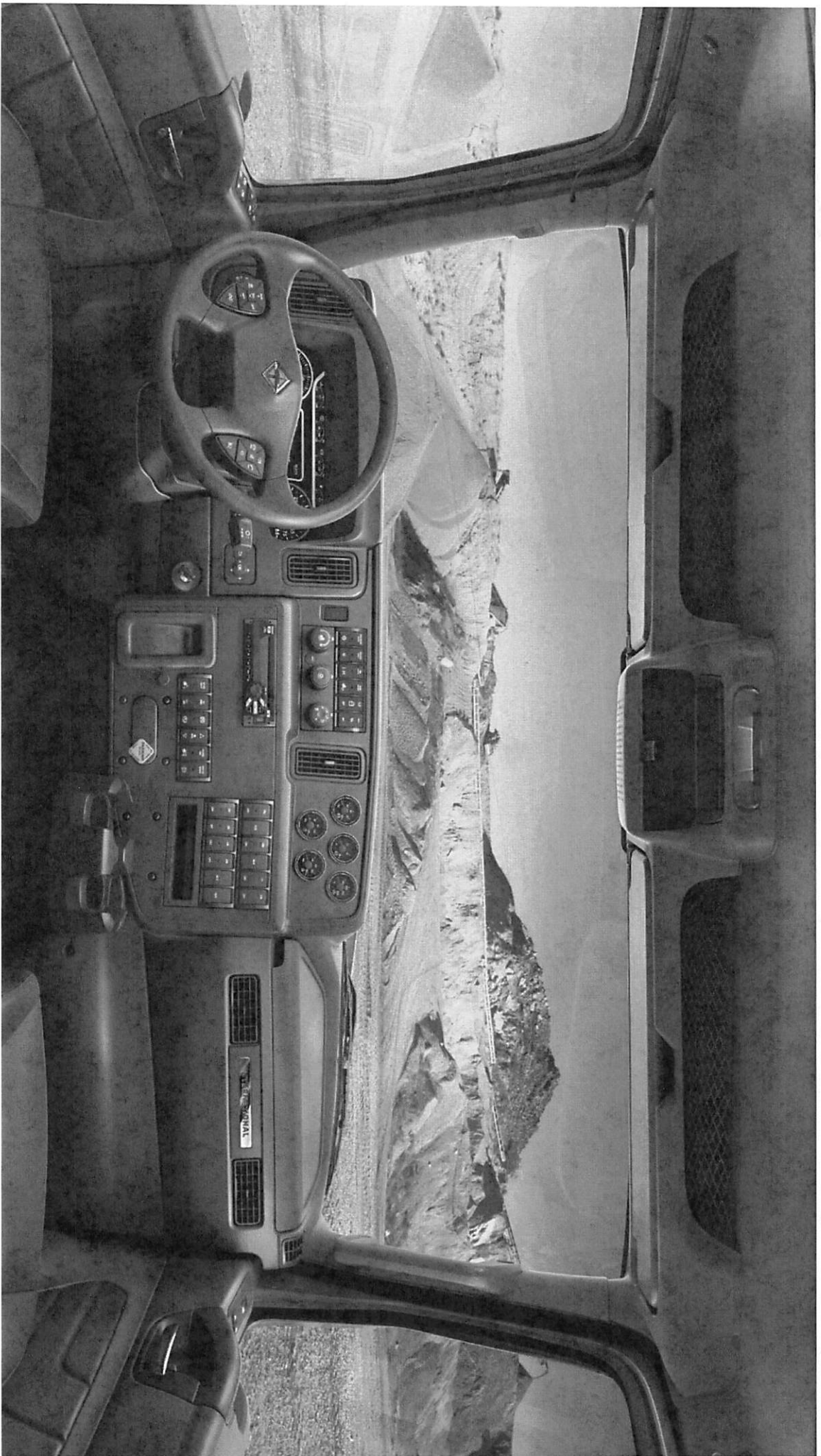
Model Designation	Axle Configuration	BBC in inches	
HV	5 = Set Forward	07	13
	6 = Set Back	07	13

= HV with set-forward axle and a 107" BBC



Configuration	Model	Axles
Set-Forward Axle	HV507	4X2
		4X4
		6X4
		6X6
	HV513	4X2
		6X4

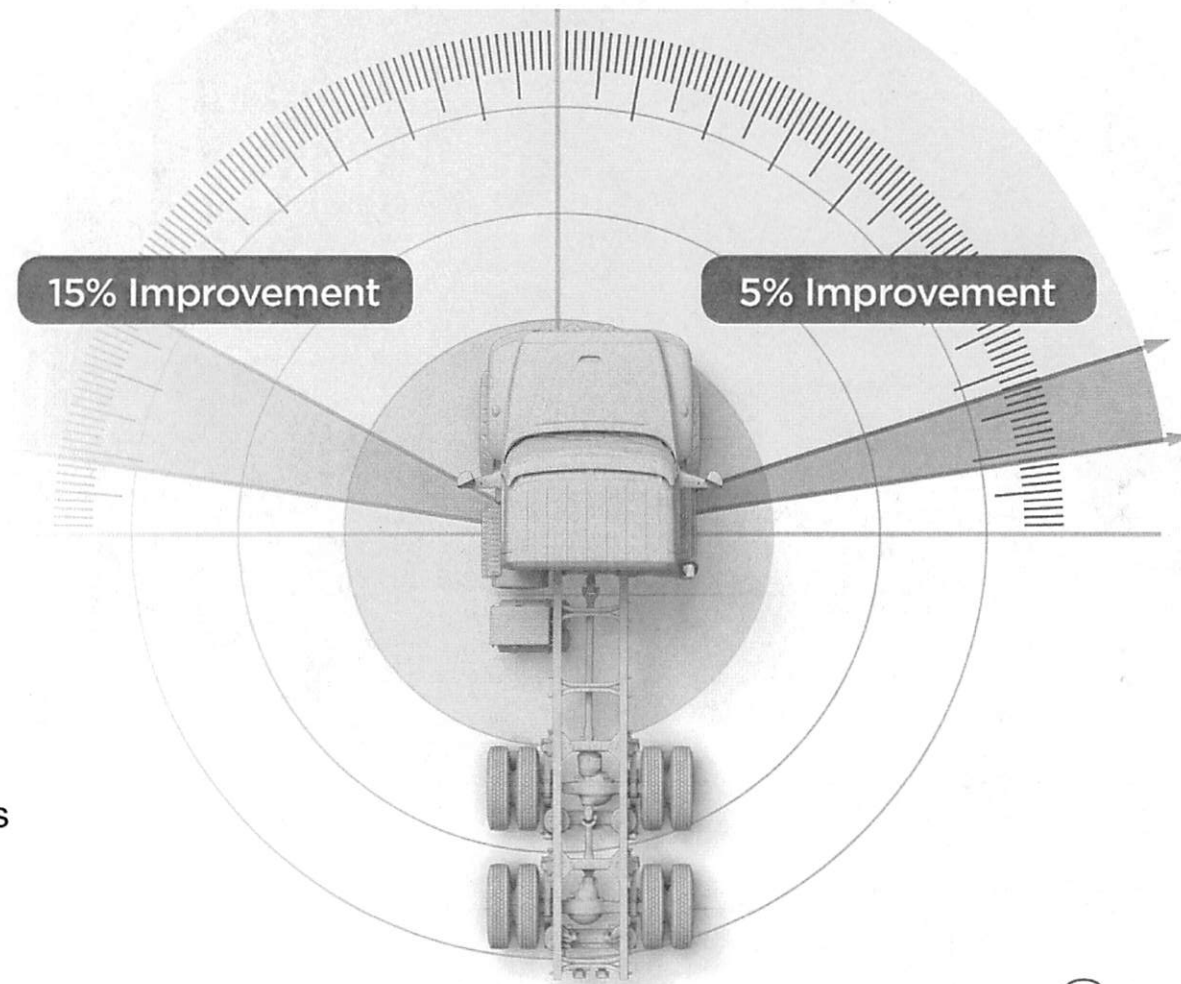
Configuration	Model	Axles
Set-Back Axle	HV607	4X2
		6X4
	HV613	4X2
		6X4
		8X6

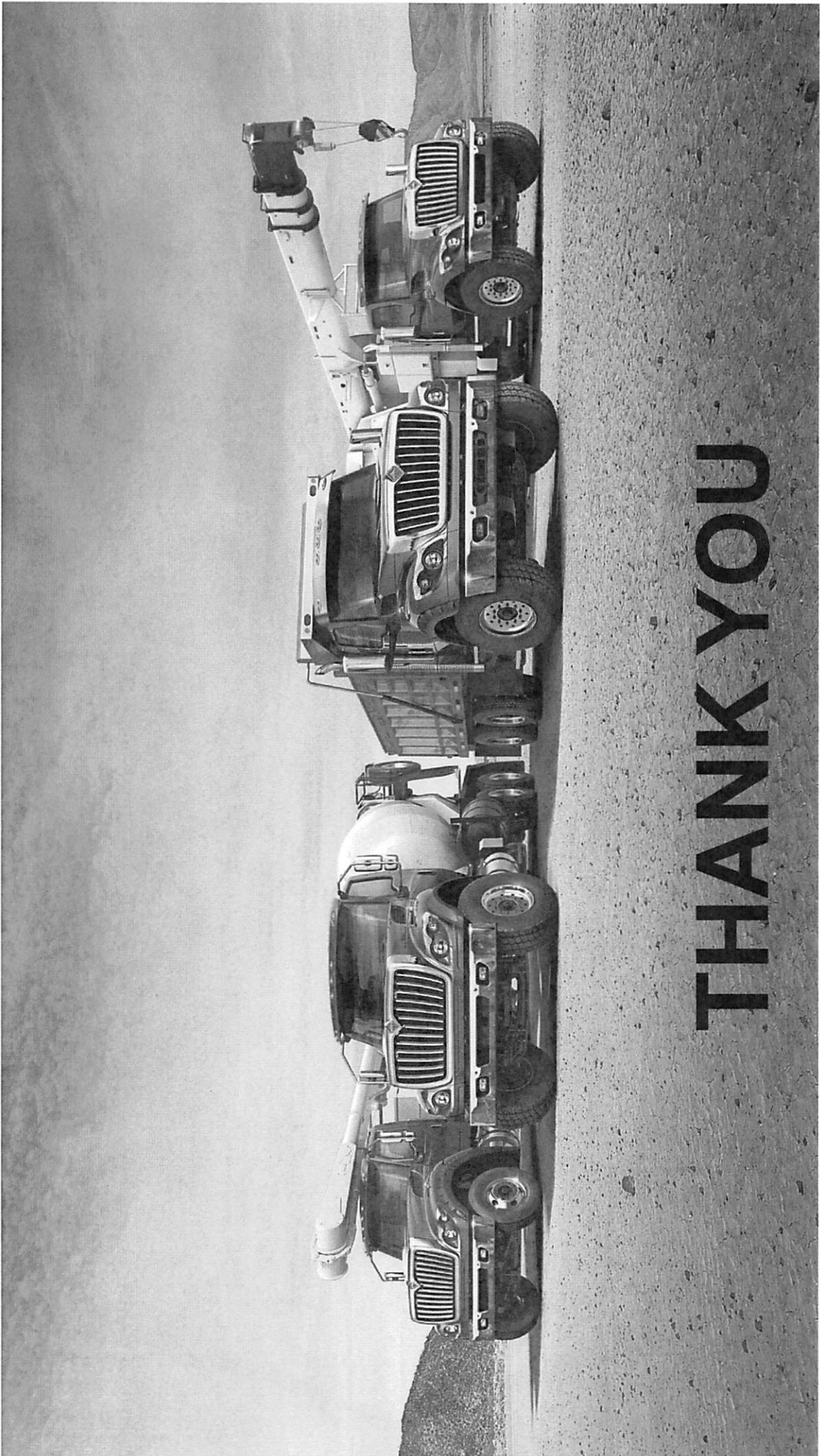




## IMPROVED VISIBILITY

The shaded areas represent how visibility has been optimized by reshaping the doors and side windows, and repositioning the cab mirrors so drivers turn their heads less. This increased visibility reduces driver stress and neck strain to enhance productivity.





**THANK YOU**

## COOPERATIVE PURCHASE CONTRACT

Contract No. 2020-37

This Cooperative Purchase Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and RWC International, LTD, an Arizona Limited Liability Company ("Contractor").

### RECITALS:

- A. Contractor has a Local Government Purchasing Cooperative Contract CTR041813 with Arizona Department of Administration State Procurement Office to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and
- B. Pursuant to section 3.14 of the Agency Contract, the City has authority to utilize the Agency Contract to enter into a cooperative purchase contract with Contractor as a Co-Op Buyer.

### AGREEMENT:

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

1. Materials and or Services Purchased: Contractor shall provide to City the materials as specified in the Purchase Order(s) submitted by the City in accordance with the Agency Contract. The materials being purchased through the Agency Contract are as follows:

#### **Public Works Vehicles:**

- (1) Barricade Truck**
- (1) 10-Wheel Snowplow Truck**
- (2) 6-Wheel Snowplow Truck**
- (1) Patch Truck**

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options selected by the City for each vehicle, as specified in the Purchase Order(s) submitted to Contractor and Exhibit A attached hereto and incorporated by reference.
3. Payment: Payment to the Contractor for the materials described above shall be one million, twenty-one thousand seven hundred and twelve dollars and seventy-five cents (**\$1,021,712.75**) made in accordance with the price list and terms set forth in the Agency Contract.
4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents attached as Exhibit B are incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract.
5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance

under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties.

RWC INTERNATIONAL, LTD:

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

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

CITY OF FLAGSTAFF

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A**  
**SCOPE OF WORK (attached)**

**EXHIBIT B  
AGENCY CONTRACT**

**RFP from STATE OF ARIZONA including AMENDMENT and OFFER & ACCEPTANCE  
(attached)**

10WH Plow Truck  
Acct 040-06-161-0612-6-  
4401  
280,000



# HV513 SFA

Sales Proposal For:  
**CITY OF FLAGSTAFF**

Presented By:  
**RWC Group**

**Prepared For:**  
CITY OF FLAGSTAFF  
Mike Stress  
211 WEST ASPEN AVE.  
FLAGSTAFF, AZ 86001-  
(928)779 - 7619  
Reference ID: N/A

**Presented By:**  
RWC Group  
Mary R Wilson  
600 North 75th Avenue  
PHOENIX AZ 85043 -  
(602)307-1050

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.

**Model Profile**  
**2020 HV513 SFA (HV513)**

<b>AXLE CONFIG:</b>	6X4
<b>APPLICATION:</b>	Front Plow with spreader
<b>MISSION:</b>	Requested GVWR: 66000. Calc. GVWR: 66000 Calc. Start / Grade Ability: 30.16% / 2.80% @ 55 MPH Calc. Geared Speed: 83.0 MPH
<b>DIMENSION:</b>	Wheelbase: 226.00, CA: 142.50, Axle to Frame: 63.00
<b>ENGINE, DIESEL:</b>	{International A26} EPA 2017, 475HP @ 1700 RPM, 1700 lb-ft Torque @ 1000 RPM, 2100 RPM Governed Speed, 475 Peak HP (Max)
<b>TRANSMISSION, AUTOMATIC:</b>	{Allison 4500 RDS} 5th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, On/Off Highway
<b>CLUTCH:</b>	Omit Item (Clutch & Control)
<b>AXLE, FRONT NON-DRIVING:</b>	{Meritor MFS-20-133A} Wide Track, I-Beam Type, 20,000-lb Capacity
<b>AXLE, REAR, TANDEM:</b>	{Meritor RT-46-164P} Single Reduction, Standard Width, 46,000-lb Capacity, with Lube Oil Pump, Driver Controlled Locking Differential in Forward-Rear and Rear-Rear Axle, 200 Wheel Ends Gear Ratio: 4.56
<b>CAB:</b>	Conventional, Day Cab
<b>TIRE, FRONT:</b>	(2) 425/65R22.5 Load Range L G296 MSA (GOODYEAR), 468 rev/mile, 68 MPH, All-Position
<b>TIRE, REAR:</b>	(8) 11R22.5 Load Range G G622 RSD (GOODYEAR), 497 rev/mile, 75 MPH, Drive
<b>SUSPENSION, REAR, TANDEM:</b>	{Hendrickson HMX-460-54} Walking Beam, 46,000-lb Capacity, 54" Axle Spacing, Rubber Springs, with Transverse Torque Rods, Rubber End Bushings
<b>FRAME REINFORCEMENT:</b>	Full Outer C-Channel, Heat Treated Alloy Steel (120,000 PSI Yield), 10.813" x 3.892" x 0.312" (274.6mm x 98.8mm x 7.9mm), 480.0" (12192mm) OAL
<b>PAINT:</b>	Cab schematic 100WM Location 1: 9219, Winter White (Std) Chassis schematic N/A

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
HV51300	Base Chassis, Model HV513 SFA with 226.00 Wheelbase, 142.50 CA, and 63.00 Axle to Frame.	7786/4536	12322	\$165,553.00

**AXLE CONFIGURATION**

1AND	AXLE CONFIGURATION {Navistar} 6x4 <u>Notes</u> : Pricing may change if axle configuration is changed.	0/0	0	\$1,524.00
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**ENGINE**

12BED	ENGINE, DIESEL {International A26} EPA 2017, 475HP @ 1700 RPM, 1700 lb-ft Torque @ 1000 RPM, 2100 RPM Governed Speed, 475 Peak HP (Max)	0/0	0	\$1,678.00
12XBD	RADIATOR Aluminum; Welded, Front to Back CrossFlow System, 1292 SqIn, 1008 SqIn CAC <u>Includes</u> : DEAERATION SYSTEM with Surge Tank : HOSE CLAMPS, RADIATOR HOSES Gates Shrink Band Type; Thermoplastic Coolant Hose Clamps : RADIATOR HOSES Premium, Rubber	0/0	0	\$0.00
12THT	FAN DRIVE {Horton Drivemaster} Direct Drive Type, Two Speed with Residual Torque Device for Disengaged Fan Speed <u>Includes</u> : FAN Nylon	0/0	0	\$0.00
12VAL	AIR CLEANER Dual Element, with Integral Snow Valve and In-Cab Control	6/0	6	\$379.00
12703	ANTI-FREEZE Red, Extended Life Coolant; To -40 Degrees F/-40 Degrees C, Freeze Protection	0/0	0	\$0.00
12XBW	BLOCK HEATER, ENGINE {Phillips} 120V/1150W, with "W" Cord for Fuel Heater and 120V/300W Oil Pan Heater <u>Includes</u> : BLOCK HEATER SOCKET Receptacle Type; Mounted below Drivers Door	0/0	0	\$148.00
12WEG	COLD STARTING EQUIPMENT Automatic; with Engine ECM Control	0/0	0	\$168.00
12WZJ	EMISSION COMPLIANCE Low NOx Idle Engine, Complies with California Clean Air Regulations; Includes "Certified Clean Idle" Decal located on Driver Door	0/0	0	\$62.00
12WTA	FAN DRIVE SPECIAL EFFECTS Fan Cooling Ring with Fan Shroud Effects, Engine Mounted	0/0	0	\$0.00
12VHC	FEDERAL EMISSIONS {International A26} EPA, OBD and GHG Certified for Calendar Year 2019	0/0	0	\$0.00

**TRANSMISSION**

13AUW	TRANSMISSION, AUTOMATIC {Allison 4500 RDS} 5th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, On/Off Highway	251/125	376	\$26,291.00
13WUC	ALLISON SPARE INPUT/OUTPUT for Rugged Duty Series (RDS); General Purpose Trucks, Construction	0/0	0	\$0.00
13WAW	OIL COOLER, AUTO TRANSMISSION {Modine} Water to Oil Type	25/0	25	\$898.00
13XAL	PTO LOCATION Customer Intends to Install PTO at Left Side of Transmission	0/0	0	\$0.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
13WDZ	SHIFT CONTROL PARAMETERS Allison S-1 Performance Programming in Primary and Allison Fixed Programming in Secondary	0/0	0	\$48.00
13WLM	TRANSMISSION OIL Synthetic; 63 thru 76 Pints	0/0	0	\$405.00
13WET	TRANSMISSION SHIFT CONTROL for Column Mounted Stalk Shifter	0/0	0	\$50.00

**CLUTCH**

11001	CLUTCH Omit Item (Clutch & Control)	-133/-23	-156	\$0.00
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**REAR AXLES, SUSPENSIONS**

14HRE	AXLE, REAR, TANDEM {Meritor RT-46-164P} Single Reduction, Standard Width, 46,000-lb Capacity, with Lube Oil Pump, Driver Controlled Locking Differential in Forward-Rear and Rear-Rear Axle, 200 Wheel Ends . Gear Ratio: 4.56	0/2410	2410	\$14,036.00
14JULY	SUSPENSION, REAR, TANDEM {Hendrickson HMX-460-54} Walking Beam, 46,000-lb Capacity, 54" Axle Spacing, Rubber Springs, with Transverse Torque Rods, Rubber End Bushings	0/500	500	\$5,023.00
14WAL	SUSPENSION/REAR-AXLE IDENTITY for Meritor Tandem Rear Axles with Bar-Pin Beam Attachment Type Suspensions	0/0	0	\$0.00

**FRONT AXLES**

2ARY	AXLE, FRONT NON-DRIVING {Meritor MFS-20-133A} Wide Track, I-Beam Type, 20,000-lb Capacity	186/0	186	\$2,153.00
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**FRONT SUSPENSIONS**

3AGA	SUSPENSION, FRONT, SPRING Parabolic Taper Leaf, Shackle Type, 20,000-lb Capacity, with Shock Absorbers	57/0	57	\$724.00
3770	SPRINGS, FRONT AUXILIARY Rubber	10/0	10	\$111.00

**CABS, COWLS, BODIES**

16030	CAB Conventional, Day Cab	0/0	0	\$0.00
16ZBT	ACCESS, CAB Steel, Driver & Passenger Sides, Two Steps per Door, for use with Day Cab and Extended Cab	0/0	0	\$0.00
16BAM	AIR CONDITIONER with Integral Heater and Defroster	52/4	56	\$1,187.00
16VKB	CAB INTERIOR TRIM Classic, for Day Cab <u>Includes</u> : CONSOLE, OVERHEAD Molded Plastic with Dual Storage Pockets, Retainer Nets and CB Radio Pocket; Located Above Driver and Passenger : DOME LIGHT, CAB Door Activated and Push On-Off at Light Lens, Timed Theater Dimming, Integral to Overhead Console, Center Mounted : SUN VISOR (2) Padded Vinyl; 2 Moveable (Front-to-Side) Primary Visors, Driver Side with Toll Ticket Strap	0/0	0	\$0.00
16WSK	CAB REAR SUSPENSION Air Bag Type	0/0	0	\$0.00
16GDG	GAUGE CLUSTER Premium Level; English with English Speedometer and Tachometer, for Air Brake Chassis, Includes Engine Coolant Temperature, Primary and Secondary Air Pressure, Fuel and DEF Gauges, Oil Pressure Gauge, Includes 5 Inch LCD Color Display	0/0	0	\$488.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
16HHE	GAUGE, AIR CLEANER RESTRICTION {Filter-Minder} with Black Bezel, Mounted in Instrument Panel	2/0	2	\$30.00
16SEE	GRAB HANDLE, EXTERIOR Chrome, Towel Bar Type, with Anti-Slip Rubber Inserts, for Cab Entry Mounted Left Side at B-Pillar	3/0	3	\$118.00
16XJP	INSTRUMENT PANEL Wing Panel	0/0	0	\$333.00
16HKT	IP CLUSTER DISPLAY On Board Diagnostics Display of Fault Codes in Gauge Cluster	0/0	0	\$0.00
16SNW	MIRROR, CONVEX, LOOK DOWN Right Side, Black, 6" x 10.5"	0/0	0	\$49.00
16SNP	MIRRORS (2) C-Loop, Power Adjust, Heated, Black Heads and Arms, 7.5" x 14" Flat Glass, Includes 7.5" x 7" Convex Mirrors, for 102" Load Width	0/0	0	\$321.00
	<u>Notes</u> : Mirror Dimensions are Rounded to the Nearest 0.5"			
16SJW	MIRROR, CONVEX, HOOD MOUNTED {Lang Mekra} (2) Right and Left Sides, Black, Heated, 7.5" Sq.	9/0	9	\$265.00
16VCC	SEAT BELT All Orange; 1 to 3	0/0	0	\$26.00
16JPY	SEAT, DRIVER {National 2000} Air Suspension, Hi Back, Vinyl W/Cloth Insert, 1 Inboard Arm Rest, Isolator, Adjuster, 3 Chamber Lumbar, 6 Way Front Adj, 3 Way Rear Cushion Adj, -3 to 14 Degree Back Angle Adjustment, Adjust Side Bolster, Vinyl Suspension Cover, Heat	0/0	0	\$469.00
16SMM	SEAT, PASSENGER {National} Non Suspension, High Back, Fixed Back, Integral Headrest, Cloth	14/9	23	\$398.00
16WJU	WINDOW, POWER (2) and Power Door Locks, Left and Right Doors, Includes Express Down Feature	5/0	5	\$367.00
16XWJ	WINDSHIELD WIPER BLADES Snow Type	2/0	2	\$30.00
<b>FRAMES</b>				
1CBU	FRAME RAILS Heat Treated Alloy Steel (120,000 PSI Yield); 10.125" x 3.580" x 0.312" (257.2mm x 90.9mm x 8.0mm); 480.0" (12192) Maximum OAL	74/212	286	\$0.00
1GBP	FRAME REINFORCEMENT Full Outer C-Channel, Heat Treated Alloy Steel (120,000 PSI Yield), 10.813" x 3.892" x 0.312" (274.6mm x 98.8mm x 7.9mm), 480.0" (12192mm) OAL	436/580	1016	\$1,700.00
1LZD	BUMPER, FRONT Swept Back, Aluminum, Stainless Steel Clad, Heavy Duty	0/0	0	\$469.00
1UAN	FRAME EXTENSION, FRONT Integral; 27" In Front of Grille, with Outer C-Channel Reinforcement	205/-30	175	\$795.00
1570	TOW HOOK, FRONT (2) Frame Mounted	8/0	8	\$118.00
1WTX	WHEELBASE RANGE 199" (505cm) Through and Including 264" (670cm)	0/0	0	\$817.00
<b>BRAKES</b>				
4091	BRAKE SYSTEM, AIR Dual System for Straight Truck Applications <u>Includes</u> : BRAKE LINES Color and Size Coded Nylon : DRAIN VALVE Twist-Type : GAUGE, AIR PRESSURE (2) Air 1 and Air 2 Gauges; Located in Instrument Cluster : PARKING BRAKE CONTROL Yellow Knob, Located on Instrument Panel : QUICK RELEASE VALVE On Rear Axle for Spring Brake Release: 1 for 4x2, 2 for 6x4	0/0	0	\$0.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	: SLACK ADJUSTERS, FRONT Automatic (with Air Cam Brakes) : SLACK ADJUSTERS, REAR Automatic (with Air Cam Brakes) : SPRING BRAKE MODULATOR VALVE R-7 for 4x2, SR-7 with relay valve for 6x4/8x6			
4AZJ	AIR BRAKE ABS {Bendix AntiLock Brake System} Full Vehicle Wheel Control System (4-Channel) with Automatic Traction Control	0/0	0	\$182.00
4193	BRAKES, FRONT, AIR CAM 16.5" x 6", Includes 24 SqIn Long Stroke Brake Chambers	26/0	26	(\$1,368.00)
4EXV	BRAKE CHAMBERS, FRONT AXLE {Bendix} 24 SqIn	18/0	18	\$0.00
4WBX	DUST SHIELDS, FRONT BRAKE for Air Brakes	5/0	5	\$35.00
4NDB	BRAKES, REAR, AIR CAM S-Cam; 16.5" x 7.0"; Includes 30/30 Sq.In. Long Stroke Brake Chamber and Spring Actuated Parking Brake	0/52	52	(\$3,048.00)
4EXU	BRAKE CHAMBERS, REAR AXLE {Bendix EverSure} 30/30 Spring Brake	0/78	78	\$0.00
4WDM	DUST SHIELDS, REAR BRAKE for Air Brakes	0/12	12	\$140.00
4SPM	AIR COMPRESSOR {Bendix BA-921 Head Unload} 15.9 CFM	0/0	0	\$0.00
4EBD	AIR DRYER {Wabco System Saver 1200} with Heater	12/6	18	\$497.00
4VKC	AIR DRYER LOCATION Mounted Inside Left Rail, Back of Cab	0/0	0	\$0.00
4WZJ	AIR TANK LOCATION (2) : One Mounted Under Each Frame Rail, Front of Rear Suspension, Parallel to Rail	0/0	0	\$288.00
4WDA	DRAIN VALVE (3) Petcocks, for Air Tanks	0/0	0	\$0.00
4619	TRAILER CONNECTIONS Four-Wheel, with Hand Control Valve and Tractor Protection Valve, for Straight Truck	0/0	0	\$542.00

Notes

: When electronic stability control is ordered with trailer connections on a 4x2 truck, please check the operator manual for trailer weight restrictions.

**STEERING**

5PTB	STEERING GEAR (2) {Sheppard M100/M80} Dual Power	77/-3	74	\$1,169.00
5708	STEERING COLUMN Tilting	10/5	15	\$125.00
5CAW	STEERING WHEEL 4-Spoke; 18" Dia., Black	0/0	0	\$0.00

**DRIVELINES**

6DHB	DRIVELINE SYSTEM {Dana Spicer} 1810HD Main Driveline with 1710 Interaxle Shaft, for 6x4	0/0	0	\$0.00
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**EXHAUST SYSTEMS**

7BKS	EXHAUST SYSTEM Single, Horizontal Aftertreatment Device, Frame Mounted Right Side Under Cab, for Single Vertical Tail Pipe, Frame Mounted Right Side Back of Cab	34/43	77	\$1,210.00
7BEV	AFTERTREATMENT COVER Steel, Black	0/0	0	\$0.00
7SDK	ENGINE COMPRESSION BRAKE by Jacobs; for N13/A26 Engines, with Selector Switch and On/Off Switch	0/0	0	\$2,158.00
7WBU	EXHAUST HEIGHT 11' 6"	2/0	2	\$118.00
7WDN	MUFFLER/TAIL PIPE GUARD (1) Aluminum	0/0	0	\$0.00
7WDT	TAIL PIPE (1) Straight Type	0/0	0	\$64.00

**ELECTRICAL SYSTEMS**

8000	ELECTRICAL SYSTEM 12-Volt, Standard Equipment <u>Includes</u>	0/0	0	\$0.00
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<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	: DATA LINK CONNECTOR For Vehicle Programming and Diagnostics In Cab			
	: HAZARD SWITCH Push On/Push Off, Located on Instrument Panel to Right of Steering Wheel			
	: HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever			
	: PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light			
	: STARTER SWITCH Electric, Key Operated			
	: STOP, TURN, TAIL & B/U LIGHTS Dual, Rear, Combination with Reflector			
	: TURN SIGNAL SWITCH Self-Cancelling for Trucks, Manual Cancelling for Tractors, with Lane Change Feature			
	: WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature (5 Pre-Set Delays), Integral with Turn Signal Lever			
	: WINDSHIELD WIPERS Single Motor, Electric, Cowl Mounted			
	: WIRING, CHASSIS Color Coded and Continuously Numbered			
12VYL	ACCESSORY WIRING, SPECIAL for Road Speed Wire Coiled Under Instrument Panel for Customer Use	0/0	0	\$45.00
8GXJ	ALTERNATOR {Leece-Neville AVI160P2013} Brush Type; 12 Volt 160 Amp. Capacity, Pad Mount	0/0	0	\$0.00
8THJ	AUXILIARY HARNESS 3.0' for Auxiliary Front Head Lights and Turn Signals for Front Plow Applications	2/0	2	\$158.00
8THB	BACK-UP ALARM Electric, 102 dBA	0/3	3	\$120.00
8VUL	BATTERY BOX Steel, with Plastic Cover, 18" Wide, 2-4 Battery Capacity, Mounted Left Side Back of Cab	0/0	0	\$0.00
8MJU	BATTERY SYSTEM {Fleetrite} Maintenance-Free, (3) 12-Volt 2850CCA Total, Top Threaded Stud	11/10	21	\$179.00
8HAE	BODY BUILDER WIRING Rear of Frame; Includes Sealed Connectors for Tail/Amber Turn/Marker/ Backup/Accessory Power/Ground and Sealed Connector for Stop/Turn	0/3	3	\$209.00
8RNC	CB RADIO Accommodation Package; Header Mounted; Feeds From Accessory Side of Ignition Switch; Includes Power Source and Two (2) Antennas, Antenna Bases with Wiring on Both Side Mirrors	0/0	0	\$437.00
8RGA	2-WAY RADIO Wiring Effects; Wiring with 20 Amp Fuse Protection, Includes Ignition Wire with 5 Amp Fuse, Wire Ends Heat Shrink and Routed to Center of Header Console in Cab	1/0	1	\$211.00
8XAH	CIRCUIT BREAKERS Manual-Reset (Main Panel) SAE Type III with Trip Indicators, Replaces All Fuses	0/0	0	\$0.00
8WPH	CLEARANCE/MARKER LIGHTS (5) {Truck Lite} Amber LED Lights, Flush Mounted on Cab or Sunshade	0/0	0	\$0.00
8HAH	ELECTRIC TRAILER BRAKE/LIGHTS Accommodation Package to Rear of Frame; for Combined Trailer Stop, Tail, Turn, Marker Light Circuits; Includes Electric Trailer Brake Accommodation Package with Cab Connections for Mounting Customer Installed Electric Brake Unit, Less Trailer Socket	0/2	2	\$363.00
8WXB	HEADLIGHT WARNING BUZZER Sounds When Head Light Switch is on and Ignition Switch is in "Off" Position	0/0	0	\$49.00
8WRB	HEADLIGHTS ON WWIPERS Headlights Will Automatically Turn on if Windshield Wipers are turned on	0/0	0	\$42.00
8HXT	HORN, AIR (2) Single Tone, Chrome, Roof Mounted, with Lanyard Pull Cord	0/0	0	\$413.00
8VAY	HORN, ELECTRIC Disc Style	0/0	0	\$0.00
8899	JUMP START STUD (2) Remote Mounted	1/0	1	\$214.00
8RML	RADIO AM/FM/WB/Clock/Bluetooth/USB Input/Auxiliary Input, MP3, Apple Device Play & Control	2/0	2	\$483.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
8WNH	RUNNING LIGHT (2) Daytime	1/0	1	\$58.00
8695	SNOW SHIELD (2) Chrome; for Dual Air Horns	2/0	2	\$33.00
8RMV	SPEAKERS (2) 6.5" Dual Cone Mounted in Doors	0/0	0	\$48.00
8WTL	STARTING MOTOR {Delco Remy 39MT} 12 Volt, Gear Reduced, with Thermal Over-Crank Protection	0/0	0	\$42.00
8WPZ	TEST EXTERIOR LIGHTS Pre-Trip Inspection will Cycle all Exterior Lamps Except Back-up Lights	0/0	0	\$42.00
8TKK	TRAILER AUXILIARY FEED CIRCUIT for Electric Trailer Brake Accommodation/Air Trailer ABS; with 30 Amp Fuse and Relay, Controlled by Ignition Switch	1/0	1	\$123.00
8VZK	TURN SIGNALS, FRONT Dual Face, LED, Amber/Red, Mounted on Top of Fender, Used with Standard Flush Mounted Front Turn Signal, Side Marker Lamps, Parking Lights and Reflectors	0/0	0	\$187.00
8WGL	WINDSHIELD WIPER SPD CONTROL Force Wipers to Slowest Intermittent Speed When Park Brake Set and Wipers Left on for a Predetermined Time	0/0	0	\$42.00

**FRONT END**

9WBK	FRONT END Tilting, Fiberglass, with Three Piece Construction, Includes Long Hood	0/0	0	\$0.00
9WAC	BUG SCREEN Mounted Behind Grille	5/0	5	\$131.00
9585	FENDER EXTENSIONS Rubber	0/0	0	\$0.00
9HBM	GRILLE Stationary, Chrome	0/0	0	\$0.00
9HBN	INSULATION, SPLASH PANELS for Sound Abatement	3/0	3	\$76.00
9AAB	LOGOS EXTERIOR Model Badges	0/0	0	\$0.00
9AAE	LOGOS EXTERIOR, ENGINE Badges	0/0	0	\$0.00

**SPEEDOMETER, TOOLS, MISC**

10022	CHASSIS COATING Corrosion Resistant E-Coat Primer Coating for Reinforced Frame Rails	0/0	0	\$1,000.00
10060	PAINT SCHEMATIC, PT-1 Single Color, Design 100 <u>Includes</u> : PAINT SCHEMATIC ID LETTERS "WM"	0/0	0	\$0.00
10761	PAINT TYPE Base Coat/Clear Coat, 1-2 Tone	0/0	0	\$0.00
10SLV	PROMOTIONAL PACKAGE Government Silver Package	0/0	0	\$0.00
10WCY	SAFETY TRIANGLES	11/1	12	\$47.00
10ABK	SURCHARGE, REAR AXLE for Meritor Rear Axles	0/0	0	\$200.00

**FUEL TANKS**

15SJZ	FUEL TANK Top Draw, Non-Polished Aluminum; 26" Dia, 80 US Gal (303L), Mounted Left Side, Under Cab	13/11	24	\$201.00
15DYP	DEF TANK 9.5 US Gal (36L) Capacity, Frame Mounted Outside Left Rail, Under Cab	0/0	0	\$0.00
15WCS	FUEL COOLER Less Thermostat; Mounted in Front of Cooling Module	15/0	15	\$276.00
15LML	FUEL/WATER SEPARATOR {Davco Fuel Pro 382} 120 VAC Plug-in Electric Pre-Heater, Coolant Heated, Includes Water-in- Fuel Sensor	0/0	0	\$623.00
15LMT	LOCATION FUEL/WATER SEPARATOR Mounted Outside Left Rail, 46" Back of Cab	0/0	0	\$70.00

**WHEELS, TIRES - FRONT**

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
27DUN	WHEELS, FRONT {Accuride 29807} DISC; 22.5x12.25 Rims, Powder Coat Steel, 5-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs, Offset 5.37"	104/0	104	\$784.00
7752668113	(2) TIRE, FRONT 425/65R22.5 Load Range L G296 MSA (GOODYEAR), 468 rev/mile, 68 MPH, All-Position	134/0	134	(\$162.00)

**WHEELS, TIRES - REAR**

28DTT	WHEELS, REAR {Accuride 28828} DUAL DISC; 22.5x8.25 Rims, Powder Coat Steel, 2-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with .472" Thick Increased Capacity Disc and with Steel Hubs	0/96	96	\$462.00
7372138102	(8) TIRE, REAR 11R22.5 Load Range G G622 RSD (GOODYEAR), 497 rev/mile, 75 MPH, Drive	0/40	40	\$480.00

**BODY INTEGRATION**

60AAT	BDY INTG, ADDITIONAL CAB HOLE for Customer Use	0/0	0	\$50.00
60AKZ	BDY INTG, DASH IND LT TRICOLOR (2) for Optional Usage Customer to Program	0/0	0	\$116.00
60AKG	BDY INTG, PTO ACCOMMODATION for (3) Latched Rocker Switches, (1) PTO Switch, (2) Generic Switches to Control (3) 30 amp relays, with Programmable Interlocks, for Body Builder Hook up in the Engine Compartment Left Side, Recommended for Automatic Transmissions	0/0	0	\$148.00

**Total of Product Features** **\$237,343.00**

Cab schematic 100WM  
Location 1: 9219, Winter White (Std)  
Chassis schematic N/A

**Services Section:**

**WARRANTY**

40127	WARRANTY Standard for HV513, HV613 Models, Effective with Vehicles Built July 1, 2017 or Later, CTS-2030A	0/0	0	\$0.00
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**Total of Service Features** **\$0.00**

**Total Component Weight:** **9488/8682 18170**

**Total List Price Including Options:** **\$237,343.00**

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
1	<p>Norwood Equipment:                      NEW CRYSTEEL SELECT DUMP BODY 150" CA                      NEEDED                      16' LONG X 87" W ID X 96" W OD                      8" TALL WESTERN LONGSILLS WITH 5/8" RUBBER WEAR                      PADS BETWEEN FRAME                      FRONT WALL IS 58" TALL , 10GA A1011 STEEL , WITH STD                      1/2 CAB SHIELD                      VERTICAL DOGHOUSE HOIST (does not protrude more then                      12" into body)                      TAPERED SIDES 54" - 46" TALL, 7GA A1011 STEEL                      FLOOR IS 3/16" AR-400 ABRASION RESISTANT STEEL                      TAILGATE IS 46" TALL, 7-GA A1011 STEEL, STD SWING                      WITH AIR OP GATE LOCK                      ASPHALT STYLE REAR, no apron                      STEPS AND GRAB HANDLE AT DRIVERS SIDE REAR                      POST                      HD REAR MUDFLAPS BEHIND DRIVE AXLE                      LED LIGHTS TO DOT REQUIREMENTS, INCLUDES BODY                      UP LIGHT                      INSTALLED COMPLETE PAINTED CUST COLOR                      HOT SHIFT PTO AND DIRECT MOUNT HYD PUMP FOR                      ALLISON TRANSMISSION                      BODY, PLOW &amp; SANDER CONTROL SYSTEM IS FORCE                      AMERICA 6100 ULTRA CONTROL</p> <p>MONROE 11' FULL MOLDBOARD TRIP, REVERSABLE                      PLOW. WITH BUILT IN LEVEL LIFT                      12" RUBBER SNOW DEFLECTOR, AND CURB GUARD                      INCLUDED                      PLOW LIGHTS AND BRACKETS INSTALLED AS                      APPLICABLE (Truck must have plow light switch)                      INCLUDES FRONT FOG LIGHTS</p> <p>MONROE 14' STAINLESS STEEL V-BOX SANDER ON SKID                      ASSEMBLY                      HEATED (OPTIONAL)                      10GA HOPPER, 62" HIGH SIDES, INCLUDES TOP GRATE                      KITS                      10GA TIP UP SPINNER ASSEMBLY                      SS FOLD UP LADDER IN REAR                      SS LIGHT BAR AT REAR OF SANDER, INCLUDES STROBE                      LIGHTS AND WORK LIGHTS                      INCLUDES SELF LOADING LEG KITS, AND RATCHET /                      BINDER TIE DOWNS</p> <p>STROBE LIGHTS MOUNTED ON CAB GUARD OF DUMP                      BODY                      STROBE LIGHTS MOUNTED IN REAR POST OF DUMP                      BODY EACH SIDE</p> <p>ELECTRIC TARP SYSTEM WITH ALUM TARP ARMS AND HD                      MESH TARP INSTALLED</p> <p>HD REAR HITCH PLATE WITH REMOVABLE, SWIVEL                      PINTLE HITCH, &amp; BUILT IN CHIP BAR                      INCLUDES D-RINGS GLAD HANDS AND 7-WAY LIGHT                      SOCKET.</p>	0/0	0	\$131,494.00

**(US DOLLAR)**

<u>Description</u>		<u>Price</u>
Total Factory List Price Including Options:		\$237,343.00
Total Preparation And Delivery:		\$0.00
Freight	\$2,250.00	
Total Freight:		\$2,250.00
Total Factory List Price Including Freight:		\$239,593.00
Less Customer Allowance:		(\$120,921.50)
Total Vehicle Price:		\$118,671.50
Total Body/Allied Equipment:		\$131,494.00
Total Sale Price:		\$250,165.50
Total Per Vehicle Sales Price:		\$250,165.50
Total Net Sales Excluding Taxes:		\$250,165.50
Arizona Tire Tax, 10 Tires	\$20.00	
Sales Tax, Maricopa County	\$20,763.74	
Total Taxes:		\$20,783.74
Net Sales Price:		\$270,949.24

If applicable, Federal Excise Tax (FET) is included in the net sales price above.

Terms of payment are cash on delivery and prices quoted are FOB Phoenix, AZ (unless otherwise noted).

This quote is good for 30 days. All inventory units are subject to prior sale. Unless otherwise noted, the quote above does NOT include title and licensing charges or Arizona state sales tax.

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle.

**Approved by Seller:**

**Accepted by Purchaser:**

\_\_\_\_\_  
**Official Title and Date**

\_\_\_\_\_  
**Firm or Business Name**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Authorized Signature and Date**

**This proposal is not binding upon the seller without Seller's Authorized Signature**

\_\_\_\_\_  
**Official Title and Date**

**The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.**

**The limited warranties applicable to the vehicles described herein are Navistar, Inc.'s standard printed warranties which are incorporated herein by reference and to which you have been provided a copy and hereby agree to their terms and conditions.**

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	<b>Total Body Allied:</b>	0/0	0	<b>\$131,494.00</b>
	STATE CONTRACT#CTR041813 MEDUIM AND HEAVY DUTY CHASSIS AND BUS	0/0	0	\$0.00
	<b>Total Goods Purchased:</b>	0/0	0	<b>\$0.00</b>

The weight calculations included in this proposal are an estimate of future vehicle weight. The actual weight as manufactured may be different from the estimated weight. Navistar, Inc. shall not be liable for any consequences resulting from any differences between the estimated weight of a vehicle and the actual weight.

# NORWOOD EQUIPMENT INC.

## QUOTATION

511 E Mohave Street  
Phoenix, AZ 85004  
Phone 602-254-0644 Fax 602-253-4100

9/4/2019

<b>TO:</b>	<b>RWC INTERNATIONAL</b>	<b>FOR: CITY OF FLAGSTAFF</b>
	<b>600 N 75TH AVE</b>	<b>10 WHEEL DUMP &amp; PLOW EQUIP</b>
<b>ATTN:</b>	<b>PHOENIX, AZ 85043</b>	<b>PREPARED BY: STAN YOUNG</b>
<b>EMAIL:</b>	<b>MARY WILSON</b>	

QUANTITY		LABOR	UNIT PRICE	SUBLET
	<b>NEW CRYSTEEL SELECT DUMP BODY 150" CA NEEDED</b>			
	16' LONG X 87" W ID X 96" W OD			
	8" TALL WESTERN LONGSILLS WITH 5/8" RUBBER WEAR PADS BETWEEN FRAME			
	FRONT WALL IS 58" TALL , 10GA A1011 STEEL , WITH STD 1/2 CAB SHIELD			
	VERTICAL DOGHOUSE HOIST (does not protrude more then 12" into body)			
	TAPERED SIDES 54" - 46" TALL, 7GA A1011 STEEL			
	FLOOR IS 3/16" AR-400 ABRASION RESISTANT STEEL			
	TAILGATE IS 46" TALL, 7-GA A1011 STEEL, STD SWING WITH AIR OP GATE LOCK			
	ASPHALT STYLE REAR, no apron			
	STEPS AND GRAB HANDLE AT DRIVERS SIDE REAR POST			
	HD REAR MUDFLAPS BEHIND DRIVE AXLE			
	LED LIGHTS TO DOT REQUIREMENTS, INCLUDES BODY UP LIGHT			
	INSTALLED COMPLETE PAINTED CUST COLOR			
	HOT SHIFT PTO AND DIRECT MOUNT HYD PUMP FOR ALLISON TRANSMISSION			
	BODY, PLOW & SANDER CONTROL SYSTEM IS FORCE AMERICA 6100 ULTRA CONTROL			
	MONROE 11' FULL MOLDBOARD TRIP, REVERSABLE PLOW. WITH BUILT IN LEVEL LIFT			
	12" RUBBER SNOW DEFLECTOR, AND CURB GUARD INCLUDED			
	PLOW LIGHTS AND BRACKETS INSTALLED AS APPLICABLE (Truck must have plow light switch)			
	INCLUDES FRONT FOG LIGHTS			
	MONROE 14' STAINLESS STEEL V-BOX SANDER ON SKID ASSEMBLY			
	HEATED (OPTIONAL)			
	10GA HOPPER, 62" HIGH SIDES, INCLUDES TOP GRATE KITS			
	10GA TIP UP SPINNER ASSEMBLY			
	SS FOLD UP LADDER IN REAR			
	SS LIGHT BAR AT REAR OF SANDER, INCLUDES STROBE LIGHTS AND WORK LIGHTS			
	INCLUDES SELF LOADING LEG KITS, AND RATCHET / BINDER TIE DOWNS			
	STROBE LIGHTS MOUNTED ON CAB GUARD OF DUMP BODY			
	STROBE LIGHTS MOUNTED IN REAR POST OF DUMP BODY EACH SIDE			
	ELECTRIC TARP SYSTEM WITH ALUM TARP ARMS AND HD MESH TARP INSTALLED			
	HD REAR HITCH PLATE WITH REMOVABLE, SWIVEL PINTLE HITCH, & BUILT IN CHIP BAR			
	INCLUDES D-RINGS GLAD HANDS AND 7-WAY LIGHT SOCKET.			
<b>NOTE:</b>	<i>FURTHER DISCUSSION SHOULD BE DONE WITH CUSTOMER TO MAKE SURE ALL OPTIONS ARE CORRECT FOR THE CUSTOMERS NEEDS BEFORE PROJECT IS STARTED</i>			
<b>Chassis</b>	<i>Chassis will need front frame extensions for plow hitch mount.</i>			
<b>Notes</b>	<i>Chassis will need plow light switch &amp; relay prewired in cab</i>			
	<i>chassis will need pto switch and (4) spare switches in dash if applicable.</i>			
	<i>chassiss will need trailer air and elect package to rear of frame</i>			

ORDER ACCEPTED BY:  
DATE:  
P.O. #

SUB TOTAL	<b>131,494.00</b>
8.6% ST TAX	Not Incl
12% FET TAX	Not Incl
<b>TOTAL</b>	

## Pricing for Medium and Heavy Duty Cab, Chassis, and Buses

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses in the columns below. Column E shall automatically populate the correct contract price utilizing the pre-entered formula.

Make	Model	Manufacturer's Suggested Retail Price (MSRP)	Percentage (%) Off MSRP	Contract Price
International	CV515	\$ 46,219.00	10%	\$ 41,597.10
International	DuraStar	\$ 113,711.00	31%	\$ 78,460.59
International	MV607	\$ 91,707.00	32%	\$ 62,360.76
International	HV 513	\$ 165,553.00	50%	\$ 82,776.50
International	HV507	\$ 92,154.00	32%	\$ 62,664.72
International	HV607	\$ 92,154.00	32%	\$ 62,664.72
International	HV613	\$ 165,553.00	50%	\$ 82,776.50
International	HX515	\$ 207,853.00	50%	\$ 103,926.50
International	HX520	\$ 217,724.00	50%	\$ 108,862.00
International	HX615	\$ 205,714.00	50%	\$ 102,857.00
International	HX620	\$ 216,724.00	50%	\$ 108,362.00
International	RH 613	\$ 192,149.00	50%	\$ 96,074.50
International	LoneStar	\$ 243,590.00	50%	\$ 121,795.00
International	LT625	\$ 203,077.00	50%	\$ 101,538.50
International	RE Bus	\$ 229,650.00	47.5%	\$ 120,566.25
International	CE Bus	\$ 153,592.00	43.5%	\$ 86,779.48
Hino	Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$ 44,563.53
Hino	Hino 155 COE Double Cab Cab & Ch	\$ 58,914.00	17%	\$ 48,898.62
Hino	Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$ 51,427.63
Hino	Hino 195 COE Double Cab Cab & Ch	\$ 67,184.00	17%	\$ 55,762.72
Hino	Hino 238 Cab & Chassis	\$ 73,428.00	17%	\$ 60,945.24
Hino	Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$ 65,007.26
Hino	Hino 258ALP Cvab & Chassis	\$ 80,191.00	17%	\$ 66,558.53
Hino	Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$ 67,606.82

Hino	Hino 268A Cab & Chassis	\$	83,309.00	17%	\$	69,146.47
Hino	Hino 338 Cab & Chassis	\$	91,217.00	17%	\$	75,710.11
					\$	-
					\$	-

**Pricing for Medium and Heavy Duty Cab, Chassis, and Buses Option:**

Instructions: Offerors shall provide information for any additional option packages/add-ons available for Medium and Heavy Duty Cab and Chassis below. Proposed option packages shall only be for Medium and Heavy Duty Cab, Chassis, and Buses proposed on the 'Pricing - Vehicles' tab. Column E shall automatically populate the correct number utilizing the pre-entered formula. Please copy and paste the format for additional space if necessary.

Manufacturer/Make/Model: International CV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 CV515	\$ 46,219.00	10%	\$	41,597.10
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International DuraStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
4300 SBA 4x2	\$ 90,259.00	31%	\$	62,278.71
4400 SBA 4x2	\$ 105,569.00	31%	\$	72,842.61
4400 SBA 6x4	\$ 113,711.00	31%	\$	78,460.59
5			\$	-

Manufacturer/Make/Model: International MV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 MV607	\$ 91,293.00	32%	\$	62,079.24
2 MV607 LP	\$ 91,707.00	32%	\$	62,360.76
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International HV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HV507	\$ 92,154.00	32%	\$	62,664.72
2 HV513	\$ 165,553.00	50%	\$	82,776.50
3 HV607	\$ 92,154.00	32%	\$	62,664.72
4 HV613	\$ 165,553.00	50%	\$	82,776.50
5			\$	-

Manufacturer/Make/Model: International HX Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HX 515	\$ 207,853.00	50%	\$	103,926.50
2 HX 520	\$ 217,724.00	50%	\$	108,862.00
3 HX 615	\$ 205,714.00	50%	\$	102,857.00
4 HX 620	\$ 216,724.00	50%	\$	108,362.00
5			\$	-

Manufacturer/Make/Model: International RH Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 RH 613	\$ 192,149.00	50%	\$	96,074.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LoneStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LoneStar	\$ 243,590.00	50%	\$	121,795.00
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LT				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LT625	\$ 203,077.00	50%	\$	101,538.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International RE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Rear Engine Bus	\$ 229,650.00	47.5%	\$	120,566.25
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International CE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Conventional	\$ 153,592.00	43.5%	\$	86,779.48
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: Hino				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$	44,563.53
2 Hino 155 COE Double Cab Cab & Chassis	\$ 58,914.00	17%	\$	48,898.62
3 Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$	51,427.63
4 Hino 195 COE Double Cab Cab & Chassis	\$ 67,184.00	17%	\$	55,762.72
5 Hino 238 Cab & Chassis	\$ 73,429.00	17%	\$	60,945.24
6 Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$	65,007.26
7 Hino 258LP Ccab & Chassis	\$ 80,191.00	17%	\$	66,558.53
8 Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$	67,606.82
9 Hino 358A Cab & Chassis	\$ 83,309.00	17%	\$	69,146.47
10 Hino 338 Cab & Chassis	\$ 91,217.00	17%	\$	75,710.11

## Pricing for Other Medium and Heavy Duty Cab, Chassis, and Buses Products or Services

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses products and services in the columns below.

Description of item or service	List Price	Percentage (%) Off List Price	Contract Price
Software NED-S01 NAVISTAR	\$ 929.50		\$ 599.30
DLB-S01 DIAMOND LOGIC	\$ 908.70		\$ 599.30
DG-DPA5-BT-C1-KIT	\$ 1,571.73		\$ 1,281.02
3886390- INSITE LIT SUBSCRIPTION	\$ 936.00		\$ 792.00
3886388 INSITE LIT	\$ 24.70		\$ 19.06
5298640- HAND HELD COMPUTER	\$ 1,228.88		\$ 1,047.95
EZ-TECH- TOUGHBOOK COMPUTER	\$ 8,476.83		\$ 6,520.64
Training Services Charge at hourly rate	\$ 135.00		\$ 119.00
DVD PLAY SYSTEM	\$5,026.46	10.0%	\$ 4,523.81
ZONAR SECURITY INSPECTION SYSTEM	\$2,079.76	10.0%	\$ 1,871.78
KENWOOD MOBILE TK-8180	\$1,344.48	10.0%	\$ 1,210.03
UPGRADE SPEAKERS	\$600.39	10.0%	\$ 540.35
Kenwood NX-900 Two Way radio and Antenna	\$846.55	10.0%	\$ 761.90
Kenwood TK-7180 with power Tamer	\$1,274.03	10.0%	\$ 1,146.63
Large light gray shoulder rail	\$1,674.75	10.0%	\$ 1,507.28
install caps & covers on wheels	\$562.35	10.0%	\$ 506.12
Tech Package-Diagnostic software,body builder software a	\$8,580.93	10.0%	\$ 7,722.84
			\$ -
Service Max Diagnostic/ NEXIQ	\$1,902.01	10.0%	\$ 1,711.81
Diamond logic builder	\$942.67	10.0%	\$ 848.40
RWC UNIVERSITY ENROLLMENT (ONLINE PORTAL) PER PERSON	\$50.50	50.0%	\$ 25.25
11R22.5 CONTINENTAL TIRE	\$683.43	10.0%	\$ 615.09
			\$ -
			\$ -
KENWOOD NEXTEDGE TWO WAY RADIO	\$991.84	10.0%	\$ 892.66

STEERING STABILIZER BAR	\$1,191.17	10.0%	\$	1,072.06
FIRE BLANKET	\$81.83	10.0%	\$	73.65
CRS SEAT	\$719.98	10.0%	\$	647.98
Motorola Two Radio model TK-690HBK	\$1,943.51	10.0%	\$	1,749.16
AUTOMATIC TIRE CHAINS	\$3,333.34	10.0%	\$	3,000.00
36" TRACKED BARRIERS	\$702.79	10.0%	\$	632.51
CUSTOMER BARRIER POUCH	\$78.05	10.0%	\$	70.25
REI Cellular Router w/antenna	\$1,575.45	10.0%	\$	1,417.90
IMMI CHILD RESTRAIN SEATS	\$4,755.08	10.0%	\$	4,279.58
TOOL BOX	\$415.28	10.0%	\$	373.75
ALLISON TRANSMISSION SOFTWARE	\$2,641.01	10.0%	\$	2,376.91
CUMMINS DIAGNOSTIC SOFTWARE	\$4,070.21	10.0%	\$	3,663.19
BRAUN LIFT UPGRADE	\$264.03	10.0%	\$	237.62
DVD PLAYER 13 SET PACKAGE	\$2,901.53	10.0%	\$	2,611.37
TS INC 2 CAMERA SYSTEM	\$1,422.57	10.0%	\$	1,280.32
CUMMINS 6.7L, EPA, OBD AND GHG CERTIFIED FOR CALENDER 2017	\$840.55	10.0%	\$	756.49
Kenwood Radio, Antenna, Timer XL	\$1,444.44	10.0%	\$	1,300.00
FREEDMAN 48 FAMILYSEATS W/3 CRASH BARRIERS LEVEL 6 CLOTH	\$16,666.67	10.0%	\$	15,000.00
			\$	-
XPR2500 MOTOROLA TWO WAY	\$886.94	10.0%	\$	798.25
24/7/6 CHANNEL (2) Camera 500GB EVENT MARKET	\$2,102.56	10.0%	\$	1,892.31
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
<b>CAMERA SYTEMS- ANGEL TRAX, BUS VISION, PROVISION</b>			\$	-
RWC GROUP			\$	-
ANGEL TRAX SYSTEM (TWO CAMERA SYSTEM)	\$2,582.88	10.0%	\$	2,324.59

ANGELTRAX FOUR CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,587.93	10.0%	\$	3,229.13
ANGELTRAX Four Camera System	\$1,915.24	10.0%	\$	1,723.72
ANGELTRAX SYSTEM (FOUR CHANNEL W/FOUR CAMERAS)	\$3,028.36	10.0%	\$	2,725.53
ANGELTRAX THREE CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,347.77	10.0%	\$	3,012.99
ANGELTRAX TWO CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$2,987.54	10.0%	\$	2,688.78
BUS VISION System	\$4,242.35	10.0%	\$	3,818.12
CoPilot 4-Channel Mobile Digital Video Recorder	\$900.58	10.0%	\$	810.53
EVENT MARKER	\$222.14	10.0%	\$	199.93
Extra Hard Drive	\$198.13	10.0%	\$	178.32
HYBRID QUEST SYSTEM	\$2,165.00	10.0%	\$	1,948.50
INDICATOR SENSOR KIT	\$162.11	10.0%	\$	145.89
PROVISION 4 camera, 8 channel	\$4,190.72	10.0%	\$	3,771.65
RR-MRH8-1000	\$6,496.11	10.0%	\$	5,846.50
	\$0.00	10.0%	\$	-

<b>REI Camera Systems</b>			\$	-
REI / 4 CH HD420 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$1,518.75	10.0%	\$	1,366.87
REI / 4 CH HD420 DVR w/2 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,751.40	10.0%	\$	1,576.26
REI / 4 CH HD420 DVR w/3 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,984.05	10.0%	\$	1,785.64
REI / 4 CH HD420 DVR w/4 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$2,216.70	10.0%	\$	1,995.03
REI / 8 CH HD800 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$2,119.13	10.0%	\$	1,907.22
REI / 8 CH HD800 DVR w/2 Cameras & 320GB Hard Drive	\$2,351.79	10.0%	\$	2,116.61
REI / 8 CH HD800 DVR w/3 Cameras & 320GB Hard Drive	\$2,584.44	10.0%	\$	2,325.99
REI / 8 CH HD800 DVR w/4 Cameras & 320GB Hard Drive	\$2,817.09	10.0%	\$	2,535.38
REI / 8 CH HD800 DVR w/5 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,049.74	10.0%	\$	2,744.76
REI / 8 CH HD800 DVR w/6 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,282.39	10.0%	\$	2,954.15

REI / 8 CH HD800 DVR w/7 Cameras & 320GB Hard Drive	\$3,515.04	10.0%	\$	3,163.54
REI / 8 CH HD800 DVR w/8 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,747.69	10.0%	\$	3,372.92
REI / GPS Receiver	\$193.27	10.0%	\$	173.94
REI / Sensor Harness	\$157.96	10.0%	\$	142.17
REI / Accelerometer	\$161.50	10.0%	\$	145.35
REI / IR Illuminator (for dome cameras needing night vision)	\$45.75	10.0%	\$	41.17
REI / 500 GB Hard Drive Upgrade	\$150.10	10.0%	\$	135.09
REI / 750 GB Hard Drive Upgrade	\$279.78	10.0%	\$	251.80
REI / 1 TB Hard Drive Upgrade	\$365.04	10.0%	\$	328.53
REI / 320 GB SATA Hard Drive, HD Series Mobile DVRs	\$200.53	10.0%	\$	180.48
REI / 500 GB SATA Hard Drive, HD Series Mobile DVRs	\$360.23	10.0%	\$	324.21
REI / 750 GB SATA Hard Drive, HD Series Mobile DVRs	\$480.31	10.0%	\$	432.28
REI / 1 TB SATA Hard Drive, HD Series Mobile DVRs	\$534.35	10.0%	\$	480.91
REI/ 8 CH HD800 DVR W/8 CAMERAS & 750 GB HARD DRIVE INTERNAL/EXTERNAL DELUXE PACKAGE	\$5,042.25	10.0%	\$	4,538.03
REI / VR-3000, AM/FM DVD PLAYER, (8) SPEAKERS,(4) 15" MONITORS MANUAL FLIP DOWN, ALL CABLES	\$3,984.90	10.0%	\$	3,586.41
HD420W DVR w/2 Antennas & 2 Antenna Cables	\$490.46	10.0%	\$	441.41
HD800W DVR w/ 2 Antennas & 2 Antenna Cables	\$670.57	10.0%	\$	603.52
HD420 / DVR, 4 CHANNELL	\$897.11	10.0%	\$	807.40
(4) 500W INVERTERS / VOLTMETER / 4 PORT USB W STORAGE POUCH	\$2,101.36	10.0%	\$	1,891.23
HD 12 channel DVR, 8 cameras, 1TBHD, WIFI GPS, exterior	\$7,318.80	10.0%	\$	6,586.92
12 channel HDS 1200 DVR w/5 cam, 1TB HD WIFI GPS	\$3,788.46	10.0%	\$	3,409.61
6 channel HDS 600 DVR w/4CAM, 500GB HDD WIFI GPS	\$2,859.58	10.0%	\$	2,573.62
REI Router and WI FI antenna	\$1,608.42	10.0%	\$	1,447.58
DVR, 5 camera, 1TB HDGPS, WIFI, extra 1TBHD	\$4,110.27	10.0%	\$	3,699.24
4 Cams, 1TB HDD Sensor cable, WIFI GPS, and panic butto	\$2,599.69	10.0%	\$	2,339.72
6 Cams, 1TB HDD, 1 Stop arm cam, Sensor cable, WIFI GP	\$4,458.55	10.0%	\$	4,012.70
			\$	-

			\$	-
<b>SEON CAMERA SYSTEMS</b>			\$	-
SEON TL4 (1) CAMERA 4-CHANNEL 320GB, 20FT CABLE, GP	\$1,892.43	10.0%	\$	1,703.18
SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$2,166.21	10.0%	\$	1,949.58
SEON TL4 (3) CAMERA 4-CHANNEL 320GB, (2) 20FT CABLE,	\$2,500.02	10.0%	\$	2,250.02
SEON TL4 (4) CAMERA 4-CHANNEL 320GB, (2)50FT CABLE, (	\$2,713.76	10.0%	\$	2,442.38
			\$	-
SEON TLHD (1) CAMERA 5-CHANNEL 320GB, (1) 20FT CABLE	\$2,120.58	10.0%	\$	1,908.52
SEON TLHD (2) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,394.35	10.0%	\$	2,154.92
SEON TLHD (3) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,728.17	10.0%	\$	2,455.35
SEON TLHD (4) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,941.91	10.0%	\$	2,647.72
			\$	-
SEON TX8 (5) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,489.46	10.0%	\$	3,140.52
SEON TX8 (6) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$3,703.20	10.0%	\$	3,332.88
SEON TX8 (7) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$4,067.04	10.0%	\$	3,660.33
SEON TX8 (8) CAMERA 8-CHANNEL 640GB, (3) 30FT CABLE,	\$4,310.80	10.0%	\$	3,879.72
SEON TX8 (4) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,167.65	10.0%	\$	2,850.89
SEON TH6H500 Trooper DVR 6HD Channel 500 GB HD, 4 c	\$2,396.73	10.0%	\$	2,157.06
Seon TX8 5 camera,640gb, GPS, Event marker & 2 camera	\$4,274.11	10.0%	\$	3,846.70
			\$	-
			\$	-
<b>Starter Kit: (Required for all NEW customers)</b>			\$	-
SEON HDD-STB: Include software, docking station & trackball m	\$234.15	10.0%	\$	210.74
SEON HDD-STB-LMK	\$522.34	10.0%	\$	470.10
SEON 1HDD-DOCK (extra docking stations)	\$138.09	10.0%	\$	124.28
			\$	-
<b>Spare Hard Drives (1-3 per 10 systems recommended)</b>			\$	-
SEON TL Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TLHD Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TX Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
SEON DXHD Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
			\$	-
SEON GPS4	\$93.66	10.0%	\$	84.29
SEON LMK	\$300.19	10.0%	\$	270.18

SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$1,561.01	10.0%	\$	1,404.91
SEON TL4 (3) CAMERA 4-CHANNEL 500 GB, (2) 20FT CABLE, (1) 50FT CABLE, GPS, EVENT TAG	\$3,583.12	10.0%	\$	3,224.81
CA-MP4 MOUNTING POST	\$54.04	10.0%	\$	48.63
CHW702E20	\$575.17	10.0%	\$	517.66
Dome camera with 50ft harness (lens TBD)	\$243.76	10.0%	\$	219.38
Dome camera with 20ft harness (lens TBD)	\$213.74	10.0%	\$	192.36
			\$	-
<b>24/7 CAMERA SYSTEMS</b>			\$	-
24/7 6 CHANNEL (3) Camera 500GB,EVENT MARKER	\$3,391.00	10.0%	\$	3,051.90
24/7 6 CHANNEL (4) Camera 500GB,EVENT MARKER	\$3,710.41	10.0%	\$	3,339.37
			\$	-
ROAD RUNNER 4 CAMERA, 1TB, GPS,EVENT MARKER	\$4,005.80	10.0%	\$	3,605.22
16 CHANNEL SOLID STATE 4 CAMERA, GPS, 64GB, SDX MEMORY	\$2,483.93	10.0%	\$	2,235.54
	\$0.00	10.0%	\$	-
			\$	-
<b>RWC GROUP</b>			\$	-
TRANS AIR / FM55 REAR / SMC3L COND / (1) TM21 COMP / 60K BTU SYST	\$9,405.68	51.6%	\$	4,552.35
TRANS AIR / FM55 REAR / 27K DASH / SMC3L COND / (1) TM21 COMP / EC	\$15,510.92	51.6%	\$	7,507.29
TRANS AIR / RT65 / (1) TM21 COMP / EC4.0 / 64K BTU SYSTEM (Quote 150	\$18,045.57	51.6%	\$	8,734.06
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (2) TM21 COMP / 12	\$20,350.01	51.6%	\$	9,849.41
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (1) TM43 COMP / 12	\$25,689.45	51.6%	\$	12,433.70
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (2) SMC3L COND / (2) TM2	\$27,679.12	51.6%	\$	13,396.69
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (2) TM	\$25,369.98	51.6%	\$	12,279.07
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (1) TM	\$30,345.31	51.6%	\$	14,687.13
TRANS AIR / FM55 FRONT & REAR / 27 DASH / / TA93 SIDE / (2) SMC3L CO	\$33,819.59	51.60%	\$	16,368.68
TRANS AIR / FM55 FRONT & REAR / R120 COND / (2) TM21 COMP / 120K B	\$24,456.19	51.6%	\$	11,836.80
TRANS AIR / FM55 FRONT & REAR / R120 COND / (1) TM43 COMP / 120K B	\$29,551.33	51.6%	\$	14,302.84
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (R120 COND / (2) TM21 CO	\$27,505.29	51.6%	\$	13,312.56
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (2) TM21 CO	\$29,532.53	51.6%	\$	14,293.75
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (1) TM43 CO	\$34,261.22	51.6%	\$	16,582.43
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / 27K DASH / R120 COND /	\$36,762.98	51.6%	\$	17,793.28
TRANS AIR /130KBTU/ FM55 FRONT (1) TA93/ (1) TA96 120 ROOF TOP CO	\$36,599.41	51.6%	\$	17,714.12

TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (2) TM21 C	\$23,645.76	51.6%	\$	11,444.55
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (1) TM43 C	\$28,846.61	51.6%	\$	13,961.76
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / 27K DASH / (2) SMC3L COND	\$30,810.43	51.6%	\$	14,912.25
TRANS AIR / (2) RT65 / (2) TM21 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$36,770.03	51.6%	\$	17,796.69
TRANS AIR / (2) RT65 / (1) TM43 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$41,259.10	51.6%	\$	19,969.41
TRANS AIR / (2) RT65 / 40K DASH / (3) TM21 COMP / EC4.0 / 168K BTU SYS	\$49,800.33	51.6%	\$	24,103.36
TRANS AIR / (2) RT65 / 40K DASH / (1) TM21 COMP / (1) TM43 COMP / EC4	\$51,794.69	51.6%	\$	25,068.63
TRANS AIR TA 17 DUCTED	\$38,759.69	51.6%	\$	18,759.69
TRANS AIR / 3 FAN CONDENSER UPGRADE (14" FANS)	\$1,477.57	51.6%	\$	715.14
TRANS AIR / 4 FAN CONDENSER UPGRADE (14" FANS)	\$2,008.46	51.6%	\$	972.09
TRANS AIR / DRIVER SNOUT	\$653.04	51.6%	\$	316.07
TRANS AIR TA55B93963C4C	\$34,246.51	51.6%	\$	16,575.31
TRANS AIR 150 BTU SYSTEM	\$31,903.38	51.6%	\$	15,441.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$40,609.26	51.6%	\$	19,654.88
RE - TRANS AIR / 150K BTU/ (2) RT96 / TRANSIT COMP / NO HEAT / EC4.0	\$46,514.45	51.6%	\$	22,512.99
RE - TRANS AIR / 177K BTU / (2) RT96 / (1) 27K DASH / (1) SMC25 COND / T	\$59,114.40	51.6%	\$	28,611.37
RE - TRANS AIR / 150K BTU/ (1) TA17 / (1) C5 COND / TRANSIT COMP / BA	\$43,420.25	51.6%	\$	21,015.40
RE - TRANS AIR / 130K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / (2) TM	\$24,870.75	51.6%	\$	12,037.44
RE - TRANS AIR / 145K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / TRANS	\$35,368.55	51.6%	\$	17,118.38
RE - TRANS AIR / 172K BTU (1) TA73 / (2) TA93 / 27K DASH / TRANSIT & 10	\$48,972.14	51.6%	\$	23,702.52
RE - TRANS AIR / 130K BTU / (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$31,407.09	51.6%	\$	15,201.03
RE - TRANS AIR / 130K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / (2) TM2	\$26,696.48	51.6%	\$	12,921.09
RE - TRANS AIR / 150K BTU / (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$36,994.39	51.6%	\$	17,905.28
RE - TRANS AIR / 177K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$53,346.37	51.6%	\$	25,819.64
RE - TRANS AIR / 150K BTU/ (1) TA77 / (1) TA96 / (1) TA93 / (2) SC4 / TRANS	\$40,803.38	51.6%	\$	19,748.84
RE - TRANS AIR / 177K BTU / (1) TA77 / (1) TA96 / (1) TA93 / (1) R120 / (1) S	\$47,926.40	51.6%	\$	23,196.38
CE-PROPANE TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$42,411.56	51.6%	\$	20,527.19
CE-CUMMINS TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$40,220.67	51.6%	\$	19,466.81
RE-KL80 DUCTED WITH DRIVERS BLOWER MOTOR (QUOTE 15800)	\$46,041.81	51.6%	\$	22,284.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$37,174.40	51.6%	\$	17,992.41
RE-TRANS AIR 150K BTU (1) TA 77 REAR, (1) TA93 SIDE/ FM-45 EVAP/RO	\$43,788.79	51.6%	\$	21,193.78
CE Propane TA55F55BSC2LPSC2LP, TM-43 w/ driver snout (15	\$20,478.93	51.6%	\$	9,911.80
CE TRANS AIR 130,000 BTU SC4	\$19,797.98	51.6%	\$	9,582.22
CE TRANS AIR 160,000 BTU TM-55 DUCTED	\$37,411.32	51.6%	\$	18,107.08

RE TRANS AIR 192,000 BTU BITZER DUCTED	\$42,283.30	51.6%	\$	20,465.12
			\$	-
			\$	-
			\$	-
			\$	-
BUS AIR (1) IN WALL Rear Evap, Skirt Cond, 3 Fan,(1) TM21 Compressor & In	\$11,745.36	51.6%	\$	5,684.75
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Skirt Cond, 3 F	\$19,732.21	51.6%	\$	9,550.39
BUS AIR (2) IN WALL Front & Rear Evap, (1) Side Mtn Evap, (1) Driver Plenum	\$22,081.28	51.6%	\$	10,687.34
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Roof Cond, 3	\$25,839.79	51.6%	\$	12,506.46
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (1) Side Evap, (2)	\$30,537.94	51.6%	\$	14,780.36
			\$	-
			\$	-
MCC (1)IW1 REAR EVAP, (1) CM3 SKIRT COND, (1) TM-21 COMP	\$9,598.31	51.6%	\$	4,645.58
MCC (2) IW1 FRONT & REAR EVAP, (1) DRIVER PLENUM, (2) CM3 SKIRT	\$21,254.40	51.6%	\$	10,287.13
MCC (2) IW1 FRONT & REAR EVAP, (1) EM2 MID COND,(1) DRIVER PLE	\$23,725.63	51.6%	\$	11,483.20
MCC (2) IW1 FRONT & REAR EVAP,(1) DRIVER PLENUM, (2) K410 ROOF	\$25,050.51	51.6%	\$	12,124.44
MCC (2) IW1 FRONT & REAR EVAP,(1) EM2 MID COND,(1) DRIVER PLEN	\$27,037.82	51.6%	\$	13,086.30
	\$0.00	51.6%	\$	-
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM3 SKIRT COND, (2)	\$26,215.64	51.6%	\$	12,688.37
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM14 SKIRT COND 4	\$43,951.14	51.6%	\$	21,272.35
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (1) CR340 ROOF COND, (	\$42,248.06	51.6%	\$	20,448.06
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, CEILING DUCT	\$42,635.66	51.6%	\$	20,635.66
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, PARCEL RACK	\$54,458.54	51.6%	\$	26,357.93
MCCGB AC353N (1) 150AMP ALT, (1) 05G COMP, CELING DUCTWORK	\$37,190.09	51.6%	\$	18,000.00
MCC Parcel rack AC System	\$46,281.00	51.6%	\$	22,400.00
			\$	-
			\$	-
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$55,359.06	51.6%	\$	26,793.78
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$53,558.84	51.6%	\$	25,922.48
THERMOKING INWALL EVAP,SLC ROOF TOP CONDENSERS,sa-400 CELIN	\$39,922.48	51.6%	\$	19,322.48
			\$	-
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT CONDENSERS, TM21 COMP, 126	\$15,727.04	51.6%	\$	7,611.89
CE / ACC-SPHEROS, (2) EVAP, (2) ROOFTOP COND, TM21 COMP, 126K BT	\$18,708.01	51.6%	\$	9,054.68
CE / ACC-SPHEROS, (3) EVAP, (2) ROOFTOP COND, TM21 COMP, 136K BT	\$20,237.26	51.6%	\$	9,794.83

CE / ACC-SPHEROS, (3) EVAP, (2) SKIRT COND, TM21 COMP, 136K BTU- F	\$17,256.28	51.6%	\$	8,352.04
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TM43 COMP, 126K B	\$21,183.93	51.6%	\$	10,253.02
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, TIE-IN DASH, TM43 COMP	\$19,797.98	51.6%	\$	9,582.22
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, STD ALONE DASH, TM43	\$22,828.28	51.6%	\$	11,048.89
CE / ACC-SPHEROS, (2) EAVP, (2) ROOFTOP COND, STD ALONE DASH, T	\$25,809.26	51.6%	\$	12,491.68
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TIE IN DASH, TM43 C	\$22,778.95	51.6%	\$	11,025.01
			\$	-
			\$	-
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$37,411.32	51.6%	\$	18,107.08
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$39,119.10	51.6%	\$	18,933.64
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65 COMP, 180K BTU- C	\$40,575.52	51.6%	\$	19,638.55
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65/ BITZER COMP, 18	\$42,283.30	51.6%	\$	20,465.12
CC33543 Stand Alone Dash TM16 low profile ducting & with drivers blower	\$42,741.37	51.6%	\$	20,686.82
RW88FW88595943 with Dash stand alone TM16	\$19,142.59	51.6%	\$	9,265.01
ACC- SPHEROS, (2) IN WALLS, MID EVAP, SKIRT COND, DRIVER DASH TM	\$26,819.36	51.6%	\$	12,980.57
ACC- SPHEROS, (2) IN WALLS, MID EVAP, ROOFTOP COND, DRIVER DAS	\$29,800.33	51.6%	\$	14,423.36
			\$	-
			\$	-
			\$	-
TOWING - 36 / UNLIMITED MILES (\$275 PER) 40KMH	\$492.42	12.0%	\$	433.33
TOWING - 48 / UNLIMITED MILES (\$275 PER) 40KMJ	\$580.81	12.0%	\$	511.11
TOWING - 60 / UNLIMITED MILES (\$275 PER) 40KMK	\$707.07	12.0%	\$	622.22
TOWING - 36 / UNLIMITED MILES (\$550 PER) 40KMB	\$694.44	12.0%	\$	611.11
TOWING - 48 / UNLIMITED MILES (\$550 PER) 40KMC	\$820.71	12.0%	\$	722.22
TOWING - 60 / UNLIMITED MILES (\$550 PER) 40KMD	\$1,010.10	12.0%	\$	888.89
			\$	-
EXT VEHICLE COVERAGE- 36 / 50K MILES 40PLB	\$946.97	12.0%	\$	833.33
EXT VEHICLE COVERAGE- 48 / 50K MILES 40PKV	\$1,641.41	12.0%	\$	1,444.44
EXT VEHICLE COVERAGE- 48 / 100K MILES 40PKW	\$2,462.12	12.0%	\$	2,166.67
EXT VEHICLE COVERAGE- 60 / 100K MILES 40PLG	\$2,904.04	12.0%	\$	2,555.56
EXT VEHICLE COVERAGE- 60 / 200K MILES 40PLJ	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 72 / 100K MILES 40PLL	\$3,358.59	12.0%	\$	2,955.56
EXT VEHICLE COVERAGE- 72 / 150K MILES 40PLM	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 84 / 100K MILES 40PLP	\$4,734.85	12.0%	\$	4,166.67

EXT VEHICLE COVERAGE- 84 / 150K MILES 40PLR	\$6,515.15	12.0%	\$	5,733.33
	\$0.00	12.0%	\$	-
STARTER & ALT- 36 / 50K MILES 40KUE	\$75.76	12.0%	\$	66.67
STARTER & ALT- 48 / 50K MILES 40KUK	\$101.01	12.0%	\$	88.89
STARTER & ALT- 48 / 100K MILES 40KUL	\$176.77	12.0%	\$	155.56
STARTER & ALT- 60 / 100K MILES 40KUR	\$227.27	12.0%	\$	200.00
STARTER & ALT- 60 / 200K MILES 40KUT	\$454.55	12.0%	\$	400.00
	\$0.00	12.0%	\$	-
CUMMINS 6.7L FULL ENG / 5YRS / 150K MILES 40SEJ	\$1,830.81	12.0%	\$	1,611.11
CUMMINS 6.7L FULL ENG / 5YRS / 200K MILES 40SEK	\$2,209.60	12.0%	\$	1,944.44
CUMMINS 6.7L FULL ENG / 5YRS / UNLIM MILES 40SEL	\$2,367.42	12.0%	\$	2,083.33
CUMMINS 6.7L FULL ENG / 7YRS / 150K MILES 40SEM	\$2,904.04	12.0%	\$	2,555.56
CUMMINS 6.7L FULL ENG / 8YRS / 150K MILES 40SEN	\$3,409.09	12.0%	\$	3,000.00
CUMMINS 6.7L FULL ENG / 10YRS / 120K MILES 40SEP	\$4,356.06	12.0%	\$	3,833.33
CUMMINS 6.7L FULL ENG / 10YRS / 150K MILES 40SER	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L FULL ENG / 10YRS / 200K MILES 40SES	\$5,176.77	12.0%	\$	4,555.56
CUMMINS 6.7L FULL ENG / 10YRS / UNLIM MILES 40SET	\$5,871.21	12.0%	\$	5,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 150K MI	\$1,388.89	12.0%	\$	1,222.22
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 200K MI	\$1,641.41	12.0%	\$	1,444.44
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / UNLIM M	\$1,767.68	12.0%	\$	1,555.56
CUMMINS 6.7L FULL ENG MINUS MAINT / 7YRS / 150K MI	\$2,462.12	12.0%	\$	2,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / 200K M	\$4,103.54	12.0%	\$	3,611.11
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / UNLIM	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L MAJOR COMPONENTS / 7YRS / 150K MILES	\$694.44	12.0%	\$	611.11
CUMMINS 6.7L MAJOR COMPONENTS / 10YRS / 200K MIL	\$946.97	12.0%	\$	833.33
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 7YRS / 150	\$2,272.73	12.0%	\$	2,000.00
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 8YRS / 150	\$2,872.47	12.0%	\$	2,527.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 12	\$3,724.75	12.0%	\$	3,277.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 15	\$4,198.23	12.0%	\$	3,694.44
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 20	\$4,671.72	12.0%	\$	4,111.11
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / UN	\$5,303.03	12.0%	\$	4,666.67
	\$0.00	12.0%	\$	-
CUMMINS L9 FULL ENG / 5YRS / 150K MILES 40SGY	\$2,367.42	12.0%	\$	2,083.33
CUMMINS L9 FULL ENG / 5YRS / 200K MILES 40SGZ	\$2,840.91	12.0%	\$	2,500.00

CUMMINS L9 FULL ENG / 5YRS / UNLIM MILES 40SHA	\$3,093.43	12.0%	\$	2,722.22
CUMMINS L9 FULL ENG / 7YRS / 150K MILES 40SHB	\$3,156.57	12.0%	\$	2,777.78
CUMMINS L9 FULL ENG / 8YRS / 150K MILES 40SHC	\$3,598.48	12.0%	\$	3,166.67
CUMMINS L9 FULL ENG / 10YRS / 120K MILES 40SMC	\$5,492.42	12.0%	\$	4,833.33
CUMMINS L9 FULL ENG / 10YRS / 150K MILES 40SMD	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG / 10YRS / 200K MILES 40SME	\$6,502.53	12.0%	\$	5,722.22
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 150K MILE	\$1,799.24	12.0%	\$	1,583.33
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 200K MILE	\$2,272.73	12.0%	\$	2,000.00
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / UNLIM MI	\$2,335.86	12.0%	\$	2,055.56
CUMMINS L9 FULL ENG MINUS MAINT / 7YRS / 150K MILE	\$3,219.70	12.0%	\$	2,833.33
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / 200K MIL	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / UNLIM M	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 7YRS / 150K	\$2,840.91	12.0%	\$	2,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 8YRS / 150K	\$3,251.26	12.0%	\$	2,861.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 120K	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 150K	\$5,334.60	12.0%	\$	4,694.44
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 200K	\$5,871.21	12.0%	\$	5,166.67
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / UNL	\$6,691.92	12.0%	\$	5,888.89
Pre Delivery Inspection Rear Engine School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Rear Engine SPED School Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Conventional School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Conventional SPEDSchool Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Cutaway School/MFSAB School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection Cutaway School/SPED School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection - Commercial/Transit to 22 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 25 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 28 FT	\$700.00	10.0%	\$	630.00
Pre Delivery Inspection - Commercial/Transit to 32 FT	\$900.00	10.0%	\$	810.00
Pre Delivery Inspection - Commercial/Transit over 32 FT	\$1,000.00	10.0%	\$	900.00
				#VALUE!
				#VALUE!
Lettering -Vinyl 5-6" BOTH SIDES AND BUMPERS	\$180.00	18.0%	\$	147.60
			\$	-
Transportation costs for New bus from Tulsa OK to Phoenix	\$1,737.12	0.0%	\$	1,737.12

Transportation costs for New bus from Hutchensen, KS to	\$1,350.00	0.0%	\$	1,350.00
Truck only			\$	-
Allison Extended warranty (see attached) for pricing			\$	-
Cab and Chassis International offer on Extended Warranty 50% off of list		50%		#VALUE!
			\$	-

<b>Equipment</b>	<b>MSRP</b>	<b>Options</b>	<b>Total</b>	<b>Contract Discount %</b>	<b>Discount \$</b>	<b>Contract Price</b>	<b>Add Ons</b>	<b>Taxes</b>	<b># of Units</b>	<b>Total</b>
<b>HV507 SFA 6-Wheel Plow</b>	\$ 92,154.00	\$ 54,428.00	\$ 146,582.00	32%	\$ 48,504.24	\$ <b>98,077.76</b>	\$ 115,849.00	\$ 35,551.84	2	\$ <b>463,405.36</b>
<b>HV513 SFA 10-Wheel Plow</b>	\$ 165,553.00	\$ 74,040.00	\$ 239,593.00	50%	\$ 120,921.50	\$ <b>118,671.50</b>	\$ 131,494.00	\$ 20,783.74	1	\$ <b>270,949.24</b>
<b>CV515 SFA Barricade Truck</b>	\$ 46,219.00	\$ 18,798.00	\$ 65,017.00	10%	\$ 7,937.20	\$ <b>57,079.80</b>	\$ 34,637.00	\$ 7,624.49	1	\$ <b>99,341.29</b>
<b>MV607 SBA Patch Truck</b>	\$ 91,707.00	\$ 31,020.00	\$ 122,727.00	32%	\$ 40,870.64	\$ <b>81,856.36</b>	\$ 91,740.00	\$ 14,420.50	1	\$ <b>188,016.86</b>



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:  
Medium and Heavy Duty Cabs, Chassis, and Buses

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

## Attachment 1 Offer and Acceptance Form

**SUBMISSION OF OFFER:** Undersigned hereby offers and agrees to provide Medium and Heavy Duty Cabs, Chassis, and Buses in compliance with the Solicitation indicated above and any Offer indicated by the latest dated version below:

Initial Offer:	1.	Mary Wilson	MRW						
		date	initial						
Revised Offers:	2.	x		3.	x		4.	x	
		date #1	initial	date #1	initial	date #1	initial		
	5.	x		6.	x		7.	x	
		date #4	initial	date #5	initial	date #6	initial		
Best and Final Offer:	8.	1/16/19							
		date	initial						

### RWC Group

Offeror company name  
600 N 75<sup>th</sup> Ave  
Address  
Phoenix, Arizona 85043  
City | State | ZIP  
27-2085725  
Federal tax identifier (EIN or SSN)

*Mary Wilson*  
Signature of person authorized to sign Offer  
*MRW*  
Initials

Mary Wilson Truck Sales  
Printed name and title  
Mary Wilson Truck Sales  
Contact name and title  
mwilson@rwcgroup.com 602-307-1037  
Contact Email Address Contact phone number

### CERTIFICATION: By signature in the above, Offeror certifies that it:

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

**ACCEPTANCE OF OFFER:** State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by number #8 at the top of this form, and which was dated 1/16/19 (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: CTR041813 The effective date of the Contract is: 1/18/19 Contract awarded 1/18/19  
Date Date

*Nicola Perrera*  
Procurement Officer signature

Nick Perrera  
Statewide Procurement Manager



# Request for Proposal

Solicitation No.

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**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of  
Administration  
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Office**

100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

## Part 2: Scope, Pricing and Terms and Conditions

### Table of Contents

SECTION 2-A: Scope of Work .....	6
SECTION 2-B: Pricing Document .....	17
1.0 Compensation.....	17
2.0 Pricing .....	18
3.0 Funding .....	19
4.0 Invoicing.....	19
5.0 Payments .....	20
SECTION 2-C: Special Terms and Conditions.....	22
1.0 ..... DEFINITION OF TERMS .....	22
1.1 Acceptance.....	22
1.2 Accepted Offer .....	22
1.3 Arizona Procurement Code; A.R.S.; A.A.C. ....	22
1.4 Arizona TPT.....	22
1.5 Attachment .....	22
1.6 Pricing Document .....	22
1.7 Contract Amendment.....	22
1.8 Contract Terms.....	22
and Conditions .....	22
1.9 Contractor .....	22
1.10 Contractor Indemnitor.....	22
1.11 Co-Op Buyer .....	23
1.12 Eligible Agency.....	23
1.13 Indemnified Basic Claims .....	23
1.14 Instructions to Offerors .....	23
1.15 Order .....	23
1.16 The State's e-Procurement System.....	23
1.17 State .....	23
1.18 State Indemnitees .....	23
1.19 Subcontractor.....	23
1.20 Work.....	24
2.0 ..... CONTRACT INTERPRETATION .....	24
2.1 Usage .....	24
2.2 Contract Order of Precedence.....	24
2.3 Independent Contractor .....	25
2.4 Complete Integration .....	25
3.0 ..... CONTRACT ADMINISTRATION AND OPERATION .....	25
3.1 Term of Contract .....	25
3.2 Contract Extensions.....	25



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 3.3 Notices and Correspondence..... 25
- 3.4 Signing of Contract Amendments ..... 26
- 3.5 Click-Through Terms and Conditions ..... 26
- 3.6 Books and Records ..... 26
- 3.7 Contractor Licenses ..... 26
- 3.8 Inspection and Testing..... 26
- 3.9 Ownership of Intellectual Property..... 27
- 3.10 Subcontracts..... 27
- 3.11 Offshore Performance of Certain Work Prohibited..... 28
- 3.12 Orders ..... 28
- 3.13 Statewide Contract Provisions ..... 28
- 3.14 Multiple-Use Provisions..... 30
- 3.15 Other Contractors ..... 30
- 3.16 Work on State Premises ..... 30
- 4.0 ..... COSTS AND PAYMENTS ..... 31
  - 4.1 Payments..... 31
  - 4.2 Applicable Taxes ..... 31
- 5.0 ..... CONTRACT CHANGES ..... 31
  - 5.1 Contract Amendments ..... 31
  - 5.2 Assignment and Delegation ..... 31
- 6.0 ..... RISK AND LIABILITY ..... 32
  - 6.1 Risk of Loss ..... 32
  - 6.2 Contractor Insurance..... 32
  - 6.3 Indemnification ..... 34
  - 6.4 Patent and Copyright Indemnification ..... 34
  - 6.5 Force Majeure ..... 35
  - 6.6 Third Party Antitrust Violations..... 35
- 7.0 ..... WARRANTIES..... 35
  - 7.1 Conformity to Requirements ..... 35
  - 7.2 Contractor Personnel ..... 36
  - 7.3 Intellectual Property ..... 36
  - 7.4 Licenses and Permits ..... 36
  - 7.5 Operational Continuity ..... 36
  - 7.6 Performance in Public Health Emergency..... 36
  - 7.7 Lobbying..... 36
  - 7.8 Survival of Warranties ..... 36
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 37
- 9.0 ..... CONTRACT TERMINATION ..... 37
- 10.0 ... CONTRACT CLAIMS ..... 37
  - 10.1 Claim Resolution..... 37
  - 10.2 Mandatory Arbitration..... 37
- 11.0 ... GENERAL PROVISIONS FOR MATERIALS ..... 37
  - 11.1 Applicability ..... 37
  - 11.2 Off-Contract ..... 37



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

Materials .....	37
11.3 Compensation for.....	37
Late Deliveries .....	37
11.4 Indicate Shipping.....	37
Costs on Order .....	37
11.5 Current Products .....	37
11.6 Maintain .....	37
Comprehensive .....	37
Selection.....	37
11.7 Additional .....	37
Products .....	37
11.8 Discontinued .....	38
Products .....	38
11.9 Forced .....	38
Substitutes .....	38
11.10 Recalls.....	38
11.11 Delivery.....	38
11.12 Delivery Time.....	38
11.13 Delivery Locations.....	38
11.14 Conditions at.....	39
Delivery Location.....	39
11.15 Materials.....	39
Acceptance.....	39
11.16 Correcting Defects .....	39
11.17 Returns .....	40
11.18 Order Cancellation.....	40
11.19 Product Safety .....	40
11.20 Hazardous.....	40
Materials .....	40
<b>12.0 ... GENERAL PROVISIONS FOR SERVICES .....</b>	<b>41</b>
12.1 Applicability.....	41
12.2 Comprehensive Services Offering.....	41
12.3 Additional Services .....	41
12.4 Off-Contract Services.....	41
12.5 Removal of Personnel.....	41
12.6 Transitions.....	41
12.7 Accuracy of Work .....	41
12.8 Requirements at Services Location.....	41
12.9 Services Acceptance .....	42
12.10 Corrective Action Required.....	42
<b>13.0 ... DATA AND INFORMATION HANDLING .....</b>	<b>42</b>
13.1 Applicability.....	42
13.2 Data Protection and Confidentiality of Information.....	42
13.3 Personally Identifiable Information.....	43
13.4 Protected Health Information.....	43
<b>SECTION 2-D: Uniform Terms and Conditions .....</b>	<b>44</b>



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 1.0 ..... DEFINITION OF TERMS ..... 44
  - 1.1 Attachment ..... 44
  - 1.2 Contract ..... 44
  - 1.3 Contract Amendment ..... 44
  - 1.4 Contractor ..... 44
  - 1.5 Days ..... 44
  - 1.6 Exhibit ..... 44
  - 1.7 Gratuity ..... 44
  - 1.8 Materials ..... 44
  - 1.9 Procurement Officer ..... 44
  - 1.10 Services ..... 44
  - 1.11 State ..... 44
  - 1.12 State Fiscal Year ..... 44
  - 1.13 Subcontract ..... 44
  
- 2.0 ..... CONTRACT INTERPRETATION ..... 44
  - 2.1 Arizona Law ..... 44
  - 2.2 Implied Terms ..... 45
  - 2.3 Contract Order of Precedence ..... 45
  - 2.4 Relationship of ..... 45
  - Parties
  - 2.5 Severability ..... 45
  - 2.6 No Parole Evidence ..... 45
  - 2.7 No Waiver ..... 45
  
- 3.0 ..... CONTRACT ADMINISTRATION AND OPERATION ..... 45
  - 3.1 Records ..... 45
  - 3.2 Non-Discrimination ..... 45
  - 3.3 Audit ..... 45
  - 3.4 Facilities Inspection ..... 45
  - and Materials Testing ..... 45
  - 3.5 Notices ..... 45
  - 3.6 Advertising, Publishing and Promotion of Contract ..... 46
  - 3.7 Property of the State ..... 46
  - 3.8 Ownership of Intellectual Property ..... 46
  - 3.9 Federal Immigration and Nationality Act ..... 46
  - 3.10 E-Verify Requirements ..... 46
  - 3.11 Offshore Performance of Work Prohibited ..... 46
  
- 4.0 ..... COSTS AND PAYMENTS ..... 46
  - 4.1 Payments ..... 46
  - 4.2 Delivery ..... 46
  - 4.3 Applicable Taxes ..... 46
  - 4.4 Availability of Funds for the Next State fiscal year ..... 47
  - 4.5 Availability of Funds for the current State fiscal year ..... 47
  
- 5.0 ..... CONTRACT CHANGES ..... 47
  - 5.1 Amendments ..... 47
  - 5.2 Subcontracts ..... 47
  - 5.3 Assignment and Delegation ..... 47



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 6.0 ..... RISK AND LIABILITY ..... 47
  - 6.1 Risk of Loss ..... 47
  - 6.2 Indemnification ..... 47
  - 6.3 Indemnification – Patent and Copyright ..... 48
  - 6.4 Force Majeure ..... 48
  - 6.5 Third Party Antitrust Violations..... 48
- 7.0 ..... WARRANTIES ..... 48
  - 7.1 Liens ..... 48
  - 7.2 Quality ..... 48
  - 7.3 Fitness ..... 49
  - 7.4 Inspection/Testing ..... 49
  - 7.5 Compliance with Laws ..... 49
  - 7.6 Survival of Rights and Obligations after Contract Expiration or Termination ..... 49
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 49
  - 8.1 Right to Assurance ..... 49
  - 8.2 Stop Work Order ..... 49
  - 8.3 Non-exclusive Remedies ..... 49
  - 8.4 Nonconforming Tender ..... 49
  - 8.5 Right of Offset ..... 50
- 9.0 ..... CONTRACT TERMINATION ..... 50
  - 9.1 Cancellation for Conflict of Interests ..... 50
  - 9.2 Gratuities ..... 50
  - 9.3 Suspension or Debarment ..... 50
  - 9.4 Termination for Convenience ..... 50
  - 9.5 Termination for Default ..... 50
  - 9.6 Continuation of Performance Through Termination ..... 50
- 10.0 ... CONTRACT CLAIMS ..... 51
  - 10.1 Contract Claims ..... 51
- 11.0 ... ARBITRATION ..... 51
  - 11.1 Arbitration ..... 51
- 12.0 ... COMMENTS WELCOME ..... 51
  - 12.1 Comments Welcome ..... 51



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-A: Scope of Work

**DESCRIPTION:** The State of Arizona invites sealed proposals from qualified firms to provide Medium and Heavy Duty Cab and Chassis for Statewide and Eligible Agencies as specified below.

**DUE DATE AND TIME:** Offers shall be received until **3:00 p.m. Arizona MST, 11/28/18.**

Additional information regarding submittal instructions is located within this document in the following sections: Special Instructions to Offerors and Uniform Instructions to Offerors.

### Start of Scope

**Requirements which must be met by vendors to be considered for this award include but are not limited to the following:**

#### 1. GENERAL CONDITIONS AND REQUIREMENTS

- 1.1. All chassis shall be manufacturer's current models in production throughout the term of this contract and shall be services completed by the Contractor before delivery and ready in all respects for use.
- 1.2. All chassis bid and furnished shall meet requirements of applicable Arizona Motor Vehicle laws and all other Federal Motor Vehicle laws (including the Federal Bridge Formula), whether or not such requirements are specified in detail.
- 1.3. The Contractor shall supply a quote sheet within seven (7) calendar days after receiving request from the eligible agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options (including line item cost), applicable tax, delivery cost, total price, and point of contact. For vehicles requiring upfit/modifications, all applicable cost shall be included in quotation or as a separate quotation.
- 1.4. Within fourteen (14) calendar days after receipt of a purchase order, Contractor shall provide the eligible agency copies of the manufacturer's factory order numbers, to confirm vehicles have been ordered. If confirmation of manufacturer's factory order numbers is not received within this timeframe the eligible agency has the option to cancel the order and purchase from another source. The eligible agency may charge the extra cost of procuring the vehicles to the original vendor. This shall be considered a mandatory requirement. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

#### 2. CHASSIS MODELS

The Contractor is encouraged to provide a full line of new Medium and Heavy Duty Cab & Chassis. Contractors shall submit a vehicle specification sheet for each cab & chassis offered, please see Attachment 4. Eligible Agencies throughout the State will have varying needs.



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Phoenix, AZ 85007

Contractors shall provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not limited to, models and manufacturer options to meet the needs of an eligible agency.

### 3. CHASSIS UPFIT/MODIFICATION

The Eligible Agency may request the awarded Contractor(s) to upfit/modify any cab and chassis for specific organizational needs. For example, a chassis may require a specialized body (i.e.: dump body, landscape body, etc.). Other cab and chassis may require interior and/or exterior modifications per the Eligible Agency's request. The Eligible Agency shall supply all upfit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the upfit/modification on a quotation to the Eligible Agency for review and acceptance before any work commences.

### 4. WARRANTY

- 4.1. At a minimum, all equipment supplies under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum of the manufacturer's warranty from the date of acceptance. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the eligible agency. The written warranty shall be included with the delivered vehicles to the eligible agency.
- 4.2. Contractors are encouraged to provide the State additional warranty packages that exceed the minimum requirements. Additional package pricing may be listed on Attachment 4.

### 5. CAB AND CHASSIS EQUIPMENT REQUIREMENTS

- 5.1. **Decals** – Decals or markings of any type pertaining to advertisement other than those installed by the manufacturer such as name and model shall not be attached to any vehicle.
- 5.2. **Fluid Requirements** – Contractor shall be responsible for notifying the eligible agency of special fluid requirements that are necessary to maintain standard and extended warranties and service agreements i.e. transmission fluid, anti-freeze, oils and lubricants that must be Original Equipment Manufacturer (OEM) only.
- 5.3. **Service Requirements** – All vehicles shall be completely assembled, serviced, adjusted and all equipment including standard and optional equipment shall be installed and the units made ready for continuous operation. Servicing requirements shall include, but not limited to, the following:
  - Complete lubrication
  - Checking of all fluid levels to insure that they are filled to the manufacturer's recommended capacity
  - Full tank(s) of fuel and DEF (diesel exhaust fluid) if required, less delivery fuel and DEF
  - Engine adjustment to proper operation condition
  - Tire inflation to correct pressure
  - Checking of all mechanical and electrical operations
  - Checking for any appearance defects
  - Cleaning, removal of all unnecessary tags and stickers, washing if necessary
- 5.4. **Special Paint Requirement** – Eligible agencies may require special paint for some vehicles, i.e., special highway yellow and special eligible agency fleet colors. An increase of no more than thirty (30) days over the required delivery time shall be allowed for this requirement.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractors shall indicate on Attachment 4 if there are any quantity requirements or an additional cost for specialty fleet colors. If no information is entered on Attachment 4, it will be understood that there is no quantity requirement or additional cost.

- 5.5. **Special Title Requirement** – There may be a requirement for the title on some vehicles purchased to be titled to other than the ordering eligible agency. The State has programs that require equipment purchased from special funds be returned to the State’s communities. These purchases will be made for authorized political subdivisions.
- 5.6. **Tires** – Any spare tire supplied, optional or standard, shall match the OEM tires and wheels contained on the vehicle. Spare tires shall be full size tire and wheel identical to factory OEM.
- 5.7. **Vehicle Equipment Requirements** – All base vehicles offered shall, at a minimum, include the following;
- All standard factory equipment
  - Automatic transmission
  - Cruise Control
  - Four (4) keys and two (2) keyless entry remotes (if applicable), per vehicle
  - Air conditioning (for non-buses)
  - Basic radio with Bluetooth capability for cell phone connection
  - Cloth seats
  - Rear view mirrors on driver and passenger doors
  - Standard factory tint glass, if available

## 6. TRAINING MATERIALS AND DIAGNOSTIC TOOLS

- 6.1. Training shall be provided by the Contractor for equipment supplied upon request from the eligible agency. Training shall be available for maintenance of engine and other mechanical and electrical functions. Training shall be categorized by Operator Training and Service (or Repair). Training and shall be provided in Attachment 4.
- 6.2. Shop Manuals – Shop manuals shall be provided by electronic, web based and/or hard copy to a requesting eligible agency.
- 6.3. Diagnostic Tools/Subscriptions – The Contractor shall provide a diagnostic scan tool(s), laptop program, and/or yearly subscription for any vehicles offered under this contract for which such device is available, upon request of an Eligible Agency. Cost of initial and any additional diagnostic equipment, yearly subscriptions or programs shall be provided in Attachment 4.

## 7. MANUFACTURER’S CERTIFICATION

- 7.1. The Contractor shall submit proof of Manufacturer certification in response to the qualifications questions located in Section 3 Attachment 2-A, stating that the Contractor is the Manufacturer or a Certified Representative of the Manufacturer, for each Manufacturer they represent under a resultant contract. The Manufacturer’s Certification must be executed by the Manufacturer(s) only, and may not be completed by the Contractor. Dealer agreements shall not be accepted in lieu of a Manufacturer’s Certification.

## 8. CURRENT MODELS

- 8.1. All vehicles shall be the manufacturer’s current models in production at the time of delivery. All vehicles shall be new, unused, equivalent in style and quality to those offered to the general public and meet or exceed all specifications and requirements set forth in this



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

solicitation.

### 9. DEALERSHIP, PARTICIPATING SERVICE AND DELIVERY LOCATIONS

- 9.1. The Contractor may submit, at any time during the contract period, new dealership, participating service and delivery locations that will be used as subcontractors for both product deliveries and drive in service centers under the contract. Requests are to be submitted electronically and shall contain:
- 9.2. The dealer or outlet name
- 9.3. Location (physical address)
- 9.4. Telephone/fax numbers and email information
- 9.5. Key personnel at that location
- 9.6. Approval shall be in the form of a bilateral change order in the State's e-Procurement system, and shall become effective on the date the change order is the 'Sent' status.

### 10. DELIVERY (MINIMUM)

- 10.1. Delivery location shall be identified on the issuing eligible agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the eligible agency of such delays along with revised delivery estimate from factory immediately after it becomes known. If manufacturer has a website available to check order status, this information will be shown in the pricing document.
- 10.2. All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M., unless a time has been agreed upon between the Contractor and eligible agency. The Contractor shall be required to give the ordering eligible agency a minimum of 24 hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.
- 10.3. All vehicles shall be delivered with four (4) keys and if applicable two (2) keyless entry remotes and a full tank(s) of fuel, less delivery.
- 10.4. The following documents shall be provided upon delivery of the vehicles(s):
- 10.5. M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
- 10.6. Warranty Document
- 10.7. Manufacturers unaltered invoice
- 10.8. The retail price label must be affixed to the window of all vehicles delivered
- 10.9. Delayed warranty/in-service start request form (if requested by ordering entity)

### 11. EQUIPMENT INSPECTION

- 11.1. Contractor shall retain title and control of all goods until they are delivered, inspected and accepted. All risk of transportation and related charges shall be the responsibility of the Contractor. The Contractor shall file all claims for visible and concealed damage. The State shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.
- 11.2. Each vehicle delivered shall be subject to a complete inspection by the eligible agency prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Thirty (30) calendar days shall be allowed



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

for this process. If delivered equipment is returned to the Contractor prior to acceptance for any reason, additional periods of thirty (30) calendar days shall be allowed for inspection when subsequent deliveries occur. All corrections shall be made within seven (7) calendar days of reported deficiency. All corrections shall be made without any inconvenience to the State.

### 12. IN-SERVICE NOTIFICATION

12.1. Vehicles not placed in service immediately upon receipt shall be warranted from the date the vehicle is placed in service. The eligible agency shall notify the Contractor in writing of the actual in-service date, on forms to be provided for such purpose upon request by the eligible agency.

### 13. OPTIONAL EQUIPMENT

13.1. All optional equipment and accessories shall be original equipment from the manufacturer and installed at the factory unless otherwise specified.

### 14. RECALL NOTICES

14.1. In the event of any recall notice, technical service bulletin, or other important notification affecting a vehicle purchased from any resultant contract, a notice shall be sent to the eligible agency listed on each applicable purchase order. Each notice shall reference the affected purchase order and vehicle identification number. The contractor shall provide and retrofit at no cost to the State all vehicles purchased under this contract with vehicle safety enhancements as a result of the recall.

### 15. VEHICLE DOCUMENTATION

15.1. The Contractor shall include in each vehicle an owner, operator and maintenance manual. This shall include all standard manufacturer literature normally furnished with the purchase of a new vehicle at the time of delivery.

### 16. FEDERAL TERMS

THE FOLLOWING SPECIAL TERMS AND CONDITIONS SHALL APPLY TO PURCHASES OF ANY VEHICLES PROCURED WITH FEDERAL FUNDS

16.1. BUS TESTING The Contractor (Manufacturer) agrees to comply with 49 U.S.C. §5323 (C) and FTA 's implementing regulation at 49CFR Part 665 and shall perform the following:

- Manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which shall be prior to the recipient's final acceptance of the first vehicle.
- A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such vehicle and the details of that vehicle's configuration and major components.

### 16.2. BUY AMERICA

- The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
- An Offeror may be required to submit an appropriate Buy America certification if federal funds are utilized to procure products and/or services under the contract.

### 16.3. CARGO PREFERENCE REQUIREMENTS

The Contractor agrees:

- To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Preceding Paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- To include these requirements in all subcontracts issued Pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 16.4. CIVIL RIGHTS

- The Contractor is required to comply with Executive Order 99-4 "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.
- The Contractor is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23 CFR
- 710.405 (b) are made applicable by reference and are hereinafter considered part of this Contract.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The Contractor is required to comply with the provisions of Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

### 16.5. CLEAN AIR

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §~ 7401 et.seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.6. CLEAN WATER

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et ~g.
- To report each violation to the Purchaser and understands and agrees that the Purchaser shall, In turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.
- To include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- Withholding for unpaid wages and liquidated damages: The grantee or recipient shall upon its own action or upon written request of an authorized representative of the Department



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

- Subcontractors: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- Payrolls and basic records: Relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or cost anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any cost reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### 16.8. ENERGY CONSERVATION

- The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### 16.9. FEDERAL CHANGES

- Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### 16.10. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

contractual provisions required by DOT, as set forth in FTA Circular 4220.1 C, dated May 1, 1995, are hereby incorporated by reference. Anything, to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests, which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### 16.11. LOBBYING RESTRICTIONS

- Contractors who apply or bid for an award of \$100,000.00 or more shall file the certification required (ATTACHMENT ASSIGN NUMBER) by 49CFR part 20, "New Restrictions of Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### 16.12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 16.13. PRE-AWARD AND POST- DELIVERY AUDIT REQUIREMENTS

- The contractor agrees to comply with 49 U.S.C. § 5323 (1) and FTA's implementing regulation at 49
- C.F.R. Part 663 and to submit the following certifications:
- Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the offeror certifies compliance with Buy America, it shall submit documentation, which lists:
- Component and sub-component parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs.
- The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- Solicitation Specification Requirements: The contractor shall submit evidence that it will be capable of meeting the bid specifications.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit:
- Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or;
- Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

### 16.14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS

- The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §~ 3801 et seq. And U.S. DOT regulations, "Program Fraud Civil Remedies, "49
- C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.
- The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. ~ 5307, the Government reserves the right to impose the penalties of 18
- U.S.C. § 1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 16.15. PRIVACY ACT

- The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### 16.16. STATE AND LOCAL LAW DISCLAIMER



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The use of many of the suggested clauses are not governed by Federal Law, but are significantly affected by State Law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

End of Section 2-A



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-B: Pricing Document

### 1.0 Compensation

- 1.1 Contractor will be compensated for the satisfactorily carrying out its obligations under the Contract by the method indicated by the “●” mark below:

<input checked="" type="radio"/>	<b>DISCOUNT OFF LIST OR CATALOG</b>
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- 1.2 DISCOUNT OFF LIST OR CATALOG. A discount off list or catalog means a percentage discount to be applied to a base price for from one or more contractually-established price lists against published catalogs. The applicable discounts are scheduled the pricing document.
- 1.2.1 Unless specified otherwise in the Pricing Document, base price is the price that is most widely offered to general customers at the time of the Order.
- 1.2.2 The catalogs used to establish base price are specified otherwise in the Pricing Document. If nothing is so specified, then the commercially available catalogs published by Contractor or Subcontractor to a dealer or reseller network for the covered materials or services are to be used.
- 1.2.3 Each catalog must:
- (a) bear the applicable State contract number;
  - (b) list all materials or services Contractor is authorized to sell under the Contract;
  - (c) not contain any items that are excluded from the Contract;
  - (d) provide ordering information and contact information for customer support.
- 1.2.4 Each catalog and its accompanying price list must include for each item:
- (a) a part or model number, if applicable;
  - (b) a complete and accurate description of the item;
  - (c) the manufacturer’s suggested retail price (MSRP) or Contractor’s list price;
  - (d) a stock keeping unit (SKU) number (SKU) , if applicable;
  - (e) the item’s unit of measure (UOM), if applicable; and
  - (f) the quantity in the unit of measure (QUOM), if applicable.
- 1.2.5 Contractor shall provide and maintain concurrent and identical electronic and hardcopy versions of all contracted price lists and catalogs.
- (a) The electronic versions are to be provided as they are available.
    - i. State, at its discretion, may host Contractor's electronic price lists and catalogs directly, or may link through the e-procurement system as a punch-out.
    - ii. Regardless of the number and types of links to Contractor's electronic price lists and catalogs, Contractor shall ensure that all Eligible Agencies and Co-Op Buyers are only able to access one unified set of data.
- 1.3 Contractor shall supply sufficient, current hardcopy catalogs and price lists price lists to applicable Eligible Agencies at Contract commencement, and provide prompt hardcopy notice of any changes to list/catalog holders as they occur. Contractor shall not change State or any Eligible Agency (or any Co-Op Buyer, if applicable) for lists/catalogs or updates.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 2.0 Pricing

- 2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachment 4 Pricing, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.
- 2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.
- 2.1.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.
- 2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.
- 2.2 For the purpose of this contract, "MSRP" shall be defined as an acronym for the Manufacturer's Suggested Retail Price. It represents the Manufacturer's recommended retail selling Price, list Price, published Price, or other usual and customary Price that would be paid by the purchaser for specific commodities and contractual services. It must be available and verifiable by the State.
- 2.3 *Medium and Heavy Duty Cab and Chassis and Available Options.* All pricing shall be a percentage off MSRP. Pricing shall include the following: all profit, administrative charges, Dealer preparation charges, environmental fees, title application and registration fees, plate transfer fees, handling charges, shipping charges, and any other charges or fees necessary to deliver the base vehicle according to the specification, exclusive of taxes. Shipping charges shall be defined as the delivery cost for each vehicle within the county in which the Contractor is located.
- 2.4 *Delivery.* Delivery costs for each county outside the county in which the dealer is located shall be indicated on Attachment 4 Pricing. There shall be no delivery charges for vehicles delivered within the county in which the Contractor is located.
- 2.5 *Supplemental Pricing – All Inclusive.* Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Statement of Work and all aspects of the Contractor's offer as accepted by the State. Details of service not explicitly stated in the Statement of Work or in the Contractor's Offer, but necessarily a part of, are deemed to be understood by the Contractor and included herein. All administrative, reporting or other requirements, all overhead costs and profit and any other costs towards the accomplishment of the requirements in this Contract are included in the pricing provided.
- 2.6 Pricing for any additional products or services shall be in accordance with the information provided in Attachment 4- Pricing,
- 2.7 ***Price Reductions and Sales Promotions.*** Contractor may reduce its contracted price at any time, and will provide documentation listing the original State contract price and the new reduced or promotional price. Promotions or reductions to sell existing inventory/stock and to include special manufacturer assistance are allowable.
- 2.8 **NO ADJUSTMENT.** All prices and rates in the e-Procurement system, or Orders if and to the extent they differ from those in the exhibit, will be valid for the entire term of the Contract, and will not be subject to revision for



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

inflation or any changes to wages, taxes or other costs that Contractor may be obliged to incur that may be higher than those which it contemplated when proposing the relevant price or rate.

## 3.0 Funding

No particular funding considerations apart from paragraph 4.3 of the Uniform Terms and Conditions [Availability of Funds] have been identified as of the Solicitation date.

## 4.0 Invoicing

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Buying Entity’s purchasing tool/process.

4.2 MINIMUM INVOICE REQUIREMENTS. Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the The State’s e-Procurement System PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes ( <i>as a separate invoice line item</i> )	●
Upcharge shipping/freight, etc. ( <i>as a separate invoice line item</i> )	Materials only
Total invoice amount due	●

4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:

1. Materials or Services that have not been authorized on an acknowledged Order;
2. Expediting, overtime, premiums, or upcharges absent State’s express prior approval; or



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

3. Materials or Services that are the subject of a Contract Amendment or Change Order that has not been fully signed.
- 4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
  - 4.6.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
  - 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
    - (a) are sent to an incorrect address;
    - (b) do not reference the correct State contract number; or
    - (c) are payable to any Person other than the Contractor.
  - 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

## 5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2 JOINT CHECKS OR DIRECT PAY. applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 5.5 PURCHASING CARD. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 AUTOMATED CLEARING HOUSE. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

<https://gao.az.gov/afis/vendor-information>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-C: Special Terms and Conditions

*The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.*

### 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Acceptance** "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
- 1.2 Accepted Offer** If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.  
If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.  
If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
- 1.3 Arizona Procurement Code; A.R.S.; A.A.C.** "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
- 1.4 Arizona TPT** "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>.
- 1.5 Attachment** "Attachment" means any item that:
  1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  2. was attached to an Offer when submitted; and
  3. was included in the Accepted Offer.
- 1.6 Pricing Document** "Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7 Contract Amendment** "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in The State's e-Procurement System is to be construed as being synonymous with "Contract Amendment".
- 1.8 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.10 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

**1.11 Co-Op Buyer**

“Co-Op Buyer” means a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.

**1.12 Eligible Agency**

If the Special Terms and Conditions indicates that the Contract is a “single-agency” contract, then “Eligible Agency” means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a “statewide” contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.

**1.13 Indemnified Basic Claims**

“Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.

**1.14 Instructions to Offerors**

“Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.

**1.15 Order**

“Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:

1. “Release” or “Release Purchase Order” in The State’s e-Procurement System;
2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or
3. “purchase order” for buying by Co-Op Buyers, if co-op buying applies.

**1.16 The State’s e-Procurement System**

“The State’s e-Procurement System” means State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System*.

NOTE (1): Technical Bulletin No. 020 is available online at:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

**1.17 State**

With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co-Op Buyer who has issued the Order.

**1.18 State Indemnitees**

“State Indemnitees” means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

**1.19 Subcontractor**

“Subcontractor” has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 1.20 Work

“Work” means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor’s obligations and duties under the Contract in conformance with the Contract and applicable laws.

## 2.0 Contract Interpretation

### 2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to “Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractors’ respective agents, representatives, and employees” in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*” in every instance;
5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

### 2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

- (a) Contract Amendments;
- (b) the final Solicitation Documents, in the order:
  - (1) Special Terms and Conditions;
  - (2) Exhibits to the Special Terms and Conditions;



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- (3) Uniform Terms and Conditions;
- (4) Scope of Work;
- (5) Exhibits to the Scope of Work;
- (6) Pricing Document;
- (7) Exhibits to the Pricing Document;
- (8) Specifications; and
- (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

**2.3 Independent Contractor**

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

**2.4 Complete Integration**

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3.0 Contract Administration and Operation

**3.1 Term of Contract**

The term of the Contract will commence on the date indicated on the Acceptance and continue for **twelve (12) months unless canceled, terminated, or permissibly extended.**

**3.2 Contract Extensions**

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.

**3.3 Notices and Correspondence**

3.3.1 TO CONTRACTOR. State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding The State's e-Procurement System Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall :

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:

Arizona Department of Administration  
State Procurement Office  
100 N 15th Ave., Suite 402



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Phoenix, AZ 85007

3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

### 3.4 Signing of Contract Amendments

Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;
2. revision to Procurement Officer appointment or contact information; or
3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – are required to give it effect.

### 3.5 Click-Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

### 3.6 Books and Records

3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

### 3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

### 3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor’s administrative communications and records relating to the Contract, are considered work product and Contractor’s property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

(a) “Government Purpose Rights” are:

- i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- ii. the right to release or disclose that work product to third parties for any State government purpose; and
- iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

(b) “Government Purpose Rights” do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- (a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- (b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
- (c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor’s or its affiliates’ ownership of such pre-existing materials.

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

### 3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor’s candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer’s advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer’s written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

**3.11 Offshore Performance of Certain Work Prohibited**

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

**3.12 Orders**

3.12.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.12.5 NO MINIMUMS OR COMMITMENTS. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

**3.13 Statewide Contract Provisions**

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

construed as a "delivery order" sub-type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services.

1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:  
<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>
2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).
3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) "approving" the Order electronically in The State's e-Procurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or (b) "rejecting" the Order electronically in The State's e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in The State's e-Procurement System, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in The State's e-Procurement System within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State's e-Procurement System and if it does so the rejection will be void.
6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under (3) and (4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

### 3.15 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

### 3.16 Work on State Premises

3.16.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*].



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 4.0 Costs and Payments

### 4.1 Payments

4.1.1 **PAYMENT DEADLINE.** State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2 **PAYMENTS ONLY TO CONTRACTOR.** Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

### 4.2 Applicable Taxes

4.2.1 **CONTRACTOR TO PAY ALL TAXES.** State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.2.2 **TAX INDEMNITY.** Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

## 5.0 Contract Changes

### 5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

### 5.2 Assignment and Delegation

5.2.1 **IN WHOLE.** Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

5.2.2 **IN PART.** Subject to paragraph 3.10 [*Subcontracts*] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 6.0 Risk and Liability

### 6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

### 6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

**MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

#### 1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$ 50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 3. Worker's Compensation and Employers' Liability

Workers' Compensation.....	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

**ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

**NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

**ACCEPTABILITY OF INSURERS:** Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

Procurement Office. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

**SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

**APPROVAL and MODIFICATIONS:** The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

### 6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") 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) (hereinafter referred to as "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 Contractor 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 Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

## 6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence.

Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party’s default unrelated to the occurrence, in which case and to that extent the other party’s normal remedies and the affected party’s obligations would apply undiminished.

## 6.6 Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

## 7.0 Warranties

### 7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State’s acceptance.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- 7.2 Contractor Personnel** Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State’s authorized representatives upon request.
- 7.3 Intellectual Property** Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.4 Licenses and Permits** Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.
- 7.5 Operational Continuity** Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor’s duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and Delegation*] that expressly recognizes the event.
- 7.6 Performance in Public Health Emergency** Contractor warrants that it will:
1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
  2. provide a copy of its current plan to State within 3 (three) business days after State’s written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.
- For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.
- 7.7 Lobbying**
- 7.7.1 PROHIBITION.
- (a) Contractor warrants that:
    - i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor’s use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
    - ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.
  - (b) Contractor shall implement and maintain adequate controls to assure compliance with (a) above.
  - (c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.
- 7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State’s benefit or on State’s behalf.
- 7.8 Survival of Warranties** All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

## 9.0 Contract Termination

No modifications to uniform terms and conditions section

## 10.0 Contract Claims

- 10.1 Claim Resolution** Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.
- 10.2 Mandatory Arbitration** In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

## 11.0 General Provisions for Materials

- 11.1 Applicability** Article 11 applies to the extent the Work is or includes Materials.
- 11.2 Off-Contract Materials** Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.
- 11.3 Compensation for Late Deliveries** Contractor shall have clear, published policies in place regarding late delivery, order cancellation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them
- 11.4 Indicate Shipping Costs on Order** Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)
- 11.5 Current Products** Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract
- 11.6 Maintain Comprehensive Selection** Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.
- 11.7 Additional Products** State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

**11.8 Discontinued Products**

response to State’s request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer’s notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide:

(a) manufacturer’s announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7)

Forced substitutions will not be permitted; Contractor shall obtain State’s prior written consent before making any discretionary substitution for any product covered by the Contract.

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, “recalls” hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product.

**11.9 Forced Substitutes**

Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State’s part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

**11.10 Recalls**

11.11.1 PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller’s dock) Incoterms®2010, with “seller’s dock” meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to “F.o.b. Origin, Contractor’s Facility” under [FAR 52.247-30](#)

**11.11 Delivery**

11.11.2 LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor’s liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to “F.o.b. Destination, Within Consignee’s Premises” under [FAR 52.247-35](#).

11.11.3 PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller’s dock) with no mark-up, which Contractor shall itemize and invoice separately

**11.12 Delivery Time**

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

**11.13 Delivery Locations**

1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
2. if the Contract is for a single State agency in all its locations, then Contractor shall



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

deliver to any of that agency's location in Arizona;

3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
4. if the Contract is for unrestricted statewide use, then:
  - i. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
  - b) If a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
  - c) if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

### 11.14 Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

### 11.15 Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

### 11.16 Correcting Defects

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials

1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.
3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

### 11.17 Returns

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day
2. reimburse Contractor for:
  - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;
  - (b) the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and,

### 11.18 Order Cancellation

3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup

### 11.19 Product Safety

### 11.20 Hazardous Materials



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 12.0 General Provisions for Services

- 12.1 Applicability** Article 12 applies to the extent the Work is or includes Services.
- 12.2 Comprehensive Services Offering** Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.
- 12.3 Additional Services** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor’s request or proposal in response to State’s request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.
- 12.4 Off-Contract Services** Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, “off-contract service” refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.
- 12.5 Removal of Personnel** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State’s facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
- 12.6 Transitions** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State’s operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State’s representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.
- 12.7 Accuracy of Work** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
- 12.8 Requirements at Services Location** Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

**12.9 Services Acceptance**

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State’s rejection.

**12.10 Corrective Action Required**

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor’s analysis and plans, and Contractor shall make any corrections State instructs and adopt State’s recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

## 13.0 Data and Information Handling

**13.1 Applicability**

Article 13 applies to the extent the Work includes handling of any (1) State’s proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State’s behest.

**13.2 Data Protection and Confidentiality of Information**

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State’s proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State’s confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

### 13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>

### 13.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-D:

# Uniform Terms and Conditions

Version: 9 (7/1/2013)

## 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Attachment** "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2 Contract** "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 Contract Amendment** "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 Contractor** "Contractor" means any Person who has a Contract with the State.
- 1.5 Days** "Days" means calendar days unless otherwise specified.
- 1.6 Exhibit** "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 Materials** "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 Procurement Officer** "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
- 1.11 State** "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12 State Fiscal Year** "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.13 Subcontract** "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

## 2.0 Contract Interpretation

- 2.1 Arizona Law** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 3.0 Contract Administration and Operation

- 3.1 Records** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

**3.6 Advertising, Publishing and Promotion of Contract**

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

**3.7 Property of the State**

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

**3.8 Ownership of Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

**3.9 Federal Immigration and Nationality Act**

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

**3.10 E-Verify Requirements**

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

**3.11 Offshore Performance of Work Prohibited.**

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

## 4.0 Costs and Payments

**4.1 Payments**

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

**4.2 Delivery**

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

**4.3 Applicable Taxes**

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does



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not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

**4.4 Availability of Funds for the Next State fiscal year**

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

**4.5 Availability of Funds for the current State fiscal year**

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements

## 5.0 Contract Changes

**5.1 Amendments**

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

**5.2 Subcontracts**

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

**5.3 Assignment and Delegation**

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6.0 Risk and Liability

**6.1 Risk of Loss**

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

**6.2 Indemnification**

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively



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referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

**6.3 Indemnification – Patent and Copyright**

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

**6.4 Force Majeure**

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall **not** include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition;

or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

**6.5 Third Party Antitrust Violations**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7.0 Warranties

**7.1 Liens**

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

**7.2 Quality**

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;



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- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness** The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing** The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Compliance with Laws** The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 Survival of Rights and Obligations after Contract Expiration or Termination**
  - 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8.0 State's Contractual Remedies

- 8.1 Right to Assurance** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order**
  - 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender** Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.



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Phoenix, AZ 85007

## 8.5 Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9.0 Contract Termination

### 9.1 Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

### 9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

### 9.3 Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

### 9.4 Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

### 9.5 Termination for Default

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

### 9.6 Continuation of

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up



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**Performance Through Termination** to the date of termination, as directed in the termination notice.

## 10.0 Contract Claims

**10.1 Contract Claims** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

## 11.0 Arbitration

**11.1 Arbitration** The parties to this Contract agree to resolve all disputes arising out of or relating to this contract 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 (Title 41).

## 12.0 Comments Welcome

**12.1 Comments Welcome** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Scott Overton, Streets Section Director  
**Co-Submitter:** Emily Markel  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Approval of Purchase through a Cooperative Purchase Contract:** To purchase two (2) 2020 International HV507 SFA Heavy Plow Trucks from the RWC Group, LLC through a cooperative purchase contract with the Arizona Department of Administration, State Procurement Office in the amount of \$463,405.36.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for two (2) 2020 International HV507 SFA Heavy Duty plow truck from RWC Group, LLC in the amount of \$463,405.36 through cooperative purchase contract #CTR041813 with the Arizona Department of Administration, State procurement office
2. Authorize the City Manager to execute the necessary documents.

**Executive Summary:**

Public Works - Streets Section is responsible for the timely snow removal and added ice traction response on our local transportation network. Response to snow events is critical to maintain the safest travel possible on city streets. These trucks are additional units to our existing fleet. The trucks are smaller, single axle severe duty units that we have determined will be best suited for our City's more urban neighborhoods where we experience issues with our larger standard equipment during snow operations. The trucks have been recommended and approved by the Fleet Management Committee and Budget Committee for the requested action.

**Financial Impact:**

This equipment purchase was approved in the FY20 budget and is funded with Highway User Revenue Funds (HURF) Acct# 040-060-161-0612-6-4401 for a budgeted amount of \$470,000.00.

**Policy Impact:**

Snow operations are a substantial element of the Streets work program. The city's Snow Operations Manual maps the entire community by zone. Equipment and operators are tasked with the removal of snow from over 700 lane miles of city owned roadways. This operation can last a couple days to over a week depending on the snow event or weather conditions. In addition to plowing, street crews use this equipment to apply a cinder traction assistance product. In summer months this truck is used in a dump truck capacity for hauling operations. We will use the trucks to service our narrow street subdivisions, downtown core and the most urban locations of the community, as our larger equipment has been challenged in the recent years by the sheer size and limited room to maneuver safely.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Transportation and Public Infrastructure - Deliver quality community assets and continue to advocate and implement a highly performing multi-model transportation system.

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

The purchase was considered and approved in the FY20 Budget Cycle.

**Options and Alternatives:**

1. Approve the purchase of two (2) 2020 International HV507 SFA Heavy Plow Trucks from the RWC Group, LLC through a cooperative purchase contract with the Arizona Department of Administration, State Procurement Office in the amount of \$463,405.36.
2. Do not approve the purchase.
3. Direct staff to re-evaluate the procurement and return with alternatives of new direction.

**Key Considerations:**

The purchase of these units is critical for PW-Streets to perform its annual snow operations response in the more compact locations of our community.

**Expanded Financial Considerations:**

There are no expanded financial considerations with this purchase. It is proposed to be fully funded in the FY20 budget utilizing highway User Revenue Funds (HURF).

**Community Benefits and Considerations:**

A typical Flagstaff winter season will see multiple snow events produce over 100" of annual snowfall and many nights of freezing temperatures. Our service delivery is of high quality and as timely as possible. Clearing roadways enables our public to move freely around the community and travel safely to their destinations. Our local school routes and transit network are of the highest priority and are maintained throughout the duration of a storm event. These main route trucks are first response vehicles that works predominately on the routes with both plowing and cindering capabilities.

**Community Involvement:**

Winter Storms are a significant source of citizen interest with the importance of having the tools to perform the duties of the position. Our community stakeholders such as NAIPTA and the local school systems have been able to deliver safe transportation of community member due to the operation efforts of our city response efforts.

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**Attachments:**    Co-Op Contract COF  
                          Exhibit A: Specifications and Cost  
                          Co-op Bid Pricing  
                          Equipment Price Breakdown  
                          Exhibit B: Offer & Acceptance  
                          Exhibit B: RFP with Co-op language

## COOPERATIVE PURCHASE CONTRACT

Contract No. 2020-37

This Cooperative Purchase Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and RWC International, LTD, an Arizona Limited Liability Company ("Contractor").

### RECITALS:

- A. Contractor has a Local Government Purchasing Cooperative Contract CTR041813 with Arizona Department of Administration State Procurement Office to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and
- B. Pursuant to section 3.14 of the Agency Contract, the City has authority to utilize the Agency Contract to enter into a cooperative purchase contract with Contractor as a Co-Op Buyer.

### AGREEMENT:

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

1. Materials and or Services Purchased: Contractor shall provide to City the materials as specified in the Purchase Order(s) submitted by the City in accordance with the Agency Contract. The materials being purchased through the Agency Contract are as follows:

#### **Public Works Vehicles:**

- (1) Barricade Truck**
- (1) 10-Wheel Snowplow Truck**
- (2) 6-Wheel Snowplow Truck**
- (1) Patch Truck**

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options selected by the City for each vehicle, as specified in the Purchase Order(s) submitted to Contractor and Exhibit A attached hereto and incorporated by reference.
3. Payment: Payment to the Contractor for the materials described above shall be one million, twenty-one thousand seven hundred and twelve dollars and seventy-five cents (**\$1,021,712.75**) made in accordance with the price list and terms set forth in the Agency Contract.
4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents attached as Exhibit B are incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract.
5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance

under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties.

RWC INTERNATIONAL, LTD:

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

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

CITY OF FLAGSTAFF

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A**  
**SCOPE OF WORK (attached)**

**EXHIBIT B  
AGENCY CONTRACT**

**RFP from STATE OF ARIZONA including AMENDMENT and OFFER & ACCEPTANCE  
(attached)**



# **HV507 SFA**

Sales Proposal For:  
**CITY OF FLAGSTAFF**

Presented By:  
**RWC Group**

**Prepared For:**  
CITY OF FLAGSTAFF  
Mike Stress  
211 WEST ASPEN AVE.  
FLAGSTAFF, AZ 86001-  
(928)779 - 7619  
Reference ID: N/A

**Presented By:**  
RWC Group  
Mary R Wilson  
600 North 75th Avenue  
PHOENIX AZ 85043 -  
(602)307-1050

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.

**Model Profile**  
**2020 HV507 SFA (HV507)**

<b>AXLE CONFIG:</b>	4X2
<b>APPLICATION:</b>	Front Plow with spreader
<b>MISSION:</b>	Requested GVWR: 43000. Calc. GVWR: 43000 Calc. Start / Grade Ability: 29.21% / 3.55% @ 55 MPH Calc. Geared Speed: 69.3 MPH
<b>DIMENSION:</b>	Wheelbase: 163.00, CA: 88.00, Axle to Frame: 75.00
<b>ENGINE, DIESEL:</b>	{Cummins L9 370} EPA 2017, 370HP @ 2000 RPM, 1250 lb-ft Torque @ 1400 RPM, 2100 RPM Governed Speed, 370 Peak HP (Max)
<b>TRANSMISSION, AUTOMATIC:</b>	{Allison 3000 RDS} 5th Generation Controls, Close Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, with 80,000-lb GVW and GCW Max, On/Off Highway
<b>CLUTCH:</b>	Omit Item (Clutch & Control)
<b>AXLE, FRONT NON-DRIVING:</b>	{Meritor MFS-20-133A} Wide Track, I-Beam Type, 20,000-lb Capacity
<b>AXLE, REAR, SINGLE:</b>	{Meritor RS-26-185} Single Reduction, 26,000-lb Capacity, Driver Controlled Locking Differential, R Wheel Ends Gear Ratio: 5.63
<b>CAB:</b>	Conventional, Day Cab
<b>TIRE, FRONT:</b>	(2) 425/65R22.5 Load Range L G296 MSA (GOODYEAR), 468 rev/mile, 68 MPH, All-Position
<b>TIRE, REAR:</b>	(4) 11R22.5 Load Range G G622 RSD (GOODYEAR), 497 rev/mile, 75 MPH, Drive
<b>SUSPENSION, REAR, SINGLE:</b>	31,000-lb Capacity, Vari-Rate Springs, with 4500-lb Capacity Auxiliary Rubber Springs
<b>FRAME REINFORCEMENT:</b>	Full Outer C-Channel, Heat Treated Alloy Steel (120,000 PSI Yield), 10.813" x 3.892" x 0.312" (274.6mm x 98.8mm x 7.9mm), 480.0" (12192mm) OAL
<b>PAINT:</b>	Cab schematic 100WK Location 1: 9219, Winter White (Std) Chassis schematic N/A

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
HV50700	Base Chassis, Model HV507 SFA with 163.00 Wheelbase, 88.00 CA, and 75.00 Axle to Frame.	5946/3741	9687	\$92,154.00
<b>AXLE CONFIGURATION</b>				
1ANA	AXLE CONFIGURATION {Navistar} 4x2 <u>Notes</u> : Pricing may change if axle configuration is changed.	0/0	0	\$0.00
<b>ENGINE</b>				
12EHY	ENGINE, DIESEL {Cummins L9 370} EPA 2017, 370HP @ 2000 RPM, 1250 lb-ft Torque @ 1400 RPM, 2100 RPM Governed Speed, 370 Peak HP (Max)	559/5	564	\$12,889.00
12UWZ	RADIATOR Cross Flow, Series System; 1228 SqIn Aluminum Radiator Core with Internal Water to Oil Transmission Cooler and 1167 In Charge Air Cooler <u>Includes</u> : DEAERATION SYSTEM with Surge Tank : HOSE CLAMPS, RADIATOR HOSES Gates Shrink Band Type; Thermoplastic Coolant Hose Clamps : RADIATOR HOSES Premium, Rubber	24/-6	18	\$0.00
12THT	FAN DRIVE {Horton Drivemaster} Direct Drive Type, Two Speed with Residual Torque Device for Disengaged Fan Speed <u>Includes</u> : FAN Nylon	0/0	0	\$0.00
12VAL	AIR CLEANER Dual Element, with Integral Snow Valve and In-Cab Control	6/0	6	\$379.00
12703	ANTI-FREEZE Red, Extended Life Coolant; To -40 Degrees F/-40 Degrees C, Freeze Protection	0/0	0	\$0.00
12WUL	BLOCK HEATER, ENGINE {Phillips} 120V/1000W, with "Y" Cord for Dealer Installed 120V/300W Oil Pan Heater <u>Includes</u> : BLOCK HEATER SOCKET Receptacle Type; Mounted below Drivers Door	3/0	3	\$116.00
12WZJ	EMISSION COMPLIANCE Low NOx Idle Engine, Complies with California Clean Air Regulations; Includes "Certified Clean Idle" Decal located on Driver Door	0/0	0	\$62.00
12XBM	ENGINE CONTROL, REMOTE MOUNTED Provision for; Includes Wiring for Body Builder Installation of PTO Controls and Starter Lockout; with Ignition Switch Control for Cummins B6.7 and L9 Engines	0/0	0	\$60.00
12VGZ	FEDERAL EMISSIONS {Cummins L9} EPA, OBD and GHG Certified for Calendar Year 2019	0/0	0	\$0.00
12VXT	THROTTLE, HAND CONTROL Engine Speed Control; Electronic, Stationary, Variable Speed; Mounted on Steering Wheel	0/0	0	\$0.00
<b>TRANSMISSION</b>				
13AVR	TRANSMISSION, AUTOMATIC {Allison 3000 RDS} 5th Generation Controls, Close Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, with 80,000-lb GVW and GCW Max, On/Off Highway	175/75	250	\$10,133.00
13WUC	ALLISON SPARE INPUT/OUTPUT for Rugged Duty Series (RDS); General Purpose Trucks, Construction	0/0	0	\$0.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
13XAL	PTO LOCATION Customer Intends to Install PTO at Left Side of Transmission	0/0	0	\$0.00
13WDZ	SHIFT CONTROL PARAMETERS Allison S-1 Performance Programming in Primary and Allison Fixed Programming in Secondary	0/0	0	\$48.00
13WLP	TRANSMISSION OIL Synthetic; 29 thru 42 Pints	0/0	0	\$203.00
13WET	TRANSMISSION SHIFT CONTROL for Column Mounted Stalk Shifter	0/0	0	\$50.00
<b>CLUTCH</b>				
11001	CLUTCH Omit Item (Clutch & Control)	-51/-12	-63	\$0.00
<b>REAR AXLES, SUSPENSIONS</b>				
14ASA	AXLE, REAR, SINGLE {Meritor RS-26-185} Single Reduction, 26,000-lb Capacity, Driver Controlled Locking Differential, R Wheel Ends . Gear Ratio: 5.63 <u>Notes</u> : Axle Lead Time is 60 Days	0/280	280	\$4,982.00
14VAJ	SUSPENSION, REAR, SINGLE 31,000-lb Capacity, Vari-Rate Springs, with 4500-lb Capacity Auxiliary Rubber Springs	0/132	132	\$305.00
<b>FRONT AXLES</b>				
2ARY	AXLE, FRONT NON-DRIVING {Meritor MFS-20-133A} Wide Track, I-Beam Type, 20,000-lb Capacity	186/0	186	\$2,426.00
<b>FRONT SUSPENSIONS</b>				
3AGA	SUSPENSION, FRONT, SPRING Parabolic Taper Leaf, Shackle Type, 20,000-lb Capacity, with Shock Absorbers	58/0	58	\$791.00
3770	SPRINGS, FRONT AUXILIARY Rubber	10/0	10	\$111.00
<b>CABS, COWLS, BODIES</b>				
16030	CAB Conventional, Day Cab	0/0	0	\$0.00
16ZBT	ACCESS, CAB Steel, Driver & Passenger Sides, Two Steps per Door, for use with Day Cab and Extended Cab	0/0	0	\$0.00
16BAM	AIR CONDITIONER with Integral Heater and Defroster	54/2	56	\$923.00
16VKB	CAB INTERIOR TRIM Classic, for Day Cab <u>Includes</u> : CONSOLE, OVERHEAD Molded Plastic with Dual Storage Pockets, Retainer Nets and CB Radio Pocket; Located Above Driver and Passenger : DOME LIGHT, CAB Door Activated and Push On-Off at Light Lens, Timed Theater Dimming, Integral to Overhead Console, Center Mounted : SUN VISOR (2) Padded Vinyl; 2 Moveable (Front-to-Side) Primary Visors, Driver Side with Toll Ticket Strap	0/0	0	\$0.00
16WSK	CAB REAR SUSPENSION Air Bag Type	0/0	0	\$0.00
16GDG	GAUGE CLUSTER Premium Level; English with English Speedometer and Tachometer, for Air Brake Chassis, Includes Engine Coolant Temperature, Primary and Secondary Air Pressure, Fuel and DEF Gauges, Oil Pressure Gauge, Includes 5 Inch LCD Color Display	0/0	0	\$488.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
16HHE	GAUGE, AIR CLEANER RESTRICTION {Filter-Minder} with Black Bezel, Mounted in Instrument Panel	2/0	2	\$30.00
16SEE	GRAB HANDLE, EXTERIOR Chrome, Towel Bar Type, with Anti-Slip Rubber Inserts, for Cab Entry Mounted Left Side at B-Pillar	3/0	3	\$118.00
16XJP	INSTRUMENT PANEL Wing Panel	0/0	0	\$333.00
16HKT	IP CLUSTER DISPLAY On Board Diagnostics Display of Fault Codes in Gauge Cluster	0/0	0	\$0.00
16SNW	MIRROR, CONVEX, LOOK DOWN Right Side, Black, 6" x 10.5"	0/0	0	\$49.00
16SNP	MIRRORS (2) C-Loop, Power Adjust, Heated, Black Heads and Arms, 7.5" x 14" Flat Glass, Includes 7.5" x 7" Convex Mirrors, for 102" Load Width	0/0	0	\$267.00
	<u>Notes</u>			
	: Mirror Dimensions are Rounded to the Nearest 0.5"			
16SJW	MIRROR, CONVEX, HOOD MOUNTED {Lang Mekra} (2) Right and Left Sides, Black, Heated, 7.5" Sq.	9/0	9	\$265.00
16VCC	SEAT BELT All Orange; 1 to 3	0/0	0	\$26.00
16JPY	SEAT, DRIVER {National 2000} Air Suspension, Hi Back, Vinyl W/Cloth Insert, 1 Inboard Arm Rest, Isolator, Adjuster, 3 Chamber Lumbar, 6 Way Front Adj, 3 Way Rear Cushion Adj, -3 to 14 Degree Back Angle Adjustment, Adjust Side Bolster, Vinyl Suspension Cover, Heat	-12/-6	-18	\$422.00
16SMM	SEAT, PASSENGER {National} Non Suspension, High Back, Fixed Back, Integral Headrest, Cloth	14/9	23	\$398.00
16WJU	WINDOW, POWER (2) and Power Door Locks, Left and Right Doors, Includes Express Down Feature	5/0	5	\$367.00
16XWJ	WINDSHIELD WIPER BLADES Snow Type	2/0	2	\$30.00
<b>FRAMES</b>				
1CBU	FRAME RAILS Heat Treated Alloy Steel (120,000 PSI Yield); 10.125" x 3.580" x 0.312" (257.2mm x 90.9mm x 8.0mm); 480.0" (12192) Maximum OAL	-39/175	136	\$118.00
1GBP	FRAME REINFORCEMENT Full Outer C-Channel, Heat Treated Alloy Steel (120,000 PSI Yield), 10.813" x 3.892" x 0.312" (274.6mm x 98.8mm x 7.9mm), 480.0" (12192mm) OAL	312/542	854	\$1,700.00
1LZD	BUMPER, FRONT Swept Back, Aluminum, Stainless Steel Clad, Heavy Duty	0/0	0	\$469.00
1WDT	FRAME EXTENSION, FRONT Integral; 20" In Front of Grille, with Outer C-Channel Reinforcement	165/-19	146	\$690.00
1570	TOW HOOK, FRONT (2) Frame Mounted	8/0	8	\$84.00
1WEV	WHEELBASE RANGE 146" (370cm) Through and Including 195" (495cm)	0/0	0	\$0.00
<b>BRAKES</b>				
4091	BRAKE SYSTEM, AIR Dual System for Straight Truck Applications <u>Includes</u> : BRAKE LINES Color and Size Coded Nylon : DRAIN VALVE Twist-Type : GAUGE, AIR PRESSURE (2) Air 1 and Air 2 Gauges; Located in Instrument Cluster : PARKING BRAKE CONTROL Yellow Knob, Located on Instrument Panel : QUICK RELEASE VALVE On Rear Axle for Spring Brake Release: 1 for 4x2, 2 for 6x4	0/0	0	\$0.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	: SLACK ADJUSTERS, FRONT Automatic (with Air Cam Brakes)			
	: SLACK ADJUSTERS, REAR Automatic (with Air Cam Brakes)			
	: SPRING BRAKE MODULATOR VALVE R-7 for 4x2, SR-7 with relay valve for 6x4/8x6			
4AZJ	AIR BRAKE ABS {Bendix AntiLock Brake System} Full Vehicle Wheel Control System (4-Channel) with Automatic Traction Control	0/0	0	\$210.00
4193	BRAKES, FRONT, AIR CAM 16.5" x 6", Includes 24 SqIn Long Stroke Brake Chambers	26/0	26	(\$1,368.00)
4EXV	BRAKE CHAMBERS, FRONT AXLE {Bendix} 24 SqIn	18/0	18	\$0.00
4WBX	DUST SHIELDS, FRONT BRAKE for Air Brakes	5/0	5	\$35.00
4NDB	BRAKES, REAR, AIR CAM S-Cam; 16.5" x 7.0"; Includes 30/30 Sq.In. Long Stroke Brake Chamber and Spring Actuated Parking Brake	0/26	26	(\$1,524.00)
4EXU	BRAKE CHAMBERS, REAR AXLE {Bendix EverSure} 30/30 Spring Brake	0/39	39	\$0.00
4WDM	DUST SHIELDS, REAR BRAKE for Air Brakes	0/6	6	\$70.00
4SPA	AIR COMPRESSOR {Cummins} 18.7 CFM	0/0	0	\$0.00
4EBD	AIR DRYER {Wabco System Saver 1200} with Heater	7/4	11	\$497.00
4VKC	AIR DRYER LOCATION Mounted Inside Left Rail, Back of Cab	12/9	21	\$50.00
4WZJ	AIR TANK LOCATION (2) : One Mounted Under Each Frame Rail, Front of Rear Suspension, Parallel to Rail	0/0	0	\$288.00
4WDA	DRAIN VALVE (3) Petcocks, for Air Tanks	0/0	0	\$0.00
4619	TRAILER CONNECTIONS Four-Wheel, with Hand Control Valve and Tractor Protection Valve, for Straight Truck	2/0	2	\$542.00

Notes

: When electronic stability control is ordered with trailer connections on a 4x2 truck, please check the operator manual for trailer weight restrictions.

**STEERING**

5PTB	STEERING GEAR (2) {Sheppard M100/M80} Dual Power	93/-6	87	\$1,169.00
5708	STEERING COLUMN Tilting	13/2	15	\$125.00
5CAW	STEERING WHEEL 4-Spoke; 18" Dia., Black	0/0	0	\$0.00

**DRIVELINES**

6DGC	DRIVELINE SYSTEM {Dana Spicer} SPL170, for 4x2/6x2	9/29	38	\$612.00
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**EXHAUST SYSTEMS**

7BKS	EXHAUST SYSTEM Single, Horizontal Aftertreatment Device, Frame Mounted Right Side Under Cab, for Single Vertical Tail Pipe, Frame Mounted Right Side Back of Cab	122/54	176	\$2,128.00
7BEV	AFTERTREATMENT COVER Steel, Black	10/3	13	\$0.00
7SDP	ENGINE COMPRESSION BRAKE {Jacobs} for Cummins ISL/L9 Engines; with Selector Switch and On/Off Switch	39/9	48	\$2,132.00
7WBU	EXHAUST HEIGHT 11' 6"	3/0	3	\$118.00
7WDN	MUFFLER/TAIL PIPE GUARD (1) Aluminum	0/0	0	\$0.00
7WDT	TAIL PIPE (1) Straight Type	0/0	0	\$0.00

**ELECTRICAL SYSTEMS**

8000	ELECTRICAL SYSTEM 12-Volt, Standard Equipment <u>Includes</u>	0/0	0	\$0.00
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<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	: DATA LINK CONNECTOR For Vehicle Programming and Diagnostics In Cab			
	: HAZARD SWITCH Push On/Push Off, Located on Instrument Panel to Right of Steering Wheel			
	: HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever			
	: PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light			
	: STARTER SWITCH Electric, Key Operated			
	: STOP, TURN, TAIL & B/U LIGHTS Dual, Rear, Combination with Reflector			
	: TURN SIGNAL SWITCH Self-Cancelling for Trucks, Manual Cancelling for Tractors, with Lane Change Feature			
	: WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature (5 Pre-Set Delays), Integral with Turn Signal Lever			
	: WINDSHIELD WIPERS Single Motor, Electric, Cowl Mounted			
12VYL	: WIRING, CHASSIS Color Coded and Continuously Numbered ACCESSORY WIRING, SPECIAL for Road Speed Wire Coiled Under Instrument Panel for Customer Use	0/0	0	\$45.00
8GXJ	ALTERNATOR {Leece-Neville AV1160P2013} Brush Type; 12 Volt 160 Amp. Capacity, Pad Mount	0/0	0	\$0.00
8THJ	AUXILIARY HARNESS 3.0' for Auxiliary Front Head Lights and Turn Signals for Front Plow Applications	2/0	2	\$158.00
8THB	BACK-UP ALARM Electric, 102 dBA	0/3	3	\$120.00
8VUL	BATTERY BOX Steel, with Plastic Cover, 18" Wide, 2-4 Battery Capacity, Mounted Left Side Back of Cab	-35/12	-23	\$177.00
8MJU	BATTERY SYSTEM {Fleetrite} Maintenance-Free, (3) 12-Volt 2850CCA Total, Top Threaded Stud	30/45	75	\$282.00
8HAE	BODY BUILDER WIRING Rear of Frame; Includes Sealed Connectors for Tail/Amber Turn/Marker/ Backup/Accessory Power/Ground and Sealed Connector for Stop/Turn	0/3	3	\$209.00
8RNC	CB RADIO Accommodation Package; Header Mounted; Feeds From Accessory Side of Ignition Switch; Includes Power Source and Two (2) Antennas, Antenna Bases with Wiring on Both Side Mirrors	34/5	39	\$437.00
8RGA	2-WAY RADIO Wiring Effects; Wiring with 20 Amp Fuse Protection, Includes Ignition Wire with 5 Amp Fuse, Wire Ends Heat Shrink and Routed to Center of Header Console in Cab	2/0	2	\$211.00
8XAH	CIRCUIT BREAKERS Manual-Reset (Main Panel) SAE Type III with Trip Indicators, Replaces All Fuses	0/0	0	\$0.00
8WPH	CLEARANCE/MARKER LIGHTS (5) {Truck Lite} Amber LED Lights, Flush Mounted on Cab or Sunshade	0/0	0	\$0.00
8HAH	ELECTRIC TRAILER BRAKE/LIGHTS Accommodation Package to Rear of Frame; for Combined Trailer Stop, Tail, Turn, Marker Light Circuits; Includes Electric Trailer Brake Accommodation Package with Cab Connections for Mounting	0/2	2	\$363.00
8WXB	Customer Installed Electric Brake Unit, Less Trailer Socket HEADLIGHT WARNING BUZZER Sounds When Head Light Switch is on and Ignition Switch is in "Off" Position	0/0	0	\$49.00
8WRB	HEADLIGHTS ON W/WIPERS Headlights Will Automatically Turn on if Windshield Wipers are turned on	0/0	0	\$42.00
8HXT	HORN, AIR (2) Single Tone, Chrome, Roof Mounted, with Lanyard Pull Cord	0/0	0	\$413.00
8VAY	HORN, ELECTRIC Disc Style	0/0	0	\$0.00
8WWJ	INDICATOR, LOW COOLANT LEVEL with Audible Alarm	0/0	0	\$0.00
8WBW	JUMP START STUD Remote Mounted	2/0	2	\$168.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
8RML	RADIO AM/FM/WB/Clock/Bluetooth/USB Input/Auxiliary Input, MP3, Apple Device Play & Control	4/0	4	\$483.00
8WNH	RUNNING LIGHT (2) Daytime	0/0	0	\$58.00
8695	SNOW SHIELD (2) Chrome; for Dual Air Horns	2/0	2	\$33.00
8RMV	SPEAKERS (2) 6.5" Dual Cone Mounted in Doors	0/0	0	\$48.00
8WTL	STARTING MOTOR {Delco Remy 39MT} 12 Volt, Gear Reduced, with Thermal Over-Crank Protection	12/1	13	\$193.00
8WPZ	TEST EXTERIOR LIGHTS Pre-Trip Inspection will Cycle all Exterior Lamps Except Back-up Lights	0/0	0	\$42.00
8TKK	TRAILER AUXILIARY FEED CIRCUIT for Electric Trailer Brake Accommodation/Air Trailer ABS; with 30 Amp Fuse and Relay, Controlled by Ignition Switch	1/0	1	\$123.00
8VZK	TURN SIGNALS, FRONT Dual Face, LED, Amber/Red, Mounted on Top of Fender, Used with Standard Flush Mounted Front Turn Signal, Side Marker Lamps, Parking Lights and Reflectors	0/0	0	\$187.00
8WGL	WINDSHIELD WIPER SPD CONTROL Force Wipers to Slowest Intermittent Speed When Park Brake Set and Wipers Left on for a Predetermined Time	0/0	0	\$42.00
<b>FRONT END</b>				
9WBC	FRONT END Tilting, Fiberglass, with Three Piece Construction, for WorkStar/HV	0/0	0	\$0.00
9WAC	BUG SCREEN Mounted Behind Grille	5/0	5	\$131.00
9585	FENDER EXTENSIONS Rubber	6/0	6	\$104.00
9HBM	GRILLE Stationary, Chrome	0/0	0	\$0.00
9ANG	HOOD, HATCH (01) for Servicing	5/0	5	\$444.00
9HBN	INSULATION, SPLASH PANELS for Sound Abatement	2/0	2	\$76.00
9AAB	LOGOS EXTERIOR Model Badges	0/0	0	\$0.00
9AAE	LOGOS EXTERIOR, ENGINE Badges	0/0	0	\$0.00
<b>SPEEDOMETER, TOOLS, MISC</b>				
10022	CHASSIS COATING Corrosion Resistant E-Coat Primer Coating for Reinforced Frame Rails	0/0	0	\$1,000.00
10060	PAINT SCHEMATIC, PT-1 Single Color, Design 100 <u>Includes</u> : PAINT SCHEMATIC ID LETTERS "WK"	0/0	0	\$0.00
10761	PAINT TYPE Base Coat/Clear Coat, 1-2 Tone	0/0	0	\$0.00
10SLV	PROMOTIONAL PACKAGE Government Silver Package	0/0	0	\$0.00
10WCY	SAFETY TRIANGLES	6/0	6	\$47.00
10ABK	SURCHARGE, REAR AXLE for Meritor Rear Axles	0/0	0	\$100.00
<b>FUEL TANKS</b>				
15SJZ	FUEL TANK Top Draw, Non-Polished Aluminum, 26" Dia, 80 US Gal (303L), Mounted Left Side, Under Cab	13/11	24	\$356.00
15DYP	DEF TANK 9.5 US Gal (36L) Capacity, Frame Mounted Outside Left Rail, Under Cab	13/4	17	\$89.00
15WCS	FUEL COOLER Less Thermostat; Mounted in Front of Cooling Module	14/0	14	\$276.00
15LMR	FUEL/WATER SEPARATOR {Racor 400 Series,} with Primer Pump, Includes Water-in-Fuel Sensor	0/0	0	\$0.00
15LLZ	LOCATION FUEL/WATER SEPARATOR Mounted Outside Left Rail, 41" Back of Cab	-3/3	0	\$50.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
<b>WHEELS, TIRES - FRONT</b>				
27DUN	WHEELS, FRONT {Accuride 29807} DISC; 22.5x12.25 Rims, Powder Coat Steel, 5-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs, Offset 5.37"	94/0	94	\$723.00
7752668113	(2) TIRE, FRONT 425/65R22.5 Load Range L G296 MSA (GOODYEAR), 468 rev/mile, 68 MPH, All-Position	134/0	134	(\$138.00)
<b>WHEELS, TIRES - REAR</b>				
28DTT	WHEELS, REAR {Accuride 28828} DUAL DISC; 22.5x8.25 Rims, Powder Coat Steel, 2-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with .472" Thick Increased Capacity Disc and with Steel Hubs	0/28	28	\$127.00
7372138102	(4) TIRE, REAR 11R22.5 Load Range G G622 RSD (GOODYEAR), 497 rev/mile, 75 MPH, Drive	0/20	20	\$180.00
<b>BODY INTEGRATION</b>				
60AAT	BDY INTG, ADDITIONAL CAB HOLE for Customer Use	0/0	0	\$50.00
60AKZ	BDY INTG, DASH IND LT TRICOLOR (2) for Optional Usage Customer to Program	0/0	0	\$116.00
60AKG	BDY INTG, PTO ACCOMMODATION for (3) Latched Rocker Switches, (1) PTO Switch, (2) Generic Switches to Control (3) 30 amp relays, with Programmable Interlocks, for Body Builder Hook up in the Engine Compartment Left Side, Recommended for Automatic Transmissions	0/0	0	\$148.00
<b>Total of Product Features</b>				<b>\$144,332.00</b>
Cab schematic 100WK Location 1: 9219, Winter White (Std) Chassis schematic N/A				
<b>Services Section:</b>				
<b>WARRANTY</b>				
40128	WARRANTY Standard for HV507, HV50B, HV607 Models, Effective with Vehicles Built July 1, 2017 or Later, CTS-2025A	0/0	0	\$0.00
<b>Total of Service Features</b>				<b>\$0.00</b>
<b>Total Component Weight:</b>		<b>8141/5230</b>	<b>13371</b>	
<b>Total List Price Including Options:</b>				<b>\$144,332.00</b>

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
1	<p>Norwood Equipment                      NEW CRYSTEEL SELECT DUMP BODY 84" MIN CA                      NEEDED                      10' LONG X 87" W ID X 96" W OD                      8" TALL WESTERN LONGSILLS WITH 5/8" RUBBER WEAR                      PADS BETWEEN FRAME                      FRONT WALL IS 58" TALL , 10GA A1011 STEEL , WITH STD                      1/2 CAB SHIELD                      VERTICAL DOGHOUSE HOIST (does not protrude more then                      12" into body)                      TAPERED SIDES 54" - 46" TALL, 7GA A1011 STEEL                      FLOOR IS 3/16" AR-400 ABRASION RESISTANT STEEL                      TAILGATE IS 46" TALL, 7-GA A1011 STEEL, STD SWING                      WITH AIR OP GATE LOCK                      ASPHALT STYLE REAR, no apron                      STEPS AND GRAB HANDLE AT DRIVERS SIDE REAR                      POST                      HD REAR MUDFLAPS BEHIND DRIVE AXLE                      LED LIGHTS TO DOT REQUIREMENTS, INCLUDES BODY                      UP LIGHT                      INSTALLED COMPLETE PAINTED CUST COLOR                      HOT SHIFT PTO AND DIRECT MOUNT HYD PUMP FOR                      ALLISON TRANSMISSION                      BODY, PLOW &amp; SANDER CONTROL SYSTEM IS FORCE                      AMERICA 6100 ULTRA CONTROL</p> <p>MONROE 12' FULL MOLDBOARD TRIP, REVERSABLE                      PLOW. WITH BUILT IN LEVEL LIFT                      12" RUBBER SNOW DEFLECTOR, AND CURB GUARD                      INCLUDED                      PLOW LIGHTS AND BRACKETS INSTALLED AS                      APPLICABLE (Truck must have plow light switch)                      INCLUDES FRONT FOG LIGHTS</p> <p>MONROE 9' STAINLESS STEEL V-BOX SANDER ON SKID                      ASSEMBLY                      HEATED (OPTIONAL)                      10GA HOPPER, 62" HIGH SIDES, INCLUDES TOP GRATE                      KITS                      10GA TIP UP SPINNER ASSEMBLY                      SS FOLD UP LADDER IN REAR                      SS LIGHT BAR AT REAR OF SANDER, INCLUDES STROBE                      LIGHTS AND WORK LIGHTS                      INCLUDES SELF LOADING LEG KITS, AND RATCHET /                      BINDER TIE DOWNS</p> <p>STROBE LIGHTS MOUNTED ON CAB GUARD OF DUMP                      BODY                      STROBE LIGHTS MOUNTED IN REAR POST OF DUMP                      BODY EACH SIDE</p> <p>ELECTRIC TARP SYSTEM WITH ALUM TARP ARMS AND HD                      MESH TARP INSTALLED</p> <p>HD REAR HITCH PLATE WITH REMOVABLE, SWIVEL                      PINTLE HITCH, &amp; BUILT IN CHIP BAR                      INCLUDES D-RINGS GLAD HANDS AND 7-WAY LIGHT                      SOCKET.</p>	0/0	0	\$115,849.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	<b>Total Body Allied:</b>	<b>0/0</b>	<b>0</b>	<b>\$115,849.00</b>
	STATE CONTRACT#CTR041813 MEDUIM AND HEAVY DUTY CHASSIS AND BUS	0/0	0	\$0.00
	<b>Total Goods Purchased:</b>	<b>0/0</b>	<b>0</b>	<b>\$0.00</b>

The weight calculations included in this proposal are an estimate of future vehicle weight. The actual weight as manufactured may be different from the estimated weight. Navistar, Inc. shall not be liable for any consequences resulting from any differences between the estimated weight of a vehicle and the actual weight.

<u>Description</u>	<u>(US DOLLAR)</u>	<u>Price</u>
Total Factory List Price Including Options:		\$144,332.00
Total Preparation And Delivery:		\$0.00
Freight	\$2,250.00	
Total Freight:		\$2,250.00
Total Factory List Price Including Freight:		\$146,582.00
Less Customer Allowance:		(\$48,504.24)
Total Vehicle Price:		\$98,077.76
Total Body/Allied Equipment:		\$115,849.00
Total Sale Price:		\$213,926.76
Total Per Vehicle Sales Price:		\$213,926.76
Total For 2 Vehicle Sales:		\$427,853.52
Total Net Sales Excluding Taxes:		\$427,853.52
Arizona Tire Tax, 10 Tires	\$40.00	
Sales Tax, Maricopa County	\$35,511.84	
Total Taxes:		\$35,551.84
Net Sales Price:		\$463,405.36

If applicable, Federal Excise Tax (FET) is included in the net sales price above.

Terms of payment are cash on delivery and prices quoted are FOB Phoenix, AZ (unless otherwise noted).

This quote is good for 30 days. All inventory units are subject to prior sale. Unless otherwise noted, the quote above does NOT include title and licensing charges or Arizona state sales tax.

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle.

**Approved by Seller:**

**Accepted by Purchaser:**

\_\_\_\_\_  
Official Title and Date

\_\_\_\_\_  
Firm or Business Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature and Date

**This proposal is not binding upon the seller without Seller's Authorized Signature**

\_\_\_\_\_  
Official Title and Date

**The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.**

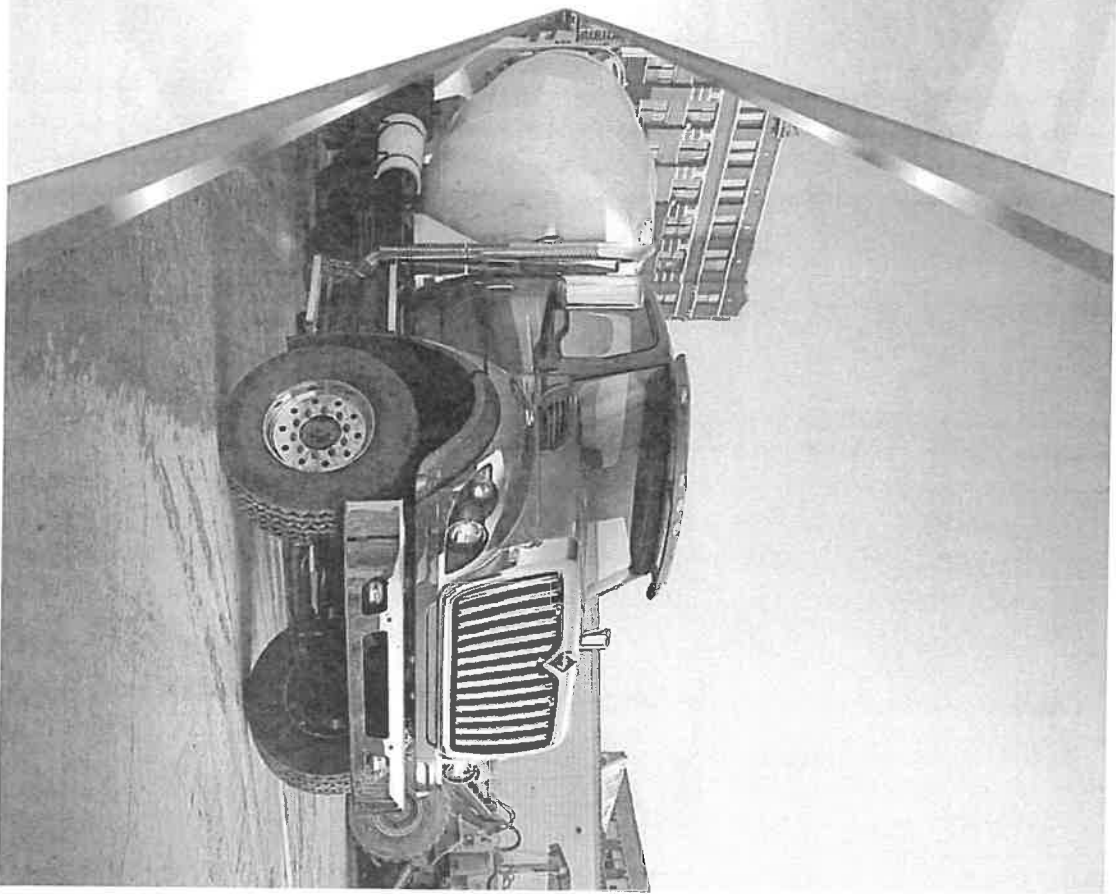
**The limited warranties applicable to the vehicles described herein are Navistar, Inc.'s standard printed warranties which are incorporated herein by reference and to which you have been provided a copy and hereby agree to their terms and conditions.**

# INTRODUCING THE NEW INTERNATIONAL HV SERIES

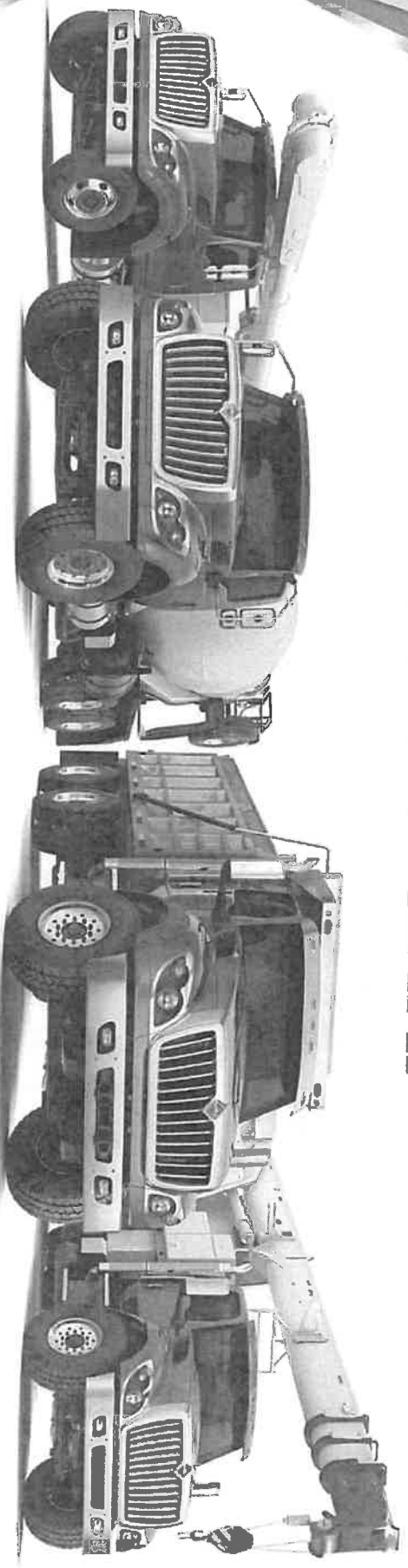


IT'S UPTIME™

International® is a registered trademark of **NAVISTAR**, Inc.



# A SMARTER APPROACH TO SERIOUS WORK.



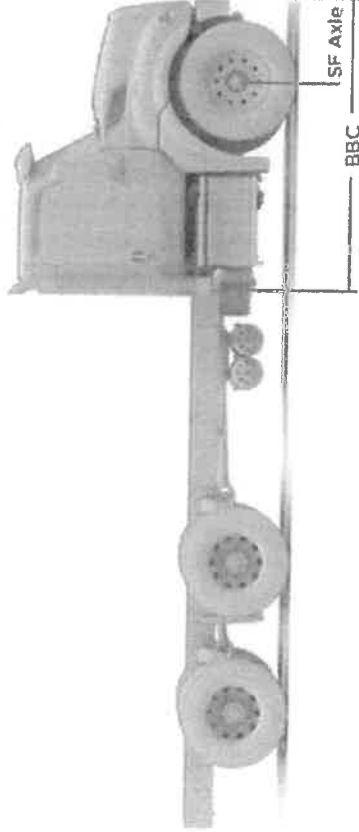
**INTRODUCING THE NEW HV SERIES.**

HV507 =

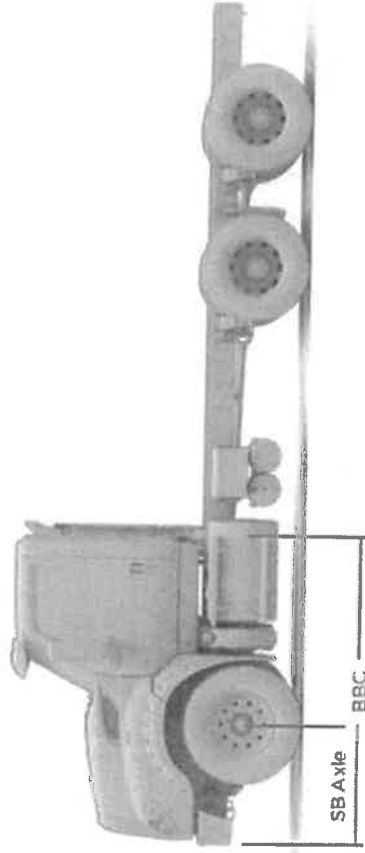
**Model Nomenclature Key**

Model Designation	Axle Configuration	BBC in inches
HV	5 = Set Forward	07
	6 = Set Back	13

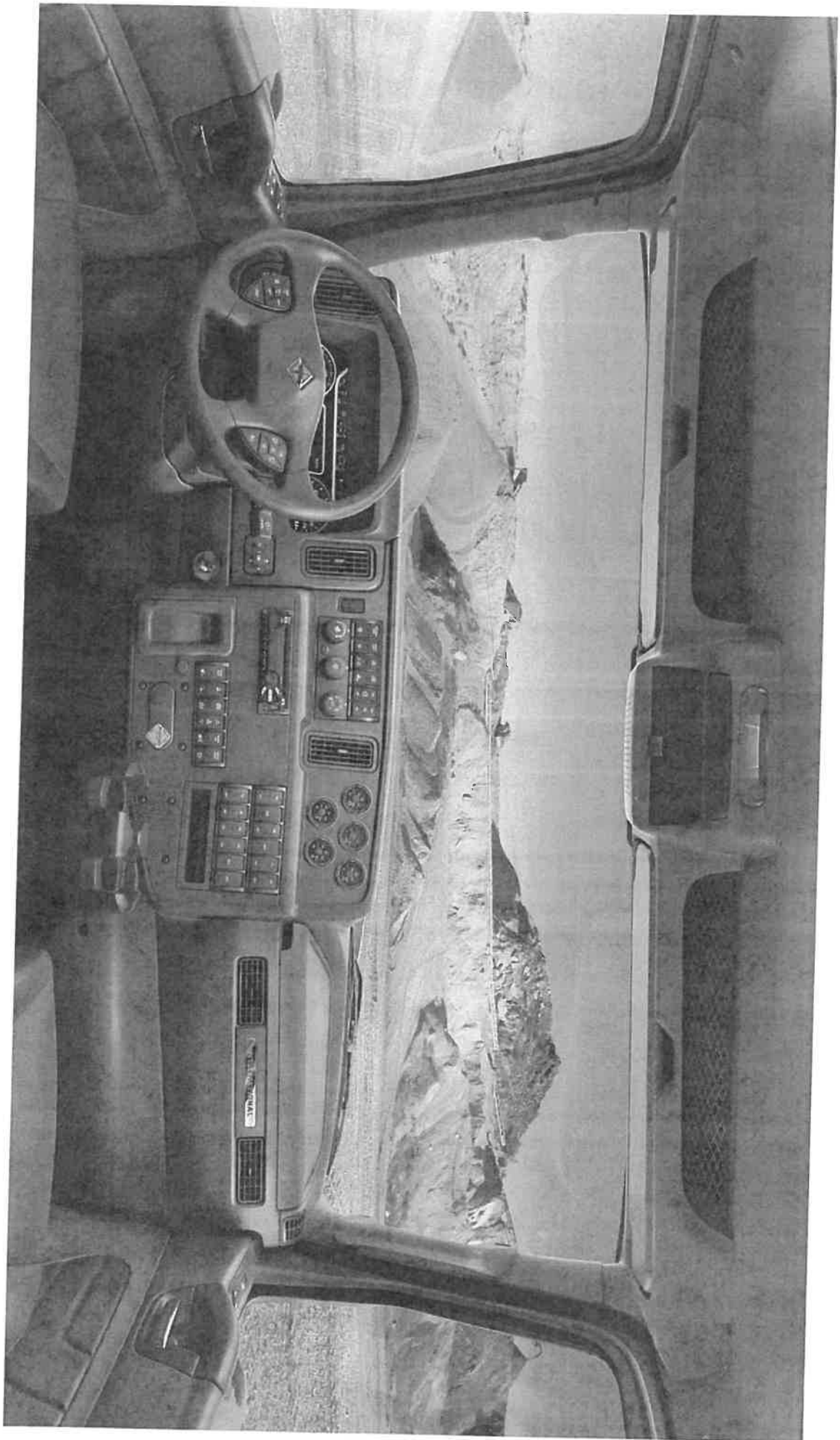
= HV with set-forward axle and a 107" BBC



Configuration	Model	Axles
Set-Forward Axle	HV507	4X2
		4X4
	HV513	6X4
		6X6
		4X2
		6X4

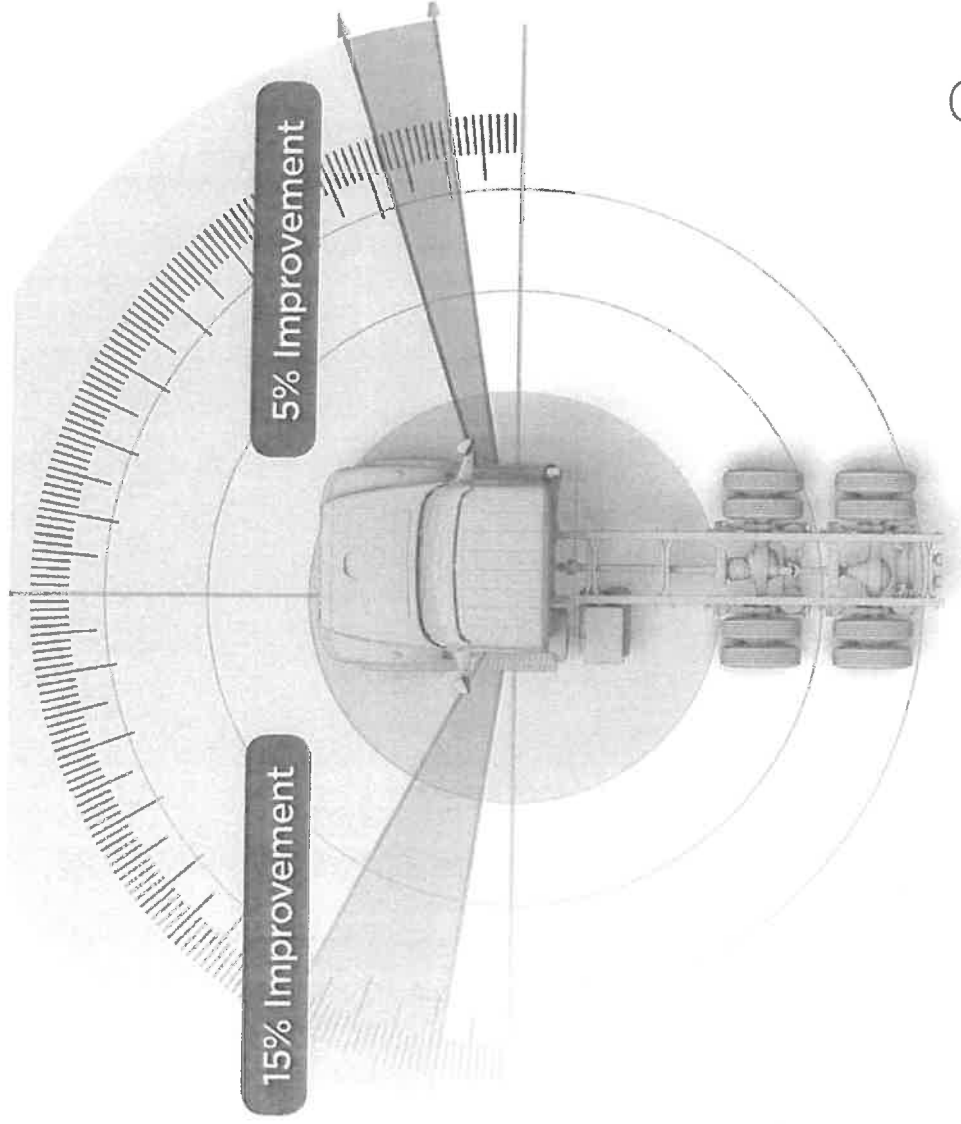


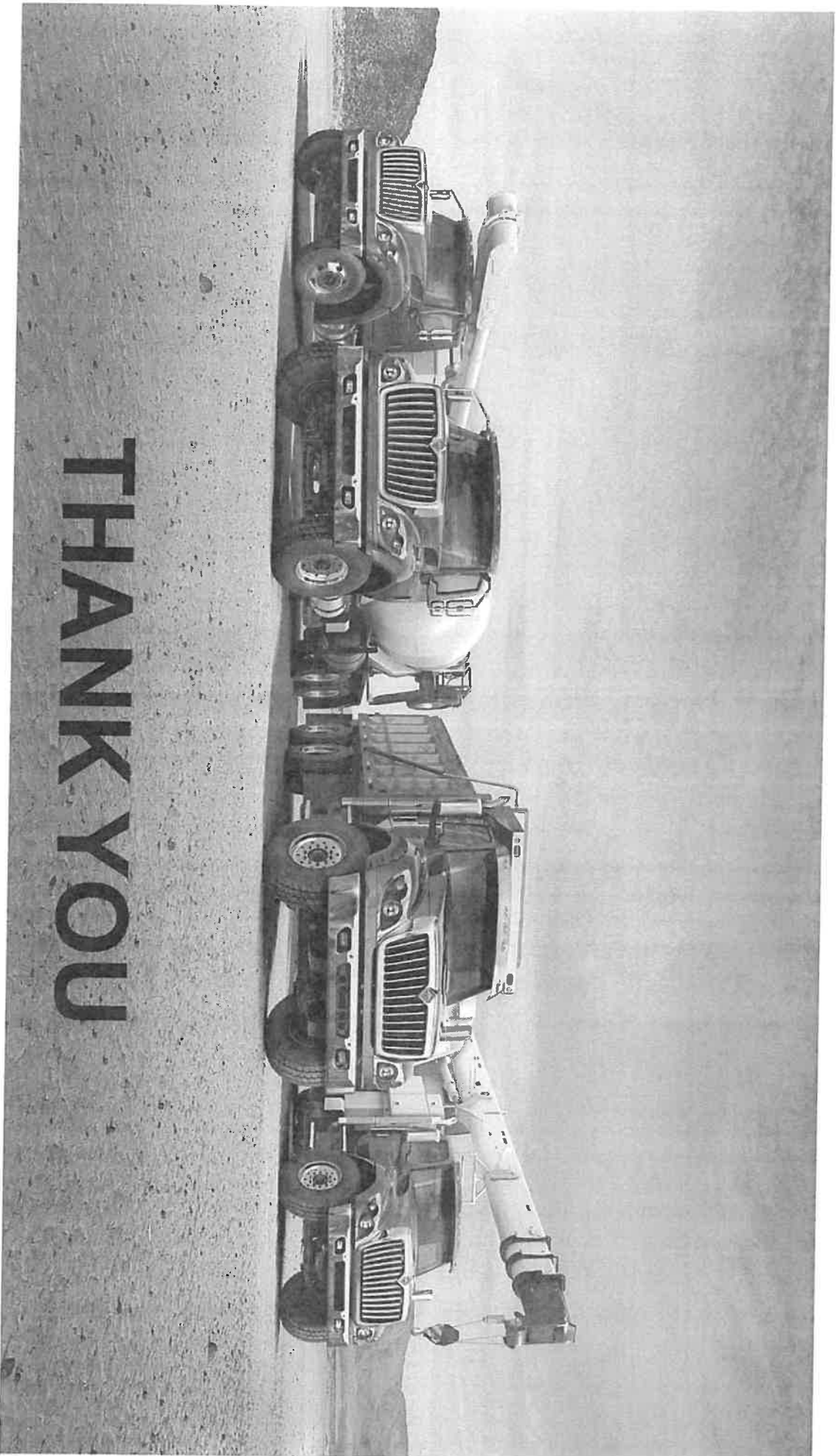
Configuration	Model	Axles
Set-Back Axle	HV607	4X2
		6X4
	HV613	4X2
		6X4
		8X6



## IMPROVED VISIBILITY

The shaded areas represent how visibility has been optimized by reshaping the doors and side windows, and repositioning the cab mirrors so drivers turn their heads less. This increased visibility reduces driver stress and neck strain to enhance productivity.





**THANK YOU**

## Pricing for Medium and Heavy Duty Cab, Chassis, and Buses

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses in the columns below. Column E shall automatically populate the correct contract price utilizing the pre-entered formula.

Make	Model	Manufacturer's Suggested Retail Price (MSRP)	Percentage (%) Off MSRP	Contract Price
International	CV515	\$ 46,219.00	10%	\$ 41,597.10
International	DuraStar	\$ 113,711.00	31%	\$ 78,460.59
International	MV607	\$ 91,707.00	32%	\$ 62,360.76
International	HV 513	\$ 165,553.00	50%	\$ 82,776.50
International	HV507	\$ 92,154.00	32%	\$ 62,664.72
International	HV607	\$ 92,154.00	32%	\$ 62,664.72
International	HV613	\$ 165,553.00	50%	\$ 82,776.50
International	HX515	\$ 207,853.00	50%	\$ 103,926.50
International	HX520	\$ 217,724.00	50%	\$ 108,862.00
International	HX615	\$ 205,714.00	50%	\$ 102,857.00
International	HX620	\$ 216,724.00	50%	\$ 108,362.00
International	RH 613	\$ 192,149.00	50%	\$ 96,074.50
International	LoneStar	\$ 243,590.00	50%	\$ 121,795.00
International	LT625	\$ 203,077.00	50%	\$ 101,538.50
International	RE Bus	\$ 229,650.00	47.5%	\$ 120,566.25
International	CE Bus	\$ 153,592.00	43.5%	\$ 86,779.48
Hino	Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$ 44,563.53
Hino	Hino 155 COE Double Cab Cab & Ch	\$ 58,914.00	17%	\$ 48,898.62
Hino	Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$ 51,427.63
Hino	Hino 195 COE Double Cab Cab & Ch	\$ 67,184.00	17%	\$ 55,762.72
Hino	Hino 238 Cab & Chassis	\$ 73,428.00	17%	\$ 60,945.24
Hino	Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$ 65,007.26
Hino	Hino 258ALP Cvab & Chassis	\$ 80,191.00	17%	\$ 66,558.53
Hino	Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$ 67,606.82

Hino	Hino 268A Cab & Chassis	\$	83,309.00	17%	\$	69,146.47
Hino	Hino 338 Cab & Chassis	\$	91,217.00	17%	\$	75,710.11
					\$	-
					\$	-

**Pricing for Medium and Heavy Duty Cab, Chassis, and Buses Option:**

Instructions: Offerors shall provide information for any additional option packages/add-ons available for Medium and Heavy Duty Cab and Chassis below. Proposed option packages shall only be for Medium and Heavy Duty Cab, Chassis, and Buses proposed on the 'Pricing - Vehicles' tab. Column E shall automatically populate the correct number utilizing the pre-entered formula. Please copy and paste the format for additional space if necessary.

Manufacturer/Make/Model: International CV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 CV515	\$ 46,219.00	10%	\$	41,597.10
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International DuraStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 4300 SBA 4x2	\$ 90,259.00	31%	\$	62,278.71
2 4400 SBA 4x2	\$ 105,569.00	31%	\$	72,842.61
3 4400 SBA 6x4	\$ 113,711.00	31%	\$	78,460.59
4			\$	-
5			\$	-

Manufacturer/Make/Model: International MV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 MV607	\$ 91,293.00	32%	\$	62,079.24
2 MV607 LP	\$ 91,707.00	32%	\$	62,360.76
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International HV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HV507	\$ 92,154.00	32%	\$	62,664.72
2 HV513	\$ 165,553.00	50%	\$	82,776.50
3 HV607	\$ 92,154.00	32%	\$	62,664.72
4 HV613	\$ 165,553.00	50%	\$	82,776.50
5			\$	-

Manufacturer/Make/Model: International HX Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HX 515	\$ 207,853.00	50%	\$	103,926.50
2 HX 520	\$ 217,724.00	50%	\$	108,862.00
3 HX 615	\$ 205,714.00	50%	\$	102,857.00
4 HX 620	\$ 216,724.00	50%	\$	108,362.00
5			\$	-

Manufacturer/Make/Model: International RH Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 RH 613	\$ 192,149.00	50%	\$	96,074.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LoneStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LoneStar	\$ 243,590.00	50%	\$	121,795.00
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LT				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LT625	\$ 203,077.00	50%	\$	101,538.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International RE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Rear Engine Bus	\$ 229,650.00	47.5%	\$	120,566.25
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International CE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Conventional	\$ 153,592.00	43.5%	\$	86,779.48
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: Hino				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$	44,563.53
2 Hino 155 COE Double Cab Cab & Chassis	\$ 58,914.00	17%	\$	48,898.62
3 Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$	51,427.63
4 Hino 195 COE Double Cab Cab & Chassis	\$ 67,184.00	17%	\$	55,762.72
5 Hino 238 Cab & Chassis	\$ 73,429.00	17%	\$	60,945.24
6 Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$	65,007.26
7 Hino 258LP Ccab & Chassis	\$ 80,191.00	17%	\$	66,558.53
8 Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$	67,606.82
9 Hino 358A Cab & Chassis	\$ 83,309.00	17%	\$	69,146.47
10 Hino 338 Cab & Chassis	\$ 91,217.00	17%	\$	75,710.11

## Pricing for Other Medium and Heavy Duty Cab, Chassis, and Buses Products or Services

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses products and services in the columns below.

Description of item or service	List Price	Percentage (%) Off List Price	Contract Price
Software NED-S01 NAVISTAR	\$ 929.50		\$ 599.30
DLB-S01 DIAMOND LOGIC	\$ 908.70		\$ 599.30
DG-DPA5-BT-C1-KIT	\$ 1,571.73		\$ 1,281.02
3886390- INSITE LIT SUBSCRIPTION	\$ 936.00		\$ 792.00
3886388 INSITE LIT	\$ 24.70		\$ 19.06
5298640- HAND HELD COMPUTER	\$ 1,228.88		\$ 1,047.95
EZ-TECH- TOUGHBOOK COMPUTER	\$ 8,476.83		\$ 6,520.64
Training Services Charge at hourly rate	\$ 135.00		\$ 119.00
DVD PLAY SYSTEM	\$5,026.46	10.0%	\$ 4,523.81
ZONAR SECURITY INSPECTION SYSTEM	\$2,079.76	10.0%	\$ 1,871.78
KENWOOD MOBILE TK-8180	\$1,344.48	10.0%	\$ 1,210.03
UPGRADE SPEAKERS	\$600.39	10.0%	\$ 540.35
Kenwood NX-900 Two Way radio and Antenna	\$846.55	10.0%	\$ 761.90
Kenwood TK-7180 with power Tamer	\$1,274.03	10.0%	\$ 1,146.63
Large light gray shoulder rail	\$1,674.75	10.0%	\$ 1,507.28
install caps & covers on wheels	\$562.35	10.0%	\$ 506.12
Tech Package-Diagnostic software,body builder software a	\$8,580.93	10.0%	\$ 7,722.84
			\$ -
Service Max Diagnostic/ NEXIQ	\$1,902.01	10.0%	\$ 1,711.81
Diamond logic builder	\$942.67	10.0%	\$ 848.40
RWC UNIVERSITY ENROLLMENT (ONLINE PORTAL) PER PERSON	\$50.50	50.0%	\$ 25.25
11R22.5 CONTINENTAL TIRE	\$683.43	10.0%	\$ 615.09
			\$ -
			\$ -
KENWOOD NEXTEDGE TWO WAY RADIO	\$991.84	10.0%	\$ 892.66

STEERING STABILIZER BAR	\$1,191.17	10.0%	\$	1,072.06
FIRE BLANKET	\$81.83	10.0%	\$	73.65
CRS SEAT	\$719.98	10.0%	\$	647.98
Motorola Two Radio model TK-690HBK	\$1,943.51	10.0%	\$	1,749.16
AUTOMATIC TIRE CHAINS	\$3,333.34	10.0%	\$	3,000.00
36" TRACKED BARRIERS	\$702.79	10.0%	\$	632.51
CUSTOMER BARRIER POUCH	\$78.05	10.0%	\$	70.25
REI Cellular Router w/antenna	\$1,575.45	10.0%	\$	1,417.90
IMMI CHILD RESTRAIN SEATS	\$4,755.08	10.0%	\$	4,279.58
TOOL BOX	\$415.28	10.0%	\$	373.75
ALLISON TRANSMISSION SOFTWARE	\$2,641.01	10.0%	\$	2,376.91
CUMMINS DIAGNOSTIC SOFTWARE	\$4,070.21	10.0%	\$	3,663.19
BRAUN LIFT UPGRADE	\$264.03	10.0%	\$	237.62
DVD PLAYER 13 SET PACKAGE	\$2,901.53	10.0%	\$	2,611.37
TS INC 2 CAMERA SYSTEM	\$1,422.57	10.0%	\$	1,280.32
CUMMINS 6.7L, EPA, OBD AND GHG CERTIFIED FOR CALENDER 2017	\$840.55	10.0%	\$	756.49
Kenwood Radio, Antenna, Timer XL	\$1,444.44	10.0%	\$	1,300.00
FREEDMAN 48 FAMILYSEATS W/3 CRASH BARRIERS LEVEL 6 CLOTH	\$16,666.67	10.0%	\$	15,000.00
			\$	-
XPR2500 MOTOROLA TWO WAY	\$886.94	10.0%	\$	798.25
24/7/6 CHANNEL (2) Camera 500GB EVENT MARKET	\$2,102.56	10.0%	\$	1,892.31
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
<b>CAMERA SYTEMS- ANGEL TRAX, BUS VISION, PROVISION</b>			\$	-
RWC GROUP			\$	-
ANGEL TRAX SYSTEM (TWO CAMERA SYSTEM)	\$2,582.88	10.0%	\$	2,324.59

ANGELTRAX FOUR CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,587.93	10.0%	\$	3,229.13
ANGELTRAX Four Camera System	\$1,915.24	10.0%	\$	1,723.72
ANGELTRAX SYSTEM (FOUR CHANNEL W/FOUR CAMERAS)	\$3,028.36	10.0%	\$	2,725.53
ANGELTRAX THREE CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,347.77	10.0%	\$	3,012.99
ANGELTRAX TWO CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$2,987.54	10.0%	\$	2,688.78
BUS VISION System	\$4,242.35	10.0%	\$	3,818.12
CoPilot 4-Channel Mobile Digital Video Recorder	\$900.58	10.0%	\$	810.53
EVENT MARKER	\$222.14	10.0%	\$	199.93
Extra Hard Drive	\$198.13	10.0%	\$	178.32
HYBRID QUEST SYSTEM	\$2,165.00	10.0%	\$	1,948.50
INDICATOR SENSOR KIT	\$162.11	10.0%	\$	145.89
PROVISION 4 camera, 8 channel	\$4,190.72	10.0%	\$	3,771.65
RR-MRH8-1000	\$6,496.11	10.0%	\$	5,846.50
	\$0.00	10.0%	\$	-

<b>REI Camera Systems</b>			\$	-
REI / 4 CH HD420 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$1,518.75	10.0%	\$	1,366.87
REI / 4 CH HD420 DVR w/2 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,751.40	10.0%	\$	1,576.26
REI / 4 CH HD420 DVR w/3 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,984.05	10.0%	\$	1,785.64
REI / 4 CH HD420 DVR w/4 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$2,216.70	10.0%	\$	1,995.03
REI / 8 CH HD800 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$2,119.13	10.0%	\$	1,907.22
REI / 8 CH HD800 DVR w/2 Cameras & 320GB Hard Drive	\$2,351.79	10.0%	\$	2,116.61
REI / 8 CH HD800 DVR w/3 Cameras & 320GB Hard Drive	\$2,584.44	10.0%	\$	2,325.99
REI / 8 CH HD800 DVR w/4 Cameras & 320GB Hard Drive	\$2,817.09	10.0%	\$	2,535.38
REI / 8 CH HD800 DVR w/5 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,049.74	10.0%	\$	2,744.76
REI / 8 CH HD800 DVR w/6 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,282.39	10.0%	\$	2,954.15

REI / 8 CH HD800 DVR w/7 Cameras & 320GB Hard Drive	\$3,515.04	10.0%	\$	3,163.54
REI / 8 CH HD800 DVR w/8 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,747.69	10.0%	\$	3,372.92
REI / GPS Receiver	\$193.27	10.0%	\$	173.94
REI / Sensor Harness	\$157.96	10.0%	\$	142.17
REI / Accelerometer	\$161.50	10.0%	\$	145.35
REI / IR Illuminator (for dome cameras needing night vision)	\$45.75	10.0%	\$	41.17
REI / 500 GB Hard Drive Upgrade	\$150.10	10.0%	\$	135.09
REI / 750 GB Hard Drive Upgrade	\$279.78	10.0%	\$	251.80
REI / 1 TB Hard Drive Upgrade	\$365.04	10.0%	\$	328.53
REI / 320 GB SATA Hard Drive, HD Series Mobile DVRs	\$200.53	10.0%	\$	180.48
REI / 500 GB SATA Hard Drive, HD Series Mobile DVRs	\$360.23	10.0%	\$	324.21
REI / 750 GB SATA Hard Drive, HD Series Mobile DVRs	\$480.31	10.0%	\$	432.28
REI / 1 TB SATA Hard Drive, HD Series Mobile DVRs	\$534.35	10.0%	\$	480.91
REI/ 8 CH HD800 DVR W/8 CAMERAS & 750 GB HARD DRIVE INTERNAL/EXTERNAL DELUXE PACKAGE	\$5,042.25	10.0%	\$	4,538.03
REI / VR-3000, AM/FM DVD PLAYER, (8) SPEAKERS,(4) 15" MONITORS MANUAL FLIP DOWN, ALL CABLES	\$3,984.90	10.0%	\$	3,586.41
HD420W DVR w/2 Antennas & 2 Antenna Cables	\$490.46	10.0%	\$	441.41
HD800W DVR w/ 2 Antennas & 2 Antenna Cables	\$670.57	10.0%	\$	603.52
HD420 / DVR, 4 CHANNELL	\$897.11	10.0%	\$	807.40
(4) 500W INVERTERS / VOLTMETER / 4 PORT USB W STORAGE POUCH	\$2,101.36	10.0%	\$	1,891.23
HD 12 channel DVR, 8 cameras, 1TBHD, WIFI GPS, exterior	\$7,318.80	10.0%	\$	6,586.92
12 channel HDS 1200 DVR w/5 cam, 1TB HD WIFI GPS	\$3,788.46	10.0%	\$	3,409.61
6 channel HDS 600 DVR w/4CAM, 500GB HDD WIFI GPS	\$2,859.58	10.0%	\$	2,573.62
REI Router and WI FI antenna	\$1,608.42	10.0%	\$	1,447.58
DVR, 5 camera, 1TB HDGPS, WIFI, extra 1TBHD	\$4,110.27	10.0%	\$	3,699.24
4 Cams, 1TB HDD Sensor cable, WIFI GPS, and panic butto	\$2,599.69	10.0%	\$	2,339.72
6 Cams, 1TB HDD, 1 Stop arm cam, Sensor cable, WIFI GP	\$4,458.55	10.0%	\$	4,012.70
			\$	-

			\$	-
<b>SEON CAMERA SYSTEMS</b>			\$	-
SEON TL4 (1) CAMERA 4-CHANNEL 320GB, 20FT CABLE, GP	\$1,892.43	10.0%	\$	1,703.18
SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$2,166.21	10.0%	\$	1,949.58
SEON TL4 (3) CAMERA 4-CHANNEL 320GB, (2) 20FT CABLE,	\$2,500.02	10.0%	\$	2,250.02
SEON TL4 (4) CAMERA 4-CHANNEL 320GB, (2)50FT CABLE, (	\$2,713.76	10.0%	\$	2,442.38
			\$	-
SEON TLHD (1) CAMERA 5-CHANNEL 320GB, (1) 20FT CABLE	\$2,120.58	10.0%	\$	1,908.52
SEON TLHD (2) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,394.35	10.0%	\$	2,154.92
SEON TLHD (3) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,728.17	10.0%	\$	2,455.35
SEON TLHD (4) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,941.91	10.0%	\$	2,647.72
			\$	-
SEON TX8 (5) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,489.46	10.0%	\$	3,140.52
SEON TX8 (6) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$3,703.20	10.0%	\$	3,332.88
SEON TX8 (7) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$4,067.04	10.0%	\$	3,660.33
SEON TX8 (8) CAMERA 8-CHANNEL 640GB, (3) 30FT CABLE,	\$4,310.80	10.0%	\$	3,879.72
SEON TX8 (4) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,167.65	10.0%	\$	2,850.89
SEON TH6H500 Trooper DVR 6HD Channel 500 GB HD, 4 c	\$2,396.73	10.0%	\$	2,157.06
Seon TX8 5 camera,640gb, GPS, Event marker & 2 camera	\$4,274.11	10.0%	\$	3,846.70
			\$	-
			\$	-
<b>Starter Kit: (Required for all NEW customers)</b>			\$	-
SEON HDD-STB: Include software, docking station & trackball m	\$234.15	10.0%	\$	210.74
SEON HDD-STB-LMK	\$522.34	10.0%	\$	470.10
SEON 1HDD-DOCK (extra docking stations)	\$138.09	10.0%	\$	124.28
			\$	-
<b>Spare Hard Drives (1-3 per 10 systems recommended)</b>			\$	-
SEON TL Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TLHD Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TX Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
SEON DXHD Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
			\$	-
SEON GPS4	\$93.66	10.0%	\$	84.29
SEON LMK	\$300.19	10.0%	\$	270.18

SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$1,561.01	10.0%	\$	1,404.91
SEON TL4 (3) CAMERA 4-CHANNEL 500 GB, (2) 20FT CABLE, (1) 50FT CABLE, GPS, EVENT TAG	\$3,583.12	10.0%	\$	3,224.81
CA-MP4 MOUNTING POST	\$54.04	10.0%	\$	48.63
CHW702E20	\$575.17	10.0%	\$	517.66
Dome camera with 50ft harness (lens TBD)	\$243.76	10.0%	\$	219.38
Dome camera with 20ft harness (lens TBD)	\$213.74	10.0%	\$	192.36
			\$	-
<b>24/7 CAMERA SYSTEMS</b>			\$	-
24/7 6 CHANNEL (3) Camera 500GB,EVENT MARKER	\$3,391.00	10.0%	\$	3,051.90
24/7 6 CHANNEL (4) Camera 500GB,EVENT MARKER	\$3,710.41	10.0%	\$	3,339.37
			\$	-
ROAD RUNNER 4 CAMERA, 1TB, GPS,EVENT MARKER	\$4,005.80	10.0%	\$	3,605.22
16 CHANNEL SOLID STATE 4 CAMERA, GPS, 64GB, SDX MEMORY	\$2,483.93	10.0%	\$	2,235.54
	\$0.00	10.0%	\$	-
			\$	-
<b>RWC GROUP</b>			\$	-
TRANS AIR / FM55 REAR / SMC3L COND / (1) TM21 COMP / 60K BTU SYST	\$9,405.68	51.6%	\$	4,552.35
TRANS AIR / FM55 REAR / 27K DASH / SMC3L COND / (1) TM21 COMP / EC	\$15,510.92	51.6%	\$	7,507.29
TRANS AIR / RT65 / (1) TM21 COMP / EC4.0 / 64K BTU SYSTEM (Quote 150	\$18,045.57	51.6%	\$	8,734.06
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (2) TM21 COMP / 12	\$20,350.01	51.6%	\$	9,849.41
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (1) TM43 COMP / 12	\$25,689.45	51.6%	\$	12,433.70
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (2) SMC3L COND / (2) TM2	\$27,679.12	51.6%	\$	13,396.69
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (2) TM	\$25,369.98	51.6%	\$	12,279.07
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (1) TM	\$30,345.31	51.6%	\$	14,687.13
TRANS AIR / FM55 FRONT & REAR / 27 DASH / / TA93 SIDE / (2) SMC3L CO	\$33,819.59	51.60%	\$	16,368.68
TRANS AIR / FM55 FRONT & REAR / R120 COND / (2) TM21 COMP / 120K B	\$24,456.19	51.6%	\$	11,836.80
TRANS AIR / FM55 FRONT & REAR / R120 COND / (1) TM43 COMP / 120K B	\$29,551.33	51.6%	\$	14,302.84
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (R120 COND / (2) TM21 CO	\$27,505.29	51.6%	\$	13,312.56
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (2) TM21 CO	\$29,532.53	51.6%	\$	14,293.75
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (1) TM43 CO	\$34,261.22	51.6%	\$	16,582.43
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / 27K DASH / R120 COND /	\$36,762.98	51.6%	\$	17,793.28
TRANS AIR /130KBTU/ FM55 FRONT (1) TA93/ (1) TA96 120 ROOF TOP CO	\$36,599.41	51.6%	\$	17,714.12

TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (2) TM21 C	\$23,645.76	51.6%	\$	11,444.55
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (1) TM43 C	\$28,846.61	51.6%	\$	13,961.76
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / 27K DASH / (2) SMC3L COND	\$30,810.43	51.6%	\$	14,912.25
TRANS AIR / (2) RT65 / (2) TM21 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$36,770.03	51.6%	\$	17,796.69
TRANS AIR / (2) RT65 / (1) TM43 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$41,259.10	51.6%	\$	19,969.41
TRANS AIR / (2) RT65 / 40K DASH / (3) TM21 COMP / EC4.0 / 168K BTU SYS	\$49,800.33	51.6%	\$	24,103.36
TRANS AIR / (2) RT65 / 40K DASH / (1) TM21 COMP / (1) TM43 COMP / EC4	\$51,794.69	51.6%	\$	25,068.63
TRANS AIR TA 17 DUCTED	\$38,759.69	51.6%	\$	18,759.69
TRANS AIR / 3 FAN CONDENSER UPGRADE (14" FANS)	\$1,477.57	51.6%	\$	715.14
TRANS AIR / 4 FAN CONDENSER UPGRADE (14" FANS)	\$2,008.46	51.6%	\$	972.09
TRANS AIR / DRIVER SNOUT	\$653.04	51.6%	\$	316.07
TRANS AIR TA55B93963C4C	\$34,246.51	51.6%	\$	16,575.31
TRANS AIR 150 BTU SYSTEM	\$31,903.38	51.6%	\$	15,441.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$40,609.26	51.6%	\$	19,654.88
RE - TRANS AIR / 150K BTU/ (2) RT96 / TRANSIT COMP / NO HEAT / EC4.0	\$46,514.45	51.6%	\$	22,512.99
RE - TRANS AIR / 177K BTU / (2) RT96 / (1) 27K DASH / (1) SMC25 COND / T	\$59,114.40	51.6%	\$	28,611.37
RE - TRANS AIR / 150K BTU/ (1) TA17 / (1) C5 COND / TRANSIT COMP / BA	\$43,420.25	51.6%	\$	21,015.40
RE - TRANS AIR / 130K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / (2) TM	\$24,870.75	51.6%	\$	12,037.44
RE - TRANS AIR / 145K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / TRANS	\$35,368.55	51.6%	\$	17,118.38
RE - TRANS AIR / 172K BTU (1) TA73 / (2) TA93 / 27K DASH / TRANSIT & 10	\$48,972.14	51.6%	\$	23,702.52
RE - TRANS AIR / 130K BTU / (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$31,407.09	51.6%	\$	15,201.03
RE - TRANS AIR / 130K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / (2) TM2	\$26,696.48	51.6%	\$	12,921.09
RE - TRANS AIR / 150K BTU / (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$36,994.39	51.6%	\$	17,905.28
RE - TRANS AIR / 177K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$53,346.37	51.6%	\$	25,819.64
RE - TRANS AIR / 150K BTU/ (1) TA77 / (1) TA96 / (1) TA93 / (2) SC4 / TRANS	\$40,803.38	51.6%	\$	19,748.84
RE - TRANS AIR / 177K BTU / (1) TA77 / (1) TA96 / (1) TA93 / (1) R120 / (1) S	\$47,926.40	51.6%	\$	23,196.38
CE-PROPANE TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$42,411.56	51.6%	\$	20,527.19
CE-CUMMINS TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$40,220.67	51.6%	\$	19,466.81
RE-KL80 DUCTED WITH DRIVERS BLOWER MOTOR (QUOTE 15800)	\$46,041.81	51.6%	\$	22,284.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$37,174.40	51.6%	\$	17,992.41
RE-TRANS AIR 150K BTU (1) TA 77 REAR, (1) TA93 SIDE/ FM-45 EVAP/RO	\$43,788.79	51.6%	\$	21,193.78
CE Propane TA55F55BSC2LPSC2LP, TM-43 w/ driver snout (15	\$20,478.93	51.6%	\$	9,911.80
CE TRANS AIR 130,000 BTU SC4	\$19,797.98	51.6%	\$	9,582.22
CE TRANS AIR 160,000 BTU TM-55 DUCTED	\$37,411.32	51.6%	\$	18,107.08

RE TRANS AIR 192,000 BTU BITZER DUCTED	\$42,283.30	51.6%	\$	20,465.12
			\$	-
			\$	-
			\$	-
			\$	-
BUS AIR (1) IN WALL Rear Evap, Skirt Cond, 3 Fan,(1) TM21 Compressor & In	\$11,745.36	51.6%	\$	5,684.75
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Skirt Cond, 3 F	\$19,732.21	51.6%	\$	9,550.39
BUS AIR (2) IN WALL Front & Rear Evap, (1) Side Mtn Evap, (1) Driver Plenum	\$22,081.28	51.6%	\$	10,687.34
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Roof Cond, 3	\$25,839.79	51.6%	\$	12,506.46
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (1) Side Evap, (2)	\$30,537.94	51.6%	\$	14,780.36
			\$	-
			\$	-
MCC (1)IW1 REAR EVAP, (1) CM3 SKIRT COND, (1) TM-21 COMP	\$9,598.31	51.6%	\$	4,645.58
MCC (2) IW1 FRONT & REAR EVAP, (1) DRIVER PLENUM, (2) CM3 SKIRT	\$21,254.40	51.6%	\$	10,287.13
MCC (2) IW1 FRONT & REAR EVAP, (1) EM2 MID COND,(1) DRIVER PLE	\$23,725.63	51.6%	\$	11,483.20
MCC (2) IW1 FRONT & REAR EVAP,(1) DRIVER PLENUM, (2) K410 ROOF	\$25,050.51	51.6%	\$	12,124.44
MCC (2) IW1 FRONT & REAR EVAP,(1) EM2 MID COND,(1) DRIVER PLE	\$27,037.82	51.6%	\$	13,086.30
	\$0.00	51.6%	\$	-
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM3 SKIRT COND, (2)	\$26,215.64	51.6%	\$	12,688.37
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM14 SKIRT COND 4	\$43,951.14	51.6%	\$	21,272.35
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (1) CR340 ROOF COND, (	\$42,248.06	51.6%	\$	20,448.06
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, CEILING DUCT	\$42,635.66	51.6%	\$	20,635.66
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, PARCEL RACK	\$54,458.54	51.6%	\$	26,357.93
MCCGB AC353N (1) 150AMP ALT, (1) 05G COMP, CELING DUCTWORK	\$37,190.09	51.6%	\$	18,000.00
MCC Parcel rack AC System	\$46,281.00	51.6%	\$	22,400.00
			\$	-
			\$	-
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$55,359.06	51.6%	\$	26,793.78
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$53,558.84	51.6%	\$	25,922.48
THERMOKING INWALL EVAP,SLC ROOF TOP CONDENSERS,sa-400 CELIN	\$39,922.48	51.6%	\$	19,322.48
			\$	-
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT CONDENSERS, TM21 COMP, 126	\$15,727.04	51.6%	\$	7,611.89
CE / ACC-SPHEROS, (2) EVAP, (2) ROOFTOP COND, TM21 COMP, 126K BT	\$18,708.01	51.6%	\$	9,054.68
CE / ACC-SPHEROS, (3) EVAP, (2) ROOFTOP COND, TM21 COMP, 136K BT	\$20,237.26	51.6%	\$	9,794.83

CE / ACC-SPHEROS, (3) EVAP, (2) SKIRT COND, TM21 COMP, 136K BTU- F	\$17,256.28	51.6%	\$	8,352.04
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TM43 COMP, 126K B	\$21,183.93	51.6%	\$	10,253.02
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, TIE-IN DASH, TM43 COMP	\$19,797.98	51.6%	\$	9,582.22
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, STD ALONE DASH, TM43	\$22,828.28	51.6%	\$	11,048.89
CE / ACC-SPHEROS, (2) EAVP, (2) ROOFTOP COND, STD ALONE DASH, T	\$25,809.26	51.6%	\$	12,491.68
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TIE IN DASH, TM43 C	\$22,778.95	51.6%	\$	11,025.01
			\$	-
			\$	-
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$37,411.32	51.6%	\$	18,107.08
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$39,119.10	51.6%	\$	18,933.64
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65 COMP, 180K BTU- C	\$40,575.52	51.6%	\$	19,638.55
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65/ BITZER COMP, 18	\$42,283.30	51.6%	\$	20,465.12
CC33543 Stand Alone Dash TM16 low profile ducting & with drivers blower	\$42,741.37	51.6%	\$	20,686.82
RW88FW88595943 with Dash stand alone TM16	\$19,142.59	51.6%	\$	9,265.01
ACC- SPHEROS, (2) IN WALLS, MID EVAP, SKIRT COND, DRIVER DASH TM	\$26,819.36	51.6%	\$	12,980.57
ACC- SPHEROS, (2) IN WALLS, MID EVAP, ROOFTOP COND, DRIVER DAS	\$29,800.33	51.6%	\$	14,423.36
			\$	-
			\$	-
			\$	-
TOWING - 36 / UNLIMITED MILES (\$275 PER) 40KMH	\$492.42	12.0%	\$	433.33
TOWING - 48 / UNLIMITED MILES (\$275 PER) 40KMJ	\$580.81	12.0%	\$	511.11
TOWING - 60 / UNLIMITED MILES (\$275 PER) 40KMK	\$707.07	12.0%	\$	622.22
TOWING - 36 / UNLIMITED MILES (\$550 PER) 40KMB	\$694.44	12.0%	\$	611.11
TOWING - 48 / UNLIMITED MILES (\$550 PER) 40KMC	\$820.71	12.0%	\$	722.22
TOWING - 60 / UNLIMITED MILES (\$550 PER) 40KMD	\$1,010.10	12.0%	\$	888.89
			\$	-
EXT VEHICLE COVERAGE- 36 / 50K MILES 40PLB	\$946.97	12.0%	\$	833.33
EXT VEHICLE COVERAGE- 48 / 50K MILES 40PKV	\$1,641.41	12.0%	\$	1,444.44
EXT VEHICLE COVERAGE- 48 / 100K MILES 40PKW	\$2,462.12	12.0%	\$	2,166.67
EXT VEHICLE COVERAGE- 60 / 100K MILES 40PLG	\$2,904.04	12.0%	\$	2,555.56
EXT VEHICLE COVERAGE- 60 / 200K MILES 40PLJ	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 72 / 100K MILES 40PLL	\$3,358.59	12.0%	\$	2,955.56
EXT VEHICLE COVERAGE- 72 / 150K MILES 40PLM	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 84 / 100K MILES 40PLP	\$4,734.85	12.0%	\$	4,166.67

EXT VEHICLE COVERAGE- 84 / 150K MILES 40PLR	\$6,515.15	12.0%	\$	5,733.33
	\$0.00	12.0%	\$	-
STARTER & ALT- 36 / 50K MILES 40KUE	\$75.76	12.0%	\$	66.67
STARTER & ALT- 48 / 50K MILES 40KUK	\$101.01	12.0%	\$	88.89
STARTER & ALT- 48 / 100K MILES 40KUL	\$176.77	12.0%	\$	155.56
STARTER & ALT- 60 / 100K MILES 40KUR	\$227.27	12.0%	\$	200.00
STARTER & ALT- 60 / 200K MILES 40KUT	\$454.55	12.0%	\$	400.00
	\$0.00	12.0%	\$	-
CUMMINS 6.7L FULL ENG / 5YRS / 150K MILES 40SEJ	\$1,830.81	12.0%	\$	1,611.11
CUMMINS 6.7L FULL ENG / 5YRS / 200K MILES 40SEK	\$2,209.60	12.0%	\$	1,944.44
CUMMINS 6.7L FULL ENG / 5YRS / UNLIM MILES 40SEL	\$2,367.42	12.0%	\$	2,083.33
CUMMINS 6.7L FULL ENG / 7YRS / 150K MILES 40SEM	\$2,904.04	12.0%	\$	2,555.56
CUMMINS 6.7L FULL ENG / 8YRS / 150K MILES 40SEN	\$3,409.09	12.0%	\$	3,000.00
CUMMINS 6.7L FULL ENG / 10YRS / 120K MILES 40SEP	\$4,356.06	12.0%	\$	3,833.33
CUMMINS 6.7L FULL ENG / 10YRS / 150K MILES 40SER	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L FULL ENG / 10YRS / 200K MILES 40SES	\$5,176.77	12.0%	\$	4,555.56
CUMMINS 6.7L FULL ENG / 10YRS / UNLIM MILES 40SET	\$5,871.21	12.0%	\$	5,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 150K MI	\$1,388.89	12.0%	\$	1,222.22
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 200K MI	\$1,641.41	12.0%	\$	1,444.44
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / UNLIM M	\$1,767.68	12.0%	\$	1,555.56
CUMMINS 6.7L FULL ENG MINUS MAINT / 7YRS / 150K MI	\$2,462.12	12.0%	\$	2,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / 200K M	\$4,103.54	12.0%	\$	3,611.11
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / UNLIM	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L MAJOR COMPONENTS / 7YRS / 150K MILES	\$694.44	12.0%	\$	611.11
CUMMINS 6.7L MAJOR COMPONENTS / 10YRS / 200K MIL	\$946.97	12.0%	\$	833.33
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 7YRS / 150	\$2,272.73	12.0%	\$	2,000.00
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 8YRS / 150	\$2,872.47	12.0%	\$	2,527.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 12	\$3,724.75	12.0%	\$	3,277.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 15	\$4,198.23	12.0%	\$	3,694.44
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 20	\$4,671.72	12.0%	\$	4,111.11
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / UN	\$5,303.03	12.0%	\$	4,666.67
	\$0.00	12.0%	\$	-
CUMMINS L9 FULL ENG / 5YRS / 150K MILES 40SGY	\$2,367.42	12.0%	\$	2,083.33
CUMMINS L9 FULL ENG / 5YRS / 200K MILES 40SGZ	\$2,840.91	12.0%	\$	2,500.00

CUMMINS L9 FULL ENG / 5YRS / UNLIM MILES 40SHA	\$3,093.43	12.0%	\$	2,722.22
CUMMINS L9 FULL ENG / 7YRS / 150K MILES 40SHB	\$3,156.57	12.0%	\$	2,777.78
CUMMINS L9 FULL ENG / 8YRS / 150K MILES 40SHC	\$3,598.48	12.0%	\$	3,166.67
CUMMINS L9 FULL ENG / 10YRS / 120K MILES 40SMC	\$5,492.42	12.0%	\$	4,833.33
CUMMINS L9 FULL ENG / 10YRS / 150K MILES 40SMD	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG / 10YRS / 200K MILES 40SME	\$6,502.53	12.0%	\$	5,722.22
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 150K MILE	\$1,799.24	12.0%	\$	1,583.33
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 200K MILE	\$2,272.73	12.0%	\$	2,000.00
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / UNLIM MI	\$2,335.86	12.0%	\$	2,055.56
CUMMINS L9 FULL ENG MINUS MAINT / 7YRS / 150K MILE	\$3,219.70	12.0%	\$	2,833.33
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / 200K MIL	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / UNLIM M	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 7YRS / 150K	\$2,840.91	12.0%	\$	2,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 8YRS / 150K	\$3,251.26	12.0%	\$	2,861.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 120K	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 150K	\$5,334.60	12.0%	\$	4,694.44
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 200K	\$5,871.21	12.0%	\$	5,166.67
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / UNL	\$6,691.92	12.0%	\$	5,888.89
Pre Delivery Inspection Rear Engine School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Rear Engine SPED School Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Conventional School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Conventional SPEDSchool Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Cutaway School/MFSAB School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection Cutaway School/SPED School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection - Commercial/Transit to 22 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 25 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 28 FT	\$700.00	10.0%	\$	630.00
Pre Delivery Inspection - Commercial/Transit to 32 FT	\$900.00	10.0%	\$	810.00
Pre Delivery Inspection - Commercial/Transit over 32 FT	\$1,000.00	10.0%	\$	900.00
				#VALUE!
				#VALUE!
Lettering -Vinyl 5-6" BOTH SIDES AND BUMPERS	\$180.00	18.0%	\$	147.60
			\$	-
Transportation costs for New bus from Tulsa OK to Phoenix	\$1,737.12	0.0%	\$	1,737.12

Transportation costs for New bus from Hutchensen, KS to	\$1,350.00	0.0%	\$	1,350.00
Truck only			\$	-
Allison Extended warranty (see attached) for pricing			\$	-
Cab and Chassis International offer on Extended Warranty 50% off of list		50%		#VALUE!
			\$	-

<b>Equipment</b>	<b>MSRP</b>	<b>Options</b>	<b>Total</b>	<b>Contract Discount %</b>	<b>Discount \$</b>	<b>Contract Price</b>	<b>Add Ons</b>	<b>Taxes</b>	<b># of Units</b>	<b>Total</b>
<b>HV507 SFA 6-Wheel Plow</b>	\$ 92,154.00	\$ 54,428.00	\$ 146,582.00	32%	\$ 48,504.24	\$ <b>98,077.76</b>	\$ 115,849.00	\$ 35,551.84	2	\$ <b>463,405.36</b>
<b>HV513 SFA 10-Wheel Plow</b>	\$ 165,553.00	\$ 74,040.00	\$ 239,593.00	50%	\$ 120,921.50	\$ <b>118,671.50</b>	\$ 131,494.00	\$ 20,783.74	1	\$ <b>270,949.24</b>
<b>CV515 SFA Barricade Truck</b>	\$ 46,219.00	\$ 18,798.00	\$ 65,017.00	10%	\$ 7,937.20	\$ <b>57,079.80</b>	\$ 34,637.00	\$ 7,624.49	1	\$ <b>99,341.29</b>
<b>MV607 SBA Patch Truck</b>	\$ 91,707.00	\$ 31,020.00	\$ 122,727.00	32%	\$ 40,870.64	\$ <b>81,856.36</b>	\$ 91,740.00	\$ 14,420.50	1	\$ <b>188,016.86</b>



# Request for Proposal

Solicitation No.  
**BPM000228**

Description:  
Medium and Heavy Duty Cabs, Chassis, and Buses

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

## Attachment 1 Offer and Acceptance Form

**SUBMISSION OF OFFER:** Undersigned hereby offers and agrees to provide Medium and Heavy Duty Cabs, Chassis, and Buses in compliance with the Solicitation indicated above and any Offer indicated by the latest dated version below:

Initial Offer:	1.	Mary Wilson	MRW						
		date	initial						
Revised Offers:	2.	x		3.	x		4.	x	
		date #1	initial	date #1	initial	date #1	initial		
	5.	x		6.	x		7.	x	
		date #4	initial	date #5	initial	date #6	initial		
Best and Final Offer:	8.	1/16/19							
		date	initial						

### RWC Group

Offeror company name

600 N 75<sup>th</sup> Ave

Address

Phoenix, Arizona 85043

City | State | ZIP

27-2085725

Federal tax identifier (EIN or SSN)

*Mary Wilson*

Signature of person authorized to sign Offer

*MRW*

Initials

Mary Wilson Truck Sales

Printed name and title

Mary Wilson Truck Sales

Contact name and title

mwilson@rwgroup.com

Contact Email Address

602-307-1037

Contact phone number

**CERTIFICATION:** By signature in the above, Offeror certifies that it:

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

**ACCEPTANCE OF OFFER:** State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by number #8 at the top of this form, and which was dated 1/16/19 (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: CTR041813

The effective date of the Contract is: 1/18/19 Contract awarded 1/18/19

Date

Date

*Nicola Perrera*

Procurement Officer signature

Nick Perrera

Statewide Procurement Manager



# Request for Proposal

Solicitation No.

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Arizona Department of  
Administration

**State Procurement  
Office**

100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

## Part 2: Scope, Pricing and Terms and Conditions

### Table of Contents

SECTION 2-A: Scope of Work .....	6
SECTION 2-B: Pricing Document .....	17
1.0 Compensation.....	17
2.0 Pricing .....	18
3.0 Funding .....	19
4.0 Invoicing.....	19
5.0 Payments .....	20
SECTION 2-C: Special Terms and Conditions.....	22
1.0 ..... DEFINITION OF TERMS .....	22
1.1 Acceptance.....	22
1.2 Accepted Offer .....	22
1.3 Arizona Procurement Code; A.R.S.; A.A.C. ....	22
1.4 Arizona TPT.....	22
1.5 Attachment .....	22
1.6 Pricing Document .....	22
1.7 Contract Amendment.....	22
1.8 Contract Terms.....	22
and Conditions .....	22
1.9 Contractor .....	22
1.10 Contractor Indemnitor.....	22
1.11 Co-Op Buyer .....	23
1.12 Eligible Agency.....	23
1.13 Indemnified Basic Claims .....	23
1.14 Instructions to Offerors .....	23
1.15 Order .....	23
1.16 The State's e-Procurement System.....	23
1.17 State .....	23
1.18 State Indemnitees .....	23
1.19 Subcontractor.....	23
1.20 Work.....	24
2.0 ..... CONTRACT INTERPRETATION .....	24
2.1 Usage .....	24
2.2 Contract Order of Precedence.....	24
2.3 Independent Contractor .....	25
2.4 Complete Integration .....	25
3.0 ..... CONTRACT ADMINISTRATION AND OPERATION .....	25
3.1 Term of Contract .....	25
3.2 Contract Extensions.....	25



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 3.3 Notices and Correspondence..... 25
- 3.4 Signing of Contract Amendments ..... 26
- 3.5 Click-Through Terms and Conditions ..... 26
- 3.6 Books and Records ..... 26
- 3.7 Contractor Licenses ..... 26
- 3.8 Inspection and Testing..... 26
- 3.9 Ownership of Intellectual Property..... 27
- 3.10 Subcontracts..... 27
- 3.11 Offshore Performance of Certain Work Prohibited..... 28
- 3.12 Orders ..... 28
- 3.13 Statewide Contract Provisions ..... 28
- 3.14 Multiple-Use Provisions..... 30
- 3.15 Other Contractors ..... 30
- 3.16 Work on State Premises ..... 30
  
- 4.0 ..... COSTS AND PAYMENTS ..... 31
  - 4.1 Payments..... 31
  - 4.2 Applicable Taxes ..... 31
  
- 5.0 ..... CONTRACT CHANGES ..... 31
  - 5.1 Contract Amendments ..... 31
  - 5.2 Assignment and Delegation ..... 31
  
- 6.0 ..... RISK AND LIABILITY ..... 32
  - 6.1 Risk of Loss ..... 32
  - 6.2 Contractor Insurance..... 32
  - 6.3 Indemnification ..... 34
  - 6.4 Patent and Copyright Indemnification ..... 34
  - 6.5 Force Majeure ..... 35
  - 6.6 Third Party Antitrust Violations..... 35
  
- 7.0 ..... WARRANTIES..... 35
  - 7.1 Conformity to Requirements ..... 35
  - 7.2 Contractor Personnel ..... 36
  - 7.3 Intellectual Property ..... 36
  - 7.4 Licenses and Permits ..... 36
  - 7.5 Operational Continuity ..... 36
  - 7.6 Performance in Public Health Emergency..... 36
  - 7.7 Lobbying..... 36
  - 7.8 Survival of Warranties ..... 36
  
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 37
  
- 9.0 ..... CONTRACT TERMINATION ..... 37
  
- 10.0 ... CONTRACT CLAIMS ..... 37
  - 10.1 Claim Resolution..... 37
  - 10.2 Mandatory Arbitration..... 37
  
- 11.0 ... GENERAL PROVISIONS FOR MATERIALS ..... 37
  - 11.1 Applicability ..... 37
  - 11.2 Off-Contract ..... 37



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

Materials .....	37
11.3 Compensation for.....	37
Late Deliveries .....	37
11.4 Indicate Shipping.....	37
Costs on Order .....	37
11.5 Current Products .....	37
11.6 Maintain .....	37
Comprehensive .....	37
Selection.....	37
11.7 Additional .....	37
Products .....	37
11.8 Discontinued .....	38
Products .....	38
11.9 Forced .....	38
Substitutes .....	38
11.10 Recalls.....	38
11.11 Delivery.....	38
11.12 Delivery Time.....	38
11.13 Delivery Locations.....	38
11.14 Conditions at.....	39
Delivery Location.....	39
11.15 Materials.....	39
Acceptance.....	39
11.16 Correcting Defects .....	39
11.17 Returns .....	40
11.18 Order Cancellation.....	40
11.19 Product Safety .....	40
11.20 Hazardous.....	40
Materials .....	40
<b>12.0 ... GENERAL PROVISIONS FOR SERVICES .....</b>	<b>41</b>
12.1 Applicability.....	41
12.2 Comprehensive Services Offering.....	41
12.3 Additional Services .....	41
12.4 Off-Contract Services.....	41
12.5 Removal of Personnel.....	41
12.6 Transitions.....	41
12.7 Accuracy of Work .....	41
12.8 Requirements at Services Location.....	41
12.9 Services Acceptance .....	42
12.10 Corrective Action Required.....	42
<b>13.0 ... DATA AND INFORMATION HANDLING .....</b>	<b>42</b>
13.1 Applicability.....	42
13.2 Data Protection and Confidentiality of Information.....	42
13.3 Personally Identifiable Information.....	43
13.4 Protected Health Information.....	43
<b>SECTION 2-D: Uniform Terms and Conditions .....</b>	<b>44</b>



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 1.0 ..... DEFINITION OF TERMS ..... 44
  - 1.1 Attachment ..... 44
  - 1.2 Contract ..... 44
  - 1.3 Contract Amendment ..... 44
  - 1.4 Contractor ..... 44
  - 1.5 Days ..... 44
  - 1.6 Exhibit ..... 44
  - 1.7 Gratuity ..... 44
  - 1.8 Materials ..... 44
  - 1.9 Procurement Officer ..... 44
  - 1.10 Services ..... 44
  - 1.11 State ..... 44
  - 1.12 State Fiscal Year ..... 44
  - 1.13 Subcontract ..... 44
  
- 2.0 ..... CONTRACT INTERPRETATION ..... 44
  - 2.1 Arizona Law ..... 44
  - 2.2 Implied Terms ..... 45
  - 2.3 Contract Order of Precedence ..... 45
  - 2.4 Relationship of ..... 45
  - Parties 45
  - 2.5 Severability ..... 45
  - 2.6 No Parole Evidence ..... 45
  - 2.7 No Waiver ..... 45
  
- 3.0 ..... CONTRACT ADMINISTRATION AND OPERATION ..... 45
  - 3.1 Records ..... 45
  - 3.2 Non-Discrimination ..... 45
  - 3.3 Audit ..... 45
  - 3.4 Facilities Inspection ..... 45
  - and Materials Testing ..... 45
  - 3.5 Notices ..... 45
  - 3.6 Advertising, Publishing and Promotion of Contract ..... 46
  - 3.7 Property of the State ..... 46
  - 3.8 Ownership of Intellectual Property ..... 46
  - 3.9 Federal Immigration and Nationality Act ..... 46
  - 3.10 E-Verify Requirements ..... 46
  - 3.11 Offshore Performance of Work Prohibited ..... 46
  
- 4.0 ..... COSTS AND PAYMENTS ..... 46
  - 4.1 Payments ..... 46
  - 4.2 Delivery ..... 46
  - 4.3 Applicable Taxes ..... 46
  - 4.4 Availability of Funds for the Next State fiscal year ..... 47
  - 4.5 Availability of Funds for the current State fiscal year ..... 47
  
- 5.0 ..... CONTRACT CHANGES ..... 47
  - 5.1 Amendments ..... 47
  - 5.2 Subcontracts ..... 47
  - 5.3 Assignment and Delegation ..... 47



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 6.0 ..... RISK AND LIABILITY ..... 47
  - 6.1 Risk of Loss ..... 47
  - 6.2 Indemnification ..... 47
  - 6.3 Indemnification – Patent and Copyright ..... 48
  - 6.4 Force Majeure ..... 48
  - 6.5 Third Party Antitrust Violations..... 48
- 7.0 ..... WARRANTIES ..... 48
  - 7.1 Liens ..... 48
  - 7.2 Quality ..... 48
  - 7.3 Fitness ..... 49
  - 7.4 Inspection/Testing ..... 49
  - 7.5 Compliance with Laws ..... 49
  - 7.6 Survival of Rights and Obligations after Contract Expiration or Termination ..... 49
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 49
  - 8.1 Right to Assurance ..... 49
  - 8.2 Stop Work Order ..... 49
  - 8.3 Non-exclusive Remedies ..... 49
  - 8.4 Nonconforming Tender ..... 49
  - 8.5 Right of Offset ..... 50
- 9.0 ..... CONTRACT TERMINATION ..... 50
  - 9.1 Cancellation for Conflict of Interests ..... 50
  - 9.2 Gratuities ..... 50
  - 9.3 Suspension or Debarment ..... 50
  - 9.4 Termination for Convenience ..... 50
  - 9.5 Termination for Default ..... 50
  - 9.6 Continuation of Performance Through Termination ..... 50
- 10.0 ... CONTRACT CLAIMS ..... 51
  - 10.1 Contract Claims ..... 51
- 11.0 ... ARBITRATION ..... 51
  - 11.1 Arbitration ..... 51
- 12.0 ... COMMENTS WELCOME ..... 51
  - 12.1 Comments Welcome ..... 51



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### SECTION 2-A: Scope of Work

**DESCRIPTION:** The State of Arizona invites sealed proposals from qualified firms to provide Medium and Heavy Duty Cab and Chassis for Statewide and Eligible Agencies as specified below.

**DUE DATE AND TIME:** Offers shall be received until **3:00 p.m. Arizona MST, 11/28/18.**

Additional information regarding submittal instructions is located within this document in the following sections: Special Instructions to Offerors and Uniform Instructions to Offerors.

### Start of Scope

**Requirements which must be met by vendors to be considered for this award include but are not limited to the following:**

#### 1. GENERAL CONDITIONS AND REQUIREMENTS

- 1.1. All chassis shall be manufacturer's current models in production throughout the term of this contract and shall be services completed by the Contractor before delivery and ready in all respects for use.
- 1.2. All chassis bid and furnished shall meet requirements of applicable Arizona Motor Vehicle laws and all other Federal Motor Vehicle laws (including the Federal Bridge Formula), whether or not such requirements are specified in detail.
- 1.3. The Contractor shall supply a quote sheet within seven (7) calendar days after receiving request from the eligible agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options (including line item cost), applicable tax, delivery cost, total price, and point of contact. For vehicles requiring upfit/modifications, all applicable cost shall be included in quotation or as a separate quotation.
- 1.4. Within fourteen (14) calendar days after receipt of a purchase order, Contractor shall provide the eligible agency copies of the manufacturer's factory order numbers, to confirm vehicles have been ordered. If confirmation of manufacturer's factory order numbers is not received within this timeframe the eligible agency has the option to cancel the order and purchase from another source. The eligible agency may charge the extra cost of procuring the vehicles to the original vendor. This shall be considered a mandatory requirement. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

#### 2. CHASSIS MODELS

The Contractor is encouraged to provide a full line of new Medium and Heavy Duty Cab & Chassis. Contractors shall submit a vehicle specification sheet for each cab & chassis offered, please see Attachment 4. Eligible Agencies throughout the State will have varying needs.



## Request for Proposal

Solicitation No.

**BPM000228**

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Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractors shall provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not limited to, models and manufacturer options to meet the needs of an eligible agency.

### 3. CHASSIS UPFIT/MODIFICATION

The Eligible Agency may request the awarded Contractor(s) to upfit/modify any cab and chassis for specific organizational needs. For example, a chassis may require a specialized body (i.e.: dump body, landscape body, etc.). Other cab and chassis may require interior and/or exterior modifications per the Eligible Agency's request. The Eligible Agency shall supply all upfit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the upfit/modification on a quotation to the Eligible Agency for review and acceptance before any work commences.

### 4. WARRANTY

- 4.1. At a minimum, all equipment supplies under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum of the manufacturer's warranty from the date of acceptance. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the eligible agency. The written warranty shall be included with the delivered vehicles to the eligible agency.
- 4.2. Contractors are encouraged to provide the State additional warranty packages that exceed the minimum requirements. Additional package pricing may be listed on Attachment 4.

### 5. CAB AND CHASSIS EQUIPMENT REQUIREMENTS

- 5.1. **Decals** – Decals or markings of any type pertaining to advertisement other than those installed by the manufacturer such as name and model shall not be attached to any vehicle.
- 5.2. **Fluid Requirements** – Contractor shall be responsible for notifying the eligible agency of special fluid requirements that are necessary to maintain standard and extended warranties and service agreements i.e. transmission fluid, anti-freeze, oils and lubricants that must be Original Equipment Manufacturer (OEM) only.
- 5.3. **Service Requirements** – All vehicles shall be completely assembled, serviced, adjusted and all equipment including standard and optional equipment shall be installed and the units made ready for continuous operation. Servicing requirements shall include, but not limited to, the following:
  - Complete lubrication
  - Checking of all fluid levels to insure that they are filled to the manufacturer's recommended capacity
  - Full tank(s) of fuel and DEF (diesel exhaust fluid) if required, less delivery fuel and DEF
  - Engine adjustment to proper operation condition
  - Tire inflation to correct pressure
  - Checking of all mechanical and electrical operations
  - Checking for any appearance defects
  - Cleaning, removal of all unnecessary tags and stickers, washing if necessary
- 5.4. **Special Paint Requirement** – Eligible agencies may require special paint for some vehicles, i.e., special highway yellow and special eligible agency fleet colors. An increase of no more than thirty (30) days over the required delivery time shall be allowed for this requirement.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

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Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractors shall indicate on Attachment 4 if there are any quantity requirements or an additional cost for specialty fleet colors. If no information is entered on Attachment 4, it will be understood that there is no quantity requirement or additional cost.

- 5.5. **Special Title Requirement** – There may be a requirement for the title on some vehicles purchased to be titled to other than the ordering eligible agency. The State has programs that require equipment purchased from special funds be returned to the State’s communities. These purchases will be made for authorized political subdivisions.
- 5.6. **Tires** – Any spare tire supplied, optional or standard, shall match the OEM tires and wheels contained on the vehicle. Spare tires shall be full size tire and wheel identical to factory OEM.
- 5.7. **Vehicle Equipment Requirements** – All base vehicles offered shall, at a minimum, include the following;
- All standard factory equipment
  - Automatic transmission
  - Cruise Control
  - Four (4) keys and two (2) keyless entry remotes (if applicable), per vehicle
  - Air conditioning (for non-buses)
  - Basic radio with Bluetooth capability for cell phone connection
  - Cloth seats
  - Rear view mirrors on driver and passenger doors
  - Standard factory tint glass, if available

## 6. TRAINING MATERIALS AND DIAGNOSTIC TOOLS

- 6.1. Training shall be provided by the Contractor for equipment supplied upon request from the eligible agency. Training shall be available for maintenance of engine and other mechanical and electrical functions. Training shall be categorized by Operator Training and Service (or Repair). Training and shall be provided in Attachment 4.
- 6.2. Shop Manuals – Shop manuals shall be provided by electronic, web based and/or hard copy to a requesting eligible agency.
- 6.3. Diagnostic Tools/Subscriptions – The Contractor shall provide a diagnostic scan tool(s), laptop program, and/or yearly subscription for any vehicles offered under this contract for which such device is available, upon request of an Eligible Agency. Cost of initial and any additional diagnostic equipment, yearly subscriptions or programs shall be provided in Attachment 4.

## 7. MANUFACTURER’S CERTIFICATION

- 7.1. The Contractor shall submit proof of Manufacturer certification in response to the qualifications questions located in Section 3 Attachment 2-A, stating that the Contractor is the Manufacturer or a Certified Representative of the Manufacturer, for each Manufacturer they represent under a resultant contract. The Manufacturer’s Certification must be executed by the Manufacturer(s) only, and may not be completed by the Contractor. Dealer agreements shall not be accepted in lieu of a Manufacturer’s Certification.

## 8. CURRENT MODELS

- 8.1. All vehicles shall be the manufacturer’s current models in production at the time of delivery. All vehicles shall be new, unused, equivalent in style and quality to those offered to the general public and meet or exceed all specifications and requirements set forth in this



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

solicitation.

### 9. DEALERSHIP, PARTICIPATING SERVICE AND DELIVERY LOCATIONS

- 9.1. The Contractor may submit, at any time during the contract period, new dealership, participating service and delivery locations that will be used as subcontractors for both product deliveries and drive in service centers under the contract. Requests are to be submitted electronically and shall contain:
- 9.2. The dealer or outlet name
- 9.3. Location (physical address)
- 9.4. Telephone/fax numbers and email information
- 9.5. Key personnel at that location
- 9.6. Approval shall be in the form of a bilateral change order in the State's e-Procurement system, and shall become effective on the date the change order is the 'Sent' status.

### 10. DELIVERY (MINIMUM)

- 10.1. Delivery location shall be identified on the issuing eligible agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the eligible agency of such delays along with revised delivery estimate from factory immediately after it becomes known. If manufacturer has a website available to check order status, this information will be shown in the pricing document.
- 10.2. All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M., unless a time has been agreed upon between the Contractor and eligible agency. The Contractor shall be required to give the ordering eligible agency a minimum of 24 hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.
- 10.3. All vehicles shall be delivered with four (4) keys and if applicable two (2) keyless entry remotes and a full tank(s) of fuel, less delivery.
- 10.4. The following documents shall be provided upon delivery of the vehicles(s):
- 10.5. M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
- 10.6. Warranty Document
- 10.7. Manufacturers unaltered invoice
- 10.8. The retail price label must be affixed to the window of all vehicles delivered
- 10.9. Delayed warranty/in-service start request form (if requested by ordering entity)

### 11. EQUIPMENT INSPECTION

- 11.1. Contractor shall retain title and control of all goods until they are delivered, inspected and accepted. All risk of transportation and related charges shall be the responsibility of the Contractor. The Contractor shall file all claims for visible and concealed damage. The State shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.
- 11.2. Each vehicle delivered shall be subject to a complete inspection by the eligible agency prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Thirty (30) calendar days shall be allowed



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

for this process. If delivered equipment is returned to the Contractor prior to acceptance for any reason, additional periods of thirty (30) calendar days shall be allowed for inspection when subsequent deliveries occur. All corrections shall be made within seven (7) calendar days of reported deficiency. All corrections shall be made without any inconvenience to the State.

### 12. IN-SERVICE NOTIFICATION

12.1. Vehicles not placed in service immediately upon receipt shall be warranted from the date the vehicle is placed in service. The eligible agency shall notify the Contractor in writing of the actual in-service date, on forms to be provided for such purpose upon request by the eligible agency.

### 13. OPTIONAL EQUIPMENT

13.1. All optional equipment and accessories shall be original equipment from the manufacturer and installed at the factory unless otherwise specified.

### 14. RECALL NOTICES

14.1. In the event of any recall notice, technical service bulletin, or other important notification affecting a vehicle purchased from any resultant contract, a notice shall be sent to the eligible agency listed on each applicable purchase order. Each notice shall reference the affected purchase order and vehicle identification number. The contractor shall provide and retrofit at no cost to the State all vehicles purchased under this contract with vehicle safety enhancements as a result of the recall.

### 15. VEHICLE DOCUMENTATION

15.1. The Contractor shall include in each vehicle an owner, operator and maintenance manual. This shall include all standard manufacturer literature normally furnished with the purchase of a new vehicle at the time of delivery.

### 16. FEDERAL TERMS

THE FOLLOWING SPECIAL TERMS AND CONDITIONS SHALL APPLY TO PURCHASES OF ANY VEHICLES PROCURED WITH FEDERAL FUNDS

16.1. BUS TESTING The Contractor (Manufacturer) agrees to comply with 49 U.S.C. §5323 (C) and FTA 's implementing regulation at 49CFR Part 665 and shall perform the following:

- Manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which shall be prior to the recipient's final acceptance of the first vehicle.
- A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such vehicle and the details of that vehicle's configuration and major components.

### 16.2. BUY AMERICA

- The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
- An Offeror may be required to submit an appropriate Buy America certification if federal funds are utilized to procure products and/or services under the contract.

### 16.3. CARGO PREFERENCE REQUIREMENTS

The Contractor agrees:

- To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Preceding Paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- To include these requirements in all subcontracts issued Pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 16.4. CIVIL RIGHTS

- The Contractor is required to comply with Executive Order 99-4 "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.
- The Contractor is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23 CFR
- 710.405 (b) are made applicable by reference and are hereinafter considered part of this Contract.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The Contractor is required to comply with the provisions of Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

### 16.5. CLEAN AIR

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §~ 7401 et.seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.6. CLEAN WATER

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et ~g.
- To report each violation to the Purchaser and understands and agrees that the Purchaser shall, In turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.
- To include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- Withholding for unpaid wages and liquidated damages: The grantee or recipient shall upon its own action or upon written request of an authorized representative of the Department



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

- Subcontractors: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- Payrolls and basic records: Relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or cost anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any cost reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### 16.8. ENERGY CONSERVATION

- The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### 16.9. FEDERAL CHANGES

- Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### 16.10. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

contractual provisions required by DOT, as set forth in FTA Circular 4220.1 C, dated May 1, 1995, are hereby incorporated by reference. Anything, to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests, which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### 16.11. LOBBYING RESTRICTIONS

- Contractors who apply or bid for an award of \$100,000.00 or more shall file the certification required (ATTACHMENT ASSIGN NUMBER) by 49CFR part 20, "New Restrictions of Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### 16.12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 16.13. PRE-AWARD AND POST- DELIVERY AUDIT REQUIREMENTS

- The contractor agrees to comply with 49 U.S.C. § 5323 (1) and FTA's implementing regulation at 49
- C.F.R. Part 663 and to submit the following certifications:
- Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the offeror certifies compliance with Buy America, it shall submit documentation, which lists:
- Component and sub-component parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs.
- The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- Solicitation Specification Requirements: The contractor shall submit evidence that it will be capable of meeting the bid specifications.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit:
- Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or;
- Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

### 16.14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS

- The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §~ 3801 et seq. And U.S. DOT regulations, "Program Fraud Civil Remedies, "49
- C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.
- The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. ~ 5307, the Government reserves the right to impose the penalties of 18
- U.S.C. § 1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 16.15. PRIVACY ACT

- The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### 16.16. STATE AND LOCAL LAW DISCLAIMER



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The use of many of the suggested clauses are not governed by Federal Law, but are significantly affected by State Law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

End of Section 2-A



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-B: Pricing Document

### 1.0 Compensation

- 1.1 Contractor will be compensated for the satisfactorily carrying out its obligations under the Contract by the method indicated by the “●” mark below:

<input checked="" type="radio"/>	<b>DISCOUNT OFF LIST OR CATALOG</b>
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- 1.2 DISCOUNT OFF LIST OR CATALOG. A discount off list or catalog means a percentage discount to be applied to a base price for from one or more contractually-established price lists against published catalogs. The applicable discounts are scheduled the pricing document.
- 1.2.1 Unless specified otherwise in the Pricing Document, base price is the price that is most widely offered to general customers at the time of the Order.
- 1.2.2 The catalogs used to establish base price are specified otherwise in the Pricing Document. If nothing is so specified, then the commercially available catalogs published by Contractor or Subcontractor to a dealer or reseller network for the covered materials or services are to be used.
- 1.2.3 Each catalog must:
- (a) bear the applicable State contract number;
  - (b) list all materials or services Contractor is authorized to sell under the Contract;
  - (c) not contain any items that are excluded from the Contract;
  - (d) provide ordering information and contact information for customer support.
- 1.2.4 Each catalog and its accompanying price list must include for each item:
- (a) a part or model number, if applicable;
  - (b) a complete and accurate description of the item;
  - (c) the manufacturer’s suggested retail price (MSRP) or Contractor’s list price;
  - (d) a stock keeping unit (SKU) number (SKU) , if applicable;
  - (e) the item’s unit of measure (UOM), if applicable; and
  - (f) the quantity in the unit of measure (QUOM), if applicable.
- 1.2.5 Contractor shall provide and maintain concurrent and identical electronic and hardcopy versions of all contracted price lists and catalogs.
- (a) The electronic versions are to be provided as they are available.
    - i. State, at its discretion, may host Contractor's electronic price lists and catalogs directly, or may link through the e-procurement system as a punch-out.
    - ii. Regardless of the number and types of links to Contractor's electronic price lists and catalogs, Contractor shall ensure that all Eligible Agencies and Co-Op Buyers are only able to access one unified set of data.
- 1.3 Contractor shall supply sufficient, current hardcopy catalogs and price lists price lists to applicable Eligible Agencies at Contract commencement, and provide prompt hardcopy notice of any changes to list/catalog holders as they occur. Contractor shall not change State or any Eligible Agency (or any Co-Op Buyer, if applicable) for lists/catalogs or updates.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 2.0 Pricing

- 2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachment 4 Pricing, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.
- 2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.
- 2.1.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.
- 2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.
- 2.2 For the purpose of this contract, "MSRP" shall be defined as an acronym for the Manufacturer's Suggested Retail Price. It represents the Manufacturer's recommended retail selling Price, list Price, published Price, or other usual and customary Price that would be paid by the purchaser for specific commodities and contractual services. It must be available and verifiable by the State.
- 2.3 *Medium and Heavy Duty Cab and Chassis and Available Options.* All pricing shall be a percentage off MSRP. Pricing shall include the following: all profit, administrative charges, Dealer preparation charges, environmental fees, title application and registration fees, plate transfer fees, handling charges, shipping charges, and any other charges or fees necessary to deliver the base vehicle according to the specification, exclusive of taxes. Shipping charges shall be defined as the delivery cost for each vehicle within the county in which the Contractor is located.
- 2.4 *Delivery.* Delivery costs for each county outside the county in which the dealer is located shall be indicated on Attachment 4 Pricing. There shall be no delivery charges for vehicles delivered within the county in which the Contractor is located.
- 2.5 *Supplemental Pricing – All Inclusive.* Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Statement of Work and all aspects of the Contractor's offer as accepted by the State. Details of service not explicitly stated in the Statement of Work or in the Contractor's Offer, but necessarily a part of, are deemed to be understood by the Contractor and included herein. All administrative, reporting or other requirements, all overhead costs and profit and any other costs towards the accomplishment of the requirements in this Contract are included in the pricing provided.
- 2.6 Pricing for any additional products or services shall be in accordance with the information provided in Attachment 4- Pricing,
- 2.7 ***Price Reductions and Sales Promotions.*** Contractor may reduce its contracted price at any time, and will provide documentation listing the original State contract price and the new reduced or promotional price. Promotions or reductions to sell existing inventory/stock and to include special manufacturer assistance are allowable.
- 2.8 **NO ADJUSTMENT.** All prices and rates in the e-Procurement system, or Orders if and to the extent they differ from those in the exhibit, will be valid for the entire term of the Contract, and will not be subject to revision for



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

inflation or any changes to wages, taxes or other costs that Contractor may be obliged to incur that may be higher than those which it contemplated when proposing the relevant price or rate.

## 3.0 Funding

No particular funding considerations apart from paragraph 4.3 of the Uniform Terms and Conditions [Availability of Funds] have been identified as of the Solicitation date.

## 4.0 Invoicing

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Buying Entity’s purchasing tool/process.

4.2 MINIMUM INVOICE REQUIREMENTS. Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the The State’s e-Procurement System PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes ( <i>as a separate invoice line item</i> )	●
Upcharge shipping/freight, etc. ( <i>as a separate invoice line item</i> )	Materials only
Total invoice amount due	●

4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:

1. Materials or Services that have not been authorized on an acknowledged Order;
2. Expediting, overtime, premiums, or upcharges absent State’s express prior approval; or



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

3. Materials or Services that are the subject of a Contract Amendment or Change Order that has not been fully signed.
- 4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
  - 4.6.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
  - 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
    - (a) are sent to an incorrect address;
    - (b) do not reference the correct State contract number; or
    - (c) are payable to any Person other than the Contractor.
  - 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

## 5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2 JOINT CHECKS OR DIRECT PAY. applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 5.5 PURCHASING CARD. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 AUTOMATED CLEARING HOUSE. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

<https://gao.az.gov/afis/vendor-information>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

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100 N 15th Ave., Suite 402

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## SECTION 2-C: Special Terms and Conditions

*The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.*

### 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Acceptance** "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
- 1.2 Accepted Offer** If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.  
If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.  
If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
- 1.3 Arizona Procurement Code; A.R.S.; A.A.C.** "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
- 1.4 Arizona TPT** "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>.
- 1.5 Attachment** "Attachment" means any item that:
  1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  2. was attached to an Offer when submitted; and
  3. was included in the Accepted Offer.
- 1.6 Pricing Document** "Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7 Contract Amendment** "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in The State's e-Procurement System is to be construed as being synonymous with "Contract Amendment".
- 1.8 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.10 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

**1.11 Co-Op Buyer**

“Co-Op Buyer” means a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.

**1.12 Eligible Agency**

If the Special Terms and Conditions indicates that the Contract is a “single-agency” contract, then “Eligible Agency” means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a “statewide” contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.

**1.13 Indemnified Basic Claims**

“Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.

**1.14 Instructions to Offerors**

“Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.

**1.15 Order**

“Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:

1. “Release” or “Release Purchase Order” in The State’s e-Procurement System;
2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or
3. “purchase order” for buying by Co-Op Buyers, if co-op buying applies.

**1.16 The State’s e-Procurement System**

“The State’s e-Procurement System” means State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System*.

NOTE (1): Technical Bulletin No. 020 is available online at:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

**1.17 State**

With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co-Op Buyer who has issued the Order.

**1.18 State Indemnitees**

“State Indemnitees” means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

**1.19 Subcontractor**

“Subcontractor” has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 1.20 Work

“Work” means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor’s obligations and duties under the Contract in conformance with the Contract and applicable laws.

## 2.0 Contract Interpretation

### 2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to “Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractors’ respective agents, representatives, and employees” in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*” in every instance;
5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

### 2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

- (a) Contract Amendments;
- (b) the final Solicitation Documents, in the order:
  - (1) Special Terms and Conditions;
  - (2) Exhibits to the Special Terms and Conditions;



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- (3) Uniform Terms and Conditions;
- (4) Scope of Work;
- (5) Exhibits to the Scope of Work;
- (6) Pricing Document;
- (7) Exhibits to the Pricing Document;
- (8) Specifications; and
- (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

**2.3 Independent Contractor**

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

**2.4 Complete Integration**

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3.0 Contract Administration and Operation

**3.1 Term of Contract**

The term of the Contract will commence on the date indicated on the Acceptance and continue for **twelve (12) months unless canceled, terminated, or permissibly extended.**

**3.2 Contract Extensions**

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.

**3.3 Notices and Correspondence**

3.3.1 TO CONTRACTOR. State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding The State's e-Procurement System Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall :

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:

Arizona Department of Administration  
State Procurement Office  
100 N 15th Ave., Suite 402



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Phoenix, AZ 85007

3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

### 3.4 Signing of Contract Amendments

Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;
2. revision to Procurement Officer appointment or contact information; or
3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – are required to give it effect.

### 3.5 Click-Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

### 3.6 Books and Records

3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

### 3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

### 3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor’s administrative communications and records relating to the Contract, are considered work product and Contractor’s property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

(a) “Government Purpose Rights” are:

- i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- ii. the right to release or disclose that work product to third parties for any State government purpose; and
- iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

(b) “Government Purpose Rights” do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- (a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- (b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
- (c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor’s or its affiliates’ ownership of such pre-existing materials.

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

### 3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor’s candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer’s advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer’s written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

**3.11 Offshore Performance of Certain Work Prohibited**

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

**3.12 Orders**

3.12.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.12.5 NO MINIMUMS OR COMMITMENTS. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

**3.13 Statewide Contract Provisions**

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

construed as a “delivery order” sub-type of ID/IQ contract to the extent the Work is Materials, and a “task order” sub-type to the extent the Work is Services.

1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:  
<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>
2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).
3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) “approving” the Order electronically in The State’s e-Procurement System, which will indicate Contractor’s unqualified acceptance of the Order as-issued; or (b) “rejecting” the Order electronically in The State’s e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in The State’s e-Procurement System, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in The State’s e-Procurement System within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State’s e-Procurement System and if it does so the rejection will be void.
6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer’s instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State’s part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor’s obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor’s refusal to do so would be a material breach of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under (3) and (4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

### 3.15 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

### 3.16 Work on State Premises

3.16.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*].



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

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Arizona Department of Administration

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100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 4.0 Costs and Payments

### 4.1 Payments

4.1.1 **PAYMENT DEADLINE.** State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2 **PAYMENTS ONLY TO CONTRACTOR.** Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

### 4.2 Applicable Taxes

4.2.1 **CONTRACTOR TO PAY ALL TAXES.** State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.2.2 **TAX INDEMNITY.** Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

## 5.0 Contract Changes

### 5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

### 5.2 Assignment and Delegation

5.2.1 **IN WHOLE.** Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

5.2.2 **IN PART.** Subject to paragraph 3.10 [*Subcontracts*] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 6.0 Risk and Liability

### 6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

### 6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

**MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

#### 1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$ 50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

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Phoenix, AZ 85007

Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 3. Worker's Compensation and Employers' Liability

Workers' Compensation.....	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

**ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

**NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

**ACCEPTABILITY OF INSURERS:** Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Procurement Office. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

**SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

**APPROVAL and MODIFICATIONS:** The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

### 6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") 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) (hereinafter referred to as "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 Contractor 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 Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

## 6.5 Force Majeure

- 6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
- 6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.
- 6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.
- 6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party’s default unrelated to the occurrence, in which case and to that extent the other party’s normal remedies and the affected party’s obligations would apply undiminished.

## 6.6 Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

## 7.0 Warranties

### 7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State’s acceptance.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- 7.2 **Contractor Personnel** Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State’s authorized representatives upon request.
- 7.3 **Intellectual Property** Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.4 **Licenses and Permits** Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.
- 7.5 **Operational Continuity** Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor’s duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and Delegation*] that expressly recognizes the event.
- 7.6 **Performance in Public Health Emergency** Contractor warrants that it will:
  1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
  2. provide a copy of its current plan to State within 3 (three) business days after State’s written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.
- 7.7 **Lobbying**
  - 7.7.1 PROHIBITION.
    - (a) Contractor warrants that:
      - i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor’s use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
      - ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.
    - (b) Contractor shall implement and maintain adequate controls to assure compliance with (a) above.
    - (c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.
  - 7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State’s benefit or on State’s behalf.
- 7.8 **Survival of Warranties** All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

## 9.0 Contract Termination

No modifications to uniform terms and conditions section

## 10.0 Contract Claims

- 10.1 Claim Resolution** Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.
- 10.2 Mandatory Arbitration** In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

## 11.0 General Provisions for Materials

- 11.1 Applicability** Article 11 applies to the extent the Work is or includes Materials.
- 11.2 Off-Contract Materials** Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.
- 11.3 Compensation for Late Deliveries** Contractor shall have clear, published policies in place regarding late delivery, order cancellation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them
- 11.4 Indicate Shipping Costs on Order** Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)
- 11.5 Current Products** Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract
- 11.6 Maintain Comprehensive Selection** Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.
- 11.7 Additional Products** State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in



# Request for Proposal

Solicitation No.  
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Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

**11.8 Discontinued Products**

response to State’s request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer’s notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide:

(a) manufacturer’s announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7)

Forced substitutions will not be permitted; Contractor shall obtain State’s prior written consent before making any discretionary substitution for any product covered by the Contract.

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, “recalls” hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product.

**11.9 Forced Substitutes**

Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State’s part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

**11.10 Recalls**

11.11.1 PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller’s dock) Incoterms®2010, with “seller’s dock” meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to “F.o.b. Origin, Contractor’s Facility” under [FAR 52.247-30](#)

**11.11 Delivery**

11.11.2 LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor’s liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to “F.o.b. Destination, Within Consignee’s Premises” under [FAR 52.247-35](#).

11.11.3 PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller’s dock) with no mark-up, which Contractor shall itemize and invoice separately

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

**11.12 Delivery Time**

1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;

**11.13 Delivery Locations**

2. if the Contract is for a single State agency in all its locations, then Contractor shall



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

deliver to any of that agency's location in Arizona;

3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
4. if the Contract is for unrestricted statewide use, then:
  - i. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
  - b) If a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
  - c) if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

### 11.14 Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

### 11.15 Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials

### 11.16 Correcting Defects

1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.
3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

### 11.17 Returns

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day
2. reimburse Contractor for:
  - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;
  - (b) the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and,

### 11.18 Order Cancellation

3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup

### 11.19 Product Safety

### 11.20 Hazardous Materials



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 12.0 General Provisions for Services

- 12.1 Applicability** Article 12 applies to the extent the Work is or includes Services.
- 12.2 Comprehensive Services Offering** Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.
- 12.3 Additional Services** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor’s request or proposal in response to State’s request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.
- 12.4 Off-Contract Services** Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, “off-contract service” refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.
- 12.5 Removal of Personnel** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State’s facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
- 12.6 Transitions** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State’s operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State’s representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.
- 12.7 Accuracy of Work** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
- 12.8 Requirements at Services Location** Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

**12.9 Services Acceptance**

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State’s rejection.

**12.10 Corrective Action Required**

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor’s analysis and plans, and Contractor shall make any corrections State instructs and adopt State’s recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

## 13.0 Data and Information Handling

**13.1 Applicability**

Article 13 applies to the extent the Work includes handling of any (1) State’s proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State’s behest.

**13.2 Data Protection and Confidentiality of Information**

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State’s proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State’s confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

### 13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>

### 13.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-D:

# Uniform Terms and Conditions

Version: 9 (7/1/2013)

## 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Attachment** "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2 Contract** "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 Contract Amendment** "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 Contractor** "Contractor" means any Person who has a Contract with the State.
- 1.5 Days** "Days" means calendar days unless otherwise specified.
- 1.6 Exhibit** "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 Materials** "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 Procurement Officer** "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
- 1.11 State** "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12 State Fiscal Year** "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.13 Subcontract** "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

## 2.0 Contract Interpretation

- 2.1 Arizona Law** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 3.0 Contract Administration and Operation

- 3.1 Records** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

**3.6 Advertising, Publishing and Promotion of Contract**

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

**3.7 Property of the State**

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

**3.8 Ownership of Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

**3.9 Federal Immigration and Nationality Act**

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

**3.10 E-Verify Requirements**

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

**3.11 Offshore Performance of Work Prohibited.**

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

## 4.0 Costs and Payments

**4.1 Payments**

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

**4.2 Delivery**

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

**4.3 Applicable Taxes**

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

**4.4 Availability of Funds for the Next State fiscal year**

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

**4.5 Availability of Funds for the current State fiscal year**

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements

## 5.0 Contract Changes

**5.1 Amendments**

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

**5.2 Subcontracts**

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor’s proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

**5.3 Assignment and Delegation**

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6.0 Risk and Liability

**6.1 Risk of Loss**

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

**6.2 Indemnification**

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively



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Solicitation No.  
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referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

**6.3 Indemnification – Patent and Copyright**

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

**6.4 Force Majeure**

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall **not** include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition;

or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

**6.5 Third Party Antitrust Violations**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

**7.0 Warranties**

**7.1 Liens**

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

**7.2 Quality**

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;



# Request for Proposal

Solicitation No.

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Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

**7.3 Fitness**

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

**7.4 Inspection/Testing**

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

**7.5 Compliance with Laws**

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

**7.6 Survival of Rights and Obligations after Contract Expiration or Termination**

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8.0 State's Contractual Remedies

**8.1 Right to Assurance**

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

**8.2 Stop Work Order**

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

**8.3 Non-exclusive Remedies**

The rights and the remedies of the State under this Contract are not exclusive.

**8.4 Nonconforming Tender**

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.



# Request for Proposal

Solicitation No.

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**State Procurement Office**

100 N 15th Ave., Suite 402

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## 8.5 Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9.0 Contract Termination

### 9.1 Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

### 9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

### 9.3 Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

### 9.4 Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

### 9.5 Termination for Default

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

### 9.6 Continuation of

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up



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**Performance Through Termination** to the date of termination, as directed in the termination notice.

## 10.0 Contract Claims

**10.1 Contract Claims** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

## 11.0 Arbitration

**11.1 Arbitration** The parties to this Contract agree to resolve all disputes arising out of or relating to this contract 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 (Title 41).

## 12.0 Comments Welcome

**12.1 Comments Welcome** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Scott Overton, Streets Section Director  
**Co-Submitter:** Emily Markel  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Approval of Purchase through a Cooperative Purchase Contract:** To purchase one (1) 2020 International MV607 SBA Asphalt Pothole Patch Truck.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase for one (1) 2020 International MV607 Asphalt Pothole Patch Truck from RWC Group in the amount of \$188,016.86 through cooperative purchase contract #CTR041813.
2. Authorize the City Manager to the necessary documents

**Executive Summary:**

Public Works - Streets Section is responsible for the ongoing maintenance of our local transportation network, including, but not limited to, pothole and asphalt repair. A pothole is formed as a result of water collection in asphalt defects or areas of poor drainage. As water collects it is subject to freeze-thaw cycles and mechanical pressures of vehicle traffic. A typical winter season will produce multiple freeze thaw cycles and can result in thousands of potholes ranging in size from 3" in diameter to large defects the width of a travel lane. We also have reported potholes in rain events and throughout monsoon season. The truck and associated tooling allow us to transport patch material while keeping working temperature. When the operator travels a road section or responds to pothole reports patch material is augured to a distribution chute on the truck filling the pothole. The operator will then grade and compact the material and move to the next location.

**Financial Impact:**

This equipment purchase was approved in the FY20 budget and is funded with Highway User Revenue Funds (HURF) Acct# 040-060-161-0614-6-4401 for a budgeted amount of \$280,000.00.

**Policy Impact:**

Public Works - Streets Section is responsible for daily activities and the timely response to all concerns as they relate to our transportation infrastructure. Response to events is critical to maintain the safest travel possible on city streets. Our patch trucks are essential in the timely repair or road damage.

This unit is being considered as a replacement of one of two existing patch trucks which has met milestone requirements for replacement. This action has been recommended to reviewed and approved by the Fleet Management Committee and was included in the FY20 budget.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Transportation and Public Infrastructure - Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

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

No

**Options and Alternatives:**

1. Approve the equipment purchase as presented.
2. Do not approve the purchase.
3. Continue to utilize the existing unit that has reached end of life milestones and been approved by our fleet evaluation process for replacement.

**Key Considerations:**

Throughout the winter season Streets responds to thousands of pothole reports. Freeze thaw cycles, rains and traffic all contribute to the degradation of our transportation infrastructure. These typical winter effects are a significant source of citizen concerns. We respond with a winter patch product but follow up is required to prolong road life as best as possible. The citizen involvement is vocal and consistent in the desire to repair these areas as quickly as possible.

Quality repairs and timely patching reduces the damage to road infrastructure and possible damage to personal property and the traveling public.

**Expanded Financial Considerations:**

This equipment purchase was approved in the FY20 budget and is funded with Highway User Revenue Funds (HURF) Acct# 040-060-161-0614-6-4401 for a budgeted amount of \$280,000.00. The unit to be replaced will be returned to Fleet Services for final status, it is likely that this unit will be sold at auction.

**Community Benefits and Considerations:**

The recent efforts of the Road Repair Street Safety program have advanced major overlay projects and it will be imperative that we maintain the investment as best as possible. The policy implication is that this purchase and equipment supports the mission to provide a high level of asphalt maintenance protecting our community's infrastructure investment

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**Attachments:**    [Equipment Images](#)  
                          [Co-Op Contract COF](#)

Exhibit A: Specifications and Cost

Co-op Bid Pricing

Equipment Price Breakdown

Exhibit B: Offer & Acceptance

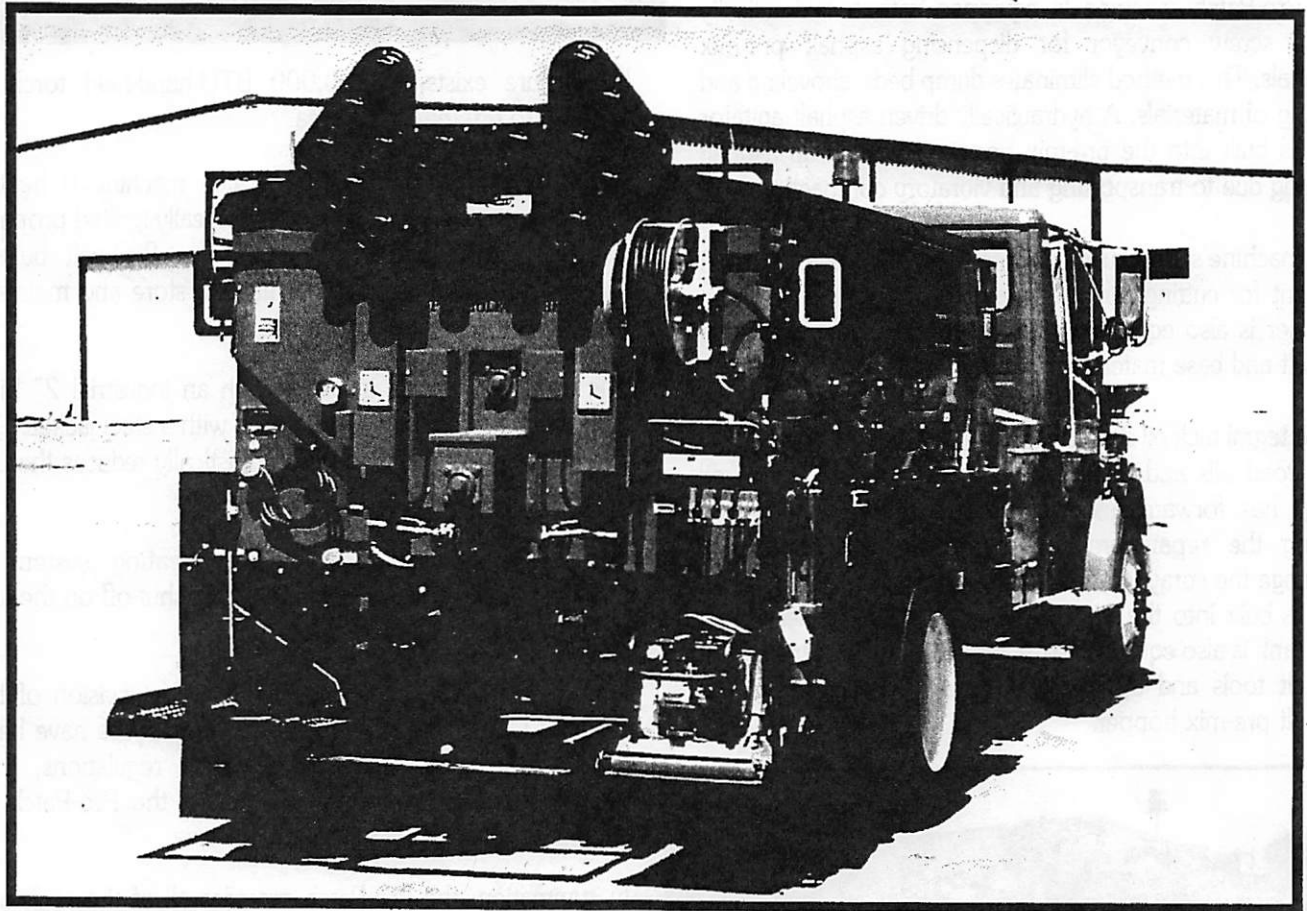
Exhibit B: RFP with Co-op Language



# PRO-PATCH

## POTHOLE PATCHER

*Year-round economical solution to asphalt street problems.  
Units available in 4.25 cubic yards, 5 cubic yards or 6 cubic yards.  
LP gas fired, Diesel fired and ALL Electric Truck mounted units  
Trailer models are only available with LP gas fired systems.*



**H.D. INDUSTRIES, INC.**  
*Pro-Patch Pot Hole Patcher*

P.O. BOX 8250, JACKSONVILLE, TEXAS 75766  
(903) 586-6126 • FAX (903) 586-0904 • 1-800-256-6126  
WEB SITE [WWW.PRO-PATCH.COM](http://WWW.PRO-PATCH.COM)

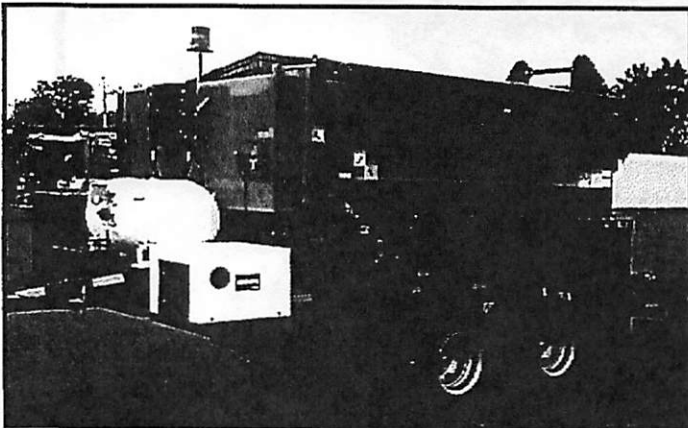
# PRO-PATCH ASPHALT POTHOLE PATCHER MODEL TCM 425-80, TCM 425-100 & TCM 425-160-DHE

The Pro-Patch Model TCM 425-80 is a truck mounted, unitized asphalt patching machine capable of making effective and permanent asphalt repairs under all weather conditions. Its unique design allows the machine to transport hot or cold asphalt pre-mix material and road oils at controlled heated temperatures. The unit's integral hydraulic system, driven by a power take-off, provides power to operate the machine's jack hammer, screw conveyor, oil pumps, asphalt agitator, and a variety of other hydraulic tools such as concrete and asphalt saws, tampers, water pumps, tree trimmers, etc.

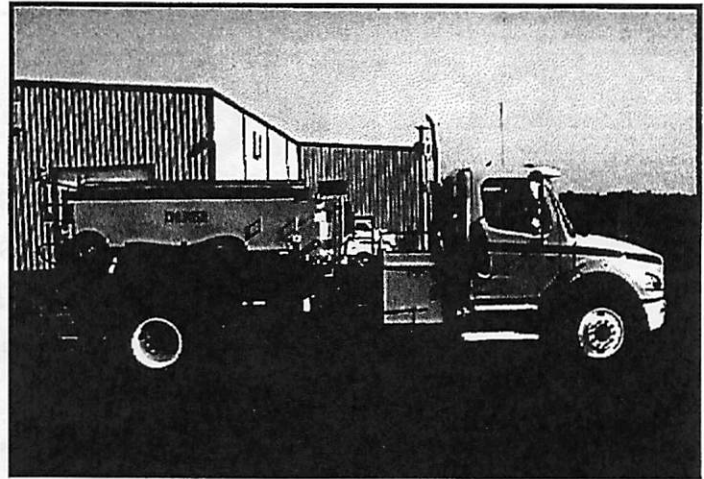
The Pro-Patch machine is equipped with a hydraulically driven screw conveyor for dispensing asphalt pre-mix materials. This method eliminates dump beds, shoveling and wasting of materials. A hydraulically driven asphalt agitator shaft is built into the pre-mix hopper to break up asphalt bridging due to transporting and vibratory compaction.

The machine's hydraulic pavement breaker is more than efficient for cutting out potholes and asphalt failures. The hammer is also equipped with a tamper shoe for packing asphalt and base material.

The integral tack oil system is capable of working asphalt cut back road oils and emulsions. The hydraulically driven oil pump has forward and reverse capabilities. After spray sealing the repair area, simply reverse the pump to scavenge the spray wand and lines clean. A releasing agent tank is built into the unit to flush the system if necessary. This tank is also equipped with a pump and sprayer to clean asphalt tools and apply diesel or releasing agent in the asphalt pre-mix hopper.



**TRAILER MODEL TM 425-100 DH**



If moisture exists, a 200,000 BTU hand-held torch is supplied to dry the repair area.

During working hours, the Pro-Patch machine is heated by two each 150,000 BTU electronically-ignited propane burners. During non-working hours, a 230-volt built-in immersion heater provides the heat to store and maintain heated pre-mix asphalt materials.

The unit body is fully insulated with an industrial 2" high temperature insulation, and covered with a steel jacket. The insulating factor of this machine drastically reduces the use of heating fuel.

The LP gas burner and electric heating system is thermostatically controlled with a safety shut-off on the loss of flame or excessive temperatures.

H.D. Industries is licensed by the LP Gas division of the Railroad Commission of Texas. Our employees have been trained and tested according to State regulations, thus making the LP gas system offered on the Pro-Patch as safely designed as any household furnace.

In summation: the Pro-Patch provides all of the tools and materials necessary for a one or two man crew to make effective asphalt repairs, eliminating the use of air compressors, oil distributors, and dump trucks, which reduces the manpower equipment maintenance, and minimizes the amount of equipment used in high traffic areas.

The Pro-Patch, when properly utilized, will reduce the cost and increase the efficiency in street maintenance programs with 100% payback.

# **ASPHALT POTHOLE PATCHER SPECIFICATIONS MODELS TCM 425-80-DHE, TCM 425-100-DHE AND TCM 425-160-DHE**

**1. GENERAL**

The Pro-Patch is a unitized asphalt repair machine capable of making permanent asphalt repairs under most weather conditions.

**2. BODY DIMENSIONS**

The body is 112" long, 50" high and 78" wide. It has Diamond Tread safety step side fenders with two ladders, body assist handles. Body has L.E.D. style stop, turn, emergency flashers and side marker lights. The body has a lockable tool storage compartment measuring 83" long, 22" deep and 10" high. MUD FLAPS INCLUDED.

**3. BODY INSULATION**

The asphalt aggregate hopper and road oil tank are fully insulated with 2" high temperature 12R factor insulation encased in a double steel jacket. The top cover on the unit is an Optional double form fitted 2" insulated tarp with tie down brackets, capable of sustaining 500° F., OR Optional Hydraulic Operated Steel Top Doors.

**4. CAPACITY**

The asphalt aggregate hopper holds 4.25 cubic yards level full or 6 tons maximum load.

**5. HEATING SYSTEMS**

The body shall have a dry radiant heat chamber heated by 2 each 150,000 BTU retort tube propane burners with vertical exhaust stacks. Exhaust stacks have an automatic electronic dampner that opens when burners are fired and close when burners shut off to prevent heat loss. The burners are thermostat controlled and regulated at 10 PSI. The ignition system is 12 volt DC with electronic ignitor. Gas burner has a safety shut-off on loss of flame or excessive temperature. Automatic safety shut-off when diesel pump is operating. Burner has two stages, ignites on 10 oz. pressure, operates at 10 PSI, on high burn regulated by the same thermostat as the electric heater. Thermostats will be 0/300° F. solid state.

**6. ELECTRONIC CONTROLS**

All electronic controls will be solid state shock resistant. Thermostat for tack oil tank is 0/250° F. Thermostat for asphalt aggregate hopper is 0/300° F. Thermostat for the asphalt hopper has built in high limit safety shut down switch. Same thermostat controls the 12 volt LP Gas fired system and the 220 volt electric heating system.

**7. EMULSION OIL TANK CAPACITY AND HEATING SYSTEM**

The tank capacity is 80 to 150 gallons, depending on model, and has a double steel jacket with 2" insulation. The tank is equipped with a heat transfer system with an adjustable temperature valve that is capable of heating the emulsion oil to approximately 150° F., using the truck engine coolant system as the heat source. The emulsion pump and all lines are in an insulated heated area. The tank has 220 volt thermostat controlled dry well electric heater and a hot well for storing the spray wand in cold weather. Tank has an 8" fill spout and a 2" gate valve on tank drain. For ease of maintenance or change out of heater, tank does not have to be drained.

**8. ELECTRIC HEATING SYSTEM**

The asphalt aggregate hopper and liquid asphalt oil tank is heated by a 220 volt, 62 kw, NEMA 4 immersion heater, thermostat controlled with 25' of cord with ground fault interrupt system. The heating system is capable of maintaining heated material up to 300° F. during non-working hours.

**9. FUEL OPTIONS**

Optional 35 or 50 gallon frame mounted LP gas bottle with quick fill connector, 10 psi regulator and fuel sight gauge OR Optional 100 lb (25 gallon) removable propane bottle, complete with 10 PSI regulator.

**10. TEMPERATURE GAUGES**

The unit has two 3" dial type, stainless steel temperature gauges that constantly monitor the temperature of the asphalt hopper and road oil tank.

**11. HAND TORCH**

For drying off repair site and cleaning hand tools, the unit has a 200,000 propane BTU hand torch with shut-off valve and 10' of hose with hose rack. Hand torch has mounting bracket for transport.

**12. LIQUID ASPHALT OIL PUMP**

A hydraulically driven, 1 1/2" self priming, variable speed, reversible, rotary gear pump with relief valve. Operating at 20 GPM at 1200 RPM, 100 PSI. The pump will circulate the emulsion oil to prevent separation and to crush any lumps that may form and cause clogging of the spray tip. Air injection systems do not have this capability.

**13. DIESEL / RELEASING AGENT STORAGE TANK**

An 18 gallon capacity tank, equipped with a 12 volt DC pump and a hand sprayer for cleaning tools and unit. There shall be a connector valve for flushing road oil pump and lines and a 1" drain. For easy hopper cleaning access and to spray hopper before loading, units with a work deck shall have an additional front mounted spray wand with 3 ft. of hose.

**14. PAVEMENT BREAKER**

We offer optional; Stanley BR45, 72, 67 and 87 Pavement Breakers, complete with quick couplers, asphalt cutter, tamper and detachable shank with lockable transporting bracket.

**15. LIQUID ASPHALT HAND SPRAYER**

A 5' x 3/8" wand, equipped with fan nozzle and Deadman Control Valve. Sprayer hose is 15' x 1/2" with a reversible pump and diesel flush system for cleaning pump and lines.

**16. HYDRAULIC PUMP**

The pump is gear type, variable speed at 12 GPM and has an operating pressure of 2000 PSI at 900 RPM.

**17. HYDRAULIC OIL RESERVOIR**

30 gallon capacity with sight and temperature gauge, ventilated fill cap, 100 micron sump strainer and a 5 micron return filler.

**18. HYDRAULIC OIL COOLER**

A Thermal Dynamic eight tube Hydraulic Oil Cooler. The fan cooler operates on 12 volt DC and is thermostat controlled.

**19. HYDRAULIC HOSE AND FITTINGS**

All hoses and crimped fittings have a minimum of 8000 PSI burst pressure.

**20. HYDRAULIC CONTROL VALVE**

Five spool, two way, variable flow with 2000 PSI relief valve. The valve controls hydraulic screw conveyor, hydraulic doors, asphalt agitator, liquid asphalt pump and tool circuit. The valve has an internal or external safety design that will protect the operator and not allow the screw conveyor or asphalt agitator to operate when the doors are open. This system is designed to divert hydraulic oil pressure back to the tank. Electronic solenoids on hydraulic valve are not acceptable due to mechanical override feature and ease of bypassing system. The valve is operated from the rear of machine by remote levers. To reduce maintenance problems the main directional control valve stack has no electric solenoids.

**21. SCREW CONVEYOR**

The 10' long by 6" diameter progressive screw conveyor with hard surfaced flights welded continuously on 2" scheduled 80 pipe is ball bearing mounted and conveyor driven by a 9200 in.lb. torque variable speed hydraulic motor with forward and reverse capabilities. The delivery chute has 120° of pivot. All bearings can be greased through a feeder line mounted outside the unit from ground level.

**22. ASPHALT AGITATOR**

The agitator shaft is built into the premix hopper and designed to break up asphalt bridging due to vibratory compaction. The scheduled 80 shaft has 12 spikes and is ball bearing mounted and driven by a 9200 in.lb. torque variable speed hydraulic motor with forward and reverse. All bearings can be greased through a feeder line mounted outside the unit from ground level.

**23. P.T.O.**

The power take off unit is a Muncie or Chelsea Electric Over Air Shift or Hot Shift.

**24. ELECTRONIC THROTTLE CONTROL**

A two (2) or three (3) speed, depending on application, rear mounted remote switch allows operator more control over which speed and pressure each particular job requires. As a safety feature, the switch will not function unless the park brake is set on the vehicle.

**25. COLOR**

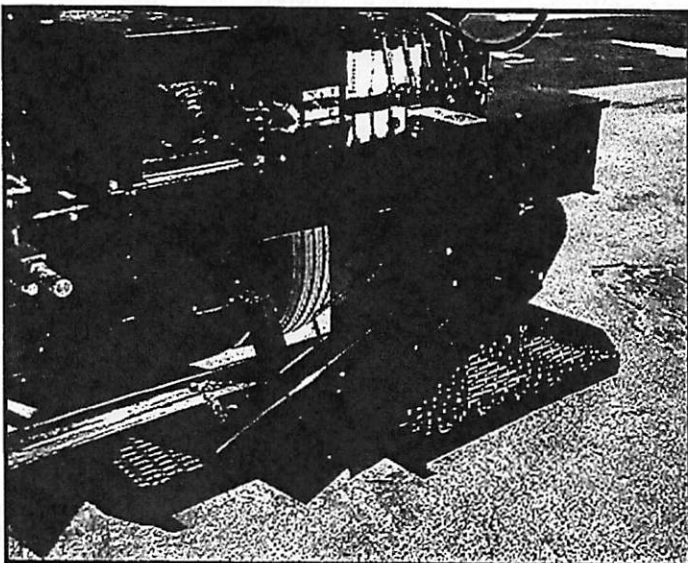
Customer's option, standard color is Omaha Orange.

**26. SERVICE MANUALS AND TRAINING**

H.D. Industries, will furnish two (2) parts, service and operators manuals with a three (3) day training program for each machine and delivery.

**27. WARRANTY**

H.D. Industries warrants the Pro-Patch Asphalt Pothole Patcher for a full twelve (12) months against defects in material and workmanship of the body and on all parts and labor. Labor applies to U.S. only.



U.S. PATENT NO. 5988935

U.S. PATENT NO. 4944632

WEB SITE: WWW.PRO-PATCH.COM

# ASPHALT POTHOLE PATCHER OPTIONAL EQUIPMENT

1. **SECONDARY AUGER MOTOR**  
A secondary, hydraulic, 9200 in.lb. torque, variable speed booster motor for auger.
2. **SPOILS BIN**  
The spoils bin is 30" wide with a 1.25 cubic yard capacity, gravity dump. Asphalt spoils may be loaded or discharged from both sides of the truck. Rear mounted spoils also available.
3. **VIBRATORY COMPACTOR PLATE**  
A Wacker WP 1550AW Compactor equipped with a 5.5 hp gasoline Honda Engine with auto oil alarm shut down. Operating weight is 190 lbs., centrifugal force 3375 lbs., plate size 19.5 x 23", a water tank and locking holding down brackets.
4. **VIBRATORY ROLLER**  
The vibratory roller is a Bomag BW55E with a 4 hp Honda Engine. Operating weight is 351 lbs., centrifugal force 2250 lbs., and single drum vibratory roller 22" wide, centrifugal clutch and water tank.
5. **HYDRAULIC REAR LIFT PLATFORM**  
A hydraulically operated lift platform for loading or unloading compactor plate or roller. The platform has a safety latch in the up position, an in cab "platform down" indicator light with compactor or roller hold down brackets and an optional pavement breaker mount. All controls for platform are at the rear of the unit.
6. **ELECTRIC HOIST**  
A 12 volt 1 1/3 hp electric hoist is available for loading or unloading the vibratory compactor plate.
7. **HYDRAULIC OPERATED STEEL TOP DOORS**  
Two (2) hydraulically operated bi-fold steel top doors with hex brake for rigidity. Doors are insulated with 2" of high temperature insulation in a double steel jacket. The doors have rain seal caps and flex plates to keep asphalt out of door hinges. Each door shall have a 1 1/2" bore with 13" stroke hydraulic cylinder with bypass and flow control valves. The controls for doors are at the front of the unit behind truck cab passenger side.
8. **INSULATED TARP TOP COVER**  
The tarp is a double form fitted 2" insulated tarp with tie downs. The tarp material is capable of sustaining 500° F.
9. **WATER TANK**  
A frame mounted eight (8) gallon tank with rust proof liner, valve and hose. Water supply for asphalt compactor plate.
10. **DRIP PAN**  
A ten (10) gallon drip pan for waste oil combination, for flushing pump, spray wand and lines at the end of the work day, with necessary valve for draining.
11. **REMOVABLE LP GAS BOTTLE**  
100 lb. (25 gallon) removable propane bottle complete with 10 PSI regulator valve.
12. **FRAME MOUNTED LP GAS BOTTLE**  
A frame mounted 35 gallon or 50 gallon capacity LP Gas Bottle with quick fill connector, 10 psi regulator and fuel sight gauge.
13. **PAVEMENT BREAKERS**  
Optional Stanley BR45, 72, 67 and 87 Pavement Breakers, complete with quick couplers, asphalt cutter, tamper and detachable shank with lockable transporting bracket.
14. **HYDRAULIC TOOL LINE HOSE REEL**  
Shall be 3000 PSI with dual 25' hydraulic tool lines. Reel is spring loaded auto-retractable.
15. **AIR LINE HOSE REEL**  
An air line hose reel with 20' of hose. Reel is spring loaded auto-retractable.
16. **HYDRAULIC AIR COMPRESSOR**  
To blow out repair sight and other compressed air demands, a separate self contained 25 CFM @ 125 PSI hydraulic driven air compressor with cooling fan. Hydraulic and electric controls are located at right rear of unit. Air compressor comes with quick couplers, 20 foot air hose, 5 foot air blow gun with deadman control valve, 5 gallon air tank with cable assisted condensation drain and 150 psi relief valve.
17. **DIESEL FUEL / RELEASING AGENT HOSE REEL**  
Hose reel for diesel fuel spray wand has 20' of hose. Reel is spring loaded auto-retractable.
18. **TACK OIL HOSE REEL**  
Hose reel for tack oil has 15' of hose. Reel is spring loaded auto-retractable.
19. **DIRECTIONAL ARROW BOARDS**  
Optional Able 2 with arrow flashing left, right and warning bar OR Optional Wanco model WSBA-14, State D.O.T. approved, with arrow flashing left, right and warning bar. The arrow board is mounted on the rear of the unit with in cab controls.

**20. STROBE LIGHT**

A pedestal mounted Meteorlight model SY2000 series.

**21. SAND SPREADER ASSEMBLY**

The Sand Spreader Assembly includes chute, spinner, hydraulic motor, hydraulic hoses, hydraulic valve, quick coupler connecting fittings and has in-cab 12 vdc electronic controls. For safety purposes, NO hydraulic high pressure hoses are in the cab.

**22. EXTRA TOOL BOX**

A 12 gauge steel 19" x 24" x 30" with water proof locking door.

**23. ASPHALT EDGER**

Edger is designed to repair deteriorated shoulders on highway. Screw conveyor assembly is ball bearing mounted, conveyor is driven by a 100 in. lb. torque hydraulic motor. Edger is powered with a 20 hp Honda LP Gas or Gasoline engine with direct mounted hydraulic pump. Unit mounts to rear of patch unit with 4 bolts. Edger has separate asphalt chute with hydraulic splitter valve to allow separate control from hopper screw conveyor to side deliver screw conveyor. Screw conveyor is fully enclosed for safety. Asphalt Edger also available with optional 21 HP Lombardini Air Cooled Diesel Engine with electric start and low oil shut down.

**24. PTO**

A Muncie or Chelsea PTO Electric Over Air Shift or Hot Shift, depending on transmission model.

**25. THROTTLE CONTROL**

An electronic engine throttle control remote rear mounted.

**26. FIRE EXTINGUISHERS**

Optional 5 lb. ABC in cab mounted extinguisher OR 10 lb. ABC extinguisher mounted outside the truck cab.

**27. HIGHWAY WARNING TRIANGLES**

A Highway warning triangle kit consisting of three (3) reflective triangles in a storage case.

**28. WORK DECK**

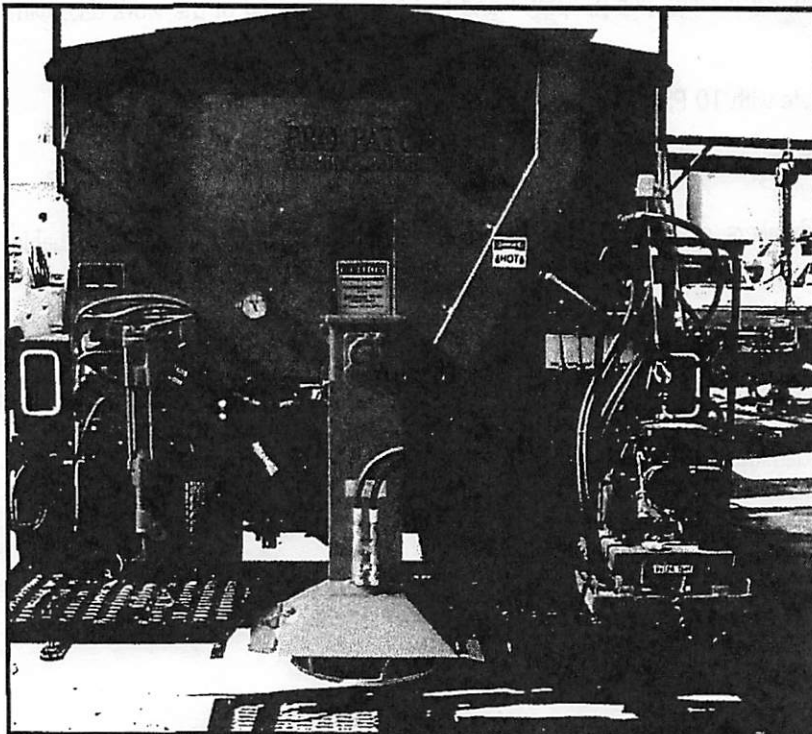
Available only on units with a built-on road oil tank. The work deck, designed to provide easy and safe access to emulsion oil tank and asphalt hopper, is constructed of 1/4" angle iron and 3/16" expanded metal with assist hand rails and shall be mounted between hopper and truck cab.

**29. ASPHALT LUTE AND SHOVEL HOLDER**

Spring loaded asphalt lute and shovel holder, mounted curb side of unit.

**TRUCK APPLICATION**

**(GMC-C7H042 / INTERNATIONAL-4300 or 4700 / FREIGHTLINER-M2 OR EQUIVALENT TRUCKS)**



**MINIMUM AXLES and SUSPENSION:**

Front axle — 10,000 lb. capacity

Rear axle — 21,000 lb. capacity

Auxiliary springs for load stabilization only.

Front springs — 10,000 lb. capacity

Rear springs — 23,000 lb. capacity

**FRAME:**

18.0 S.M.

**TIRES and WHEELS:**

Wheels — Disc 10H steel 22.5 x 8.25 1 PC

Tires — Radial 11R22.5 - 14 ply. hwy.

**TRANSMISSION:**

Allison Automatic or Standard

**ELECTRICAL EQUIPMENT:**

Alternator — 120 amp

Battery — 12 volts, 2 each

**COOLING:**

Heavy duty radiator

**G.V.W.: 33,000**

**(NOTICE) CAB TO AXLE:**

Basic unit with spoils bins — 138" C.A.

Basic unit without spoils bins — 120" C.A.

**H.D. INDUSTRIES, INC.**

**P.O. BOX 8250 • JACKSONVILLE, TEXAS 75766**

**(903) 586-6126 • FAX: (903) 586-0904 • 1-800-256-6126**

## COOPERATIVE PURCHASE CONTRACT

Contract No. 2020-37

This Cooperative Purchase Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and RWC International, LTD, an Arizona Limited Liability Company ("Contractor").

### RECITALS:

- A. Contractor has a Local Government Purchasing Cooperative Contract CTR041813 with Arizona Department of Administration State Procurement Office to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and
- B. Pursuant to section 3.14 of the Agency Contract, the City has authority to utilize the Agency Contract to enter into a cooperative purchase contract with Contractor as a Co-Op Buyer.

### AGREEMENT:

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

1. Materials and or Services Purchased: Contractor shall provide to City the materials as specified in the Purchase Order(s) submitted by the City in accordance with the Agency Contract. The materials being purchased through the Agency Contract are as follows:

#### **Public Works Vehicles:**

- (1) Barricade Truck**
- (1) 10-Wheel Snowplow Truck**
- (2) 6-Wheel Snowplow Truck**
- (1) Patch Truck**

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options selected by the City for each vehicle, as specified in the Purchase Order(s) submitted to Contractor and Exhibit A attached hereto and incorporated by reference.
3. Payment: Payment to the Contractor for the materials described above shall be one million, twenty-one thousand seven hundred and twelve dollars and seventy-five cents (**\$1,021,712.75**) made in accordance with the price list and terms set forth in the Agency Contract.
4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents attached as Exhibit B are incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract.
5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance

under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties.

RWC INTERNATIONAL, LTD:

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

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

CITY OF FLAGSTAFF

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A**  
**SCOPE OF WORK (attached)**

**EXHIBIT B  
AGENCY CONTRACT**

**RFP from STATE OF ARIZONA including AMENDMENT and OFFER & ACCEPTANCE  
(attached)**



# **MV607 SBA**

Sales Proposal For:  
**CITY OF FLAGSTAFF**

Presented By:  
**RWC Group**

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**Prepared For:**  
CITY OF FLAGSTAFF  
Mike Stress  
211 WEST ASPEN AVE.  
FLAGSTAFF, AZ 86001-  
(928)779 - 7619  
Reference ID: Patch Truck

**Presented By:**  
RWC Group  
Mary R Wilson  
600 North 75th Avenue  
PHOENIX AZ 85043 -  
(602)307-1050

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.

**Model Profile**  
**2020 MV607 SBA (MV607)**

<b>AXLE CONFIG:</b>	4X2
<b>APPLICATION:</b>	Utility/Service (Other)
<b>MISSION:</b>	Requested GVWR: 35000. Calc. GVWR: 35000 Calc. Start / Grade Ability: 28.23% / 1.47% @ 55 MPH Calc. Geared Speed: 89.6 MPH
<b>DIMENSION:</b>	Wheelbase: 207.00, CA: 139.90, Axle to Frame: 81.00
<b>ENGINE, DIESEL:</b>	{Cummins B6.7 250} EPA 2017, 250HP @ 2400 RPM, 660 lb-ft Torque @ 1600 RPM, 2600 RPM Governed Speed, 250 Peak HP (Max)
<b>TRANSMISSION, AUTOMATIC:</b>	{Allison 3500 RDS} 5th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, with 80,000-lb GVW and GCW Max, On/Off Highway
<b>CLUTCH:</b>	Omit Item (Clutch & Control)
<b>AXLE, FRONT NON-DRIVING:</b>	{Meritor MFS-12-122A} I-Beam Type, 12,000-lb Capacity
<b>AXLE, REAR, SINGLE:</b>	{Meritor RS-23-160} Single Reduction, 23,000-lb Capacity, Driver Controlled Locking Differential, 200 Wheel Ends Gear Ratio: 5.38
<b>CAB:</b>	Conventional, Day Cab
<b>TIRE, FRONT:</b>	(2) 11R22.5 Load Range H HSR2 (CONTINENTAL), 498 rev/mile, 75 MPH, All-Position
<b>TIRE, REAR:</b>	(4) 11R22.5 Load Range G HSR2 (CONTINENTAL), 498 rev/mile, 75 MPH, All-Position
<b>SUSPENSION, REAR, SINGLE:</b>	23,500-lb Capacity, Vari-Rate Springs
<b>PAINT:</b>	Cab schematic 100WP Location 1: 9219, Winter White (Std) Chassis schematic N/A

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
MV60700	Base Chassis, Model MV607 SBA with 207.00 Wheelbase, 139.90 CA, and 81.00 Axle to Frame.	5602/2659	8261	\$91,293.00

**AXLE CONFIGURATION**

1ANA	AXLE CONFIGURATION {Navistar} 4x2 <u>Notes</u> : Pricing may change if axle configuration is changed.	0/0	0	\$0.00
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**ENGINE**

12EJS	ENGINE, DIESEL {Cummins B6.7 250} EPA 2017, 250HP @ 2400 RPM, 660 lb-ft Torque @ 1600 RPM, 2600 RPM Governed Speed, 250 Peak HP (Max)	0/0	0	\$2,693.00
12UYE	RADIATOR Aluminum; 2-Row, Cross Flow, Over Under System, 717 SqIn Louvered, with 313 SqIn Charge Air Cooler. with In-Tank Transmission Cooler <u>Includes</u> : DEAERATION SYSTEM with Surge Tank : HOSE CLAMPS, RADIATOR HOSES Gates Shrink Band Type; Thermoplastic Coolant Hose Clamps : RADIATOR HOSES Premium, Rubber	0/0	0	\$0.00
12TSY	FAN DRIVE {Borg-Warner SA85} Viscous Type, Screw On <u>Includes</u> : FAN Nylon	0/0	0	\$0.00
12VBR	AIR CLEANER with Service Protection Element	0/0	0	\$0.00
12703	ANTI-FREEZE Red, Extended Life Coolant; To -40 Degrees F/ -40 Degrees C, Freeze Protection	0/0	0	\$0.00
12WSY	BLOCK HEATER, ENGINE {Phillips} 120V/750W, for Cummins ISB/B6.7 Engines <u>Includes</u> : BLOCK HEATER SOCKET Receptacle Type; Mounted below Drivers Door	0/0	0	\$90.00
12WZE	EMISSION COMPLIANCE Federal, Does Not Comply with California Clean Air Idle Regulations	0/0	0	\$0.00
12XAT	ENGINE CONTROL, REMOTE MOUNTED Provision for; Includes Wiring for Body Builder Installation of PTO Controls; with Ignition Switch Control for Cummins ISB/B6.7 or ISL/L9 Engines	0/0	0	\$45.00
12VGY	FEDERAL EMISSIONS {Cummins B6.7} EPA, OBD and GHG Certified for Calendar Year 2019	0/0	0	\$0.00
12WPV	OIL PAN 15 Quart Capacity, For Cummins ISB/B6.7 Engines	0/0	0	\$0.00
12VXV	THROTTLE, HAND CONTROL Engine Speed Control for PTO; Electronic, Mobile, Variable Speed; (Range 2 to 20 MPH) Mounted on Steering Wheel	2/0	2	\$0.00
12EMZ	VENDOR WARRANTY, ENGINE {Cummins} B6.7 Engine, 3-Year Unlimited Miles Standard Warranty	0/0	0	\$0.00

**TRANSMISSION**

13AVL	TRANSMISSION, AUTOMATIC {Allison 3500 RDS} 5th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, with 80,000-lb GVW and GCW Max, On/Off Highway	229/54	283	\$6,541.00
13WUC	ALLISON SPARE INPUT/OUTPUT for Rugged Duty Series (RDS); General Purpose Trucks, Construction	0/0	0	\$0.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
13WVV	NEUTRAL AT STOP Allison Transmission Shifts to Neutral When Service Brake is Depressed While Vehicle is at Stop and Remains in Neutral Until Service Brake is Released	0/0	0	\$525.00
13XAA	PTO CONTROL, DASH MOUNTED For Customer Provided	3/0	3	\$116.00
13XAL	PTO; Includes Switch, Electric/Air Solenoid, Piping and Wiring	0/0	0	\$0.00
13WYU	PTO LOCATION Customer Intends to Install PTO at Left Side of Transmission	0/0	0	\$0.00
13WLP	SHIFT CONTROL PARAMETERS Allison 3000 or 4000 Series Transmissions, 5th Generation Controls, Performance Programming	0/0	0	\$203.00
13WET	TRANSMISSION OIL Synthetic; 29 thru 42 Pints	0/0	0	\$50.00
	TRANSMISSION SHIFT CONTROL for Column Mounted Stalk Shifter			
<b>CLUTCH</b>				
11001	CLUTCH Omit Item (Clutch & Control)	0/0	0	\$0.00
<b>REAR AXLES, SUSPENSIONS</b>				
14ARB	AXLE, REAR, SINGLE {Meritor RS-23-160} Single Reduction, 23,000-lb Capacity, Driver Controlled Locking Differential, 200 Wheel Ends . Gear Ratio: 5.38	0/425	425	\$2,004.00
14SAN	SUSPENSION, REAR, SINGLE 23,500-lb Capacity, Vari-Rate Springs	0/39	39	\$51.00
14WMG	AXLE, REAR, LUBE {EmGard FE-75W-90} Synthetic Oil; 30 thru 39.99 Pints	0/0	0	\$198.00
14SZB	SPRINGS, REAR AUXILIARY Multileaf; 4,500-lb Capacity	0/90	90	\$208.00
<b>FRONT AXLES</b>				
2ASC	AXLE, FRONT NON-DRIVING {Meritor MFS-12-122A} I-Beam Type, 12,000-lb Capacity	42/0	42	\$371.00
<b>FRONT SUSPENSIONS</b>				
3ADC	SUSPENSION, FRONT, SPRING Parabolic Taper Leaf, Shackle Type, 12,000-lb Capacity, with Shock Absorbers	36/0	36	\$184.00
3770	<u>Includes</u> : SPRING PINS Rubber Bushings, Maintenance-Free SPRINGS, FRONT AUXILIARY Rubber	10/0	10	\$111.00
<b>CABS, COWLS, BODIES</b>				
16030	CAB Conventional, Day Cab	0/0	0	\$0.00
16ZBT	<u>Includes</u> : CLEARANCE/MARKER LIGHTS (5) Flush Mounted ACCESS, CAB Steel, Driver & Passenger Sides, Two Steps per Door, for use with Day Cab and Extended Cab	0/0	0	\$0.00
16BAM	AIR CONDITIONER with Integral Heater and Defroster	56/0	56	\$923.00
16VKB	CAB INTERIOR TRIM Classic, for Day Cab	0/0	0	\$0.00
	<u>Includes</u> : CONSOLE, OVERHEAD Molded Plastic with Dual Storage Pockets, Retainer Nets and CB Radio Pocket; Located Above Driver and Passenger			

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	: DOME LIGHT, CAB Door Activated and Push On-Off at Light Lens, Timed Theater Dimming, Integral to Overhead Console, Center Mounted			
	: SUN VISOR (2) Padded Vinyl; 2 Moveable (Front-to-Side) Primary Visors, Driver Side with Toll Ticket Strap			
16VLK	CAB REAR SUSPENSION Air Suspension, for Mid Cab Height	42/0	42	\$572.00
16GDC	GAUGE CLUSTER Base Level; English with English Speedometer and Tachometer, for Air Brake Chassis, Includes Engine Coolant Temperature, Primary and Secondary Air Pressure, Fuel and DEF Gauges, Oil Pressure Gauge, Includes 3 Inch Monochromatic Text Display	0/0	0	\$0.00
16HHE	GAUGE, AIR CLEANER RESTRICTION {Filter-Minder} with Black Bezel, Mounted in Instrument Panel	2/0	2	\$30.00
16SDC	GRAB HANDLE, EXTERIOR (2) Chrome, Towel Bar Type, with Anti-Slip Rubber Inserts, for Cab Entry Mounted Left and Right Side at B-Pillar	6/0	6	\$236.00
16WHJ	HOSE CLAMPS, HEATER HOSE {Breeze} Belleville Washer Type	0/0	0	\$25.00
16XJN	INSTRUMENT PANEL Flat Panel	0/0	0	\$0.00
16HKT	IP CLUSTER DISPLAY On Board Diagnostics Display of Fault Codes in Gauge Cluster	0/0	0	\$0.00
16SNX	MIRROR, CONVEX, LOOK DOWN Right Side, Bright, 6" x 10.5"	0/0	0	\$57.00
16SNR	MIRRORS (2) C-Loop, Power Adjust, Heated, LED Clearance Lights, Bright Heads and Arms, 7.5" x 14" Flat Glass, Includes 7.5" x 7" Convex Mirrors, for 102" Load Width	0/0	0	\$442.00
	<u>Notes</u>			
	: Mirror Dimensions are Rounded to the Nearest 0.5"			
16JNT	SEAT, DRIVER {National 2000} Air Suspension, High Back with Integral Headrest, Vinyl, Isolator, 1 Chamber Lumbar, with 2 Position Front Cushion Adjust, -3 to +14 Degree Angle Back Adjust	-14/-4	-18	\$116.00
16SMH	SEAT, TWO-MAN PASSENGER {National} Fixed Back, Integrated Headrest in Both Occupant Positions, Vinyl, with Under Seat Storage Compartment	44/27	71	\$576.00
16XWD	SUNSHADE, EXTERIOR Aerodynamic, Painted Roof Color, with Integral Clearance/Marker Lights	15/2	17	\$253.00
16WJU	WINDOW, POWER (2) and Power Door Locks, Left and Right Doors, Includes Express Down Feature	5/0	5	\$367.00
<b>FRAMES</b>				
1CAH	FRAME RAILS Heat Treated Alloy Steel (120,000 PSI Yield); 10.375" x 3.705" x 0.438" (263.5mm x 94.1mm x 11.1mm); 456.0" (11582mm) Maximum OAL	246/551	797	\$1,026.00
1WAC	BUMPER EXTENSION, FRONT 4.0"	14/-2	12	\$50.00
1LNN	BUMPER, FRONT Contoured, Steel, Chrome Plated	16/-2	14	\$410.00
1570	TOW HOOK, FRONT (2) Frame Mounted	8/0	8	\$84.00
1LEG	LICENSE PLATE HOLDER Includes Upper & Lower Mounting Plate Hardware, Mounted in Existing Holes in Front Bumper	3/0	3	\$29.00
1WEJ	WHEELBASE RANGE 199" (505cm) Through and Including 254" (645cm)	0/0	0	\$349.00
<b>BRAKES</b>				
4091	BRAKE SYSTEM, AIR Dual System for Straight Truck Applications <u>Includes</u>	-34/-16	-50	(\$339.00)

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
	: BRAKE LINES Color and Size Coded Nylon			
	: DRAIN VALVE Twist-Type			
	: GAUGE, AIR PRESSURE (2) Air 1 and Air 2 Gauges; Located in Instrument Cluster			
	: PARKING BRAKE CONTROL Yellow Knob, Located on Instrument Panel			
	: QUICK RELEASE VALVE On Rear Axle for Spring Brake Release: 1 for 4x2, 2 for 6x4			
	: SLACK ADJUSTERS, FRONT Automatic (with Air Cam Brakes)			
	: SLACK ADJUSTERS, REAR Automatic (with Air Cam Brakes)			
	: SPRING BRAKE MODULATOR VALVE R-7 for 4x2, SR-7 with relay valve for 6x4/8x6			
4AZA	AIR BRAKE ABS {Bendix AntiLock Brake System} Full Vehicle Wheel Control System (4-Channel)	9/21	30	\$1,357.00
4196	BRAKES, FRONT, AIR CAM 16.5" x 5", Includes 24 SqIn Long Stroke Brake Chambers	136/0	136	\$0.00
4EXV	BRAKE CHAMBERS, FRONT AXLE {Bendix} 24 SqIn	18/0	18	\$0.00
4EUB	BRAKE LININGS, FRONT {Meritor R301} Non-Asbestos for S-Cam Brake	0/0	0	\$29.00
29339	BRAKE DRUMS, FRONT {Gunite}	0/0	0	\$98.00
4NCZ	BRAKES, REAR, AIR CAM S-Cam; 16.5" x 7.0"; Includes 30/28 Sq.In. Long Stroke Brake Chambers and Piston-Type Spring Activated Parking Brakes	0/206	206	\$0.00
4EVR	BRAKE CHAMBERS, REAR AXLE {MGM MJS3028ET} 30/28 Piston Spring Brake	0/44	44	\$458.00
4EUD	BRAKE LININGS, REAR {Meritor R301} Non-Asbestos for S-Cam Brake	0/0	0	\$29.00
29346	BRAKE DRUMS, REAR {Gunite}	0/0	0	\$254.00
4773	BRAKE SHOES, REAR Cast	0/0	0	\$1,021.00
4SPA	AIR COMPRESSOR {Cummins} 18.7 CFM	37/1	38	\$69.00
4EBS	AIR DRYER {Bendix AD-9} with Heater	19/9	28	\$450.00
4VKC	AIR DRYER LOCATION Mounted Inside Left Rail, Back of Cab	15/6	21	\$50.00
4VKH	AIR TANK LOCATION (2) Mounted Under Battery Box, Outside Right Rail, Under Cab	0/0	0	\$50.00
4WWZ	DRAIN VALVE (3) with Pull Chains for Air Tanks	0/0	0	\$105.00

**STEERING**

5PRR	STEERING GEAR {TRW (Ross) TAS66} Power	34/-5	29	\$248.00
5708	STEERING COLUMN Tilting	14/2	16	\$125.00
5CAW	STEERING WHEEL 4-Spoke; 18" Dia., Black	0/0	0	\$0.00

**DRIVELINES**

6DGG	DRIVELINE SYSTEM {Dana Spicer} 1710, for 4x2/6x2	5/23	28	(\$249.00)
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**EXHAUST SYSTEMS**

7BKY	EXHAUST SYSTEM Single, Horizontal Aftertreatment Device, Frame Mounted Under Right Rail Back of Cab, Includes Single Short Horizontal Tail Pipe	0/0	0	\$0.00
7SCP	ENGINE EXHAUST BRAKE for Cummins ISB/B6.7/ISL/L9 Engine with Variable Vane Turbo Charger	0/0	0	\$184.00
7WCW	TAIL PIPE (1) Horizontal, Short, Exits Right Side, 90 Degree Turnout	0/0	0	\$120.00

**ELECTRICAL SYSTEMS**

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
8000	ELECTRICAL SYSTEM 12-Volt, Standard Equipment <u>Includes</u> : DATA LINK CONNECTOR For Vehicle Programming and Diagnostics In Cab : HAZARD SWITCH Push On/Push Off, Located on Instrument Panel to Right of Steering Wheel : HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever : PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light : STARTER SWITCH Electric, Key Operated : STOP, TURN, TAIL & B/U LIGHTS Dual, Rear, Combination with Reflector : TURN SIGNAL SWITCH Self-Cancelling for Trucks, Manual Cancelling for Tractors, with Lane Change Feature : TURN SIGNALS, FRONT Includes Reflectors and Auxiliary Side Turn Signals, Solid State Flashers; Flush Mounted : WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature (5 Pre-Set Delays), Integral with Turn Signal Lever : WINDSHIELD WIPERS Single Motor, Electric, Cowl Mounted : WIRING, CHASSIS Color Coded and Continuously Numbered	0/0	0	\$0.00
8GXD	ALTERNATOR {Leece-Neville AVI160P2013} Brush Type; 12 Volt 160 Amp. Capacity, Pad Mount, with Remote Sense	0/0	0	\$0.00
8VUX	BATTERY BOX Steel, with Plastic Cover, 25" Wide, 2-3 Battery Capacity, Mounted Right Side Under Cab	0/0	0	\$0.00
8MJU	BATTERY SYSTEM {Fleetrite} Maintenance-Free, (3) 12-Volt 2850CCA Total, Top Threaded Stud	43/31	74	\$282.00
8HAB	BODY BUILDER WIRING Back of Day Cab at Left Frame or Under Sleeper, Extended or Crew Cab at Left Frame; Includes Sealed Connectors for Tail/Amber Turn/Marker/ Backup/ Accessory Power/Ground and Sealed Connector for Stop/Turn	2/0	2	\$100.00
8XAH	CIRCUIT BREAKERS Manual-Reset (Main Panel) SAE Type III with Trip Indicators, Replaces All Fuses	0/0	0	\$0.00
8WPH	CLEARANCE/MARKER LIGHTS (5) {Truck Lite} Amber LED Lights, Flush Mounted on Cab or Sunshade	0/0	0	\$70.00
8THV	DISCONNECT, FRONT HARNESS for Guide Post Lights; Connectors Located at Headlight Connection, for Customer Installation	0/0	0	\$14.00
8WZK	HEADLIGHTS Halogen, Composite Aero Design	0/0	0	\$0.00
8WRB	HEADLIGHTS ON W/WIPERS Headlights Will Automatically Turn on if Windshield Wipers are turned on	0/0	0	\$42.00
8XHN	HORN, AIR Black, Single Trumpet, with Lanyard Pull Cord	3/0	3	\$94.00
8541	HORN, ELECTRIC (2) Disc Style	1/0	1	\$29.00
8WWJ	INDICATOR, LOW COOLANT LEVEL with Audible Alarm	0/0	0	\$0.00
8WBW	JUMP START STUD Remote Mounted <u>Includes</u> : JUMP START STUD Mounted to Battery Box	2/0	2	\$168.00
8718	POWER SOURCE Cigar Type Receptacle without Plug and Cord	1/0	1	\$30.00
8RML	RADIO AM/FM/WB/Clock/Bluetooth/USB Input/Auxiliary Input, MP3, Apple Device Play & Control	2/0	2	\$483.00
8RMV	SPEAKERS (2) 6.5" Dual Cone Mounted in Doors	0/0	0	\$48.00
8WTK	STARTING MOTOR {Delco Remy 38MT Type 300} 12 Volt, Less Thermal Over-Crank Protection	8/0	8	\$193.00
8XGT	TURN SIGNALS, FRONT Includes LED Side Turn Lights Mounted on Fender	0/0	0	\$25.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
<b>FRONT END</b>				
9WAY	FRONT END Tilting, Fiberglass, with Three Piece Construction	0/0	0	\$0.00
9WAC	BUG SCREEN Mounted Behind Grille	5/0	5	\$131.00
9HAD	GRILLE Chrome	0/0	0	\$0.00
9HBN	INSULATION, SPLASH PANELS for Sound Abatement	2/0	2	\$76.00
9HAN	INSULATION, UNDER HOOD for Sound Abatement	10/0	10	\$167.00
9AAB	LOGOS EXTERIOR Model Badges	0/0	0	\$0.00
9AAE	LOGOS EXTERIOR, ENGINE Badges	0/0	0	\$0.00
<b>SPEEDOMETER, TOOLS, MISC</b>				
10BAE	LABEL, DEF "DEF ONLY"	0/0	0	\$8.00
10WUE	MUD FLAPS, FRONT WHEELS (2) Rubber, Mounted on Fender Extension	12/0	12	\$76.00
10060	PAINT SCHEMATIC, PT-1 Single Color, Design 100 Includes : PAINT SCHEMATIC ID LETTERS "WP"	0/0	0	\$0.00
10761	PAINT TYPE Base Coat/Clear Coat, 1-2 Tone	0/0	0	\$0.00
10SLV	PROMOTIONAL PACKAGE Government Silver Package	0/0	0	\$0.00
10ABJ	SURCHARGE, FRONT AXLE for Meritor Front Axles	0/0	0	\$100.00
10ABK	SURCHARGE, REAR AXLE for Meritor Rear Axles	0/0	0	\$100.00
<b>FUEL TANKS</b>				
15SWY	FUEL TANK Top Draw, Polished Aluminum, D-Style, 19" Tank Depth, 50 US Gal (189L), Mounted Left Side, Under Cab	22/7	29	\$435.00
15WDG	DEF TANK 7 US Gal (26L) Capacity, Frame Mounted Outside Left Rail, Under Cab	0/0	0	\$0.00
15WCS	FUEL COOLER Less Thermostat; Mounted in Front of Cooling Module	0/0	0	\$276.00
15LMS	FUEL/WATER SEPARATOR 12 VDC Electric Heater, Includes Pre-Heater, Includes Water-in-Fuel Sensor, Cummins Supplied on Engine	-1/0	-1	\$221.00
<b>WHEELS, TIRES - FRONT</b>				
27DVK	WHEELS, FRONT {Alcoa 88367} DISC; 22.5x8.25 Rims, Polished Aluminum, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Aluminum Hubs	-77/0	-77	\$911.00
7382135415	(2) TIRE, FRONT 11R22.5 Load Range H HSR2 (CONTINENTAL), 498 rev/mile, 75 MPH, All-Position	56/0	56	\$394.00
<b>WHEELS, TIRES - REAR</b>				
28DVP	WHEELS, REAR {Accuride 42644} DUAL DISC; 22.5x8.25 Rims, Extra Polish Aluminum, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs	0/-128	-128	\$1,159.00
7372135415	(4) TIRE, REAR 11R22.5 Load Range G HSR2 (CONTINENTAL), 498 rev/mile, 75 MPH, All-Position	0/108	108	\$712.00
<b>WHEELS MISC OPTIONS</b>				
29WLK	WHEEL BEARING, FRONT, LUBE {EmGard FE-75W-90} Synthetic Oil	0/0	0	\$59.00

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR) (\$350.00)
29BAG	WHEEL, REAR, IDENTITY Replace Inner Aluminum Wheels on Rear Duals with the Equivalent Steel Wheels - For Use with Hub Piloted Wheels Only	0/59	59	
29580	WHEEL SEALS, FRONT {International} Oil-Lubricated Wheel Bearings	0/0	0	\$37.00
<b>Total of Product Features</b>				<b>\$120,377.00</b>
Cab schematic 100WP Location 1: 9219, Winter White (Std) Chassis schematic N/A				

**Services Section:**

**WARRANTY**

40129	WARRANTY Standard for MV Series, Effective with Vehicles Built July 1, 2017 or Later, CTS-2020A	0/0	0	\$0.00
<b>Total of Service Features</b>				<b>\$0.00</b>
<b>Total Component Weight:</b>		<b>6711/4207</b>	<b>10918</b>	
<b>Total List Price Including Options:</b>				<b>\$120,377.00</b>

<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)	<u>List</u> (US DOLLAR)
1	PRO PATCH Model TCM 425-100 DHER Patch Body Including All Standard Equipment Plus: Emulsion Auto Rejuvenator System Hydraulic Dump Work Deck 18"x46" Hydraulic Bi Fold Steel Top Doors 50 Gal. Frame Mounted LP Gas Bottle Hand Torch 15' Hose Emulsion Tack Oil Hose 20' W/Hose Rack Wacker WP1550AW Compactor Plate Two Asphalt Lute/Shovel Holder 10 Gal. Stainless Steel Water Tank 8 Gal. Drip and Waste Pan Stanley BR45 Pavement Breaker Hydraulic Tool Line Hose Reel Hydraulic Flow Meter Hydraulic Rear Lift Platform With Breaker Mount Removal Asphalt Shoveling Apron Superior Signal SRTA16, 16 LED-Arrowboard FED SIGNAL Four Remote LED Strobe Light System Mounted Each Corner Truck Lights Rectangular 6.5" Oval Tail Lights w/Amber Strobe LED Back Up Camera With Sound Hot Shift PTO Electronic Throttle Control Rear Mount Diesel Fuel Hose Reel w/25' Hose Color:White 2 Days Factory Training On Site 2 Grille mounted LED Strobes 20lb Fire Extinguisher Tool Box Air Compressor With Airline Hose reel Cone Rack	0/0	0	\$91,740.00
	<b>Total Body Allied:</b>	<b>0/0</b>	<b>0</b>	<b>\$91,740.00</b>
	State Contract CTR041813 Medium and Heavy Duty	0/0	0	\$0.00
	<b>Total Goods Purchased:</b>	<b>0/0</b>	<b>0</b>	<b>\$0.00</b>

The weight calculations included in this proposal are an estimate of future vehicle weight. The actual weight as manufactured may be different from the estimated weight. Navistar, Inc. shall not be liable for any consequences resulting from any differences between the estimated weight of a vehicle and the actual weight.

<u>Description</u>	<u>(US DOLLAR)</u>	<u>Price</u>
Total Factory List Price Including Options:		\$120,377.00
Total Preparation And Delivery:		\$0.00
Freight	\$2,350.00	
Total Freight:		\$2,350.00
Total Factory List Price Including Freight:		\$122,727.00
Less Customer Allowance:		(\$40,870.64)
Total Vehicle Price:		\$81,856.36
Total Body/Allied Equipment:		\$91,740.00
Total Sale Price:		\$173,596.36
Total Per Vehicle Sales Price:		\$173,596.36
Total Net Sales Excluding Taxes:		\$173,596.36
Arizona Tire Tax, 6 Tires	\$12.00	
Sales Tax, Maricopa County	\$14,408.50	
Total Taxes:		\$14,420.50
Net Sales Price:		\$188,016.86

If applicable, Federal Excise Tax (FET) is included in the net sales price above.

Terms of payment are cash on delivery and prices quoted are FOB Phoenix, AZ (unless otherwise noted).

This quote is good for 30 days. All inventory units are subject to prior sale. Unless otherwise noted, the quote above does NOT include title and licensing charges or Arizona state sales tax.

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle.

**Approved by Seller:**

**Accepted by Purchaser:**

\_\_\_\_\_  
Official Title and Date

\_\_\_\_\_  
Firm or Business Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature and Date

**This proposal is not binding upon the seller without Seller's Authorized Signature**

\_\_\_\_\_  
Official Title and Date

**The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.**

**The limited warranties applicable to the vehicles described herein are Navistar, Inc.'s standard printed warranties which are incorporated herein by reference and to which you have been provided a copy and hereby agree to their terms and conditions.**

## Pricing for Medium and Heavy Duty Cab, Chassis, and Buses

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses in the columns below. Column E shall automatically populate the correct contract price utilizing the pre-entered formula.

Make	Model	Manufacturer's Suggested Retail Price (MSRP)	Percentage (%) Off MSRP	Contract Price
International	CV515	\$ 46,219.00	10%	\$ 41,597.10
International	DuraStar	\$ 113,711.00	31%	\$ 78,460.59
International	MV607	\$ 91,707.00	32%	\$ 62,360.76
International	HV 513	\$ 165,553.00	50%	\$ 82,776.50
International	HV507	\$ 92,154.00	32%	\$ 62,664.72
International	HV607	\$ 92,154.00	32%	\$ 62,664.72
International	HV613	\$ 165,553.00	50%	\$ 82,776.50
International	HX515	\$ 207,853.00	50%	\$ 103,926.50
International	HX520	\$ 217,724.00	50%	\$ 108,862.00
International	HX615	\$ 205,714.00	50%	\$ 102,857.00
International	HX620	\$ 216,724.00	50%	\$ 108,362.00
International	RH 613	\$ 192,149.00	50%	\$ 96,074.50
International	LoneStar	\$ 243,590.00	50%	\$ 121,795.00
International	LT625	\$ 203,077.00	50%	\$ 101,538.50
International	RE Bus	\$ 229,650.00	47.5%	\$ 120,566.25
International	CE Bus	\$ 153,592.00	43.5%	\$ 86,779.48
Hino	Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$ 44,563.53
Hino	Hino 155 COE Double Cab Cab & Ch	\$ 58,914.00	17%	\$ 48,898.62
Hino	Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$ 51,427.63
Hino	Hino 195 COE Double Cab Cab & Ch	\$ 67,184.00	17%	\$ 55,762.72
Hino	Hino 238 Cab & Chassis	\$ 73,428.00	17%	\$ 60,945.24
Hino	Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$ 65,007.26
Hino	Hino 258ALP Cvab & Chassis	\$ 80,191.00	17%	\$ 66,558.53
Hino	Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$ 67,606.82

Hino	Hino 268A Cab & Chassis	\$	83,309.00	17%	\$	69,146.47
Hino	Hino 338 Cab & Chassis	\$	91,217.00	17%	\$	75,710.11
					\$	-
					\$	-

**Pricing for Medium and Heavy Duty Cab, Chassis, and Buses Option:**

Instructions: Offerors shall provide information for any additional option packages/add-ons available for Medium and Heavy Duty Cab and Chassis below. Proposed option packages shall only be for Medium and Heavy Duty Cab, Chassis, and Buses proposed on the 'Pricing - Vehicles' tab. Column E shall automatically populate the correct number utilizing the pre-entered formula. Please copy and paste the format for additional space if necessary.

Manufacturer/Make/Model: International CV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 CV515	\$ 46,219.00	10%	\$	41,597.10
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International DuraStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 4300 SBA 4x2	\$ 90,259.00	31%	\$	62,278.71
2 4400 SBA 4x2	\$ 105,569.00	31%	\$	72,842.61
3 4400 SBA 6x4	\$ 113,711.00	31%	\$	78,460.59
4			\$	-
5			\$	-

Manufacturer/Make/Model: International MV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 MV607	\$ 91,293.00	32%	\$	62,079.24
2 MV607 LP	\$ 91,707.00	32%	\$	62,360.76
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International HV Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HV507	\$ 92,154.00	32%	\$	62,664.72
2 HV513	\$ 165,553.00	50%	\$	82,776.50
3 HV607	\$ 92,154.00	32%	\$	62,664.72
4 HV613	\$ 165,553.00	50%	\$	82,776.50
5			\$	-

Manufacturer/Make/Model: International HX Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 HX 515	\$ 207,853.00	50%	\$	103,926.50
2 HX 520	\$ 217,724.00	50%	\$	108,862.00
3 HX 615	\$ 205,714.00	50%	\$	102,857.00
4 HX 620	\$ 216,724.00	50%	\$	108,362.00
5			\$	-

Manufacturer/Make/Model: International RH Series				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 RH 613	\$ 192,149.00	50%	\$	96,074.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LoneStar				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LoneStar	\$ 243,590.00	50%	\$	121,795.00
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International LT				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 LT625	\$ 203,077.00	50%	\$	101,538.50
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International RE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Rear Engine Bus	\$ 229,650.00	47.5%	\$	120,566.25
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: International CE Bus				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Conventional	\$ 153,592.00	43.5%	\$	86,779.48
2			\$	-
3			\$	-
4			\$	-
5			\$	-

Manufacturer/Make/Model: Hino				
Option Package Description:	Manufacturer's Suggested Retail Price (MSRP)	Percentage (% Off MSRP)	Contract Price	
1 Hino 155 COE Cab & Chassis	\$ 53,691.00	17%	\$	44,563.53
2 Hino 155 COE Double Cab Cab & Chassis	\$ 58,914.00	17%	\$	48,898.62
3 Hino 195 COE Cab & Chassis	\$ 61,961.00	17%	\$	51,427.63
4 Hino 195 COE Double Cab Cab & Chassis	\$ 67,184.00	17%	\$	55,762.72
5 Hino 238 Cab & Chassis	\$ 73,429.00	17%	\$	60,945.24
6 Hino 258LP Cab & Chassis	\$ 78,322.00	17%	\$	65,007.26
7 Hino 258LP Ccab & Chassis	\$ 80,191.00	17%	\$	66,558.53
8 Hino 268 Cab & Chassis	\$ 81,454.00	17%	\$	67,606.82
9 Hino 358A Cab & Chassis	\$ 83,309.00	17%	\$	69,146.47
10 Hino 338 Cab & Chassis	\$ 91,217.00	17%	\$	75,710.11

## Pricing for Other Medium and Heavy Duty Cab, Chassis, and Buses Products or Services

Instructions: Offerors shall provide pricing for all proposed Medium and Heavy Duty Cab, Chassis, and/or Buses products and services in the columns below.

Description of item or service	List Price	Percentage (%) Off List Price	Contract Price
Software NED-S01 NAVISTAR	\$ 929.50		\$ 599.30
DLB-S01 DIAMOND LOGIC	\$ 908.70		\$ 599.30
DG-DPA5-BT-C1-KIT	\$ 1,571.73		\$ 1,281.02
3886390- INSITE LIT SUBSCRIPTION	\$ 936.00		\$ 792.00
3886388 INSITE LIT	\$ 24.70		\$ 19.06
5298640- HAND HELD COMPUTER	\$ 1,228.88		\$ 1,047.95
EZ-TECH- TOUGHBOOK COMPUTER	\$ 8,476.83		\$ 6,520.64
Training Services Charge at hourly rate	\$ 135.00		\$ 119.00
DVD PLAY SYSTEM	\$5,026.46	10.0%	\$ 4,523.81
ZONAR SECURITY INSPECTION SYSTEM	\$2,079.76	10.0%	\$ 1,871.78
KENWOOD MOBILE TK-8180	\$1,344.48	10.0%	\$ 1,210.03
UPGRADE SPEAKERS	\$600.39	10.0%	\$ 540.35
Kenwood NX-900 Two Way radio and Antenna	\$846.55	10.0%	\$ 761.90
Kenwood TK-7180 with power Tamer	\$1,274.03	10.0%	\$ 1,146.63
Large light gray shoulder rail	\$1,674.75	10.0%	\$ 1,507.28
install caps & covers on wheels	\$562.35	10.0%	\$ 506.12
Tech Package-Diagnostic software,body builder software a	\$8,580.93	10.0%	\$ 7,722.84
			\$ -
Service Max Diagnostic/ NEXIQ	\$1,902.01	10.0%	\$ 1,711.81
Diamond logic builder	\$942.67	10.0%	\$ 848.40
RWC UNIVERSITY ENROLLMENT (ONLINE PORTAL) PER PERSON	\$50.50	50.0%	\$ 25.25
11R22.5 CONTINENTAL TIRE	\$683.43	10.0%	\$ 615.09
			\$ -
			\$ -
KENWOOD NEXTEDGE TWO WAY RADIO	\$991.84	10.0%	\$ 892.66

STEERING STABILIZER BAR	\$1,191.17	10.0%	\$	1,072.06
FIRE BLANKET	\$81.83	10.0%	\$	73.65
CRS SEAT	\$719.98	10.0%	\$	647.98
Motorola Two Radio model TK-690HBK	\$1,943.51	10.0%	\$	1,749.16
AUTOMATIC TIRE CHAINS	\$3,333.34	10.0%	\$	3,000.00
36" TRACKED BARRIERS	\$702.79	10.0%	\$	632.51
CUSTOMER BARRIER POUCH	\$78.05	10.0%	\$	70.25
REI Cellular Router w/antenna	\$1,575.45	10.0%	\$	1,417.90
IMMI CHILD RESTRAIN SEATS	\$4,755.08	10.0%	\$	4,279.58
TOOL BOX	\$415.28	10.0%	\$	373.75
ALLISON TRANSMISSION SOFTWARE	\$2,641.01	10.0%	\$	2,376.91
CUMMINS DIAGNOSTIC SOFTWARE	\$4,070.21	10.0%	\$	3,663.19
BRAUN LIFT UPGRADE	\$264.03	10.0%	\$	237.62
DVD PLAYER 13 SET PACKAGE	\$2,901.53	10.0%	\$	2,611.37
TS INC 2 CAMERA SYSTEM	\$1,422.57	10.0%	\$	1,280.32
CUMMINS 6.7L, EPA, OBD AND GHG CERTIFIED FOR CALENDER 2017	\$840.55	10.0%	\$	756.49
Kenwood Radio, Antenna, Timer XL	\$1,444.44	10.0%	\$	1,300.00
FREEDMAN 48 FAMILYSEATS W/3 CRASH BARRIERS LEVEL 6 CLOTH	\$16,666.67	10.0%	\$	15,000.00
			\$	-
XPR2500 MOTOROLA TWO WAY	\$886.94	10.0%	\$	798.25
24/7/6 CHANNEL (2) Camera 500GB EVENT MARKET	\$2,102.56	10.0%	\$	1,892.31
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-
<b>CAMERA SYTEMS- ANGEL TRAX, BUS VISION, PROVISION</b>			\$	-
RWC GROUP			\$	-
ANGEL TRAX SYSTEM (TWO CAMERA SYSTEM)	\$2,582.88	10.0%	\$	2,324.59

ANGELTRAX FOUR CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,587.93	10.0%	\$	3,229.13
ANGELTRAX Four Camera System	\$1,915.24	10.0%	\$	1,723.72
ANGELTRAX SYSTEM (FOUR CHANNEL W/FOUR CAMERAS)	\$3,028.36	10.0%	\$	2,725.53
ANGELTRAX THREE CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$3,347.77	10.0%	\$	3,012.99
ANGELTRAX TWO CAMERA HYBRID QUEST DVR CAMERA SYSTEM W/320GB DRIVE	\$2,987.54	10.0%	\$	2,688.78
BUS VISION System	\$4,242.35	10.0%	\$	3,818.12
CoPilot 4-Channel Mobile Digital Video Recorder	\$900.58	10.0%	\$	810.53
EVENT MARKER	\$222.14	10.0%	\$	199.93
Extra Hard Drive	\$198.13	10.0%	\$	178.32
HYBRID QUEST SYSTEM	\$2,165.00	10.0%	\$	1,948.50
INDICATOR SENSOR KIT	\$162.11	10.0%	\$	145.89
PROVISION 4 camera, 8 channel	\$4,190.72	10.0%	\$	3,771.65
RR-MRH8-1000	\$6,496.11	10.0%	\$	5,846.50
	\$0.00	10.0%	\$	-

<b>REI Camera Systems</b>			\$	-
REI / 4 CH HD420 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$1,518.75	10.0%	\$	1,366.87
REI / 4 CH HD420 DVR w/2 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,751.40	10.0%	\$	1,576.26
REI / 4 CH HD420 DVR w/3 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$1,984.05	10.0%	\$	1,785.64
REI / 4 CH HD420 DVR w/4 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$2,216.70	10.0%	\$	1,995.03
REI / 8 CH HD800 DVR w/1 Camera & 320GB Hard Drive / Event Marker / Panic Button	\$2,119.13	10.0%	\$	1,907.22
REI / 8 CH HD800 DVR w/2 Cameras & 320GB Hard Drive	\$2,351.79	10.0%	\$	2,116.61
REI / 8 CH HD800 DVR w/3 Cameras & 320GB Hard Drive	\$2,584.44	10.0%	\$	2,325.99
REI / 8 CH HD800 DVR w/4 Cameras & 320GB Hard Drive	\$2,817.09	10.0%	\$	2,535.38
REI / 8 CH HD800 DVR w/5 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,049.74	10.0%	\$	2,744.76
REI / 8 CH HD800 DVR w/6 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,282.39	10.0%	\$	2,954.15

REI / 8 CH HD800 DVR w/7 Cameras & 320GB Hard Drive	\$3,515.04	10.0%	\$	3,163.54
REI / 8 CH HD800 DVR w/8 Cameras & 320GB Hard Drive / Event Marker / Panic Button	\$3,747.69	10.0%	\$	3,372.92
REI / GPS Receiver	\$193.27	10.0%	\$	173.94
REI / Sensor Harness	\$157.96	10.0%	\$	142.17
REI / Accelerometer	\$161.50	10.0%	\$	145.35
REI / IR Illuminator (for dome cameras needing night vision)	\$45.75	10.0%	\$	41.17
REI / 500 GB Hard Drive Upgrade	\$150.10	10.0%	\$	135.09
REI / 750 GB Hard Drive Upgrade	\$279.78	10.0%	\$	251.80
REI / 1 TB Hard Drive Upgrade	\$365.04	10.0%	\$	328.53
REI / 320 GB SATA Hard Drive, HD Series Mobile DVRs	\$200.53	10.0%	\$	180.48
REI / 500 GB SATA Hard Drive, HD Series Mobile DVRs	\$360.23	10.0%	\$	324.21
REI / 750 GB SATA Hard Drive, HD Series Mobile DVRs	\$480.31	10.0%	\$	432.28
REI / 1 TB SATA Hard Drive, HD Series Mobile DVRs	\$534.35	10.0%	\$	480.91
REI/ 8 CH HD800 DVR W/8 CAMERAS & 750 GB HARD DRIVE INTERNAL/EXTERNAL DELUXE PACKAGE	\$5,042.25	10.0%	\$	4,538.03
REI / VR-3000, AM/FM DVD PLAYER, (8) SPEAKERS,(4) 15" MONITORS MANUAL FLIP DOWN, ALL CABLES	\$3,984.90	10.0%	\$	3,586.41
HD420W DVR w/2 Antennas & 2 Antenna Cables	\$490.46	10.0%	\$	441.41
HD800W DVR w/ 2 Antennas & 2 Antenna Cables	\$670.57	10.0%	\$	603.52
HD420 / DVR, 4 CHANNELL	\$897.11	10.0%	\$	807.40
(4) 500W INVERTERS / VOLTMETER / 4 PORT USB W STORAGE POUCH	\$2,101.36	10.0%	\$	1,891.23
HD 12 channel DVR, 8 cameras, 1TBHD, WIFI GPS, exterior	\$7,318.80	10.0%	\$	6,586.92
12 channel HDS 1200 DVR w/5 cam, 1TB HD WIFI GPS	\$3,788.46	10.0%	\$	3,409.61
6 channel HDS 600 DVR w/4CAM, 500GB HDD WIFI GPS	\$2,859.58	10.0%	\$	2,573.62
REI Router and WI FI antenna	\$1,608.42	10.0%	\$	1,447.58
DVR, 5 camera, 1TB HDGPS, WIFI, extra 1TBHD	\$4,110.27	10.0%	\$	3,699.24
4 Cams, 1TB HDD Sensor cable, WIFI GPS, and panic butto	\$2,599.69	10.0%	\$	2,339.72
6 Cams, 1TB HDD, 1 Stop arm cam, Sensor cable, WIFI GP	\$4,458.55	10.0%	\$	4,012.70
			\$	-

			\$	-
<b>SEON CAMERA SYSTEMS</b>			\$	-
SEON TL4 (1) CAMERA 4-CHANNEL 320GB, 20FT CABLE, GP	\$1,892.43	10.0%	\$	1,703.18
SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$2,166.21	10.0%	\$	1,949.58
SEON TL4 (3) CAMERA 4-CHANNEL 320GB, (2) 20FT CABLE,	\$2,500.02	10.0%	\$	2,250.02
SEON TL4 (4) CAMERA 4-CHANNEL 320GB, (2)50FT CABLE, (	\$2,713.76	10.0%	\$	2,442.38
			\$	-
SEON TLHD (1) CAMERA 5-CHANNEL 320GB, (1) 20FT CABLE	\$2,120.58	10.0%	\$	1,908.52
SEON TLHD (2) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,394.35	10.0%	\$	2,154.92
SEON TLHD (3) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,728.17	10.0%	\$	2,455.35
SEON TLHD (4) CAMERA 5-CHANNEL 320GB, (2) 50FT CABLE	\$2,941.91	10.0%	\$	2,647.72
			\$	-
SEON TX8 (5) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,489.46	10.0%	\$	3,140.52
SEON TX8 (6) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$3,703.20	10.0%	\$	3,332.88
SEON TX8 (7) CAMERA 8-CHANNEL 640GB, (3) 20FT CABLE,	\$4,067.04	10.0%	\$	3,660.33
SEON TX8 (8) CAMERA 8-CHANNEL 640GB, (3) 30FT CABLE,	\$4,310.80	10.0%	\$	3,879.72
SEON TX8 (4) CAMERA 8-CHANNEL 640GB, (2) 20FT CABLE,	\$3,167.65	10.0%	\$	2,850.89
SEON TH6H500 Trooper DVR 6HD Channel 500 GB HD, 4 c	\$2,396.73	10.0%	\$	2,157.06
Seon TX8 5 camera,640gb, GPS, Event marker & 2 camera	\$4,274.11	10.0%	\$	3,846.70
			\$	-
			\$	-
<b>Starter Kit: (Required for all NEW customers)</b>			\$	-
SEON HDD-STB: Include software, docking station & trackball m	\$234.15	10.0%	\$	210.74
SEON HDD-STB-LMK	\$522.34	10.0%	\$	470.10
SEON 1HDD-DOCK (extra docking stations)	\$138.09	10.0%	\$	124.28
			\$	-
<b>Spare Hard Drives (1-3 per 10 systems recommended)</b>			\$	-
SEON TL Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TLHD Spare Hard Drive - 320GB	\$192.12	10.0%	\$	172.91
SEON TX Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
SEON DXHD Spare Hard Drive - 640GB	\$378.25	10.0%	\$	340.42
			\$	-
SEON GPS4	\$93.66	10.0%	\$	84.29
SEON LMK	\$300.19	10.0%	\$	270.18

SEON TL4 (2) CAMERA 4-CHANNEL 320GB, (2) 50FT CABLE,	\$1,561.01	10.0%	\$	1,404.91
SEON TL4 (3) CAMERA 4-CHANNEL 500 GB, (2) 20FT CABLE, (1) 50FT CABLE, GPS, EVENT TAG	\$3,583.12	10.0%	\$	3,224.81
CA-MP4 MOUNTING POST	\$54.04	10.0%	\$	48.63
CHW702E20	\$575.17	10.0%	\$	517.66
Dome camera with 50ft harness (lens TBD)	\$243.76	10.0%	\$	219.38
Dome camera with 20ft harness (lens TBD)	\$213.74	10.0%	\$	192.36
			\$	-
<b>24/7 CAMERA SYSTEMS</b>			\$	-
24/7 6 CHANNEL (3) Camera 500GB,EVENT MARKER	\$3,391.00	10.0%	\$	3,051.90
24/7 6 CHANNEL (4) Camera 500GB,EVENT MARKER	\$3,710.41	10.0%	\$	3,339.37
			\$	-
ROAD RUNNER 4 CAMERA, 1TB, GPS,EVENT MARKER	\$4,005.80	10.0%	\$	3,605.22
16 CHANNEL SOLID STATE 4 CAMERA, GPS, 64GB, SDX MEMORY	\$2,483.93	10.0%	\$	2,235.54
	\$0.00	10.0%	\$	-
			\$	-
<b>RWC GROUP</b>			\$	-
TRANS AIR / FM55 REAR / SMC3L COND / (1) TM21 COMP / 60K BTU SYST	\$9,405.68	51.6%	\$	4,552.35
TRANS AIR / FM55 REAR / 27K DASH / SMC3L COND / (1) TM21 COMP / EC	\$15,510.92	51.6%	\$	7,507.29
TRANS AIR / RT65 / (1) TM21 COMP / EC4.0 / 64K BTU SYSTEM (Quote 150	\$18,045.57	51.6%	\$	8,734.06
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (2) TM21 COMP / 12	\$20,350.01	51.6%	\$	9,849.41
TRANS AIR / FM55 FRONT & REAR / (2) SMC3L COND / (1) TM43 COMP / 12	\$25,689.45	51.6%	\$	12,433.70
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (2) SMC3L COND / (2) TM2	\$27,679.12	51.6%	\$	13,396.69
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (2) TM	\$25,369.98	51.6%	\$	12,279.07
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / (2) SMC3L COND / (1) TM	\$30,345.31	51.6%	\$	14,687.13
TRANS AIR / FM55 FRONT & REAR / 27 DASH / / TA93 SIDE / (2) SMC3L CO	\$33,819.59	51.60%	\$	16,368.68
TRANS AIR / FM55 FRONT & REAR / R120 COND / (2) TM21 COMP / 120K B	\$24,456.19	51.6%	\$	11,836.80
TRANS AIR / FM55 FRONT & REAR / R120 COND / (1) TM43 COMP / 120K B	\$29,551.33	51.6%	\$	14,302.84
TRANS AIR / FM55 FRONT & REAR / 27K DASH / (R120 COND / (2) TM21 CO	\$27,505.29	51.6%	\$	13,312.56
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (2) TM21 CO	\$29,532.53	51.6%	\$	14,293.75
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / R120 COND / (1) TM43 CO	\$34,261.22	51.6%	\$	16,582.43
TRANS AIR / FM55 FRONT & REAR / TA93 SIDE / 27K DASH / R120 COND /	\$36,762.98	51.6%	\$	17,793.28
TRANS AIR /130KBTU/ FM55 FRONT (1) TA93/ (1) TA96 120 ROOF TOP CO	\$36,599.41	51.6%	\$	17,714.12

TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (2) TM21 C	\$23,645.76	51.6%	\$	11,444.55
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / (2)SMC3L COND / (1) TM43 C	\$28,846.61	51.6%	\$	13,961.76
TRANS AIR / (1) TA73 REAR / (2) TA93 SIDE / 27K DASH / (2) SMC3L COND	\$30,810.43	51.6%	\$	14,912.25
TRANS AIR / (2) RT65 / (2) TM21 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$36,770.03	51.6%	\$	17,796.69
TRANS AIR / (2) RT65 / (1) TM43 COMP / EC4.0 / 128K BTU SYSTEM (Quote	\$41,259.10	51.6%	\$	19,969.41
TRANS AIR / (2) RT65 / 40K DASH / (3) TM21 COMP / EC4.0 / 168K BTU SYS	\$49,800.33	51.6%	\$	24,103.36
TRANS AIR / (2) RT65 / 40K DASH / (1) TM21 COMP / (1) TM43 COMP / EC4	\$51,794.69	51.6%	\$	25,068.63
TRANS AIR TA 17 DUCTED	\$38,759.69	51.6%	\$	18,759.69
TRANS AIR / 3 FAN CONDENSER UPGRADE (14" FANS)	\$1,477.57	51.6%	\$	715.14
TRANS AIR / 4 FAN CONDENSER UPGRADE (14" FANS)	\$2,008.46	51.6%	\$	972.09
TRANS AIR / DRIVER SNOUT	\$653.04	51.6%	\$	316.07
TRANS AIR TA55B93963C4C	\$34,246.51	51.6%	\$	16,575.31
TRANS AIR 150 BTU SYSTEM	\$31,903.38	51.6%	\$	15,441.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$40,609.26	51.6%	\$	19,654.88
RE - TRANS AIR / 150K BTU/ (2) RT96 / TRANSIT COMP / NO HEAT / EC4.0	\$46,514.45	51.6%	\$	22,512.99
RE - TRANS AIR / 177K BTU / (2) RT96 / (1) 27K DASH / (1) SMC25 COND / T	\$59,114.40	51.6%	\$	28,611.37
RE - TRANS AIR / 150K BTU/ (1) TA17 / (1) C5 COND / TRANSIT COMP / BA	\$43,420.25	51.6%	\$	21,015.40
RE - TRANS AIR / 130K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / (2) TM	\$24,870.75	51.6%	\$	12,037.44
RE - TRANS AIR / 145K BTU/ (1) TA73 / (2) TA93 / (2) SMC3L COND / TRANS	\$35,368.55	51.6%	\$	17,118.38
RE - TRANS AIR / 172K BTU (1) TA73 / (2) TA93 / 27K DASH / TRANSIT & 10	\$48,972.14	51.6%	\$	23,702.52
RE - TRANS AIR / 130K BTU / (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$31,407.09	51.6%	\$	15,201.03
RE - TRANS AIR / 130K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / (2) TM2	\$26,696.48	51.6%	\$	12,921.09
RE - TRANS AIR / 150K BTU / (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$36,994.39	51.6%	\$	17,905.28
RE - TRANS AIR / 177K BTU/ (1) TA55 / (1) TA77 / (1) SC3 / (1) SC4 / TRANS	\$53,346.37	51.6%	\$	25,819.64
RE - TRANS AIR / 150K BTU/ (1) TA77 / (1) TA96 / (1) TA93 / (2) SC4 / TRANS	\$40,803.38	51.6%	\$	19,748.84
RE - TRANS AIR / 177K BTU / (1) TA77 / (1) TA96 / (1) TA93 / (1) R120 / (1) S	\$47,926.40	51.6%	\$	23,196.38
CE-PROPANE TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$42,411.56	51.6%	\$	20,527.19
CE-CUMMINS TA/ FM55 FRONT & REAR /TA-93/ (2) SMC3L COND / (1) TM4	\$40,220.67	51.6%	\$	19,466.81
RE-KL80 DUCTED WITH DRIVERS BLOWER MOTOR (QUOTE 15800)	\$46,041.81	51.6%	\$	22,284.24
RE - TRANS AIR / 155K BTU/ (1) TA77 REAR / (2) TA93 SIDE / (2) 4C 15" FA	\$37,174.40	51.6%	\$	17,992.41
RE-TRANS AIR 150K BTU (1) TA 77 REAR, (1) TA93 SIDE/ FM-45 EVAP/RO	\$43,788.79	51.6%	\$	21,193.78
CE Propane TA55F55BSC2LPSC2LP, TM-43 w/ driver snout (15	\$20,478.93	51.6%	\$	9,911.80
CE TRANS AIR 130,000 BTU SC4	\$19,797.98	51.6%	\$	9,582.22
CE TRANS AIR 160,000 BTU TM-55 DUCTED	\$37,411.32	51.6%	\$	18,107.08

RE TRANS AIR 192,000 BTU BITZER DUCTED	\$42,283.30	51.6%	\$	20,465.12
			\$	-
			\$	-
			\$	-
			\$	-
BUS AIR (1) IN WALL Rear Evap, Skirt Cond, 3 Fan,(1) TM21 Compressor & In	\$11,745.36	51.6%	\$	5,684.75
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Skirt Cond, 3 F	\$19,732.21	51.6%	\$	9,550.39
BUS AIR (2) IN WALL Front & Rear Evap, (1) Side Mtn Evap, (1) Driver Plenum	\$22,081.28	51.6%	\$	10,687.34
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (2) Roof Cond, 3	\$25,839.79	51.6%	\$	12,506.46
BUS AIR (2) IN WALL Front & Rear Evap, (1) Driver Plenum, (1) Side Evap, (2)	\$30,537.94	51.6%	\$	14,780.36
			\$	-
			\$	-
MCC (1)IW1 REAR EVAP, (1) CM3 SKIRT COND, (1) TM-21 COMP	\$9,598.31	51.6%	\$	4,645.58
MCC (2) IW1 FRONT & REAR EVAP, (1) DRIVER PLENUM, (2) CM3 SKIRT	\$21,254.40	51.6%	\$	10,287.13
MCC (2) IW1 FRONT & REAR EVAP, (1) EM2 MID COND,(1) DRIVER PLE	\$23,725.63	51.6%	\$	11,483.20
MCC (2) IW1 FRONT & REAR EVAP,(1) DRIVER PLENUM, (2) K410 ROOF	\$25,050.51	51.6%	\$	12,124.44
MCC (2) IW1 FRONT & REAR EVAP,(1) EM2 MID COND,(1) DRIVER PLE	\$27,037.82	51.6%	\$	13,086.30
	\$0.00	51.6%	\$	-
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM3 SKIRT COND, (2)	\$26,215.64	51.6%	\$	12,688.37
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (2) CM14 SKIRT COND 4	\$43,951.14	51.6%	\$	21,272.35
MCC (1) EM3 REAR EVAP, (2) EM2 SIDE EVAP, (1) CR340 ROOF COND, (	\$42,248.06	51.6%	\$	20,448.06
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, CEILING DUCT	\$42,635.66	51.6%	\$	20,635.66
MCC (1) ECO353N-32SL,(1) 150 AMP ALT, (1) 05G COMP, PARCEL RACK	\$54,458.54	51.6%	\$	26,357.93
MCCGB AC353N (1) 150AMP ALT, (1) 05G COMP, CELING DUCTWORK	\$37,190.09	51.6%	\$	18,000.00
MCC Parcel rack AC System	\$46,281.00	51.6%	\$	22,400.00
			\$	-
			\$	-
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$55,359.06	51.6%	\$	26,793.78
THERMOKING DUCTED SYSTEM, Roof top Cond,3 fan, 24 volt, (1) TRANSIT	\$53,558.84	51.6%	\$	25,922.48
THERMOKING INWALL EVAP,SLC ROOF TOP CONDENSERS,sa-400 CELIN	\$39,922.48	51.6%	\$	19,322.48
			\$	-
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT CONDENSERS, TM21 COMP, 126	\$15,727.04	51.6%	\$	7,611.89
CE / ACC-SPHEROS, (2) EVAP, (2) ROOFTOP COND, TM21 COMP, 126K BT	\$18,708.01	51.6%	\$	9,054.68
CE / ACC-SPHEROS, (3) EVAP, (2) ROOFTOP COND, TM21 COMP, 136K BT	\$20,237.26	51.6%	\$	9,794.83

CE / ACC-SPHEROS, (3) EVAP, (2) SKIRT COND, TM21 COMP, 136K BTU- F	\$17,256.28	51.6%	\$	8,352.04
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TM43 COMP, 126K B	\$21,183.93	51.6%	\$	10,253.02
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, TIE-IN DASH, TM43 COMP	\$19,797.98	51.6%	\$	9,582.22
CE / ACC-SPHEROS, (2) EVAP, (2) SKIRT COND, STD ALONE DASH, TM43	\$22,828.28	51.6%	\$	11,048.89
CE / ACC-SPHEROS, (2) EAVP, (2) ROOFTOP COND, STD ALONE DASH, T	\$25,809.26	51.6%	\$	12,491.68
CE / ACC-SPHEROS, (2) EVAP, (2) ROOF TOP COND, TIE IN DASH, TM43 C	\$22,778.95	51.6%	\$	11,025.01
			\$	-
			\$	-
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$37,411.32	51.6%	\$	18,107.08
CE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM43 COMP, 160K BTU- C	\$39,119.10	51.6%	\$	18,933.64
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65 COMP, 180K BTU- C	\$40,575.52	51.6%	\$	19,638.55
RE / ACC-SPHEROS, LO PRO DUCTED SYSTEM, TM65/ BITZER COMP, 18	\$42,283.30	51.6%	\$	20,465.12
CC33543 Stand Alone Dash TM16 low profile ducting & with drivers blower	\$42,741.37	51.6%	\$	20,686.82
RW88FW88595943 with Dash stand alone TM16	\$19,142.59	51.6%	\$	9,265.01
ACC- SPHEROS, (2) IN WALLS, MID EVAP, SKIRT COND, DRIVER DASH TM	\$26,819.36	51.6%	\$	12,980.57
ACC- SPHEROS, (2) IN WALLS, MID EVAP, ROOFTOP COND, DRIVER DAS	\$29,800.33	51.6%	\$	14,423.36
			\$	-
			\$	-
			\$	-
TOWING - 36 / UNLIMITED MILES (\$275 PER) 40KMH	\$492.42	12.0%	\$	433.33
TOWING - 48 / UNLIMITED MILES (\$275 PER) 40KMJ	\$580.81	12.0%	\$	511.11
TOWING - 60 / UNLIMITED MILES (\$275 PER) 40KMK	\$707.07	12.0%	\$	622.22
TOWING - 36 / UNLIMITED MILES (\$550 PER) 40KMB	\$694.44	12.0%	\$	611.11
TOWING - 48 / UNLIMITED MILES (\$550 PER) 40KMC	\$820.71	12.0%	\$	722.22
TOWING - 60 / UNLIMITED MILES (\$550 PER) 40KMD	\$1,010.10	12.0%	\$	888.89
			\$	-
EXT VEHICLE COVERAGE- 36 / 50K MILES 40PLB	\$946.97	12.0%	\$	833.33
EXT VEHICLE COVERAGE- 48 / 50K MILES 40PKV	\$1,641.41	12.0%	\$	1,444.44
EXT VEHICLE COVERAGE- 48 / 100K MILES 40PKW	\$2,462.12	12.0%	\$	2,166.67
EXT VEHICLE COVERAGE- 60 / 100K MILES 40PLG	\$2,904.04	12.0%	\$	2,555.56
EXT VEHICLE COVERAGE- 60 / 200K MILES 40PLJ	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 72 / 100K MILES 40PLL	\$3,358.59	12.0%	\$	2,955.56
EXT VEHICLE COVERAGE- 72 / 150K MILES 40PLM	\$4,545.45	12.0%	\$	4,000.00
EXT VEHICLE COVERAGE- 84 / 100K MILES 40PLP	\$4,734.85	12.0%	\$	4,166.67

EXT VEHICLE COVERAGE- 84 / 150K MILES 40PLR	\$6,515.15	12.0%	\$	5,733.33
	\$0.00	12.0%	\$	-
STARTER & ALT- 36 / 50K MILES 40KUE	\$75.76	12.0%	\$	66.67
STARTER & ALT- 48 / 50K MILES 40KUK	\$101.01	12.0%	\$	88.89
STARTER & ALT- 48 / 100K MILES 40KUL	\$176.77	12.0%	\$	155.56
STARTER & ALT- 60 / 100K MILES 40KUR	\$227.27	12.0%	\$	200.00
STARTER & ALT- 60 / 200K MILES 40KUT	\$454.55	12.0%	\$	400.00
	\$0.00	12.0%	\$	-
CUMMINS 6.7L FULL ENG / 5YRS / 150K MILES 40SEJ	\$1,830.81	12.0%	\$	1,611.11
CUMMINS 6.7L FULL ENG / 5YRS / 200K MILES 40SEK	\$2,209.60	12.0%	\$	1,944.44
CUMMINS 6.7L FULL ENG / 5YRS / UNLIM MILES 40SEL	\$2,367.42	12.0%	\$	2,083.33
CUMMINS 6.7L FULL ENG / 7YRS / 150K MILES 40SEM	\$2,904.04	12.0%	\$	2,555.56
CUMMINS 6.7L FULL ENG / 8YRS / 150K MILES 40SEN	\$3,409.09	12.0%	\$	3,000.00
CUMMINS 6.7L FULL ENG / 10YRS / 120K MILES 40SEP	\$4,356.06	12.0%	\$	3,833.33
CUMMINS 6.7L FULL ENG / 10YRS / 150K MILES 40SER	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L FULL ENG / 10YRS / 200K MILES 40SES	\$5,176.77	12.0%	\$	4,555.56
CUMMINS 6.7L FULL ENG / 10YRS / UNLIM MILES 40SET	\$5,871.21	12.0%	\$	5,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 150K MI	\$1,388.89	12.0%	\$	1,222.22
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / 200K MI	\$1,641.41	12.0%	\$	1,444.44
CUMMINS 6.7L FULL ENG MINUS MAINT / 5YRS / UNLIM M	\$1,767.68	12.0%	\$	1,555.56
CUMMINS 6.7L FULL ENG MINUS MAINT / 7YRS / 150K MI	\$2,462.12	12.0%	\$	2,166.67
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / 200K M	\$4,103.54	12.0%	\$	3,611.11
CUMMINS 6.7L FULL ENG MINUS MAINT / 10YRS / UNLIM	\$4,608.59	12.0%	\$	4,055.56
CUMMINS 6.7L MAJOR COMPONENTS / 7YRS / 150K MILES	\$694.44	12.0%	\$	611.11
CUMMINS 6.7L MAJOR COMPONENTS / 10YRS / 200K MIL	\$946.97	12.0%	\$	833.33
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 7YRS / 150	\$2,272.73	12.0%	\$	2,000.00
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 8YRS / 150	\$2,872.47	12.0%	\$	2,527.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 12	\$3,724.75	12.0%	\$	3,277.78
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 15	\$4,198.23	12.0%	\$	3,694.44
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / 20	\$4,671.72	12.0%	\$	4,111.11
CUMMINS 6.7L FULL ENG MINUS INJECTORS / 10YRS / UN	\$5,303.03	12.0%	\$	4,666.67
	\$0.00	12.0%	\$	-
CUMMINS L9 FULL ENG / 5YRS / 150K MILES 40SGY	\$2,367.42	12.0%	\$	2,083.33
CUMMINS L9 FULL ENG / 5YRS / 200K MILES 40SGZ	\$2,840.91	12.0%	\$	2,500.00

CUMMINS L9 FULL ENG / 5YRS / UNLIM MILES 40SHA	\$3,093.43	12.0%	\$	2,722.22
CUMMINS L9 FULL ENG / 7YRS / 150K MILES 40SHB	\$3,156.57	12.0%	\$	2,777.78
CUMMINS L9 FULL ENG / 8YRS / 150K MILES 40SHC	\$3,598.48	12.0%	\$	3,166.67
CUMMINS L9 FULL ENG / 10YRS / 120K MILES 40SMC	\$5,492.42	12.0%	\$	4,833.33
CUMMINS L9 FULL ENG / 10YRS / 150K MILES 40SMD	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG / 10YRS / 200K MILES 40SME	\$6,502.53	12.0%	\$	5,722.22
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 150K MILE	\$1,799.24	12.0%	\$	1,583.33
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / 200K MILE	\$2,272.73	12.0%	\$	2,000.00
CUMMINS L9 FULL ENG MINUS MAINT / 5YRS / UNLIM MI	\$2,335.86	12.0%	\$	2,055.56
CUMMINS L9 FULL ENG MINUS MAINT / 7YRS / 150K MILE	\$3,219.70	12.0%	\$	2,833.33
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / 200K MIL	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS MAINT / 10YRS / UNLIM M	\$5,808.08	12.0%	\$	5,111.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 7YRS / 150K	\$2,840.91	12.0%	\$	2,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 8YRS / 150K	\$3,251.26	12.0%	\$	2,861.11
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 120K	\$5,113.64	12.0%	\$	4,500.00
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 150K	\$5,334.60	12.0%	\$	4,694.44
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / 200K	\$5,871.21	12.0%	\$	5,166.67
CUMMINS L9 FULL ENG MINUS INJECTORS / 10YRS / UNL	\$6,691.92	12.0%	\$	5,888.89
Pre Delivery Inspection Rear Engine School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Rear Engine SPED School Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Conventional School/MFSAB Bus	\$1,000.00	10.0%	\$	900.00
Pre Delivery Inspection Conventional SPEDSchool Bus	\$1,100.00	10.0%	\$	990.00
Pre Delivery Inspection Cutaway School/MFSAB School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection Cutaway School/SPED School Bus	\$875.00	10.0%	\$	787.50
Pre Delivery Inspection - Commercial/Transit to 22 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 25 FT	\$650.00	10.0%	\$	585.00
Pre Delivery Inspection - Commercial/Transit to 28 FT	\$700.00	10.0%	\$	630.00
Pre Delivery Inspection - Commercial/Transit to 32 FT	\$900.00	10.0%	\$	810.00
Pre Delivery Inspection - Commercial/Transit over 32 FT	\$1,000.00	10.0%	\$	900.00
				#VALUE!
				#VALUE!
Lettering -Vinyl 5-6" BOTH SIDES AND BUMPERS	\$180.00	18.0%	\$	147.60
			\$	-
Transportation costs for New bus from Tulsa OK to Phoenix	\$1,737.12	0.0%	\$	1,737.12

Transportation costs for New bus from Hutchensen, KS to	\$1,350.00	0.0%	\$	1,350.00
Truck only			\$	-
Allison Extended warranty (see attached) for pricing			\$	-
Cab and Chassis International offer on Extended Warranty 50% off of list		50%		#VALUE!
			\$	-

<b>Equipment</b>	<b>MSRP</b>	<b>Options</b>	<b>Total</b>	<b>Contract Discount %</b>	<b>Discount \$</b>	<b>Contract Price</b>	<b>Add Ons</b>	<b>Taxes</b>	<b># of Units</b>	<b>Total</b>
<b>HV507 SFA 6-Wheel Plow</b>	\$ 92,154.00	\$ 54,428.00	\$ 146,582.00	32%	\$ 48,504.24	\$ <b>98,077.76</b>	\$ 115,849.00	\$ 35,551.84	2	\$ <b>463,405.36</b>
<b>HV513 SFA 10-Wheel Plow</b>	\$ 165,553.00	\$ 74,040.00	\$ 239,593.00	50%	\$ 120,921.50	\$ <b>118,671.50</b>	\$ 131,494.00	\$ 20,783.74	1	\$ <b>270,949.24</b>
<b>CV515 SFA Barricade Truck</b>	\$ 46,219.00	\$ 18,798.00	\$ 65,017.00	10%	\$ 7,937.20	\$ <b>57,079.80</b>	\$ 34,637.00	\$ 7,624.49	1	\$ <b>99,341.29</b>
<b>MV607 SBA Patch Truck</b>	\$ 91,707.00	\$ 31,020.00	\$ 122,727.00	32%	\$ 40,870.64	\$ <b>81,856.36</b>	\$ 91,740.00	\$ 14,420.50	1	\$ <b>188,016.86</b>



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:  
Medium and Heavy Duty Cabs, Chassis, and Buses

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

## Attachment 1 Offer and Acceptance Form

**SUBMISSION OF OFFER:** Undersigned hereby offers and agrees to provide Medium and Heavy Duty Cabs, Chassis, and Buses in compliance with the Solicitation indicated above and any Offer indicated by the latest dated version below:

Initial Offer:	1.	Mary Wilson	MRW						
		date	initial						
Revised Offers:	2.	x		3.	x		4.	x	
		date #1	initial	date #1	initial	date #1	initial		
	5.	x		6.	x		7.	x	
		date #4	initial	date #5	initial	date #6	initial		
Best and Final Offer:	8.	1/16/19							
		date	initial						

### RWC Group

Offeror company name  
600 N 75<sup>th</sup> Ave  
Address  
Phoenix, Arizona 85043  
City | State | ZIP  
27-2085725  
Federal tax identifier (EIN or SSN)

*Mary Wilson* Signature of person authorized to sign Offer  
*MRW* Initials

Mary Wilson Truck Sales  
Printed name and title  
Mary Wilson Truck Sales  
Contact name and title  
mwilson@rwcgroup.com 602-307-1037  
Contact Email Address Contact phone number

### CERTIFICATION:

 By signature in the above, Offeror certifies that it:

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

**ACCEPTANCE OF OFFER:** State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by number #8 at the top of this form, and which was dated 1/16/19 (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: CTR041813 The effective date of the Contract is: 1/18/19 Contract awarded 1/18/19  
Date Date

*Nicola Perrera*  
Procurement Officer signature

Nick Perrera  
Statewide Procurement Manager



# Request for Proposal

Solicitation No.

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Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of  
Administration  
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100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

## Part 2: Scope, Pricing and Terms and Conditions

### Table of Contents

SECTION 2-A: Scope of Work .....	6
SECTION 2-B: Pricing Document .....	17
1.0 Compensation.....	17
2.0 Pricing .....	18
3.0 Funding .....	19
4.0 Invoicing.....	19
5.0 Payments .....	20
SECTION 2-C: Special Terms and Conditions.....	22
1.0 ..... DEFINITION OF TERMS .....	22
1.1 Acceptance.....	22
1.2 Accepted Offer .....	22
1.3 Arizona Procurement Code; A.R.S.; A.A.C. ....	22
1.4 Arizona TPT.....	22
1.5 Attachment .....	22
1.6 Pricing Document .....	22
1.7 Contract Amendment.....	22
1.8 Contract Terms.....	22
and Conditions .....	22
1.9 Contractor .....	22
1.10 Contractor Indemnitor.....	22
1.11 Co-Op Buyer .....	23
1.12 Eligible Agency.....	23
1.13 Indemnified Basic Claims .....	23
1.14 Instructions to Offerors .....	23
1.15 Order .....	23
1.16 The State's e-Procurement System.....	23
1.17 State .....	23
1.18 State Indemnitees .....	23
1.19 Subcontractor.....	23
1.20 Work.....	24
2.0 ..... CONTRACT INTERPRETATION .....	24
2.1 Usage .....	24
2.2 Contract Order of Precedence.....	24
2.3 Independent Contractor .....	25
2.4 Complete Integration .....	25
3.0 ..... CONTRACT ADMINISTRATION AND OPERATION .....	25
3.1 Term of Contract .....	25
3.2 Contract Extensions.....	25



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 3.3 Notices and Correspondence..... 25
- 3.4 Signing of Contract Amendments ..... 26
- 3.5 Click-Through Terms and Conditions ..... 26
- 3.6 Books and Records ..... 26
- 3.7 Contractor Licenses ..... 26
- 3.8 Inspection and Testing..... 26
- 3.9 Ownership of Intellectual Property..... 27
- 3.10 Subcontracts..... 27
- 3.11 Offshore Performance of Certain Work Prohibited..... 28
- 3.12 Orders ..... 28
- 3.13 Statewide Contract Provisions ..... 28
- 3.14 Multiple-Use Provisions..... 30
- 3.15 Other Contractors ..... 30
- 3.16 Work on State Premises ..... 30
  
- 4.0 ..... COSTS AND PAYMENTS ..... 31
  - 4.1 Payments..... 31
  - 4.2 Applicable Taxes ..... 31
  
- 5.0 ..... CONTRACT CHANGES ..... 31
  - 5.1 Contract Amendments ..... 31
  - 5.2 Assignment and Delegation ..... 31
  
- 6.0 ..... RISK AND LIABILITY ..... 32
  - 6.1 Risk of Loss ..... 32
  - 6.2 Contractor Insurance..... 32
  - 6.3 Indemnification ..... 34
  - 6.4 Patent and Copyright Indemnification ..... 34
  - 6.5 Force Majeure ..... 35
  - 6.6 Third Party Antitrust Violations..... 35
  
- 7.0 ..... WARRANTIES..... 35
  - 7.1 Conformity to Requirements ..... 35
  - 7.2 Contractor Personnel ..... 36
  - 7.3 Intellectual Property ..... 36
  - 7.4 Licenses and Permits ..... 36
  - 7.5 Operational Continuity ..... 36
  - 7.6 Performance in Public Health Emergency..... 36
  - 7.7 Lobbying..... 36
  - 7.8 Survival of Warranties ..... 36
  
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 37
  
- 9.0 ..... CONTRACT TERMINATION ..... 37
  
- 10.0 ... CONTRACT CLAIMS ..... 37
  - 10.1 Claim Resolution..... 37
  - 10.2 Mandatory Arbitration..... 37
  
- 11.0 ... GENERAL PROVISIONS FOR MATERIALS ..... 37
  - 11.1 Applicability ..... 37
  - 11.2 Off-Contract ..... 37



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

Materials .....	37
11.3 Compensation for.....	37
Late Deliveries .....	37
11.4 Indicate Shipping.....	37
Costs on Order .....	37
11.5 Current Products .....	37
11.6 Maintain .....	37
Comprehensive .....	37
Selection.....	37
11.7 Additional .....	37
Products .....	37
11.8 Discontinued .....	38
Products .....	38
11.9 Forced .....	38
Substitutes .....	38
11.10 Recalls.....	38
11.11 Delivery.....	38
11.12 Delivery Time.....	38
11.13 Delivery Locations.....	38
11.14 Conditions at.....	39
Delivery Location.....	39
11.15 Materials.....	39
Acceptance.....	39
11.16 Correcting Defects .....	39
11.17 Returns .....	40
11.18 Order Cancellation.....	40
11.19 Product Safety .....	40
11.20 Hazardous.....	40
Materials .....	40
<b>12.0 ... GENERAL PROVISIONS FOR SERVICES .....</b>	<b>41</b>
12.1 Applicability.....	41
12.2 Comprehensive Services Offering.....	41
12.3 Additional Services .....	41
12.4 Off-Contract Services.....	41
12.5 Removal of Personnel.....	41
12.6 Transitions.....	41
12.7 Accuracy of Work .....	41
12.8 Requirements at Services Location.....	41
12.9 Services Acceptance .....	42
12.10 Corrective Action Required.....	42
<b>13.0 ... DATA AND INFORMATION HANDLING .....</b>	<b>42</b>
13.1 Applicability.....	42
13.2 Data Protection and Confidentiality of Information.....	42
13.3 Personally Identifiable Information.....	43
13.4 Protected Health Information.....	43
<b>SECTION 2-D: Uniform Terms and Conditions .....</b>	<b>44</b>



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 1.0 ..... DEFINITION OF TERMS ..... 44
  - 1.1 Attachment ..... 44
  - 1.2 Contract ..... 44
  - 1.3 Contract Amendment ..... 44
  - 1.4 Contractor ..... 44
  - 1.5 Days ..... 44
  - 1.6 Exhibit ..... 44
  - 1.7 Gratuity ..... 44
  - 1.8 Materials ..... 44
  - 1.9 Procurement Officer ..... 44
  - 1.10 Services ..... 44
  - 1.11 State ..... 44
  - 1.12 State Fiscal Year ..... 44
  - 1.13 Subcontract ..... 44
  
- 2.0 ..... CONTRACT INTERPRETATION ..... 44
  - 2.1 Arizona Law ..... 44
  - 2.2 Implied Terms ..... 45
  - 2.3 Contract Order of Precedence ..... 45
  - 2.4 Relationship of ..... 45
  - Parties
  - 2.5 Severability ..... 45
  - 2.6 No Parole Evidence ..... 45
  - 2.7 No Waiver ..... 45
  
- 3.0 ..... CONTRACT ADMINISTRATION AND OPERATION ..... 45
  - 3.1 Records ..... 45
  - 3.2 Non-Discrimination ..... 45
  - 3.3 Audit ..... 45
  - 3.4 Facilities Inspection ..... 45
  - and Materials Testing ..... 45
  - 3.5 Notices ..... 45
  - 3.6 Advertising, Publishing and Promotion of Contract ..... 46
  - 3.7 Property of the State ..... 46
  - 3.8 Ownership of Intellectual Property ..... 46
  - 3.9 Federal Immigration and Nationality Act ..... 46
  - 3.10 E-Verify Requirements ..... 46
  - 3.11 Offshore Performance of Work Prohibited ..... 46
  
- 4.0 ..... COSTS AND PAYMENTS ..... 46
  - 4.1 Payments ..... 46
  - 4.2 Delivery ..... 46
  - 4.3 Applicable Taxes ..... 46
  - 4.4 Availability of Funds for the Next State fiscal year ..... 47
  - 4.5 Availability of Funds for the current State fiscal year ..... 47
  
- 5.0 ..... CONTRACT CHANGES ..... 47
  - 5.1 Amendments ..... 47
  - 5.2 Subcontracts ..... 47
  - 5.3 Assignment and Delegation ..... 47



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- 6.0 ..... RISK AND LIABILITY ..... 47
  - 6.1 Risk of Loss ..... 47
  - 6.2 Indemnification ..... 47
  - 6.3 Indemnification – Patent and Copyright ..... 48
  - 6.4 Force Majeure ..... 48
  - 6.5 Third Party Antitrust Violations..... 48
- 7.0 ..... WARRANTIES ..... 48
  - 7.1 Liens ..... 48
  - 7.2 Quality ..... 48
  - 7.3 Fitness ..... 49
  - 7.4 Inspection/Testing ..... 49
  - 7.5 Compliance with Laws ..... 49
  - 7.6 Survival of Rights and Obligations after Contract Expiration or Termination ..... 49
- 8.0 ..... STATE'S CONTRACTUAL REMEDIES ..... 49
  - 8.1 Right to Assurance ..... 49
  - 8.2 Stop Work Order ..... 49
  - 8.3 Non-exclusive Remedies ..... 49
  - 8.4 Nonconforming Tender ..... 49
  - 8.5 Right of Offset ..... 50
- 9.0 ..... CONTRACT TERMINATION ..... 50
  - 9.1 Cancellation for Conflict of Interests ..... 50
  - 9.2 Gratuities ..... 50
  - 9.3 Suspension or Debarment ..... 50
  - 9.4 Termination for Convenience ..... 50
  - 9.5 Termination for Default ..... 50
  - 9.6 Continuation of Performance Through Termination ..... 50
- 10.0 ... CONTRACT CLAIMS ..... 51
  - 10.1 Contract Claims ..... 51
- 11.0 ... ARBITRATION ..... 51
  - 11.1 Arbitration ..... 51
- 12.0 ... COMMENTS WELCOME ..... 51
  - 12.1 Comments Welcome ..... 51



## Request for Proposal

Solicitation No.

**BPM000228**

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Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### SECTION 2-A: Scope of Work

**DESCRIPTION:** The State of Arizona invites sealed proposals from qualified firms to provide Medium and Heavy Duty Cab and Chassis for Statewide and Eligible Agencies as specified below.

**DUE DATE AND TIME:** Offers shall be received until **3:00 p.m. Arizona MST, 11/28/18.**

Additional information regarding submittal instructions is located within this document in the following sections: Special Instructions to Offerors and Uniform Instructions to Offerors.

### Start of Scope

**Requirements which must be met by vendors to be considered for this award include but are not limited to the following:**

#### 1. GENERAL CONDITIONS AND REQUIREMENTS

- 1.1. All chassis shall be manufacturer's current models in production throughout the term of this contract and shall be services completed by the Contractor before delivery and ready in all respects for use.
- 1.2. All chassis bid and furnished shall meet requirements of applicable Arizona Motor Vehicle laws and all other Federal Motor Vehicle laws (including the Federal Bridge Formula), whether or not such requirements are specified in detail.
- 1.3. The Contractor shall supply a quote sheet within seven (7) calendar days after receiving request from the eligible agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options (including line item cost), applicable tax, delivery cost, total price, and point of contact. For vehicles requiring upfit/modifications, all applicable cost shall be included in quotation or as a separate quotation.
- 1.4. Within fourteen (14) calendar days after receipt of a purchase order, Contractor shall provide the eligible agency copies of the manufacturer's factory order numbers, to confirm vehicles have been ordered. If confirmation of manufacturer's factory order numbers is not received within this timeframe the eligible agency has the option to cancel the order and purchase from another source. The eligible agency may charge the extra cost of procuring the vehicles to the original vendor. This shall be considered a mandatory requirement. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

#### 2. CHASSIS MODELS

The Contractor is encouraged to provide a full line of new Medium and Heavy Duty Cab & Chassis. Contractors shall submit a vehicle specification sheet for each cab & chassis offered, please see Attachment 4. Eligible Agencies throughout the State will have varying needs.



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Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractors shall provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not limited to, models and manufacturer options to meet the needs of an eligible agency.

### 3. CHASSIS UPFIT/MODIFICATION

The Eligible Agency may request the awarded Contractor(s) to upfit/modify any cab and chassis for specific organizational needs. For example, a chassis may require a specialized body (i.e.: dump body, landscape body, etc.). Other cab and chassis may require interior and/or exterior modifications per the Eligible Agency's request. The Eligible Agency shall supply all upfit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the upfit/modification on a quotation to the Eligible Agency for review and acceptance before any work commences.

### 4. WARRANTY

- 4.1. At a minimum, all equipment supplies under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum of the manufacturer's warranty from the date of acceptance. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the eligible agency. The written warranty shall be included with the delivered vehicles to the eligible agency.
- 4.2. Contractors are encouraged to provide the State additional warranty packages that exceed the minimum requirements. Additional package pricing may be listed on Attachment 4.

### 5. CAB AND CHASSIS EQUIPMENT REQUIREMENTS

- 5.1. **Decals** – Decals or markings of any type pertaining to advertisement other than those installed by the manufacturer such as name and model shall not be attached to any vehicle.
- 5.2. **Fluid Requirements** – Contractor shall be responsible for notifying the eligible agency of special fluid requirements that are necessary to maintain standard and extended warranties and service agreements i.e. transmission fluid, anti-freeze, oils and lubricants that must be Original Equipment Manufacturer (OEM) only.
- 5.3. **Service Requirements** – All vehicles shall be completely assembled, serviced, adjusted and all equipment including standard and optional equipment shall be installed and the units made ready for continuous operation. Servicing requirements shall include, but not limited to, the following:
  - Complete lubrication
  - Checking of all fluid levels to insure that they are filled to the manufacturer's recommended capacity
  - Full tank(s) of fuel and DEF (diesel exhaust fluid) if required, less delivery fuel and DEF
  - Engine adjustment to proper operation condition
  - Tire inflation to correct pressure
  - Checking of all mechanical and electrical operations
  - Checking for any appearance defects
  - Cleaning, removal of all unnecessary tags and stickers, washing if necessary
- 5.4. **Special Paint Requirement** – Eligible agencies may require special paint for some vehicles, i.e., special highway yellow and special eligible agency fleet colors. An increase of no more than thirty (30) days over the required delivery time shall be allowed for this requirement.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractors shall indicate on Attachment 4 if there are any quantity requirements or an additional cost for specialty fleet colors. If no information is entered on Attachment 4, it will be understood that there is no quantity requirement or additional cost.

- 5.5. **Special Title Requirement** – There may be a requirement for the title on some vehicles purchased to be titled to other than the ordering eligible agency. The State has programs that require equipment purchased from special funds be returned to the State’s communities. These purchases will be made for authorized political subdivisions.
- 5.6. **Tires** – Any spare tire supplied, optional or standard, shall match the OEM tires and wheels contained on the vehicle. Spare tires shall be full size tire and wheel identical to factory OEM.
- 5.7. **Vehicle Equipment Requirements** – All base vehicles offered shall, at a minimum, include the following;
- All standard factory equipment
  - Automatic transmission
  - Cruise Control
  - Four (4) keys and two (2) keyless entry remotes (if applicable), per vehicle
  - Air conditioning (for non-buses)
  - Basic radio with Bluetooth capability for cell phone connection
  - Cloth seats
  - Rear view mirrors on driver and passenger doors
  - Standard factory tint glass, if available

## 6. TRAINING MATERIALS AND DIAGNOSTIC TOOLS

- 6.1. Training shall be provided by the Contractor for equipment supplied upon request from the eligible agency. Training shall be available for maintenance of engine and other mechanical and electrical functions. Training shall be categorized by Operator Training and Service (or Repair). Training and shall be provided in Attachment 4.
- 6.2. Shop Manuals – Shop manuals shall be provided by electronic, web based and/or hard copy to a requesting eligible agency.
- 6.3. Diagnostic Tools/Subscriptions – The Contractor shall provide a diagnostic scan tool(s), laptop program, and/or yearly subscription for any vehicles offered under this contract for which such device is available, upon request of an Eligible Agency. Cost of initial and any additional diagnostic equipment, yearly subscriptions or programs shall be provided in Attachment 4.

## 7. MANUFACTURER’S CERTIFICATION

- 7.1. The Contractor shall submit proof of Manufacturer certification in response to the qualifications questions located in Section 3 Attachment 2-A, stating that the Contractor is the Manufacturer or a Certified Representative of the Manufacturer, for each Manufacturer they represent under a resultant contract. The Manufacturer’s Certification must be executed by the Manufacturer(s) only, and may not be completed by the Contractor. Dealer agreements shall not be accepted in lieu of a Manufacturer’s Certification.

## 8. CURRENT MODELS

- 8.1. All vehicles shall be the manufacturer’s current models in production at the time of delivery. All vehicles shall be new, unused, equivalent in style and quality to those offered to the general public and meet or exceed all specifications and requirements set forth in this



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

solicitation.

### 9. DEALERSHIP, PARTICIPATING SERVICE AND DELIVERY LOCATIONS

- 9.1. The Contractor may submit, at any time during the contract period, new dealership, participating service and delivery locations that will be used as subcontractors for both product deliveries and drive in service centers under the contract. Requests are to be submitted electronically and shall contain:
- 9.2. The dealer or outlet name
- 9.3. Location (physical address)
- 9.4. Telephone/fax numbers and email information
- 9.5. Key personnel at that location
- 9.6. Approval shall be in the form of a bilateral change order in the State's e-Procurement system, and shall become effective on the date the change order is the 'Sent' status.

### 10. DELIVERY (MINIMUM)

- 10.1. Delivery location shall be identified on the issuing eligible agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the eligible agency of such delays along with revised delivery estimate from factory immediately after it becomes known. If manufacturer has a website available to check order status, this information will be shown in the pricing document.
- 10.2. All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M., unless a time has been agreed upon between the Contractor and eligible agency. The Contractor shall be required to give the ordering eligible agency a minimum of 24 hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.
- 10.3. All vehicles shall be delivered with four (4) keys and if applicable two (2) keyless entry remotes and a full tank(s) of fuel, less delivery.
- 10.4. The following documents shall be provided upon delivery of the vehicles(s):
- 10.5. M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
- 10.6. Warranty Document
- 10.7. Manufacturers unaltered invoice
- 10.8. The retail price label must be affixed to the window of all vehicles delivered
- 10.9. Delayed warranty/in-service start request form (if requested by ordering entity)

### 11. EQUIPMENT INSPECTION

- 11.1. Contractor shall retain title and control of all goods until they are delivered, inspected and accepted. All risk of transportation and related charges shall be the responsibility of the Contractor. The Contractor shall file all claims for visible and concealed damage. The State shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.
- 11.2. Each vehicle delivered shall be subject to a complete inspection by the eligible agency prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Thirty (30) calendar days shall be allowed



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

for this process. If delivered equipment is returned to the Contractor prior to acceptance for any reason, additional periods of thirty (30) calendar days shall be allowed for inspection when subsequent deliveries occur. All corrections shall be made within seven (7) calendar days of reported deficiency. All corrections shall be made without any inconvenience to the State.

### 12. IN-SERVICE NOTIFICATION

12.1. Vehicles not placed in service immediately upon receipt shall be warranted from the date the vehicle is placed in service. The eligible agency shall notify the Contractor in writing of the actual in-service date, on forms to be provided for such purpose upon request by the eligible agency.

### 13. OPTIONAL EQUIPMENT

13.1. All optional equipment and accessories shall be original equipment from the manufacturer and installed at the factory unless otherwise specified.

### 14. RECALL NOTICES

14.1. In the event of any recall notice, technical service bulletin, or other important notification affecting a vehicle purchased from any resultant contract, a notice shall be sent to the eligible agency listed on each applicable purchase order. Each notice shall reference the affected purchase order and vehicle identification number. The contractor shall provide and retrofit at no cost to the State all vehicles purchased under this contract with vehicle safety enhancements as a result of the recall.

### 15. VEHICLE DOCUMENTATION

15.1. The Contractor shall include in each vehicle an owner, operator and maintenance manual. This shall include all standard manufacturer literature normally furnished with the purchase of a new vehicle at the time of delivery.

### 16. FEDERAL TERMS

THE FOLLOWING SPECIAL TERMS AND CONDITIONS SHALL APPLY TO PURCHASES OF ANY VEHICLES PROCURED WITH FEDERAL FUNDS

16.1. BUS TESTING The Contractor (Manufacturer) agrees to comply with 49 U.S.C. §5323 (C) and FTA 's implementing regulation at 49CFR Part 665 and shall perform the following:

- Manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which shall be prior to the recipient's final acceptance of the first vehicle.
- A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such vehicle and the details of that vehicle's configuration and major components.

### 16.2. BUY AMERICA

- The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
- An Offeror may be required to submit an appropriate Buy America certification if federal funds are utilized to procure products and/or services under the contract.

### 16.3. CARGO PREFERENCE REQUIREMENTS

The Contractor agrees:

- To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Preceding Paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- To include these requirements in all subcontracts issued Pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 16.4. CIVIL RIGHTS

- The Contractor is required to comply with Executive Order 99-4 "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.
- The Contractor is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23 CFR
- 710.405 (b) are made applicable by reference and are hereinafter considered part of this Contract.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The Contractor is required to comply with the provisions of Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

### 16.5. CLEAN AIR

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §~ 7401 et.seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.6. CLEAN WATER

The Contractor agrees to:

- Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et ~g.
- To report each violation to the Purchaser and understands and agrees that the Purchaser shall, In turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.
- To include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 16.7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- Withholding for unpaid wages and liquidated damages: The grantee or recipient shall upon its own action or upon written request of an authorized representative of the Department



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

- Subcontractors: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- Payrolls and basic records: Relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or cost anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any cost reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### 16.8. ENERGY CONSERVATION

- The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### 16.9. FEDERAL CHANGES

- Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### 16.10. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

contractual provisions required by DOT, as set forth in FTA Circular 4220.1 C, dated May 1, 1995, are hereby incorporated by reference. Anything, to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests, which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### 16.11. LOBBYING RESTRICTIONS

- Contractors who apply or bid for an award of \$100,000.00 or more shall file the certification required (ATTACHMENT ASSIGN NUMBER) by 49CFR part 20, "New Restrictions of Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### 16.12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 16.13. PRE-AWARD AND POST- DELIVERY AUDIT REQUIREMENTS

- The contractor agrees to comply with 49 U.S.C. § 5323 (1) and FTA's implementing regulation at 49
- C.F.R. Part 663 and to submit the following certifications:
- Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the offeror certifies compliance with Buy America, it shall submit documentation, which lists:
- Component and sub-component parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs.
- The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- Solicitation Specification Requirements: The contractor shall submit evidence that it will be capable of meeting the bid specifications.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit:
- Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or;
- Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

### 16.14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS

- The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §~ 3801 et seq. And U.S. DOT regulations, "Program Fraud Civil Remedies, "49
- C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.
- The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. ~ 5307, the Government reserves the right to impose the penalties of 18
- U.S.C. § 1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 16.15. PRIVACY ACT

- The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### 16.16. STATE AND LOCAL LAW DISCLAIMER



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- The use of many of the suggested clauses are not governed by Federal Law, but are significantly affected by State Law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

End of Section 2-A



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-B: Pricing Document

### 1.0 Compensation

- 1.1 Contractor will be compensated for the satisfactorily carrying out its obligations under the Contract by the method indicated by the “●” mark below:

<input checked="" type="radio"/>	<b>DISCOUNT OFF LIST OR CATALOG</b>
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- 1.2 DISCOUNT OFF LIST OR CATALOG. A discount off list or catalog means a percentage discount to be applied to a base price for from one or more contractually-established price lists against published catalogs. The applicable discounts are scheduled the pricing document.
- 1.2.1 Unless specified otherwise in the Pricing Document, base price is the price that is most widely offered to general customers at the time of the Order.
- 1.2.2 The catalogs used to establish base price are specified otherwise in the Pricing Document. If nothing is so specified, then the commercially available catalogs published by Contractor or Subcontractor to a dealer or reseller network for the covered materials or services are to be used.
- 1.2.3 Each catalog must:
- (a) bear the applicable State contract number;
  - (b) list all materials or services Contractor is authorized to sell under the Contract;
  - (c) not contain any items that are excluded from the Contract;
  - (d) provide ordering information and contact information for customer support.
- 1.2.4 Each catalog and its accompanying price list must include for each item:
- (a) a part or model number, if applicable;
  - (b) a complete and accurate description of the item;
  - (c) the manufacturer’s suggested retail price (MSRP) or Contractor’s list price;
  - (d) a stock keeping unit (SKU) number (SKU) , if applicable;
  - (e) the item’s unit of measure (UOM), if applicable; and
  - (f) the quantity in the unit of measure (QUOM), if applicable.
- 1.2.5 Contractor shall provide and maintain concurrent and identical electronic and hardcopy versions of all contracted price lists and catalogs.
- (a) The electronic versions are to be provided as they are available.
    - i. State, at its discretion, may host Contractor's electronic price lists and catalogs directly, or may link through the e-procurement system as a punch-out.
    - ii. Regardless of the number and types of links to Contractor's electronic price lists and catalogs, Contractor shall ensure that all Eligible Agencies and Co-Op Buyers are only able to access one unified set of data.
- 1.3 Contractor shall supply sufficient, current hardcopy catalogs and price lists price lists to applicable Eligible Agencies at Contract commencement, and provide prompt hardcopy notice of any changes to list/catalog holders as they occur. Contractor shall not change State or any Eligible Agency (or any Co-Op Buyer, if applicable) for lists/catalogs or updates.



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 2.0 Pricing

- 2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachment 4 Pricing, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.
- 2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.
- 2.1.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.
- 2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.
- 2.2 For the purpose of this contract, "MSRP" shall be defined as an acronym for the Manufacturer's Suggested Retail Price. It represents the Manufacturer's recommended retail selling Price, list Price, published Price, or other usual and customary Price that would be paid by the purchaser for specific commodities and contractual services. It must be available and verifiable by the State.
- 2.3 *Medium and Heavy Duty Cab and Chassis and Available Options.* All pricing shall be a percentage off MSRP. Pricing shall include the following: all profit, administrative charges, Dealer preparation charges, environmental fees, title application and registration fees, plate transfer fees, handling charges, shipping charges, and any other charges or fees necessary to deliver the base vehicle according to the specification, exclusive of taxes. Shipping charges shall be defined as the delivery cost for each vehicle within the county in which the Contractor is located.
- 2.4 *Delivery.* Delivery costs for each county outside the county in which the dealer is located shall be indicated on Attachment 4 Pricing. There shall be no delivery charges for vehicles delivered within the county in which the Contractor is located.
- 2.5 *Supplemental Pricing – All Inclusive.* Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Statement of Work and all aspects of the Contractor's offer as accepted by the State. Details of service not explicitly stated in the Statement of Work or in the Contractor's Offer, but necessarily a part of, are deemed to be understood by the Contractor and included herein. All administrative, reporting or other requirements, all overhead costs and profit and any other costs towards the accomplishment of the requirements in this Contract are included in the pricing provided.
- 2.6 Pricing for any additional products or services shall be in accordance with the information provided in Attachment 4- Pricing,
- 2.7 ***Price Reductions and Sales Promotions.*** Contractor may reduce its contracted price at any time, and will provide documentation listing the original State contract price and the new reduced or promotional price. Promotions or reductions to sell existing inventory/stock and to include special manufacturer assistance are allowable.
- 2.8 **NO ADJUSTMENT.** All prices and rates in the e-Procurement system, or Orders if and to the extent they differ from those in the exhibit, will be valid for the entire term of the Contract, and will not be subject to revision for



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

inflation or any changes to wages, taxes or other costs that Contractor may be obliged to incur that may be higher than those which it contemplated when proposing the relevant price or rate.

## 3.0 Funding

No particular funding considerations apart from paragraph 4.3 of the Uniform Terms and Conditions [Availability of Funds] have been identified as of the Solicitation date.

## 4.0 Invoicing

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Buying Entity’s purchasing tool/process.

4.2 MINIMUM INVOICE REQUIREMENTS. Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the The State’s e-Procurement System PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes (as a separate invoice line item)	●
Upcharge shipping/freight, etc. (as a separate invoice line item)	Materials only
Total invoice amount due	●

4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:

1. Materials or Services that have not been authorized on an acknowledged Order;
2. Expediting, overtime, premiums, or upcharges absent State’s express prior approval; or



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

3. Materials or Services that are the subject of a Contract Amendment or Change Order that has not been fully signed.
- 4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
  - 4.6.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
  - 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
    - (a) are sent to an incorrect address;
    - (b) do not reference the correct State contract number; or
    - (c) are payable to any Person other than the Contractor.
  - 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

## 5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2 JOINT CHECKS OR DIRECT PAY. applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 5.5 PURCHASING CARD. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 AUTOMATED CLEARING HOUSE. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

<https://gao.az.gov/afis/vendor-information>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-C: Special Terms and Conditions

*The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.*

### 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Acceptance** "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
- 1.2 Accepted Offer** If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.  
If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.  
If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
- 1.3 Arizona Procurement Code; A.R.S.; A.A.C.** "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
- 1.4 Arizona TPT** "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>.
- 1.5 Attachment** "Attachment" means any item that:
  1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  2. was attached to an Offer when submitted; and
  3. was included in the Accepted Offer.
- 1.6 Pricing Document** "Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7 Contract Amendment** "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in The State's e-Procurement System is to be construed as being synonymous with "Contract Amendment".
- 1.8 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.10 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

- 1.11 Co-Op Buyer** “Co-Op Buyer” means a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.
- 1.12 Eligible Agency** If the Special Terms and Conditions indicates that the Contract is a “single-agency” contract, then “Eligible Agency” means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a “statewide” contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.
- 1.13 Indemnified Basic Claims** “Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.14 Instructions to Offerors** “Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.
- 1.15 Order** “Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:

  1. “Release” or “Release Purchase Order” in The State’s e-Procurement System;
  2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or
  3. “purchase order” for buying by Co-Op Buyers, if co-op buying applies.
- 1.16 The State’s e-Procurement System** “The State’s e-Procurement System” means State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System*.

NOTE (1): Technical Bulletin No. 020 is available online at:  
<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>
- 1.17 State** With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.18 State Indemnitees** “State Indemnitees” means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.19 Subcontractor** “Subcontractor” has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 1.20 Work

“Work” means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor’s obligations and duties under the Contract in conformance with the Contract and applicable laws.

## 2.0 Contract Interpretation

### 2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to “Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractors’ respective agents, representatives, and employees” in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*” in every instance;
5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

### 2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

- (a) Contract Amendments;
- (b) the final Solicitation Documents, in the order:
  - (1) Special Terms and Conditions;
  - (2) Exhibits to the Special Terms and Conditions;



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- (3) Uniform Terms and Conditions;
- (4) Scope of Work;
- (5) Exhibits to the Scope of Work;
- (6) Pricing Document;
- (7) Exhibits to the Pricing Document;
- (8) Specifications; and
- (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

**2.3 Independent Contractor**

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

**2.4 Complete Integration**

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

**3.0 Contract Administration and Operation**

**3.1 Term of Contract**

The term of the Contract will commence on the date indicated on the Acceptance and continue for **twelve (12) months unless canceled, terminated, or permissibly extended.**

**3.2 Contract Extensions**

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.

**3.3 Notices and Correspondence**

3.3.1 TO CONTRACTOR. State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding The State's e-Procurement System Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall :

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:

Arizona Department of Administration  
State Procurement Office  
100 N 15th Ave., Suite 402



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Phoenix, AZ 85007

3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

### 3.4 Signing of Contract Amendments

Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;
2. revision to Procurement Officer appointment or contact information; or
3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of a Change Order – are required to give it effect.

### 3.5 Click-Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

### 3.6 Books and Records

3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

### 3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

### 3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor’s administrative communications and records relating to the Contract, are considered work product and Contractor’s property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

(a) “Government Purpose Rights” are:

- i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- ii. the right to release or disclose that work product to third parties for any State government purpose; and
- iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

(b) “Government Purpose Rights” do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- (a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- (b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
- (c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor’s or its affiliates’ ownership of such pre-existing materials.

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

### 3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor’s candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer’s advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer’s written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For



# Request for Proposal

Solicitation No.  
**BPM000228**  
Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

**3.11 Offshore Performance of Certain Work Prohibited**

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

**3.12 Orders**

3.12.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.12.5 NO MINIMUMS OR COMMITMENTS. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

**3.13 Statewide Contract Provisions**

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be



## Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

construed as a “delivery order” sub-type of ID/IQ contract to the extent the Work is Materials, and a “task order” sub-type to the extent the Work is Services.

1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:  
<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>
2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).
3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) “approving” the Order electronically in The State’s e-Procurement System, which will indicate Contractor’s unqualified acceptance of the Order as-issued; or (b) “rejecting” the Order electronically in The State’s e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in The State’s e-Procurement System, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in The State’s e-Procurement System within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State’s e-Procurement System and if it does so the rejection will be void.
6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer’s instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State’s part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor’s obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor’s refusal to do so would be a material breach of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

### 3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under (3) and (4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

### 3.15 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

### 3.16 Work on State Premises

3.16.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*].



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 4.0 Costs and Payments

### 4.1 Payments

4.1.1 **PAYMENT DEADLINE.** State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2 **PAYMENTS ONLY TO CONTRACTOR.** Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

### 4.2 Applicable Taxes

4.2.1 **CONTRACTOR TO PAY ALL TAXES.** State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.2.2 **TAX INDEMNITY.** Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

## 5.0 Contract Changes

### 5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

### 5.2 Assignment and Delegation

5.2.1 **IN WHOLE.** Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

5.2.2 **IN PART.** Subject to paragraph 3.10 [*Subcontracts*] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 6.0 Risk and Liability

### 6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

### 6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

**MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

#### 1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$ 50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 3. Worker's Compensation and Employers' Liability

Workers' Compensation.....	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

**ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

**NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

**ACCEPTABILITY OF INSURERS:** Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

Procurement Office. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

**SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

**APPROVAL and MODIFICATIONS:** The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

### 6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") 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) (hereinafter referred to as "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 Contractor 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 Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

## 6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence.

Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party’s default unrelated to the occurrence, in which case and to that extent the other party’s normal remedies and the affected party’s obligations would apply undiminished.

## 6.6 Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

## 7.0 Warranties

### 7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State’s acceptance.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- 7.2 Contractor Personnel** Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State’s authorized representatives upon request.
- 7.3 Intellectual Property** Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.4 Licenses and Permits** Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.
- 7.5 Operational Continuity** Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor’s duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and Delegation*] that expressly recognizes the event.
- 7.6 Performance in Public Health Emergency** Contractor warrants that it will:
1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
  2. provide a copy of its current plan to State within 3 (three) business days after State’s written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.
- For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.
- 7.7 Lobbying**
- 7.7.1 PROHIBITION.
- (a) Contractor warrants that:
    - i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor’s use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
    - ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.
  - (b) Contractor shall implement and maintain adequate controls to assure compliance with (a) above.
  - (c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.
- 7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State’s benefit or on State’s behalf.
- 7.8 Survival of Warranties** All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

## 9.0 Contract Termination

No modifications to uniform terms and conditions section

## 10.0 Contract Claims

- 10.1 Claim Resolution** Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.
- 10.2 Mandatory Arbitration** In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

## 11.0 General Provisions for Materials

- 11.1 Applicability** Article 11 applies to the extent the Work is or includes Materials.
- 11.2 Off-Contract Materials** Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.
- 11.3 Compensation for Late Deliveries** Contractor shall have clear, published policies in place regarding late delivery, order cancellation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them
- 11.4 Indicate Shipping Costs on Order** Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)
- 11.5 Current Products** Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract
- 11.6 Maintain Comprehensive Selection** Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.
- 11.7 Additional Products** State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

**11.8 Discontinued Products**

response to State’s request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer’s notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide:

(a) manufacturer’s announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7)

Forced substitutions will not be permitted; Contractor shall obtain State’s prior written consent before making any discretionary substitution for any product covered by the Contract.

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, “recalls” hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product.

**11.9 Forced Substitutes**

Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State’s part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

**11.10 Recalls**

11.11.1 PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller’s dock) Incoterms®2010, with “seller’s dock” meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to “F.o.b. Origin, Contractor’s Facility” under [FAR 52.247-30](#)

**11.11 Delivery**

11.11.2 LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor’s liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to “F.o.b. Destination, Within Consignee’s Premises” under [FAR 52.247-35](#).

11.11.3 PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller’s dock) with no mark-up, which Contractor shall itemize and invoice separately

**11.12 Delivery Time**

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

**11.13 Delivery Locations**

1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
2. if the Contract is for a single State agency in all its locations, then Contractor shall



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

deliver to any of that agency's location in Arizona;

3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
4. if the Contract is for unrestricted statewide use, then:
  - i. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
  - b) If a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
  - c) if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

### 11.14 Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

### 11.15 Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

### 11.16 Correcting Defects

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials

1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.
3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

### 11.17 Returns

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day
2. reimburse Contractor for:
  - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;
  - (b) the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and,

### 11.18 Order Cancellation

3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup

### 11.19 Product Safety

### 11.20 Hazardous Materials



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## 12.0 General Provisions for Services

- 12.1 Applicability** Article 12 applies to the extent the Work is or includes Services.
- 12.2 Comprehensive Services Offering** Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.
- 12.3 Additional Services** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor’s request or proposal in response to State’s request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.
- 12.4 Off-Contract Services** Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, “off-contract service” refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.
- 12.5 Removal of Personnel** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State’s facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
- 12.6 Transitions** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State’s operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State’s representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.
- 12.7 Accuracy of Work** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
- 12.8 Requirements at Services Location** Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

**12.9 Services Acceptance**

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State’s rejection.

**12.10 Corrective Action Required**

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor’s analysis and plans, and Contractor shall make any corrections State instructs and adopt State’s recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

## 13.0 Data and Information Handling

**13.1 Applicability**

Article 13 applies to the extent the Work includes handling of any (1) State’s proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State’s behest.

**13.2 Data Protection and Confidentiality of Information**

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State’s proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State’s confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

### 13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>

### 13.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

End of Section 2-B



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

## SECTION 2-D:

# Uniform Terms and Conditions

Version: 9 (7/1/2013)

## 1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Attachment** "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2 Contract** "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 Contract Amendment** "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 Contractor** "Contractor" means any Person who has a Contract with the State.
- 1.5 Days** "Days" means calendar days unless otherwise specified.
- 1.6 Exhibit** "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 Materials** "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 Procurement Officer** "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
- 1.11 State** "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12 State Fiscal Year** "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.13 Subcontract** "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

## 2.0 Contract Interpretation

- 2.1 Arizona Law** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 3.0 Contract Administration and Operation

- 3.1 Records** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative



# Request for Proposal

Solicitation No.

**BPM000228**

Description:

**Medium and Heavy Duty Cabs, Chassis, and Buses**

Arizona Department of Administration

**State Procurement Office**

100 N 15th Ave., Suite 402

Phoenix, AZ 85007

may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

**3.6 Advertising, Publishing and Promotion of Contract**

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

**3.7 Property of the State**

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

**3.8 Ownership of Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

**3.9 Federal Immigration and Nationality Act**

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

**3.10 E-Verify Requirements**

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

**3.11 Offshore Performance of Work Prohibited.**

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

## 4.0 Costs and Payments

**4.1 Payments**

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

**4.2 Delivery**

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

**4.3 Applicable Taxes**

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does



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Arizona Department of Administration

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100 N 15th Ave., Suite 402

Phoenix, AZ 85007

not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

**4.4 Availability of Funds for the Next State fiscal year**

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

**4.5 Availability of Funds for the current State fiscal year**

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements

## 5.0 Contract Changes

**5.1 Amendments**

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

**5.2 Subcontracts**

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor’s proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

**5.3 Assignment and Delegation**

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6.0 Risk and Liability

**6.1 Risk of Loss**

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

**6.2 Indemnification**

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively



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Arizona Department of Administration  
**State Procurement Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

**6.3 Indemnification – Patent and Copyright**

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

**6.4 Force Majeure**

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall **not** include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition;

or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

**6.5 Third Party Antitrust Violations**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7.0 Warranties

**7.1 Liens**

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

**7.2 Quality**

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;



# Request for Proposal

Solicitation No.

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Arizona Department of Administration

**State Procurement Office**

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Phoenix, AZ 85007

- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness** The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing** The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Compliance with Laws** The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 Survival of Rights and Obligations after Contract Expiration or Termination**
  - 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8.0 State's Contractual Remedies

- 8.1 Right to Assurance** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order**
  - 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender** Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.



# Request for Proposal

Solicitation No.

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Phoenix, AZ 85007

## 8.5 Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9.0 Contract Termination

### 9.1 Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

### 9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

### 9.3 Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

### 9.4 Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

### 9.5 Termination for Default

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

### 9.6 Continuation of

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up



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Arizona Department of Administration

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**Performance Through Termination** to the date of termination, as directed in the termination notice.

## 10.0 Contract Claims

**10.1 Contract Claims** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

## 11.0 Arbitration

**11.1 Arbitration** The parties to this Contract agree to resolve all disputes arising out of or relating to this contract 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 (Title 41).

## 12.0 Comments Welcome

**12.1 Comments Welcome** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Lance Roberts, Police Lieutenant  
**Co-Submitter:** Stacey Brechler-Knaggs  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Approval of a Grant Agreement:** Between the City of Flagstaff and the Governor's Office of Highway Safety for Driving Under the Influence/Impaired Driving Enforcement and Equipment Grant #2020-405d-013.

**STAFF RECOMMENDED ACTION:**

Approve the acceptance of the Grant from the Governor's Office of Highway Safety in the amount of \$50,918.00, for the Flagstaff Police Department to increase staffing in an attempt to reduce injury motor vehicle collisions caused by impaired drivers. The funds will also be used to purchase an Intoxilyzer 9000, a laser printer 19000, and a handheld 2D barcode reader.

**Executive Summary:**

Approval of the grant award will enable the Flagstaff Police Department to increase efforts in reducing injury motor vehicle collisions by locating impaired drivers and supplementing on duty patrol officers with paid overtime officers on nights and weekends when impaired driving accidents historically occur. It will also assist in the prosecution of offenders with the new equipment to be purchased.

**Financial Impact:**

There is no significant financial impact to the City of Flagstaff in terms of expenditures. This grant is budgeted within the Police Department budget.

**Policy Impact:**

Allows us to provide additional funding to assist Flagstaff Police Department in meeting the community's expectations in regards reducing injury collisions and apprehending impaired drivers of motor vehicles.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Flagstaff Regional Plan Policy PF.3.1 Maintain high-quality effectiveness and efficiency in law enforcement, fire and emergency services to the extent that is consistent with governmental operations, plans, public policies, population served, and monies available.

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

No-There has not been a previous council decision on this grant.

**Options and Alternatives:**

- 1.) Approve acceptance of the grant from the Governor's Office of Highway Safety.
- 2.) Disapprove acceptance of the grant from the Governor's Office of Highway Safety.

**Background/History:**

The Flagstaff Police Department has partnered with the Governor's Office of Highway Safety (GOHS) for the past twenty-five (25) years in efforts to reduce the amount of injury motor vehicle collisions in our community. GOHS has continuously provided grant monies that have been used to staff details that are focused on finding impaired drivers, thus removing them from our highways and making our community safer.

**Key Considerations:**

Grant monies from the Governor's Office of Highway Safety allows us to schedule more officers on weekends and holidays when impaired drivers are more frequent. These additional officers are focused on finding and removing impaired drivers from our roadways, which reduces motor vehicle collisions making our community much safer.

**Expanded Financial Considerations:**

Approval of the grant will give the Flagstaff Police Department \$40,000.00 to be spent on overtime assignments to increase efforts in reducing injury motor vehicle collisions by locating impaired drivers and supplementing on duty patrol officers with paid overtime officers on nights and weekends when impaired driving accidents historically occur. It will also assist in the prosecution of offenders with the new equipment to be purchased. The grant also allows \$10,918.00 for an intoxilyzer, a laser printer and a 2D barcode reader which is used in the processing of impaired drivers.

**Community Benefits and Considerations:**

Approval of the grant award will enable the Flagstaff Police Department to increase efforts in reducing injury motor vehicle collisions by locating impaired drivers and supplementing on duty patrol officers with paid overtime officers on nights and weekends when impaired driving accidents historically occur. It will also assist in the prosecution of offenders with the new equipment to be purchased

**Community Involvement:**

Inform the Council and public on the application of this grant and intended use of these funds.

**Expanded Options and Alternatives:**

- 1.) Approve as recommended.
- 2.) Disapprove the grant award.

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**Attachments:** GOSH DUI Enforcement and Equipment Grant Agreement

HIGHWAY SAFETY CONTRACT

This page, the Project Director's Manual and attached hereto and incorporated herein by reference, constitute the entire Contract between the parties hereto unless the Governor's Highway Safety Representative authorizes deviation in writing.

**FAIN: 69A3752030000405dAZM** **Assistance Listings: 20.616**

<b>1. APPLICANT AGENCY</b> Flagstaff Police Department	<b>GOHS CONTRACT NUMBER:</b> <b>2020-405d-013</b>
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<b>ADDRESS</b> 911 East Sawmill Road, Flagstaff, AZ, 86001	<b>PROGRAM AREA:</b> <b>405d</b>
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<b>2. GOVERNMENTAL UNIT</b> City of Flagstaff	<b>AGENCY CONTACT:</b> Lance Roberts
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<b>ADDRESS</b> 211 West Aspen Avenue, Flagstaff, AZ, 86001	<b>3. PROJECT TITLE:</b> DUI/Impaired Driving Enforcement, Related Materials and Supplies - 2D Barcode Reader (Handheld); Laser Printer I9000; Equipment - Intoxilyzer 9000
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<b>4. GUIDELINES:</b> 405d	
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**5. BRIEFLY STATE PURPOSE OF PROJECT:**  
Federal 405d funds will support Personnel Services (Overtime), Employee Related Expenses, Materials and Supplies: 2D Barcode Reader (Handheld), Laser Printer I9000, and Capital Outlay: Intoxilyzer 9000 Unit to enhance DUI/Impaired Driving Enforcement throughout the City of Flagstaff.

<b>6. BUDGET COST CATEGORY</b>	<b>Project Period FFY 2020</b>
<b>I. Personnel Services</b>	\$28,571.00
<b>II. Employee Related Expenses (40%)</b>	\$11,429.00
<b>III. Professional and Outside Services</b>	\$0.00
<b>IV. Travel In-State</b>	\$0.00
<b>V. Travel Out-of-State</b>	\$0.00
<b>VI. Materials and Supplies</b>	\$1,668.00
<b>VII. Capital Outlay</b>	\$9,250.00
<b>TOTAL ESTIMATED COSTS</b>	<b>\$50,918.00</b>

<b>PROJECT PERIOD</b>	<b>FROM:</b> Effective Date (Date of GOHS Director Signature)	<b>TO:</b> 09-30-2020
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<b>CURRENT GRANT PERIOD</b>	<b>FROM:</b> 10-01-2019	<b>TO:</b> 09-30-2020
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**TOTAL FEDERAL FUNDS OBLIGATED THIS FFY: \$50,918.00**

A political subdivision or State agency that is mandated to provide a certified resolution or ordinance authorizing entry into this Contract must do so prior to incurring any expenditures. Failure to do so may result in termination of the awarded Contract.

**PROBLEM IDENTIFICATION AND RESOLUTION:**

**Agency Background:**

Number of sworn officers: 113

Total Population in city/town or county: 65,000

Total Road Mileage: Highway: 35 Local: 634 Total: 669

	2017	2016	2015
Total Crashes	2814	2962	2871
Total Injury Crashes	403	405	434
Total Fatal Crashes	4	6	7
Total Alcohol-related Crashes	82	106	104
Total Alcohol-related Serious Injuries	27	27	23
Total Alcohol-related Fatalities	0	0	1
Total Speed-related Crashes	109	100	105
Total Speed-related Serious Injuries	36	28	34
Total Speed-related Fatalities	0	0	1

The data above represents: County  City/Town

**Agency Problem/Attempts to Solve Problem:**

The City of Flagstaff is the county seat of Coconino County. The city sits at approximately 7000 feet above sea level; at this altitude, weather conditions significantly affect driving. Snow, rain, wind and fog frequently contribute to hazardous road conditions and collisions. When impaired drivers are thrown into the mix these are amplified. There are currently 172,932 vehicles registered in Coconino County, not including the 20,000 plus students enrolled at the Northern Arizona University nor the high volume of tourist related traffic. From 2016-2018, there were 77 injury collisions and 1 fatal collision that were alcohol related, with 98 injury collisions that were speed related out of 1,243 total injury accidents.

**Agency Funding:**

Federal 405d funds will support Personnel Services (Overtime), Employee Related Expenses, Materials and Supplies: 2D Barcode Reader (Handheld), Laser Printer I9000, and Capital Outlay: Intoxilyzer 9000 Unit to enhance DUI/Impaired Driving Enforcement throughout the City of Flagstaff.

**How Agency Will Solve Problem with Funding:**

The Flagstaff Police Department, in partnership with the local community, intends to provide officer enforcement that require overtime activities associated with increased D.U.I. enforcement. Flagstaff PD’s mission is to preserve life and property. One of the departmental goals is to make Flagstaff city streets safer by reducing traffic-related injuries and fatalities, by increasing D.U.I. awareness through education about the dangers of driving under the influence and by directed enforcement activities that remove impaired drivers from city streets. Flagstaff PD is committed to making city streets safer for motorists, bicyclists and pedestrians. Drunk drivers present a real threat to the safety of all persons on or near the highway.

**PROJECT MEASURES:****Agency Goals:**

To decrease the number of speeding-related crashes 5% from 82 during calendar year 2017 to 78 by December 31, 2020.

To decrease fatalities in speeding-related crashes 100% from 0 in calendar year 2017 to 0 by December 31, 2020.

To decrease serious injuries in speeding-related crashes 5% from 27 in calendar year 2017 to 26 by December 31, 2020.

**Contract Objectives:**

To participate in a minimum of 11 DUI saturation patrols per quarter during FFY 20

To participate in a minimum of 2 DUI task force operations per quarter during FFY 2020.

**Additional Contract Objectives:**

1. To participate in a minimum of 12 hours of DUI Education/Prevention per quarter during FFY 2020.

2. To participate in a minimum of 1 DUI/Alcohol awareness campaign targeting local night clubs and liquor establishments per quarter during FFY 2020.

**GOALS/OBJECTIVES:**

Federal 405d funds will support Personnel Services (Overtime), Employee Related Expenses, Materials and Supplies: 2D Barcode Reader (Handheld), Laser Printer I9000, and Capital Outlay: Intoxilyzer 9000 Unit to enhance DUI/Impaired Driving Enforcement throughout the City of Flagstaff.

Expenditures of funding pertaining to Impaired Driving Enforcement including Personnel Services and ERE, Materials and Supplies, Capital Equipment, and/or Travel In and Out-of-State shall comply with the Impaired Driving Program goals provided by the Arizona Governor's Office of Highway Safety. The Impaired Driving Program goal is to reduce the incidences of alcohol and drug related driving fatalities and injuries through enforcement, education, and public awareness throughout the State of Arizona. Law enforcement personnel participating in Impaired Driving Enforcement/DUI activities including, DUI Task Force details under this program, shall be HGN/SFST certified.

**MEDIA RELEASE:**

To prepare complete press release information for media (television, radio, print, and on-line) during each campaign period including a main press release, schedule of events, departmental plans, and relevant data. The material will emphasize the campaign's purpose, aggressive enforcement, and the high cost of DUI/Impaired Driving in terms of money, criminal, and human consequences.

The Flagstaff Police Department will maintain responsibility for **reporting sustained enforcement** activity in a timely manner. Additionally, it is the responsibility of the Flagstaff Police Department to report all holiday task force enforcement statistics to GOHS on-line at the GOHS website **no later than 10:00 a.m. the morning following each day of the event.**

The holidays and special events include but not limited to: Super Bowl Sunday, Valentine's Day, President's Day, St. Patrick's Day, Spring Break, Easter, Cinco de Mayo, Prom Night, Memorial Day, Graduation Day, Independence Day, Labor Day, Columbus Day, Halloween, and the Thanksgiving through New Year's details.

**PLEASE NOTE: Failure to submit Statistics, Quarterly Reports, and/or Report of Costs Incurred (RCIs) timely and correctly may delay reimbursement for expenditures to your Agency.**

**METHOD OF PROCEDURE:**

The Flagstaff Police Department will make expenditures, as follows, to meet the outlined Program Goals/Objectives:

Personnel Services - To support Overtime for DUI/Impaired Driving Enforcement Activities

Employee Related Expenses - To support Employee Related Expenses for Agency Overtime

Materials and Supplies - To purchase/procure the following Materials and Supplies for DUI/Impaired Driving Enforcement Activities: 2D Barcode Reader (Handheld), Laser Printer I9000

Capital Outlay - To purchase/procure the following Capital Outlay for DUI/Impaired Driving Enforcement Activities: Intoxilyzer 9000 Unit

**PRESS RELEASE:**

Agencies are **required** to develop and distribute a press release announcing this grant award **upon receipt** of the executed Contract. A copy of this press release shall be sent to the GOHS Director for approval prior to being sent to the media. This press release shall include the objective and specify that the funding is from the Governor's Office of Highway Safety.

**BAC TESTING AND REPORTING REQUIREMENTS:**

Alcohol impairment is a major contributing factor in fatality and serious injury motor vehicle collisions. Accurate data on alcohol involvement is essential to understanding the full extent of the role of alcohol and to assess progress toward reducing impaired driving.

**Each law enforcement agency that receives an enforcement-related grant is required to ensure that accurate data on all drivers involved is reported.** Failure to comply may result in withholding funds and cancellation of the enforcement contract until this requirement is met.

**PURSUIT POLICY:**

All law enforcement agencies receiving Federal funds are encouraged to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police (IACP) that are currently in effect.

**EQUIPMENT:****Intoxilyzer 9000 Unit**

Agencies receiving funding for Capital Outlay (major equipment) such as DUI processing vans, marked and unmarked enforcement sedans, and marked enforcement motorcycles shall schedule a press conference acknowledging the grant award from the Governor's Office of Highway Safety. The purpose of this press conference is for the Agency to present the equipment to their community.

The Flagstaff Police Department shall immediately notify GOHS if any equipment purchased under this Contract ceases to be used in the manner described in this Contract. In such event, the Flagstaff Police Department further agrees to dispose of this equipment using the Flagstaff Police Department's, city, town, or county ordinance, code, or rule regarding disposal of equipment.

In the absence of an ordinance, code, or rule regarding the disposal of the property, the Flagstaff Police Department may refer to that of the State. The Flagstaff Police Department shall maintain or cause to be maintained for its useful life, any equipment purchased under this Contract. The Flagstaff Police Department shall incorporate any equipment purchased under this Contract into its inventory records. The Flagstaff Police Department shall insure any equipment purchased under this Contract for the duration of its useful life. Self-insurance meets this requirement.

**Administrative and Maintenance Costs:**

The Flagstaff Police Department shall be responsible for all administrative, maintenance, operational costs, and the costs of any damage relating to the Intoxilyzer 9000 Unit.

**Decals:**

The Governor's Office of Highway Safety shall provide the Flagstaff Police Department with decals depicting the Governor's Office of Highway Safety logo. These decals shall be affixed to the equipment before being placed in service.

**Equipment Purchase:**

The equipment purchased under this Contract shall be ordered, received, training completed, and placed in service prior to the end of the project period.

If the Agency cannot meet this requirement, the Agency must submit a letter of explanation signed by the Project Director on the Agency's letterhead via mail or hand delivered to the Director of the Governor's Office of Highway Safety within sixty (60) days before the end of the project period.

The application of 2 CFR Part 200 "Procurement Standards" requires that:

Grantees and sub-grantees will use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurement procedures conform to applicable Federal and State laws and standards. The most stringent purchasing requirement at each level must be met. If the Agency does not have a procurement process, the Agency shall use the State procurement process.

**Original Purpose of Equipment:**

Pursuant to 23 CFR §1300.31, all equipment purchased under this Contract is to be used for the original purpose intended under this Contract. All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes. Neither the State nor the Agency (sub-grantees) or contractors shall encumber the title or interest while such need exists.

The Governor's Office of Highway Safety shall reserve the right to transfer title of equipment acquired under the Section 405 program to the Federal government or to a third party when such third party is otherwise eligible under existing statutes.

Furthermore, 2 CFR §200.313 states that equipment (acquired under this grant) shall be used by the grantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

**Insurance:**

It is agreed that the Flagstaff Police Department shall adequately insure all capital equipment purchased under this Contract for repair or replacement.

**SPECIFIC REQUIREMENTS:**

In addition, the devices must be certified and approved by the Arizona Department of Public Safety per Arizona Administrative Code R9-14-403.

The Flagstaff Police Department will be responsible for providing all personnel the appropriate training for using the Intoxilyzer purchased under this Contract implementing a NHTSA approved training course.

The Flagstaff Police Department will maintain written documentation (copy of the training certificates) which will be available upon request for review by GOHS.

Intoxilyzer will be operated, calibrated under the standard quality assurance procedures per the appropriate outlined procedures listed in the Arizona Administrative Code.

#### **EQUIPMENT –**

##### **Requirements for Equipment:**

The Flagstaff Police Department shall provide a high quality color photograph of all equipment purchased under this Contract. The Flagstaff Police Department shall complete the attached **Capital Outlay Equipment** form for all individual equipment purchases of \$5,000.00 or more. The form is to be attached and submitted with the next quarterly report subsequent to the delivery of the equipment.

##### **METHOD OF PROCUREMENT:**

The application of 2 CFR Part 200 "Procurement Standards" requires that:

Grantees and sub-grantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided the procurement procedures conform to applicable Federal laws and standards. The most stringent purchasing requirement at each level must be met. If the Agency does not have a procurement process, the Agency may use the State procurement process.

A clear audit trail must be established to determine costs charged against this Contract. Substantiation of costs shall, where possible, be made utilizing the Flagstaff Police Department documentation consisting of, but not limited to, copies of time sheets, purchase orders, copies of invoices, and proof of payment.

The Agency shall retain copies of all documentation in the project file.

##### **State Contract:**

Procurement may be made using an open State contract award. Documents submitted to substantiate purchases using an open State contract must bear the contract number.

##### **PROJECT EVALUATION:**

This project shall be administratively evaluated to ensure the objectives have been met.

##### **Quarterly Report**

The purpose of the Quarterly Report is to provide information on contracted grant activities conducted at the conclusion of each active quarter. The information provided is used to review progress of the funded project and the successfulness in meeting outlined goals and objectives. The information, photos, highlights, obstacles,

and mandatory statistical data provided in this report are analyzed by the assigned Project Coordinator. It is critical the report contains the following information:

- **Original signatures on all Quarterly Reports and RCIs**
  - **All Quarterly Reports and RCIs shall include the signature of the Project Director unless prior authorization for another is on file with GOHS.**

**Report Schedule**

Reporting Period	Due Date
<b>1<sup>st</sup> Quarterly Report and RCI</b> (October 1 to December 31, 2019)	January 30, 2020
<b>2<sup>nd</sup> Quarterly Report and RCI</b> (January 1 to March 31, 2020)	April 20, 2020
<b>3<sup>rd</sup> Quarterly Report and RCI</b> (April 1 to June 30, 2020)	July 20, 2020
<b>4<sup>th</sup> Quarterly Report and RCI</b> (July 1 to September 30, 2020)	<b>October 15, 2020</b>
<b>Final Statement of Accomplishments</b>	<b>October 15, 2020</b>

The Quarterly Report **shall be completed on the form available on-line and can be submitted by email** to the Governor’s Office of Highway Safety.

**NOTE: IT IS REQUIRED THAT ALL LAW ENFORCEMENT AGENCIES MUST ENTER STATISTICAL AND ENFORCEMENT ACTIVITY INTO THE ON-LINE GOHS DUI REPORTING SYSTEM, IN ADDITION TO SUBMITTING THE QUARTERLY ENFORCEMENT REPORT.**

**Final Statement of Accomplishments**

The Project Director shall submit a Final Statement of Accomplishments Report to the GOHS **no later than fifteen (15) days after the conclusion of each Federal Fiscal Year (September 30th)**. All agencies receiving funding are required to submit a Final Statement of Accomplishments Report.

**Note:** Failure to comply with the outlined GOHS reporting requirements may result in withholding of Federal funds or termination of the Contract.

**PROFESSIONAL AND TECHNICAL PERSONNEL:**

**Kevin Treadway, Chief of Police, Flagstaff Police Department, shall serve as Project Director.**

**Lance Roberts, Lieutenant, Flagstaff Police Department, shall serve as Project Administrator.**

**Shannon Parks, Governor's Office of Highway Safety, shall serve as Project Coordinator.**

**REPORT OF COSTS INCURRED (RCI):**

The Agency shall submit a Report of Costs Incurred (RCI), with supporting documentation attached, to the Governor’s Office of Highway Safety on a quarterly basis, for each active quarter, in conjunction with the required report. Agencies may submit additional RCI forms for expenditures when funds have been expended for which reimbursement is being requested.

Accepted supporting documentation to submit with a Report of Cost Incurred (RCI) includes, but is not limited to; scanned copies of timesheets, payroll records, paid invoices/purchase orders, and other account records.

RCIs shall be typed and delivered via mail or hand delivered with appropriate supporting documentation to the Governor’s Office of Highway Safety. **Electronically submitted RCIs will not be accepted.** Final RCIs will not be accepted fifteen (15) days after the conclusion of each Federal Fiscal Year (September 30th). **Expenditures submitted after the expiration date may not be reimbursed and the Agency will accept fiscal responsibility.**

**PROJECT MONITORING:**

Highway safety grant project monitoring is used by GOHS project coordinators to track the progress of project objectives, performance measures, and compliance with applicable procedures, laws, and regulations.

The process is used throughout the duration of the contracted project and serves as a continuous management tool. Project monitoring also presents an opportunity to develop partnerships, share information, and provide assistance to contracted agencies. Additionally, project monitoring outlines a set of procedures for project review and documentation.

Project monitoring serves as a management tool for:

- Detecting and preventing problems
- Helping to identify needed changes
- Identifying training or assistance needed
- Obtaining data necessary for planning and evaluation
- Identifying exemplary projects

**Types of Monitoring**

Monitoring is formal and informal, financial and operational. The most common types of monitoring are:

- Ongoing contact with the contracted grantee through phone calls, e-mails, correspondence, and meetings
- On-Site and/or In-House monitoring reviews of project operations, management, and financial records and systems
- Review of project Quarterly Reports
- Review and approval of Report of Costs Incurred (RCIs)
- Desk review of other documents in the project grant files for timely submission and completeness

<b>Monitoring Schedule</b>	
<b>Total Awarded Amount:</b>	<b>Type of Monitoring:</b>
Under \$50,000	Desk Review/Phone Conference
\$50,000 and over	May have an In-House GOHS Review
\$100,000+	May have an On-Site Review
Capital Outlay Greater than \$25,000 (combined)	May have an On-Site Review
Desk Review and Phone Conference	Internal review of all written documentation related to contractual project including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. A phone conference call conducted during the course of the project which includes the date and time of the call, the person(s) contacted, and the results. It serves as an informational review to determine progress of programmatic/financial activities. Both the designated project administrator and fiscal contact should be present, if possible, during the phone conference. If identified financial or operational problems are present, GOHS reserves the right to bring

	the grantee in for an in-house meeting at GOHS. Monitoring form written by Project Coordinator, any findings, areas of improvement, concern, or recognition will be provided to the grantee.
In-House Review	Documents performance review results including project activities, reimbursement claims review, equipment purchases, approvals, and other information. Reviews applicable information related to the project(s) including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Completed at GOHS in a meeting with appropriate operational and financial personnel. Monitoring form written by Project Coordinator, any findings, areas of improvement, concern, or recognition will be provided to the grantee.
On-Site Monitoring	Documents performance review results including project activities, reimbursement claims review, equipment purchases, and other information. Reviews applicable information related to the project(s) including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Conducted on-site at the grantee’s Agency with monitoring form completed on-site by Project Coordinator. Any findings, areas of improvement, concern, or recognition, will be provided to the grantee.

On-site and/or in-house monitoring for grantees of designated projects with large Capital Outlay purchases, personnel services, and complex projects must be completed within the second or third quarter of the fiscal year. Contracted projects displaying any problems may need on-site monitoring more than once during the fiscal year.

On-site and/or In-house monitoring includes a review and discussion of all issues related to ensure the effective administration of the contracted project. The following are the most important items to review:

- Progress toward meeting goals/objectives and performance measures
- Adherence to the contract specifications, timely submission of complete and correct reports, including required documentation
- Quarterly Reports
- Status of expenditures related to the outlined budget
- Accounting records and RCI's
- Supporting documentation (training documentation, inventory sheets, photographs, press releases, etc.)

In addition, the designated Agency will ensure that any equipment purchased will be available for inspection and is being used for the purpose for which it was bought under the outlined contractual agreement.

**Documentation**

The Governor's Office of Highway Safety will retain all findings documented on the GOHS Monitoring Form in the Agency's respective Federal file. Findings will be discussed with the designated contract representative (Project Administrator, fiscal specialist) by phone and/or e-mail. All noted deficiencies will be provided to the grantee with guidance for improvement and solutions to problems. Grantees that exhibit significantly poor performance may be placed on a performance plan as outlined by the GOHS Director. Grantee monitoring information will additionally provide documentation for potential funding in subsequent fiscal year grant proposal review.

**PROJECT PERIOD:**

The project period shall commence on the date the GOHS Director signs the Highway Safety Contract and terminate on September 30th of that or subsequent year as indicated on the Highway Safety Contract.

**DURATION:**

Contracts shall be effective on the date the Governor's Office of Highway Safety Director signs the Contract and expire at the end of the project period.

If the Agency is unable to expend the funds in the time specified, the Agency will submit notification on the Agency's letterhead and hand deliver or submit via regular mail to the Director of the Governor's Office of Highway Safety a minimum of sixty days (60) prior to the end of the project period.

The Agency shall address all requests to modify the Contract to the Director of the Governor's Office of Highway Safety on Agency's official letterhead and either hand deliver or submit the request via regular mail. All requests for modification must bear the signature of the Project Director.

Failure to comply may result in cancellation of the Contract. Any unexpended funds remaining at the termination of the Contract shall be released back to the Governor's Office of Highway Safety.

**ESTIMATED COSTS:**

I.	Personnel Services (overtime)	\$28,571.00
II.	Employee Related Expenses (ERE) (40%)	\$11,429.00
III.	Professional and Outside Services	\$0.00
IV.	Travel In-State	\$0.00
V.	Travel Out-of-State	\$0.00
VI.	Materials and Supplies 2D Barcode Reader (Handheld), Laser Printer I9000	\$1,668.00
VII.	Capital Outlay Intoxilyzer 9000 Unit	\$9,250.00
	<b>TOTAL ESTIMATED COSTS</b>	<b>*\$50,918.00</b>

\*Includes all applicable training, tax, freight, and advertising costs. The GOHS reserves the right to limit reimbursement of Employee Related Expenses from zero (0) to a maximum rate of forty (40) percent. This is the maximum ERE amount to be reimbursed. It is agreed and understood that the Flagstaff Police Department shall absorb any and all expenditures in excess of \$50,918.00.

**QUARTERLY ENFORCEMENT REPORT  
(Submitted to GOHS)**

**Reporting Period**

<b>DESCRIPTION</b>	<b>CONTRACT ACTIVITY</b>	<b>AGENCY ACTIVITY</b>
Total Contacts (Traffic Stops)		
Total Sober Designated Drivers Contacted		
Total Know Your Limit Contacts		
<b>TOTAL DUI ARRESTS</b>		
Total DUI Aggravated		
Total DUI Misdemeanor		
Total DUI Extreme (.15 or Above)		
Under 21 DUI Arrests		
Average BAC		
Minor Consumption / Possession Citations		
Total DUI Drug Arrests		
30-Day Vehicle Impounds		
Seat Belt Citations		
Child Restraint Citations		
Criminal Speed Citations		
Reckless Driving Citations		
Civil Speed Citations		
Other Citations (Except Speed)		
Other Arrests		
Participating Officer/Deputies (Cumulative)		

**Arizona Governor's Office of Highway Safety  
Capital Outlay Equipment Record  
Equipment \$5,000.00 or more**

<b>Equipment Description</b>	<b>Make/Model</b>	<b>Serial Number</b>	<b>Date Ordered</b>	<b>Date Received</b>	<b>Cost Per Unit</b>

**Note: Photographs of all Capital Outlay Equipment must be submitted with form**

**CERTIFICATIONS AND AGREEMENTS**

This CONTRACT, is made and entered into by and between the STATE OF ARIZONA, by and through the Governor's Office of Highway Safety (GOHS) hereinafter referred to as "STATE", and the agency named in this Contract, hereinafter referred to as "AGENCY".

WHEREAS, the National Highway Safety Act of 1966, as amended (23 USC §§401-404), provides Federal funds to STATE for approved highway safety projects; and

WHEREAS, STATE may make said funds available to various state, county, tribal, or municipal agencies, governments, or political subdivisions upon application and approval by STATE and the United States Department of Transportation (USDOT); and

WHEREAS, AGENCY must comply with the requirements listed herein to be eligible for Federal funds for approved highway safety projects; and

WHEREAS, AGENCY has submitted an application for Federal funds for highway safety projects;

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES AND OTHER GOODS AND VALUABLE CONSIDERATION, it is mutually agreed that AGENCY will strictly comply with the following terms and conditions and the following Federal and State Statutes, Rules, and Regulations:

**I. Project Monitoring, Reports, and Inspections**

- A. AGENCY agrees to fully cooperate with representatives of STATE monitoring the project, either on-site or by telephone, during the life of the Contract.
- B. AGENCY will submit Quarterly Reports (one for each three-month period of the project year) to STATE in the form and manner prescribed by STATE. Notice of the specific requirements for each report will be given in this Contract or at any time thereafter by giving thirty (30) days written notice to AGENCY by ordinary mail at the address listed on the Contract. Failure to comply with Quarterly Report requirements may result in withholding of Federal funds or termination of this Contract.
- C. AGENCY will submit a Final Report/Statement of Accomplishment at completion of the Contract to include all financial, performance, and other reports required as a condition of the grant to STATE within thirty (30) days of the completion of the Contract.
- D. Representatives authorized by STATE and the National Highway Traffic Safety Administration (NHTSA) will have the right to visit the site and inspect the work under this Contract whenever such representatives may determine such inspection is necessary.

**II. Reimbursement of Eligible Expenses**

- A. AGENCY's Project Director, or Finance Personnel, will submit a Report of Costs Incurred Form (RCI) to STATE each time there have been funds expended for which reimbursement is being requested. Failure to meet this requirement may be cause to terminate the project under Section XX herein, "Termination and Abandonment".

- B. AGENCY will reimburse STATE for any ineligible or unauthorized expenses for which Federal funds have been claimed and reimbursement received, as may have been determined by a State or Federal audit.
- C. STATE will have the right to withhold any installments equal to the reimbursement received by AGENCY for prior installments which have been subsequently determined to be ineligible or unauthorized.

### **III. Property Agreement**

- A. AGENCY will immediately notify STATE if any equipment purchased under this Contract ceases to be used in the manner as set forth by this Contract. In such event, AGENCY further agrees to either give credit to the project cost or to another active highway safety project for the residual value of such equipment in an amount to be determined by STATE or to transfer or otherwise dispose of such equipment as directed by STATE.
- B. No equipment will be conveyed, sold, salvaged, transferred, etc., without the express written approval of STATE, or unless otherwise provided elsewhere in this Contract.
- C. AGENCY will maintain or cause to be maintained for its useful life, any equipment purchased under this Contract.
- D. AGENCY will incorporate any equipment purchased under this Contract into its inventory records.
- E. AGENCY will insure any equipment purchased under this Contract for the duration of its useful life. Self-insurance meets the requirements of this section.

### **IV. Travel**

#### In-State and Out-of-State Travel

In state and out-of-state travel claims will be reimbursed at rates provided by AGENCY's regulations, provided that such regulations are as restrictive as those of STATE. Where they are less restrictive, ARS §38-624 will apply.

The State must approve all out-of-state travel in writing and in advance.

### **V. Standard of Performance**

AGENCY hereby agrees to perform all work and services herein required or set forth, and to furnish all labor, materials, and equipment, except that labor, material, and equipment as STATE agrees to furnish pursuant to this Contract.

### **VI. Hold Harmless Agreement**

Neither party to this agreement agrees to indemnify the other party or hold harmless the other party from liability hereunder. However, if the common law or a statute provides for either a right to indemnify and/or a right to contribution to any party to this agreement then the right to pursue one or both of these remedies is preserved.

**VII. Non-Assignment and Sub-Contracts**

This Contract is not assignable nor may any portion of the work to be performed be subcontracted unless specifically agreed to in writing by STATE. No equipment purchased hereunder may be assigned or operated by other than AGENCY unless agreed to in writing by STATE.

**VIII. Work Products and Title to Commodities and Equipment**

- A. The work product and results of the project are the property of STATE, unless otherwise specified elsewhere in this Contract. All property, instruments, non-consumable materials, supplies, and the like, which are furnished or paid for by STATE under the terms of this Contract, unless otherwise provided for elsewhere in this Contract, are and remain the property of STATE and will be returned at the completion of this project upon request of STATE. The work product and results of the project will be furnished to STATE upon request, if no provision is otherwise made by this Contract.
- B. The provisions of subparagraph A apply whether or not the project contracted for herein is completed.

**IX. Copyrights and Patents**

Any copyrightable materials, patentable discovery, or invention produced in the course of this project may be claimed by STATE and a copyright or patent obtained by it at its expense. In the event STATE does not wish to obtain such copyright or patent, AGENCY may do so, but in any event, provision will be made by AGENCY for royalty-free, nonexclusive, nontransferable, and irrevocable licenses to be given the United States Government and STATE and its political subdivisions to use such copyrightable material, patented discoveries, or inventions in any manner they see fit. The STATE reserves the right to impose such other terms and conditions upon the use of such copyrights or patents as may be deemed in the best interest of STATE in the event AGENCY is allowed to obtain a copyright or patent.

**X. Uniform Administrative Requirements**

(2 CFR Part 1201): *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*:

The application of 2 CFR Part 200 "Procurement Standards" Requires that:

AGENCY and sub-grantees will use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law. The most stringent purchasing requirement at each level must be met.

The Arizona Procurement Code (ARS §41-2501, et. seq.) and promulgated rules (A.A.C. Title 2, Chapter 7) are a part of this Contract as if fully set forth herein and AGENCY agrees to fully comply with these requirements for any procurement using grant monies from this Contract.

**XI. Non-Discrimination**

During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- A. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- B. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
- C. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- D. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including, but not limited to, withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- E. To insert this clause, including paragraphs A through E, in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

**XII. Executive Order 2009-09**

It is mutually agreed that AGENCY will comply with the terms and conditions of Executive Order 2009-09, *Non-Discrimination in Employment by Government Contractors and Subcontractors*. Executive Order 2009-09 is located in Part II of the Project Director's Manual.

**XIII. Application of Hatch Act**

The AGENCY will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

**XIV. Minority Business Enterprises (MBE) Policy and Obligation**

- A. Policy: It is the policy of the USDOT that minority business enterprises as defined in 49 CFR Part 23, will have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the minority business enterprises requirements of 49 CFR Part 23 apply to this Contract.
- B. Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, all recipients or contractors will take all necessary and reasonable steps in accordance with 49 CFR, Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors will not discriminate on the basis of race, color, creed, sex, or national origin in the award and performance of USDOT-assigned contracts.

**XV. Arbitration Clause, ARS §12-1518**

Pursuant to ARS §12-1518, the parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Contract where the provisions of mandatory arbitration apply.

**XVI. Inspection and Audit, ARS §35-214**

Pursuant to ARS §35-214, all books, accounts, reports, files, and other records relating to this Contract will be subject at all reasonable times to inspection and audit by STATE for five (5) years after completion of this Contract. The records will be produced at the Governor's Office of Highway Safety.

**XVII. Appropriation of Funds by U.S. Congress**

It is agreed that in no event will this Contract be binding on any party hereto unless and until such time as funds are appropriated and authorized by the U.S. Congress and specifically allocated to the project submitted herein and then only for the fiscal year for which such allocation is made. In the event no funds are appropriated by the U.S. Congress or no funds are allocated for the project proposed herein for subsequent fiscal years, this Contract will be null and void, except as to that portion for which funds have then been appropriated or allocated to this project, and no right of action or damages will accrue to the benefit of the parties hereto as to that portion of the Contract or project that may so become null and void.

**XVIII. Continuation of Highway Safety Program**

It is the intention of AGENCY to continue the Highway Safety Program identified in this Contract once Federal funding is completed. This intended continuation will be based upon cost effectiveness and an evaluation by AGENCY of the program's impact on highway safety.

**XIX. E-Verify**

Both parties acknowledge that immigration laws require them to register and participate with the E-Verify Program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this State. Both parties warrant that they have registered with and participate with E-Verify. If either party later determines that the other non-compliant party has not complied with E-Verify, it will notify the non-compliant party by certified mail of the determination and of the right to appeal the determination.

**XX. Termination and Abandonment**

- A. The STATE and AGENCY hereby agree to the full performance of the covenants contained herein, except that STATE reserves the right, at its discretion, to terminate or abandon any portion of the project for which services have not been already performed by AGENCY.
- B. In the event STATE abandons the services or any part of the services as herein provided, STATE will notify AGENCY in writing and within twenty-four (24) hours after receiving such notice, AGENCY will discontinue advancing the work under this Contract and proceed to close said operations under the Contract.

- C. The appraisal value of work performed by AGENCY to the date of such termination or abandonment shall be made by STATE on a basis equitable to STATE and AGENCY and a final reimbursement made to AGENCY on the basis of costs incurred. Upon termination or abandonment, AGENCY will deliver to STATE all documents, completely or partially completed, together with all unused materials supplied by STATE.
- D. AGENCY may terminate or abandon this Contract upon thirty (30) days written notice to STATE, provided there is subsequent concurrence by STATE. Termination or abandonment by AGENCY will provide that costs can be incurred against the project up to and including sixty (60) days after notice is given to STATE.
- E. Any equipment or commodities which have been purchased as a part of this Contract and which have not been consumed or reached the end of its useful life will be returned to STATE upon its written request.

## **XXI. Cancellation Statute**

All parties are hereby put on notice that this Contract is subject to cancellation pursuant to ARS §38-511, the provisions of which are stated below.

In accordance with ARS §38-511, this Contract may be cancelled without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the STATE, its political subdivisions or any department or agency of either, is at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter or the Contract.

The cancellation shall be effective when written notice from the Governor or Chief Executive Officer or governing body of the political subdivision is received by all other parties to the Contract unless the notice specifies a later time.

## **AGREEMENT OF UNDERSTANDING AND CERTIFICATION OF COMPLIANCE**

### **Acceptance of Condition**

It is understood and agreed by the undersigned that a grant received as a result of this Contract is subject to the Highway Safety Act of 1966, as amended (23 U.S.C.A. §§401-404), ARS §28-602, and all administrative regulations governing grants established by the USDOT and STATE. It is expressly agreed that this Highway Safety Project constitutes an official part of the STATE's Highway Safety Program and that AGENCY will meet the requirements as set forth in the accompanying Project Director's Manual, which are incorporated herein and made a part of this Contract. All State and Federal Statutes, Rules, Regulations, and Circulars referenced in this Contract are a part of this document as if fully set forth herein. It is also agreed that no work will be performed nor any obligation incurred until AGENCY is notified in writing that this project has been approved by the Governor's Highway Safety Representative.

### **Certificate of Compliance**

This is to certify that AGENCY will comply with all of the State and Federal Statutes, Rules and Regulations identified in this Contract.

**Certification of Non-Duplication of Grant Funds Expenditure**

This is to certify that AGENCY has no ongoing nor completed projects under contract with other Federal fund sources which duplicate or overlap any work contemplated or described in this Contract. It is further certified that any pending or proposed request for other Federal grant funds which would duplicate or overlap work described in the Contract will be revised to exclude any such duplication of grant fund expenditures. It is understood that any such duplication of Federal funds expenditures subsequently determined by audit will be subject to recovery by STATE.

**Single Audit Act**

If your political subdivision has had an independent audit meeting the requirements of the Single Audit Act of 1984, (31 U.S.C.A. §7501 et. seq.), please forward a copy to GOHS, Attention: Fiscal Services Officer, within thirty (30) days of the effective date of this Contract. If such audit has not been performed, please advise when it is being scheduled.

**Buy America Act**

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron, and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than twenty-five (25) percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

**Prohibition on Using Grant Funds to Check for Helmet Usage**

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

**Certification Regarding Debarment and Suspension**

- A. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
- B. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- C. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in

addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

- D. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- E. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used* in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- F. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- G. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled Instructions for Lower Tier Certification including the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction, provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
- H. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov>).
- I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- J. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause of default.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matter**

- A. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principal:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the prospective primary tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Lower Tier Certification**

- A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- C. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- D. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
- E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4,

debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- F. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions Website (<https://www.sam.gov>).
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**REIMBURSEMENT INSTRUCTIONS**

**1. Agency Official preparing the Report of Costs Incurred:**

Name: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**2. Agency's Fiscal Contact:**

Name: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

**3. *REIMBURSEMENT INFORMATION:***

Warrant/Check to be made payable to:

\_\_\_\_\_

Warrant/Check to be mailed to:

\_\_\_\_\_

(Agency)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, State, Zip Code)

**4. *DUNS Number:***

\_\_\_\_\_

(DUNS #)

\_\_\_\_\_

(Registered Address & Zip Code)

**Restriction on State Lobbying**

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

**Certification for Contracts, Grant, Loans, and Cooperative Agreements (Federal Lobbying)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients will certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

***Signature of Project Director:***

***Signature of Authorized Official of Governmental Unit:***

Kevin Treadway, Chief of Police  
Flagstaff Police Department

Barbara Goodrich, City Manager  
City of Flagstaff

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date Telephone

\_\_\_\_\_  
Date Telephone

**AUTHORITY & FUNDS**

1. This Project is authorized by 23 U.S.C. §405 and regulations promulgated there under, more particularly Volume 102, and if State funds are involved, this project is authorized by ARS §28-602.

The funds authorized for this Project have been appropriated and budgeted by the U.S. Department of Transportation. The expenses are reimbursable under Arizona's Highway Safety Plan Program Area 405d, as approved for by the National Highway Traffic Safety Administration.

- |    |                                      |                           |
|----|--------------------------------------|---------------------------|
| 2. | <b>A. EFFECTIVE DATE:</b>            | <b>B. FEDERAL FUNDS:</b>  |
|    | <i>Authorization to Proceed Date</i> | <b><u>\$50,918.00</u></b> |

3. **AGREEMENT AND AUTHORIZATION TO PROCEED**  
by State Official responsible to Governor for the  
administration of the State Highway Safety Agency

\_\_\_\_\_  
 Alberto Gutier, Director  
 Governor's Office of Highway Safety  
 Governor's Highway Safety Representative

\_\_\_\_\_  
 Approval Date

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elaine Averitt, Planning Development Manager  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Approval of Final Plat** Request by Brookfield Communities, Inc. for Final Plat approval for Woodshire on Butler Condominiums, a 50-unit residential condominium subdivision. The approximately 4.06-acre site is located at 2989 E. Butler Avenue in the HC, Highway Commercial zone and 3001 E. Butler Avenue in the HR, High-Density Residential zone; both are in a Resource Protection Overlay (RPO) zone. **(Subdivision of approximately 4.06 acres into 50 lots located at 2989 and 3001 E. Butler Avenue)**

**STAFF RECOMMENDED ACTION:**

Staff recommends approving the final plat with no conditions and authorizing the Mayor to sign both the plat and City/Subdivider Agreement when notified by staff that the documents are ready for recording.

**Executive Summary:**

This is a request for final plat approval for a 50-unit residential condominium subdivision known as Woodshire on Butler Condominiums. Please see Sheet No. 1 of the Final Plat for the Vicinity Map.

**Financial Impact:**

Per the Development Agreement, the Developer shall pay cash-in-lieu (\$99,653.00) for constructing future curb/gutter, sidewalk, streetlights, street trees, and a right-turn lane at the Butler Avenue driveway. Also, the Developer will make a total cash-in-lieu contribution of \$22,470.41 for the combined project; this is the Developer's portion of the off-site improvement costs of the required secondary water source. There will also be no ongoing maintenance costs to the City for the internal driveways.

**Policy Impact:**

There are no policy impacts affiliated with this Final Plat.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

### Council Goals

Economic Development - Grow and strengthen a more equitable and resilient economy.

Affordable Housing - Support development and increase the inventory of public and private affordable housing for renters and home buyers.

### Team Flagstaff Goals

Strategic Priority #4 - Work in partnership to enhance a safe and livable community.

### Regional Plan

Goal NH.3. Make available a variety of housing types at different price points, to provide housing opportunity for all economic sectors.

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

July 2, 2019: City Council approved a Purchase Agreement authorizing the sale of a portion of City property located at 2989 E. Butler Avenue to Woodshire on Butler, LLC for affordable housing (Ordinance No. 2019-11).

July 2, 2019: City Council approved a Preliminary Plat (PZ-18-00105-03).

July 2, 2019: City Council approved a Development Agreement (Resolution No. 2019-18).

### **Options and Alternatives:**

- 1) Approve the final plat with no conditions.
- 2) Approve the final plat with added conditions.
- 3) Deny the final plat based on non-compliance with the approved preliminary plat, the Zoning Code, the Subdivision Code, and/or the Engineering Design Standards and Specifications for New Infrastructure.

### **Background/History:**

The subject site is located on the south side of Butler Avenue just east of Herold Ranch Road. On July 2, 2019, the City Council approved a Purchase Agreement, a Preliminary Plat, and an associated Development Agreement; all requirements for the proposed development of this condominium subdivision which includes an affordable housing component. Civil engineering plans for the project were approved on August 12, 2019. On October 3, 2019, the Inter-Division Staff approved a Final Plat for the proposed development of 50 new condominium lots and two tracts.

### **Key Considerations:**

The City Council reviews final plat applications to ensure that the final plat meets the requirements of City Code Title 10, Flagstaff Zoning Code; Title 11, General Plans and Subdivision Code; and Title 13, Engineering Design Standards and Specifications. All the applicable city codes were reviewed by staff for this final plat application and found to meet the requirements.

### **Expanded Financial Considerations:**

None

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





# City of Flagstaff

# Community Development Division

211 W. Aspen Ave  
 Flagstaff, AZ 86001  
 www.flagstaff.az.gov

P: (928) 213-2618  
 F: (928) 213-2609

RECEIVED  
 SEP 19 2019  
 Resubmitted

<b>Date Received</b> AUG 06 2019		<b>Application for Subdivision Review</b>		<b>File Number</b> P218-00105-09
<b>Property Owner(s)</b> Brookfield Communities, Inc.			<b>Phone</b>	
<b>Mailing Address</b> 3550 N. Central Ave. #1101		<b>City, State, Zip</b> Phoenix, AZ 85012		<b>Email</b>
<b>Applicant(s)</b> Phillip V. Petersen			<b>Phone</b> 602-265-4400	
<b>Mailing Address</b> 3550 N. Central Ave. #1101		<b>City, State, Zip</b> Phoenix, AZ 85012		<b>Email</b> philp@brookfieldcommunities.com
<b>Project Representative</b> Guillermo E. Cortes, PE			<b>Phone</b> 928-773-0354	
<b>Mailing Address</b> 110 West Dale Avenue		<b>City, State, Zip</b> Flagstaff, AZ 86001		<b>Email</b> gcortes@swiaz.com
<b>Requested Review:</b> <input type="checkbox"/> Development Master Plan <input type="checkbox"/> Conceptual Plat <input type="checkbox"/> Preliminary Plat P&Z and Council <input type="checkbox"/> Modified Subdivision <input type="checkbox"/> Preliminary Plat <input checked="" type="checkbox"/> Final Plat- Council				

<b>Project Name:</b> WoodShire on Butler Condominiums		<b>Site Address</b> 2989 & 3001 E. Butler Ave.		<b>Parcel Number</b> APN #106-04-006C & 106-04-007B	
<b>Proposed Use</b> Residential		<b>Existing Use</b> Undeveloped		<b>Subdivision, Tract &amp; Lot Number</b>	
<b>Zoning District</b> High Density Residential (HR) & Highway Commercial - HC		<b>Regional Plan Category</b> Urban		<b>Flood Zone</b> Zone X	
				<b>Size of Site (Sq. ft. or Acres)</b> +/- 4.06 acres	
<b>Property Information:</b>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Located in an existing Local/National Historic District? (Name: _____)			
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Existing structures are over 50 years old at the time of application?			
		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subject property is undeveloped land?			

Surrounding Uses	North	South	East	West
(Res, Com, Ind)	Residential	Residential	Residential	Commercial

Proposed Use:	Number of Lots	Number of Units	Number of acres per use	Building Square Feet
Residential	50	50	1 acre/12 units	~1,100 sf

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

<b>Property Owner Signature: (required)</b> 	<b>Date:</b> 7-8-19	<b>Applicant Signature:</b> 	<b>Date:</b> 7-8-19
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For City Use			
<b>Date Filed:</b> 8-6-2019		<b>Case Number (s)</b> P2-18-00105-07	
<b>P &amp; Z Hearing Date:</b> N/A		<b>Publication and Posting Date:</b> N/A	
<b>Council Hearing Date:</b> 11-5-19		<b>Publication and Posting Date:</b> N/A	
<b>Fee Receipt Number:</b> REC-1950389		<b>Amount:</b> \$1,840.00	
		<b>Date:</b> 8-6-2019	
<b>Action by Planning and Zoning Commission:</b> N/A		<b>Action By City Council:</b>	
<input type="checkbox"/> Approved		<input type="checkbox"/> Approved	
<input type="checkbox"/> Denied		<input type="checkbox"/> Denied	
<input type="checkbox"/> Continued		<input type="checkbox"/> Continued	
<b>Staff Assignments</b>	Planning	Engineering	Fire
		Public Works/Utilities	Stormwater

PLOTTED: Oct 02, 2019 - 2:44pm

**DEDICATION**

STATE OF ARIZONA  
COUNTY OF COCONINO

KNOW ALL MEN BY THESE PRESENTS: That WoodShire on Butler, LLC (An Arizona Limited Liability Company), as owner, hereby publishes this plat as and for WoodShire on Butler Condominiums. A subdivision of a portion of land situated in the Section 23, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as shown platted hereon, and hereby declares that said plat sets forth the locations and gives the dimensions and measurements of the lots (units), tracts and easements constituting same and that each lot (unit), tract and easement shall be known by the number or name given to each, respectively, on said plat.

Each Unit shown hereon is a single family, detached Condominium Unit, with no shared garages, any other attached buildings, archways or breezeways.  
Each Unit is encumbered by, and subject to the Condominium Declaration for the WoodShire on Butler Condominiums, an Arizona nonprofit corporation.

The Condominium Unit consists of the entire structure, including site and air space, within the horizontal and vertical boundaries of the Unit, and is not considered to be a common element or limited common element.

Each Condominium Unit owner shall be solely responsible for insurance, operation, maintenance and repair of each Unit, except as provided in the Condominium Declaration.

Any common assessments collected will be for amenities outside of the footprint of the individual site.

The Owner hereby dedicates to the City of Flagstaff:  
1. all public utility easements (P.U.E.) shown hereon for the benefit of all authorized utility companies for public utility and access purposes only,  
2. those rights of way (R.O.W.) shown hereon for use/access by the public and use by all authorized companies for the City of Flagstaff  
3. Tract 'B' for slope resource protection as shown hereon.  
4. a 20' temporary emergency access easement shown hereon for the temporary emergency access purposes only.

Tract 'A' is hereby dedicated as to the WoodShire on Butler Condominium Association, (HOA) as Common Area/Open Space/Forest Resource Protection.

IN WITNESS WHEREOF: WoodShire on Butler, LLC, an Arizona limited liability company, has hereunto caused this declaration to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_ 2019,

By: Arizona Mountain Communities, LLC, a Delaware limited liability company  
Its: Sole Member  
By: Phillip V. Petersen  
Its: Manager

STATE OF ARIZONA  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned personally appeared, \_\_\_\_\_, Manager of \_\_\_\_\_ Arizona Mountain Communities, LLC, a Delaware limited liability company, the Sole Member of WoodShire on Butler LLC, an Arizona limited liability company, on behalf of the limited liability company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein constrained.

IN WITNESS WHEREOF I hereunto set forth my hand and official seal

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**LENDER:**

ON Q FINANCIAL COMPANY, AN ARIZONA STATE CHARTERED BANK

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**CITY OF FLAGSTAFF APPROVALS**

CITY OF FLAGSTAFF  
It is hereby certified that this plat has been officially approved for the record by the Council of the City of Flagstaff, Coconino County, Arizona, on the \_\_\_\_ day of \_\_\_\_\_, 2019.

BY: \_\_\_\_\_ Mayor

ATTEST: \_\_\_\_\_ City Clerk

It is hereby certified that this plat has been officially approved for the record by the City of Flagstaff Planning Director and City Engineer, on the \_\_\_\_ day of \_\_\_\_\_, 2019.

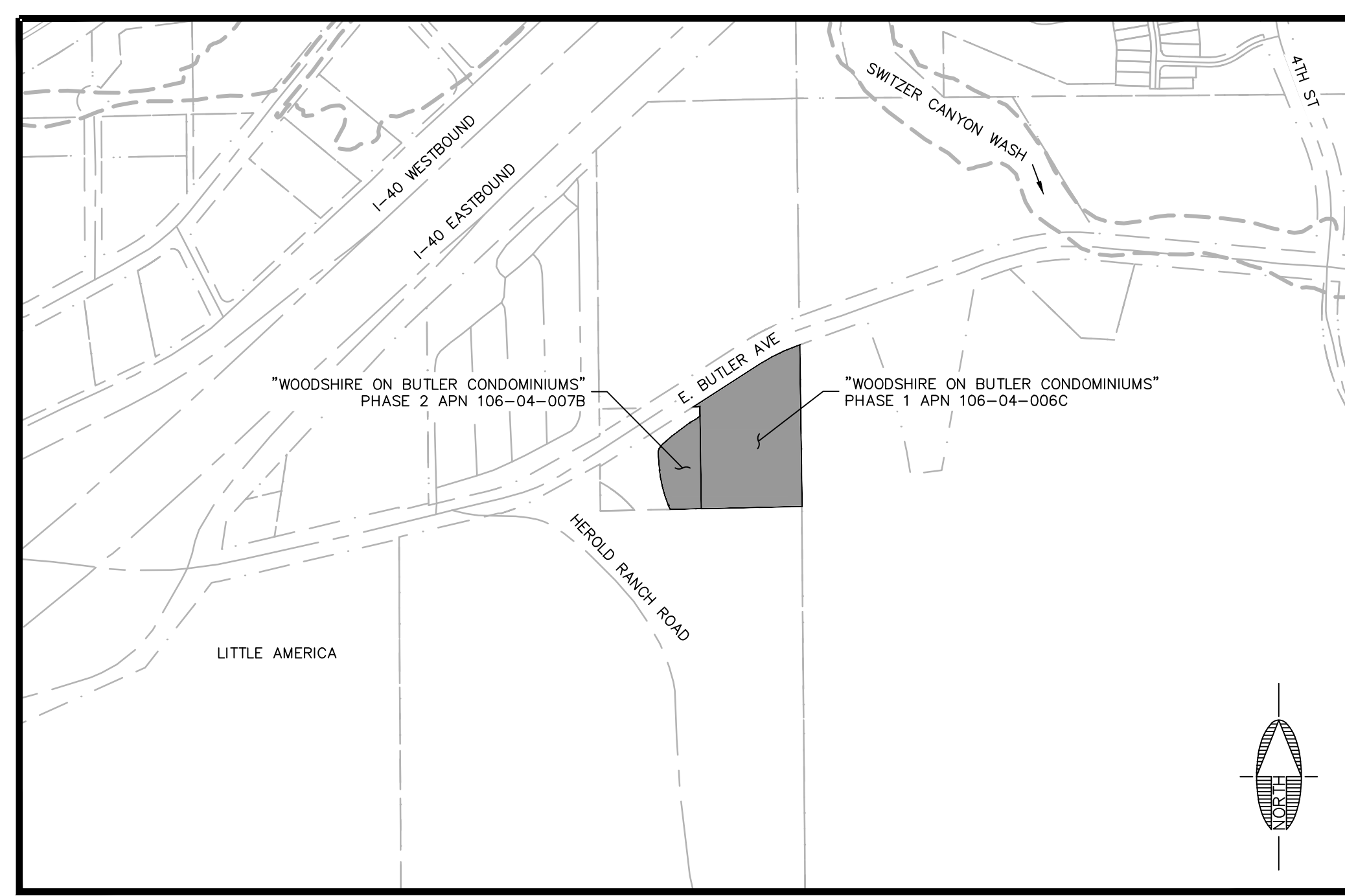
BY: \_\_\_\_\_ Planning Director

BY: \_\_\_\_\_ City Engineer

SHEET INDEX table with columns: SHEET NO., DWG NO., SHEET TITLE. Rows include CVR, FP01, FP02, FP03.

**FINAL PLAT OF  
WOODSHIRE ON BUTLER  
CONDOMINIUMS  
FLAGSTAFF, ARIZONA**

LOCATED IN SECTION 23, TOWNSHIP 21 NORTH,  
RANGE 7 EAST, GILA AND SALT BASE AND  
MERIDIAN, COCONINO COUNTY, FLAGSTAFF, ARIZONA



VICINITY MAP  
N.T.S.

**PROJECT OWNER:**

BROOKFIELD COMMUNITIES, INC.  
PHILIP PETERSEN  
3550 N. CENTRAL AVENUE #1101  
PHOENIX, AZ 85012  
(602) 265-4400

**CIVIL ENGINEER:**

SHEPARD-WESNITZER INC.  
GUILLERMO E. CORTES #33983  
110 WEST DALE AVE  
FLAGSTAFF, AZ 86001  
(928) 773-0354

**SURVEYOR:**

SHEPARD-WESNITZER, INC.  
AARON D. BORLING, RLS #48756  
110 W. DALE AVE.  
FLAGSTAFF, AZ 86001  
(928) 773-0354

**UTILITY COMPANY APPROVAL**

**ARIZONA PUBLIC SERVICE**

MEGAN MCCARTHY (BY LETTER) 4/29/19  
BY: DATE:

**UNISOURCE ENERGY SERVICES**

MARTIN CONBOY (BY LETTER) 4/19/19  
BY: DATE:

**CENTURYLINK**

MANUEL HERNANDEZ (BY LETTER) 4/16/19  
BY: DATE:

**ALTICE USA**

SANFORD YAZZIE (BY LETTER) 5/15/19  
BY: DATE:

**UTILITY COMPANY CONTACTS**

APS CONTACT: MEGAN MCCARTHY 2200 E. HUNTINGTON FLAGSTAFF, AZ 86004 MEGAN.MCCARTHY@APS.COM PHONE: (928) 773-6447

UNISOURCE ENERGY SERVICES CONTACT: MARTIN CONBOY 2901 W SHAMRELL BLVD #110 FLAGSTAFF, AZ 86001 MCONBOY@UESAZ.COM PHONE: (928) 226-2269

CENTURYLINK CONTACT: MANUEL HERNANDEZ 112 NORTH BEAVER STREET FLAGSTAFF, AZ 86001 MANUEL.HERNANDEZ4@CENTURYLINK.COM PHONE: (928) 779-4935

ALTICE USA CONTACT: SANFORD YAZZIE 1601 SOUTH PLAZA WAY FLAGSTAFF, AZ 86001 SANFORD.YAZZIE@ALTICEUSA.COM PHONE: (928) 266-0672

**UTILITY CONFLICT**

THERE ARE NO APPARENT UTILITY CONFLICTS WITH APS, CENTURYLINK, UNISOURCE, OR ALTICE USA; HOWEVER, THEY DO HAVE EXISTING FACILITIES IN THE AREA THAT WILL NEED TO BE PROTECTED AND/OR RELOCATED.

**PROJECT INFORMATION:**

WOODSHIRE ON BUTLER CONDOMINIUMS

NUMBER OF LOTS: 50  
GROSS AREA: 4.06 ACRES  
NET AREA: 3.93 ACRES

- 1. THE PROJECT IS LOCATED WITHIN THE CITY OF FLAGSTAFF WATER SERVICE AREA AND HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY.
- 2. ALL UTILITIES, INCLUDING STREET LIGHTS AND ELECTRICAL LINES INSTALLED WITH THIS PROJECT SHALL BE PLACED UNDERGROUND.
- 3. DEVELOPMENT AND USE OF THIS SITE WILL CONFORM TO ALL APPLICABLE CITY OF FLAGSTAFF CODES AND ORDINANCES.
- 4. ONE PARKING SPACE IS RESERVED PER UNIT AND DEDICATED AS A LIMITED COMMON ELEMENT (L.C.E.). ALL OTHER PARKING SPACES ARE AVAILABLE FOR VISITORS AND DEDICATED AS A COMMON ELEMENT (C.E.).
- 5. HOA SHALL MAINTAIN ALL COMMON AREAS WITHIN TRACT 'A' AND TRACT 'B' AS SHOWN.
- 6. THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS FOR THE WOODSHIRE ON BUTLER CONDOMINIUMS SHALL BE RECORDED IN THE OFFICE OF THE COCONINO COUNTY RECORDER AND ARE HEREBY INCORPORATED AS PART OF THIS PLAT.
- 7. NEW IMPERVIOUS AREA: 1.88 AC TOTAL INCLUDES ROADWAY IMPROVEMENTS, SIDEWALKS, BUILDING PADS AND ASSOCIATED PARKING LOTS.
- 8. THE CITY OF FLAGSTAFF PROVIDES WATER [UTILITY] SERVICE PURSUANT TO STATE LAW, AND IS CURRENTLY OPERATING UNDER A DESIGNATION OF ADEQUATE WATER SUPPLY GRANTED BY THE ARIZONA DEPARTMENT OF WATER RESOURCES, APPLICATION NO. 41-900002.0002.
- 9. EXCEPT FOR CONSTRUCTION AND IMPROVEMENTS BY GOVERNMENTAL ENTITIES AND CERTIFICATED PUBLIC UTILITIES, CONSTRUCTION AND IMPROVEMENTS WITHIN UTILITY EASEMENTS SHALL BE LIMITED TO THE FOLLOWING: REMOVABLE WOOD, WIRE OR SECTION-TYPE FENCING; CONSTRUCTION STRUCTURES OR BUILDING EXPRESSLY APPROVED IN WRITING BY ALL PUBLIC UTILITIES WHICH USE OR SHALL USE THE UTILITY EASEMENT.
- 10. THE WOODSHIRE ON BUTLER CONDOMINIUM ASSOCIATION SHALL BE SOLELY RESPONSIBLE FOR THE OPERATION, MAINTENANCE, AND LIABILITY FOR ALL DETENTION FACILITIES; AND, THE CITY OF FLAGSTAFF MAY PERIODICALLY INSPECT SAID DETENTION FACILITIES TO VERIFY THAT REGULAR MAINTENANCE ACTIVITIES ARE BEING PERFORMED ADEQUATELY.
- 11. TOPOGRAPHIC, BOUNDARY, AND EXISTING EASEMENT INFORMATION BASED ON AN ALTA/ACSM LAND TITLE SURVEY PREPARED BY WOODSON ENGINEERING, INC. DATED 9/24/2003 INSTRUMENT #3230568, OFFICIAL RECORDS OF COCONINO COUNTY AND RESULTS OF SURVEY PREPARED BY SHPHARD-WESNITZER, INC. DATED 4/15/2019 INSTRUMENT #3839374, OFFICIAL RECORDS OF COCONINO COUNTY.

**SUMMARY OF TRACTS:**

TRACT A: 100,377 SF (2,304 AC) SHALL CONTAIN ALL AREA OUTSIDE OF THE UNITS AND THEIR ASSOCIATED COMMON ELEMENTS AND LIMITED COMMON ELEMENTS AND IS DEDICATED HEREON TO THE OWNER'S ASSOCIATION AS COMMON AREA/OPEN SPACE/FOREST RESOURCE PROTECTION.  
TRACT B: 8,335 SF (0.191 AC) SHALL CONTAIN THE AREA AS SHOWN, AND IS DEDICATED HEREON TO THE OWNER'S ASSOCIATION AS SLOPE RESOURCE PROTECTION.

**FLOOD ZONE CLASSIFICATION:**

THE SUBJECT PARCEL IS LOCATED WITHIN ZONE X OF FEMA FIRM MAP #04005C682BQ, EFFECTIVE SEPTEMBER 3, 2010. ZONE X IS DESCRIBED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANGE FLOODPLAIN.

**ZONING:**

EXISTING ZONING: PHASE 1 APN 106-04-006C HIGH DENSITY RESIDENTIAL (HR)  
PHASE 2 APN 106-04-007B HIGHWAY COMMERCIAL (HC)

THE ENTIRE PROJECT AREA IS WITHIN THE CITY OF FLAGSTAFF ZONING "HIGH DENSITY RESIDENTIAL (HR)" AND "HIGHWAY COMMERCIAL (HC)" PER CITY OF FLAGSTAFF OFFICIAL ZONING MAP 9 & 10. THIS PROJECT WILL NOT INVOLVE REZONING.

CITY OF FLAGSTAFF ZONING CODE SEC. 10-50.110.080  
PHASE 1 APN 106-04-006C BUNGALOW COURTS (REQUIRED TO MEET PREVIOUSLY APPROVED ORDINANCE BASED ON 2005 REZONING)

- MAX. BUILDING SIZE 32'X24'
- MAX. BUILDING HEIGHT 2 STORIES
- FRONT SETBACK 24'
- SIDE SETBACK 15'
- REAR SETBACK 20'
- MAX. LOT COVERAGE 50%
- MIN. DENSITY 10 UNITS/ACRE
- MIN. OPEN SPACE 15%
- NUMBER OF UNITS 3 MIN.; 9 MAX.

CITY OF FLAGSTAFF ZONING CODE SEC. 10-40.40.080  
PHASE 2 APN 106-04-007B WAS GRANTED A CONDITIONAL USE PERMIT FOR A PLANNED RESIDENTIAL DEVELOPMENT USING THE BUNGALOW COURT BUILDING TYPE AND THE T4 NEIGHBORHOOD 2 (T4N.2) SETBACKS AND LOT COVERAGE.

- MAX. LOT COVERAGE 80%
- MAX. BUILDING HEIGHT 52'
- FRONT SETBACK 5'
- SIDE SETBACK 3'
- SIDE STREET 10'
- REAR SETBACK 3'

**RESOURCE PROTECTION OVERLAY ZONE:**

THIS PROPERTY IS WITHIN THE CITY OF FLAGSTAFF RESOURCE PROTECTION OVERLAY ZONE; THEREFORE, THERE ARE RESOURCES REQUIRING PROTECTION ON THIS PROPERTY.

**CERTIFICATE OF LAND SURVEYOR**

This is to certify that the survey of the property described and platted hereon was made under my direction and supervision and is accurately represented on this plat. I also certify that the plat is in substantial conformance to the approved tentative plat and that this plat is correct and accurate as shown to the best of my knowledge and belief.

Registered Land Surveyor

Date \_\_\_\_\_

Vertical sidebar containing: FLAGSTAFF ARIZONA, WOODSHIRE ON BUTLER CONDOMINIUMS, COVER SHEET, JOB NO., DATE, SCALE, DRAWN, DESIGN, CHECKED, SWI logo, Shephard Wesnitzer, Inc., REVISIONS table, ARIZONA 811 logo, DRAWING NO. CVR, SHT NO. OF 1 4.

FILE: P:\2017\17159\DRAWINGS\PLATS\FINAL\17159 COVER.DWG CPHAM

PLOTTED: Oct. 02, 2019 - 2:45pm

### COORDINATE SYSTEM DETAILS

**LINEAR UNIT:** INTERNATIONAL FEET  
**GEODETIC DATUM:** NAD 83 (CONUS)  
**VERTICAL DATUM:** NAVD 88, REFERENCED FROM CITY OF FLAGSTAFF CONTROL POINT #1922200  
**SYSTEM:** CITY OF FLAGSTAFF LOW DISTORTION PROJECTION (2015)

**PROJECTION:**  
 TRANSVERSE MERCATOR  
 LATITUDE OF GRID ORIGIN: 35° 10' 00" N  
 LONGITUDE OF CENTRAL MERIDIAN: 111° 37' 00" W  
 NORTING AT GRID ORIGIN: 0 FT  
 EASTING AT CENTRAL MERIDIAN: 70,000 FT  
 CENTRAL MERIDIAN SCALE FACTOR: 1.000333 (EXACT)

ALL MEASURED DISTANCES AND BEARINGS SHOWN HEREON ARE GRID VALUES BASED ON THE PRECEDING PROJECTION DEFINITION. THE PROJECTION WAS DEFINED SUCH THAT GRID DISTANCES ARE EQUIVALENT TO "GROUND" DISTANCES IN THE PROJECT AREA.

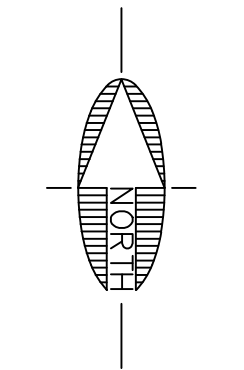
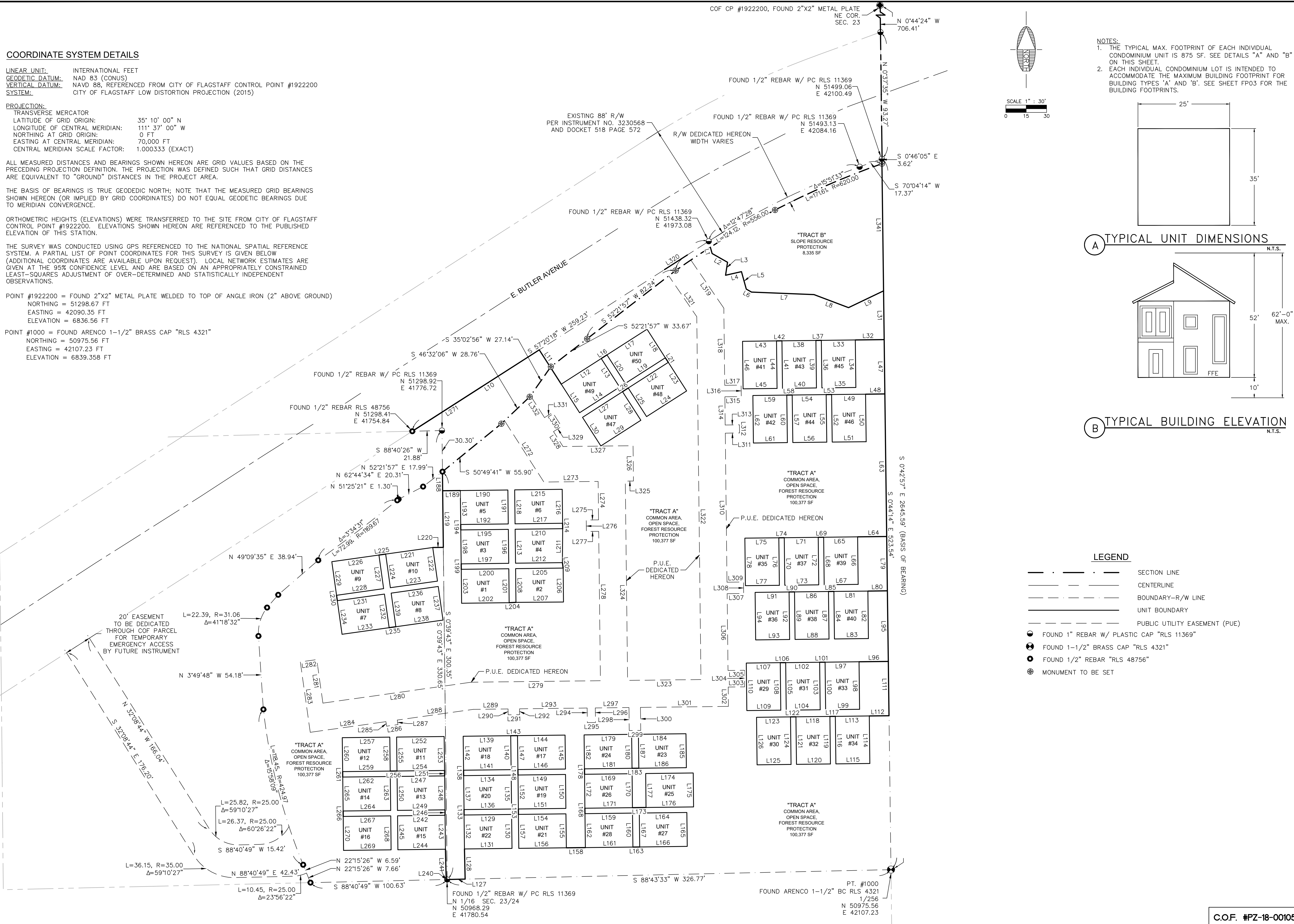
THE BASIS OF BEARINGS IS TRUE GEODETIC NORTH; NOTE THAT THE MEASURED GRID BEARINGS SHOWN HEREON (OR IMPLIED BY GRID COORDINATES) DO NOT EQUAL GEODETIC BEARINGS DUE TO MERIDIAN CONVERGENCE.

ORTHOMETRIC HEIGHTS (ELEVATIONS) WERE TRANSFERRED TO THE SITE FROM CITY OF FLAGSTAFF CONTROL POINT #1922200. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE PUBLISHED ELEVATION OF THIS STATION.

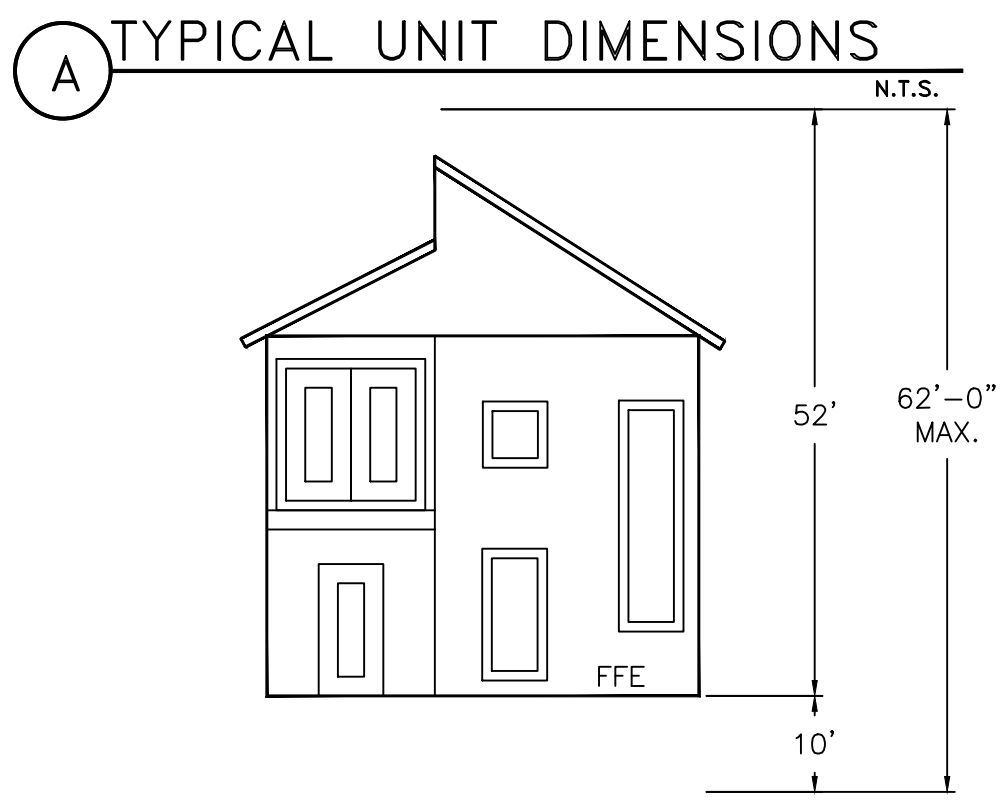
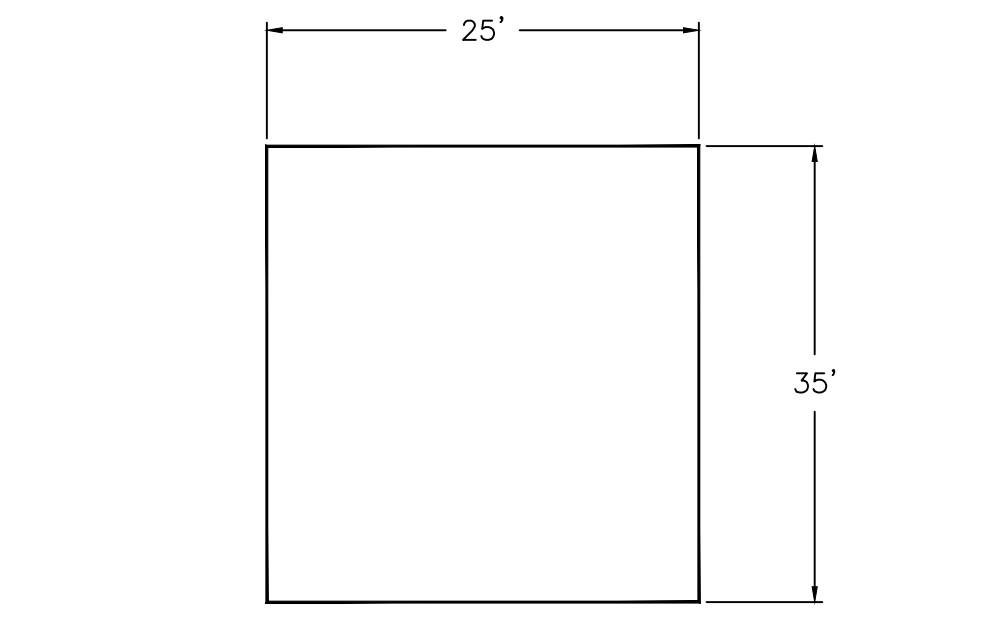
THE SURVEY WAS CONDUCTED USING GPS REFERENCED TO THE NATIONAL SPATIAL REFERENCE SYSTEM. A PARTIAL LIST OF POINT COORDINATES FOR THIS SURVEY IS GIVEN BELOW (ADDITIONAL COORDINATES ARE AVAILABLE UPON REQUEST). LOCAL NETWORK ESTIMATES ARE GIVEN AT THE 95% CONFIDENCE LEVEL AND ARE BASED ON AN APPROPRIATELY CONSTRAINED LEAST-SQUARES ADJUSTMENT OF OVER-DETERMINED AND STATISTICALLY INDEPENDENT OBSERVATIONS.

POINT #1922200 = FOUND 2"x2" METAL PLATE WELDED TO TOP OF ANGLE IRON (2" ABOVE GROUND)  
 NORTHING = 51298.67 FT  
 EASTING = 42090.35 FT  
 ELEVATION = 6836.56 FT

POINT #1000 = FOUND ARENCO 1-1/2" BRASS CAP "RLS 4321"  
 NORTHING = 50975.56 FT  
 EASTING = 42107.23 FT  
 ELEVATION = 6839.358 FT



- NOTES:**
1. THE TYPICAL MAX. FOOTPRINT OF EACH INDIVIDUAL CONDOMINIUM UNIT IS 875 SF. SEE DETAILS "A" AND "B" ON THIS SHEET.
  2. EACH INDIVIDUAL CONDOMINIUM LOT IS INTENDED TO ACCOMMODATE THE MAXIMUM BUILDING FOOTPRINT FOR BUILDING TYPES "A" AND "B". SEE SHEET FP03 FOR THE BUILDING FOOTPRINTS.



**A TYPICAL UNIT DIMENSIONS**  
**B TYPICAL BUILDING ELEVATION**

- LEGEND**
- SECTION LINE
  - - - CENTERLINE
  - - - BOUNDARY-R/W LINE
  - UNIT BOUNDARY
  - PUBLIC UTILITY EASEMENT (PUE)
- FOUND 1" REBAR W/ PLASTIC CAP "RLS 11369"
  - ⊙ FOUND 1-1/2" BRASS CAP "RLS 4321"
  - FOUND 1/2" REBAR "RLS 48756"
  - ⊙ MONUMENT TO BE SET

FLAGSTAFF ARIZONA

WOODSHIRE ON BUTLER CONDOMINIUMS

**FINAL PLAT (1)**

JOB NO.:	17159
DATE:	OCT 19
SCALE:	AS SHOWN
DRAWN:	CNP
DESIGN:	ONP
CHECKED:	AOB

110 W. Dole Avenue  
 Flagstaff, AZ 86001  
 928.773.0354  
 928.774.8934 fax  
 www.swigaz.com

**SWI**  
 Shephard Wesnitzer, Inc.

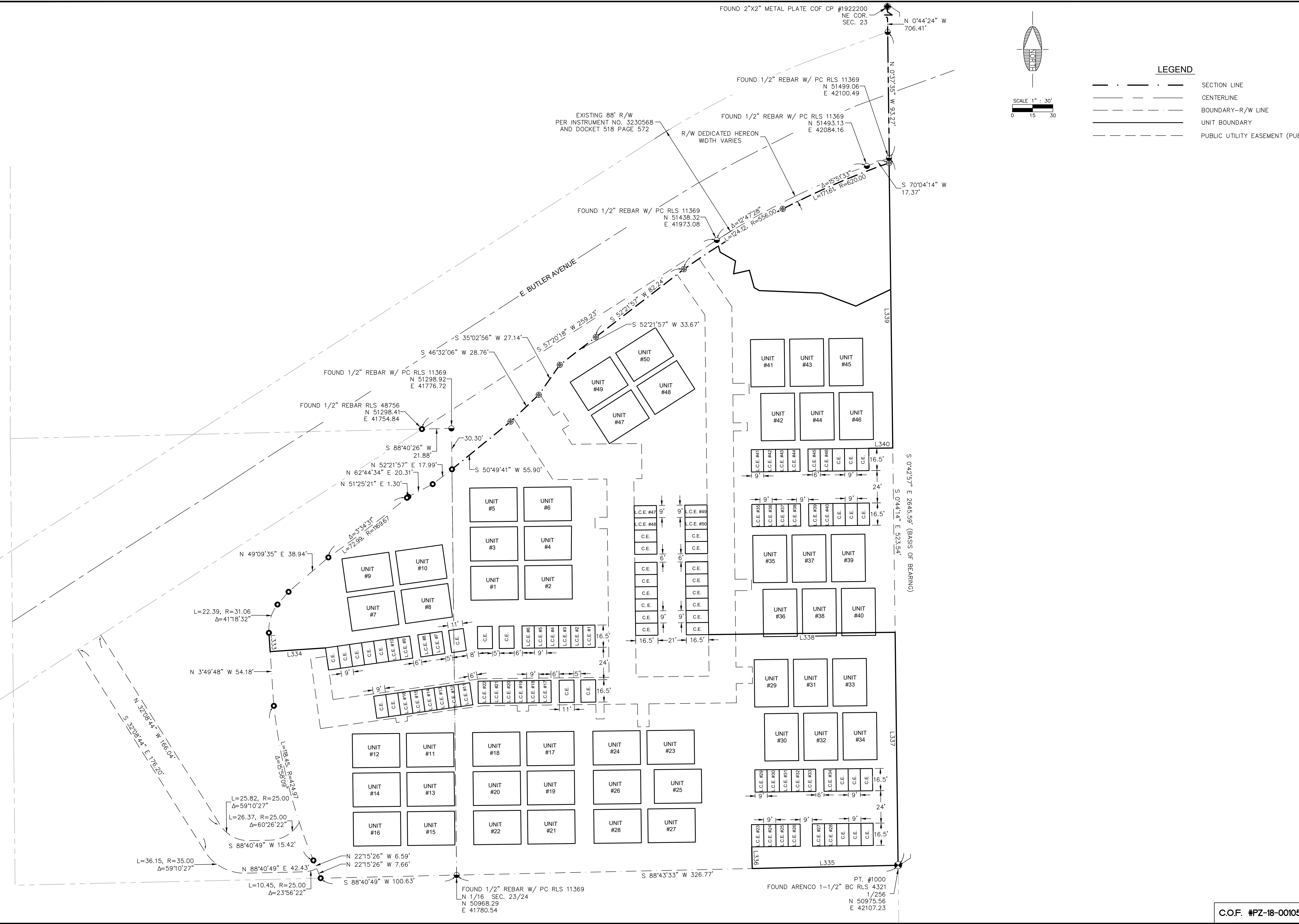
NO.	DESCRIPTION	DATE	BY

Call at least two full working days before you begin excavation.  
**ARIZONA 811**  
 Arizona Blue Stakes, Inc. (928-534-8111)

DRAWING NO. **FP01**

SHT NO. 2 OF 4

C.O.F. #PZ-18-00105



**LEGEND**

	SECTION LINE
	CENTERLINE
	BOUNDARY-R/W LINE
	UNIT BOUNDARY
	PUBLIC UTILITY EASEMENT (PUE)

FLAGSTAFF ARIZONA

WOODSHIRE ON BUTLER CONDOMINIUMS

**FINAL PLAT (2)**

JOB NO:	17159
DATE:	OCT 19
SCALE:	AS SHOWN
DRAWN:	CNP
DESIGN:	CNP
CHECKED:	AOB

110 W. Dole Avenue  
Flagstaff, AZ 86001  
928.773.0354  
928.774.8934 fax  
www.swi.coz.com

**SWI**  
Shephard Wesnitzer, Inc.

NO.	DESCRIPTION	DATE	BY

Call out at least two full working days before you begin excavation.  
**ARIZONA 811**  
Arizona Blue Stakes, Inc.  
088 8-1-1 or 1-800-514-1111 (T82-5348)

DRAWING NO. **FP02**

SHT NO.	OF
3	4

C.O.F. #PZ-18-00105

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	4.80	S 15°19'19" E
L2	13.09	S 60°19'35" E
L3	9.66	N 8°38'39" E
L4	11.99	N 77°09'00" E
L5	13.32	S 15°21'34" E
L6	4.46	S 60°31'07" E
L7	46.03	S 87°42'32" E
L8	27.14	S 69°17'08" E
L9	28.59	N 64°25'59" E
L10	111.00	N 57°20'18" E
L11	30.00	N 32°39'42" W
L12	35.00	S 57°20'18" W
L13	25.00	N 32°39'42" W
L14	35.00	N 57°20'18" E
L15	25.00	S 32°39'42" E
L16	5.00	N 57°20'18" E
L17	35.00	S 57°20'18" W
L18	25.00	N 32°39'42" W
L19	35.00	N 57°20'18" E
L20	25.00	S 32°39'42" E
L21	4.00	S 32°39'42" E
L22	35.00	S 57°20'18" W
L23	25.00	N 32°39'42" W
L24	35.00	N 57°20'18" E
L25	25.00	S 32°39'42" E
L26	5.00	N 57°20'18" E
L27	35.00	S 57°20'18" W
L28	25.00	N 32°39'42" W
L29	35.00	N 57°20'18" E
L30	25.00	S 32°39'42" E
L31	35.91	N 0°44'14" W
L32	21.24	N 89°15'46" E
L33	25.00	S 89°20'17" W
L34	35.00	N 0°39'43" W
L35	25.00	N 89°20'17" E
L36	35.00	S 0°39'43" E
L37	4.00	S 89°20'17" W
L38	25.00	S 89°20'17" W
L39	35.00	N 0°39'43" W
L40	25.00	N 89°20'17" E
L41	35.00	S 0°39'43" E
L42	4.00	S 89°20'17" W
L43	25.00	S 89°20'17" W
L44	35.00	N 0°39'43" W
L45	25.00	N 89°20'17" E
L46	35.00	S 0°39'43" E
L47	40.01	N 0°44'14" W
L48	14.19	S 89°15'46" W
L49	25.00	S 89°20'17" W
L50	35.00	N 0°39'43" W
L51	25.00	N 89°20'17" E
L52	35.00	S 0°39'43" E
L53	4.00	N 89°20'17" E
L54	25.00	S 89°20'17" W
L55	35.00	N 0°39'43" W
L56	25.00	N 89°20'17" E
L57	35.00	S 0°39'43" E
L58	4.00	N 89°20'17" E
L59	25.00	S 89°20'17" W
L60	35.00	N 0°39'43" W
L61	25.00	N 89°20'17" E
L62	35.00	S 0°39'43" E
L63	104.99	S 0°44'14" E
L64	21.43	N 89°15'46" E
L65	25.00	S 89°20'17" W
L66	35.00	N 0°39'43" W
L67	25.00	N 89°20'17" E
L68	35.00	S 0°39'43" E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L69	4.00	N 89°20'17" E
L70	35.00	S 0°39'43" E
L71	25.00	S 89°20'17" W
L72	35.00	N 0°39'43" W
L73	25.00	N 89°20'17" E
L74	4.00	N 89°20'17" E
L75	25.00	S 89°20'17" W
L76	35.00	N 0°39'43" W
L77	25.00	N 89°20'17" E
L78	35.00	S 0°39'43" E
L79	40.01	S 0°44'14" E
L80	14.38	N 89°15'46" E
L81	25.00	S 89°20'17" W
L82	35.00	N 0°39'43" W
L83	25.00	N 89°20'17" E
L84	35.00	S 0°39'43" E
L85	4.00	N 89°20'17" E
L86	25.00	S 89°20'17" W
L87	35.00	N 0°39'43" W
L88	25.00	N 89°20'17" E
L89	35.00	S 0°39'43" E
L90	4.00	N 89°20'17" E
L91	25.00	S 89°20'17" W
L92	35.00	N 0°39'43" W
L93	25.00	N 89°20'17" E
L94	35.00	S 0°39'43" E
L95	51.99	N 0°44'14" W
L96	21.55	N 89°15'46" E
L97	25.00	S 89°20'17" W
L98	35.00	N 0°39'43" W
L99	25.00	N 89°20'17" E
L100	35.00	S 0°39'43" E
L101	4.00	N 89°20'17" E
L102	25.00	S 89°20'17" W
L103	35.00	N 0°39'43" W
L104	25.00	N 89°20'17" E
L105	35.00	S 0°39'43" E
L106	4.00	N 89°20'17" E
L107	25.00	S 89°20'17" W
L108	35.00	N 0°39'43" W
L109	25.00	N 89°20'17" E
L110	35.00	S 0°39'43" E
L111	40.01	S 0°44'14" E
L112	14.50	N 89°15'46" E
L113	25.00	S 89°20'17" W
L114	35.00	N 0°39'43" W
L115	25.00	N 89°20'17" E
L116	35.00	S 0°39'43" E
L117	4.00	S 89°20'17" W
L118	25.00	S 89°20'17" W
L119	35.00	N 0°39'43" W
L120	25.00	N 89°20'17" E
L121	35.00	S 0°39'43" E
L122	4.00	S 89°20'17" W
L123	25.00	S 89°20'17" W
L124	35.00	N 0°39'43" W
L125	25.00	N 89°20'17" E
L126	35.00	S 0°39'43" E
L127	13.24	S 88°43'33" W
L128	22.19	S 1°16'27" E
L129	35.00	S 89°20'17" W
L130	25.00	N 0°39'43" W
L131	35.00	N 89°20'17" E
L132	25.00	S 0°39'43" E
L133	4.00	N 0°39'43" W
L134	35.00	S 89°20'17" W
L135	25.00	N 0°39'43" W
L136	35.00	N 89°20'17" E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L137	25.00	S 0°39'43" E
L138	4.00	N 0°39'43" W
L139	35.00	N 89°20'17" W
L140	25.00	N 0°39'43" W
L141	35.00	N 89°20'17" E
L142	25.00	S 0°39'43" E
L143	5.00	N 89°20'17" E
L144	35.00	S 89°20'17" W
L145	25.00	N 0°39'43" W
L146	35.00	N 89°20'17" E
L147	25.00	S 0°39'43" E
L148	4.00	S 0°39'43" E
L149	35.00	S 89°20'17" W
L150	25.00	N 0°39'43" W
L151	35.00	N 89°20'17" E
L152	25.00	S 0°39'43" E
L153	4.00	S 0°39'43" E
L154	35.00	S 89°20'17" W
L155	25.00	N 0°39'43" W
L156	35.00	N 89°20'17" E
L157	25.00	S 0°39'43" E
L158	14.00	N 89°20'17" E
L159	35.00	S 89°20'17" W
L160	25.00	N 0°39'43" W
L161	35.00	N 89°20'17" E
L162	25.00	S 0°39'43" E
L163	5.00	S 89°20'17" W
L164	35.00	S 89°20'17" W
L165	25.00	N 0°39'43" W
L166	35.00	N 89°20'17" E
L167	25.00	S 0°39'43" E
L168	4.00	N 0°39'43" W
L169	35.00	S 89°20'17" W
L170	25.00	N 0°39'43" W
L171	35.00	N 89°20'17" E
L172	25.00	S 0°39'43" E
L173	10.00	S 89°20'17" W
L174	35.00	S 89°20'17" W
L175	25.00	N 0°39'43" W
L176	35.00	N 89°20'17" E
L177	25.00	S 0°39'43" E
L178	4.00	N 0°39'43" W
L179	35.00	S 89°20'17" W
L180	25.00	N 0°39'43" W
L181	35.00	N 89°20'17" E
L182	25.00	S 0°39'43" E
L183	5.00	S 89°20'17" W
L184	35.00	S 89°20'17" W
L185	25.00	N 0°39'43" W
L186	35.00	N 89°20'17" E
L187	25.00	S 0°39'43" E
L188	14.02	N 0°39'43" W
L189	13.00	S 89°20'17" W
L190	35.00	S 89°20'17" W
L191	25.00	N 0°39'43" W
L192	35.00	N 89°20'17" E
L193	25.00	S 0°39'43" E
L194	4.00	S 0°39'43" E
L195	35.00	S 89°20'17" W
L196	25.00	N 0°39'43" W
L197	35.00	N 89°20'17" E
L198	25.00	S 0°39'43" E
L199	4.00	S 0°39'43" E
L200	35.00	S 89°20'17" W
L201	25.00	N 0°39'43" W
L202	35.00	N 89°20'17" E
L203	25.00	S 0°39'43" E
L204	5.00	N 87°25'47" E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L205	35.00	S 89°20'17" W
L206	25.00	N 0°39'43" W
L207	35.00	N 89°36'39" E
L208	24.83	S 0°39'43" E
L209	4.03	S 7°47'13" E
L210	35.00	S 89°20'17" W
L211	25.00	N 0°29'02" E
L212	34.50	N 89°20'17" E
L213	25.00	S 0°39'43" E
L214	4.00	S 0°39'43" E
L215	35.00	S 89°20'17" W
L216	25.00	N 0°39'43" W
L217	35.00	N 89°20'17" E
L218	25.00	S 0°39'43" E
L219	41.70	S 0°39'43" E
L220	7.81	N 89°20'17" E
L221	35.00	S 81°58'32" W
L222	25.00	N 8°01'28" W
L223	35.00	N 81°58'32" E
L224	25.00	S 8°01'28" E
L225	5.00	S 81°58'32" W
L226	35.00	S 81°58'32" W
L227	25.00	N 8°01'28" W
L228	35.00	N 81°58'32" E
L229	25.00	S 8°01'28" E
L230	4.00	S 8°01'28" E
L231	35.00	S 81°58'32" W
L232	25.00	N 8°01'28" W
L233	35.00	N 81°58'32" E
L234	25.00	S 8°01'28" E
L235	5.00	N 81°58'32" E
L236	35.00	S 81°58'32" W
L237	25.00	N 8°01'28" W
L238	35.00	N 81°58'32" E
L239	25.00	S 8°01'28" E
L240	0.74	S 88°40'49" W
L241	22.34	S 1°19'11" E
L242	35.00	N 89°20'17" E
L243	25.00	S 0°39'43" E
L244	35.00	S 89°20'17" W
L245	25.00	N 0°39'43" W
L246	4.00	N 0°39'43" W
L247	35.00	N 89°20'17" E
L248	25.00	S 0°39'43" E
L249	35.00	S 89°20'17" W
L250	25.00	N 0°39'43" W
L251	4.00	N 0°39'43" W
L252	35.00	N 89°20'17" E
L253	25.00	S 0°39'43" E
L254	35.00	S 89°20'17" W
L255	25.00	N 0°39'43" W
L256	5.00	N 89°20'17" E
L257	35.00	N 89°20'17" E
L258	25.00	S 0°39'43" E
L259	35.00	S 89°20'17" W
L260	25.00	N 0°39'43" W
L261	4.00	N 0°39'43" W
L262	35.00	N 89°20'17" E
L263	25.00	S 0°39'43" E
L264	35.00	S 89°20'17" W
L265	25.00	N 0°39'43" W
L266	4.00	N 0°39'43" W
L267	35.00	N 89°20'17" E
L268	25.00	S 0°39'43" E
L269	35.00	S 89°20'17" W
L270	25.00	N 0°39'43" W
L271	61.37	S 57°20'18" W
L320	20.01	S 57°20'18" W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L333	13.90	N 3°49'48" W
L334	40.98	S 86°10'12" W
L335	107.98	N 88°43'33" E
L336	16.00	S 1°16'27" E
L337	172.47	S 0°44'14" E
L338	138.03	N 89°17'03" E
L339	214.68	N 0°44'14" W
L340	17.74	N 89°17'03" E
L341	97.26	N 0°44'14" W

<b>Shephard &amp; Wesnitzer, Inc.</b> <small>Call or text, two full working days before you begin excavation.</small> <small>ARIZONA 811</small> <small>Arizona Blue Stake, Inc.</small> <small>800-841-1111 or 1-800-514E-11 (822-5348)</small>	<b>FINAL PLAT (3)</b> WOODSHIRE ON BUTLER CONDOMINIUMS FLAGSTAFF ARIZONA	JOB NO: 17159 DATE: OCT 19 SCALE: AS SHOWN DRAWN: CNP DESIGN: CNP CHECKED: ADB																
REVISIONS <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> <th>BY</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	NO.	DESCRIPTION	DATE	BY													DRAWING NO. <b>FP03</b>	SHEET NO. 4 OF 4 C.O.F. #PZ-18-00105
NO.	DESCRIPTION	DATE	BY															



# City of Flagstaff

City Council – Consent Agenda

Nov. 5, 2019

City Hall, Council Chambers

Request: Final Plat

PZ-18-00105-07

*Woodshire on Butler Condominiums*



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# Final Plat

## Brookfield Communities, Inc.

### Woodshire on Butler Condominiums

- A request for Final Plat approval for a 50-unit residential condominium development located at 2989 and 3001 E Butler Avenue, a combined site area of approximately 4.06 acres, in the Highway Commercial (HC) Zone and High Density Residential (HR) Zone with a Resource Protection Overlay
- This subdivision combines the 0.744-acre “city parcel” with the 3.31-acre adjacent parcel for an approximately 4.06-acre development site.
- The eastern parcel is zoned HR and the smaller city parcel is zoned HC.
- The “city parcel” was purchased by Brookfield Communities, Inc. on October 1, 2019.

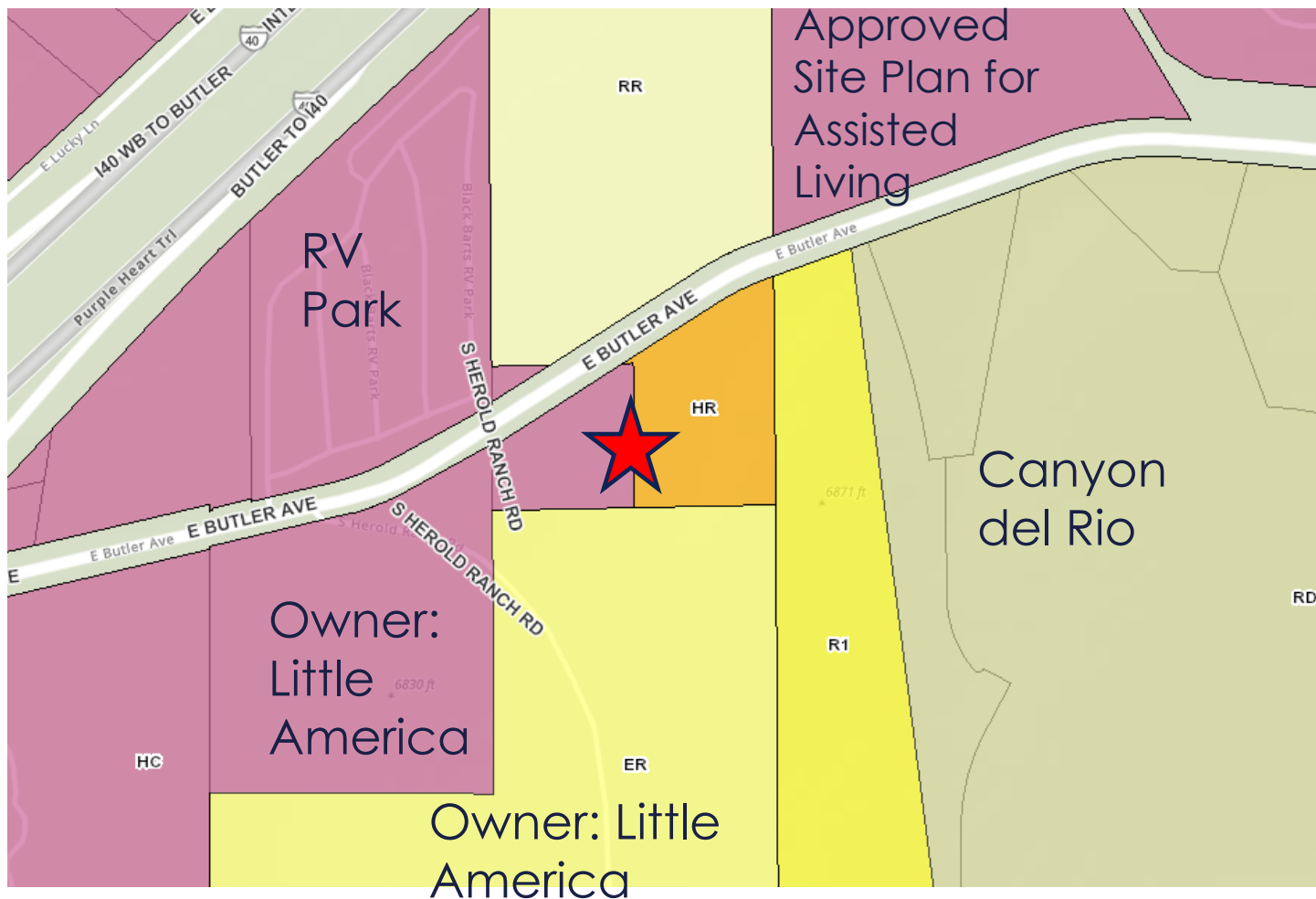


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# Vicinity Map with Zoning



Fourth St.



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# Aerial



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# Proposed Full Buildout of Butler Ave & Roundabout

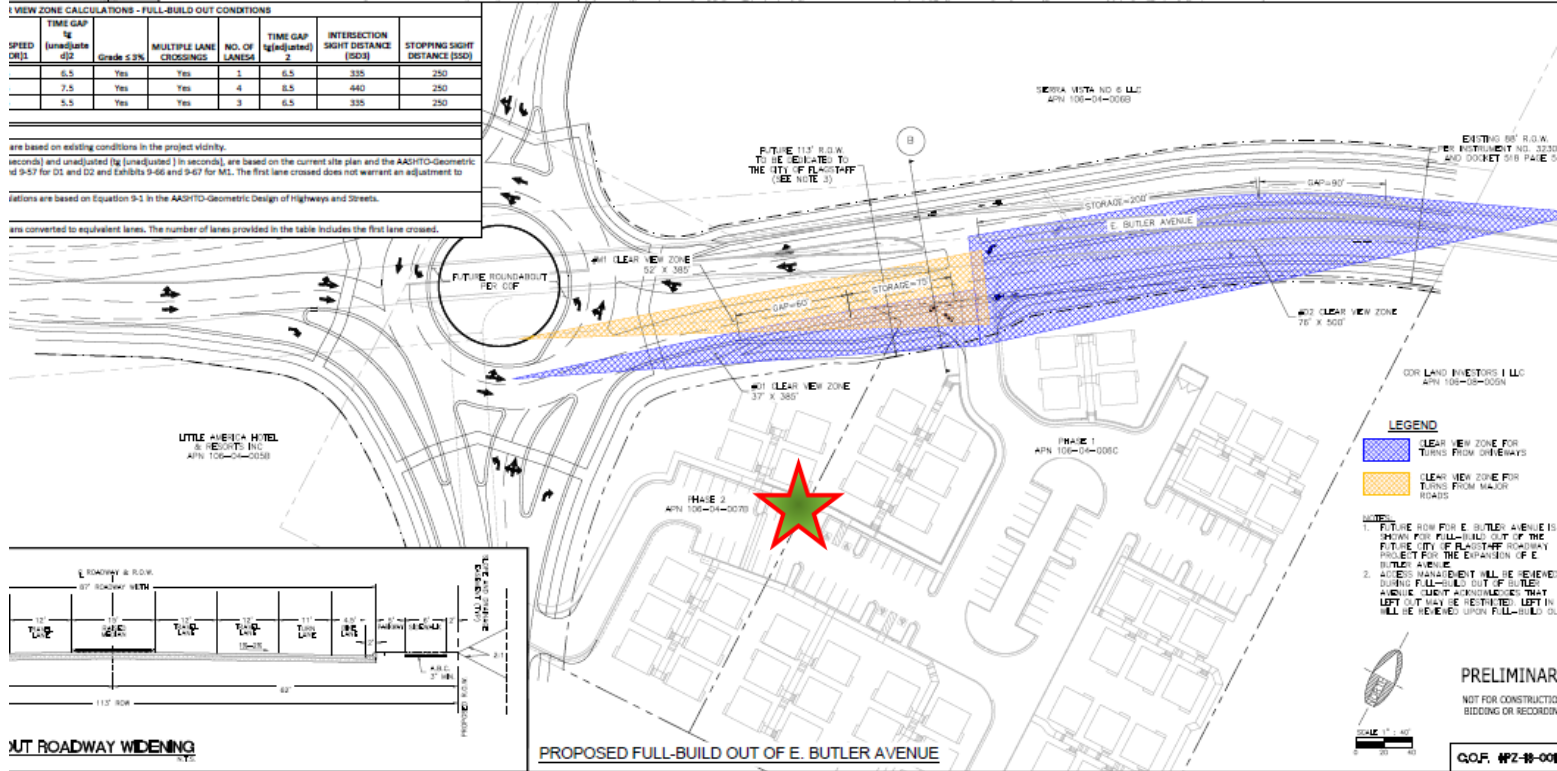


## VIEW ZONE CALCULATIONS - FULL-BUILD OUT CONDITIONS

SPEED (MI/H)	TIME GAP (s)	Grade %	MULTIPLE LANE CROSSINGS	NO. OF LANES	TIME GAP (s)	INTERSECTION SIGHT DISTANCE (ISD)	STOPPING SIGHT DISTANCE (SSD)
6.5	Yes	Yes	1	6.5	335	250	
7.5	Yes	Yes	4	8.5	440	250	
5.5	Yes	Yes	3	6.5	335	250	

are based on existing conditions in the project vicinity.  
seconds) and unadjusted (g [unadjusted ] in seconds), are based on the current site plan and the AASHTO-Geometric  
of 9-57 for D1 and D2 and Exhibits 9-56 and 9-57 for M1. The first line crossed does not warrant an adjustment to  
ations are based on Equation 9-1 in the AASHTO-Geometric Design of Highways and Streets.

are converted to equivalent lanes. The number of lanes provided in the table includes the first lane crossed.



**CUT ROADWAY WIDENING**

**PROPOSED FULL-BUILD OUT OF E. BUTLER AVENUE**

**PRELIMINARY**

NOT FOR CONSTRUCTION BIDDING OR RECORD

**Q.C.F. #PZ-18-001**



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# Final Plat & Airspace



## COORDINATE SYSTEM DETAILS

**UNIT:** INTERNATIONAL FEET  
**PROJECTION:** NAVD 83 (CONUS)  
**CONTROL POINT:** NAVD 83 REDEFINED FROM CITY OF FLAGSTAFF CONTROL POINT #922200  
**ELLIPSOID:** CITY OF FLAGSTAFF LOW ELLIPSOID PROJECTION (2005)

**PROJECTIONS:**  
 TRANSVERSE MERCATOR  
 LATITUDE OF GRID ORIGIN: 35° 10' 00" N  
 LONGITUDE OF CENTRAL MERIDIAN: 111° 27' 00" W  
 NORTHING AT GRID ORIGIN: 0 FT  
 EASTING AT CENTRAL MERIDIAN: 700000 FT  
 CENTRAL MERIDIAN SCALE FACTOR: 1.000033 (SEACT)

ALL BEARING, DISTANCE AND BEARING-DISTANCE VALUES ARE GRID VALUES BASED ON THE PRECISE PROJECTION DEFINITION. THE PROJECTION WAS CHECKED SUCH THAT GRID DISTANCES ARE EQUIVALENT TO "GROUND" DISTANCES IN THE PROJECT AREA.

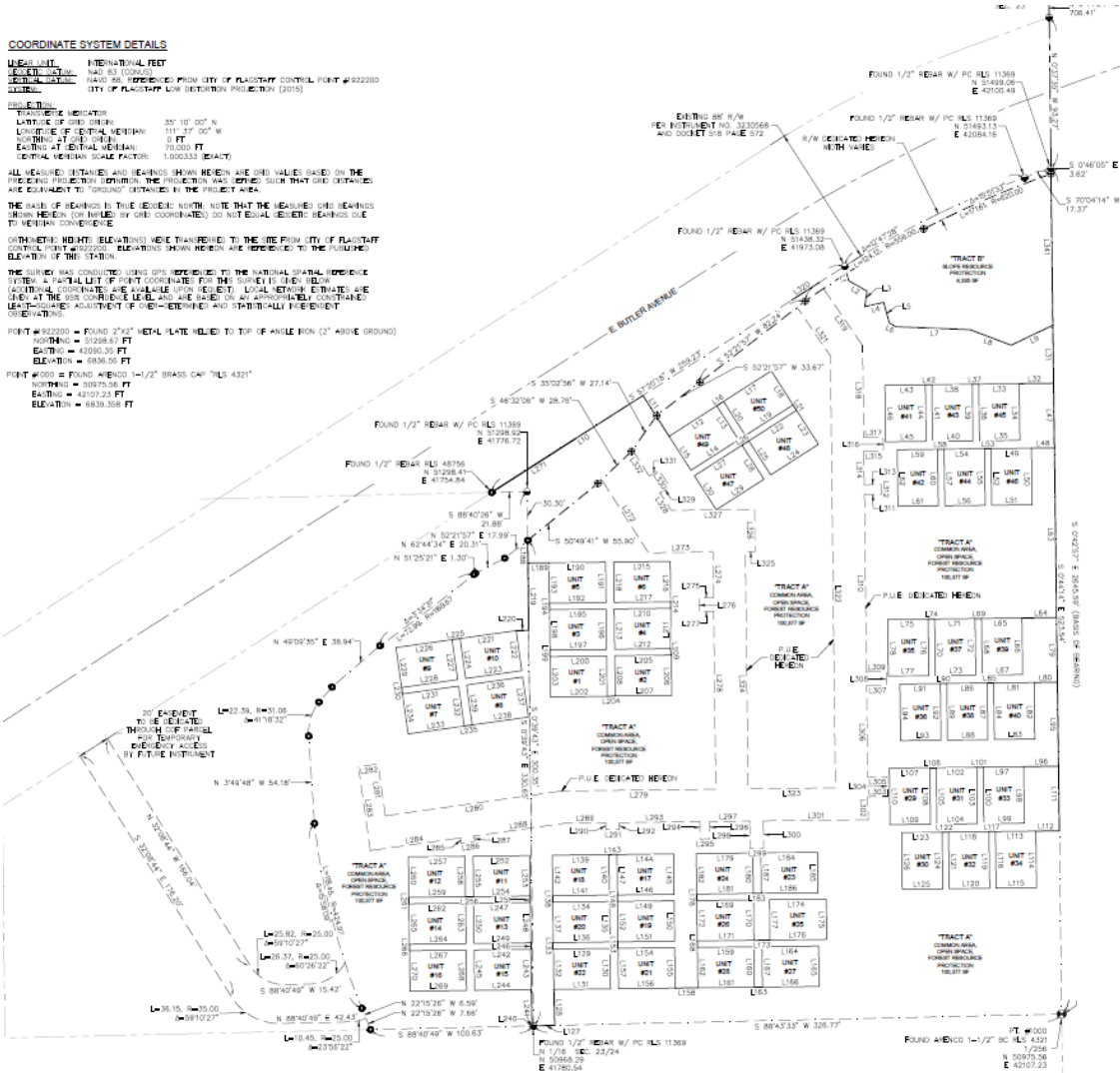
THE SCALE OF BEARINGS IN THIS DOCUMENT NOTE THAT THE BEARING-DISTANCE BEARINGS SHOWN HEREIN (OR ROUNDED) ARE COORDINATED TO NATIONAL GRID BEARINGS DUE TO MERIDIAN CONVERGENCE.

ORTHOMETRIC HEIGHTS, ELEVATIONS WERE TRANSFERRED TO THE GRID FROM CITY OF FLAGSTAFF CONTROL POINT #922200. ELEVATIONS SHOWN HEREIN ARE REFERENCED TO THE FOLLOWING ELEVATION OF THIS STATION:

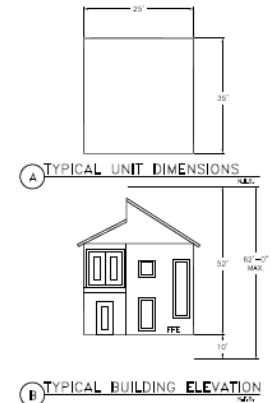
THE SURVEY WAS CONDUCTED USING GPS REFERENCED TO THE NATIONAL SPATIAL REFERENCE SYSTEM. A PARTIAL LIST OF POINT COORDINATES FOR THIS SURVEY IS GIVEN BELOW. (ADDITIONAL COORDINATES ARE AVAILABLE UPON REQUEST). LOCAL NETWORK ESTIMATES ARE USED AT THE 95% CONFIDENCE LEVEL AND ARE BASED ON AN APPROPRIATELY CONTROLLED LEAST-SQUARES ADJUSTMENT OF FIELD-OBTAINED AND STATISTICALLY INDEPENDENT OBSERVATIONS.

POINT #922200 = FOUND 2" DIA METAL PLATE NEEDED TO TOP OF ANGLE IRON (2" ABOVE GROUND)  
 NORTHING = 51298.89 FT  
 EASTING = 43990.36 FT  
 ELEVATION = 6836.94 FT

POINT #0000 = FOUND ANENCO 1-1/2" BRASS CAP "MLS 4321"  
 NORTHING = 50975.96 FT  
 EASTING = 43072.23 FT  
 ELEVATION = 6839.38 FT



THE TYPICAL MAX. FOOTPRINT OF EACH INDIVIDUAL CONDOMINIUM UNIT IS 875 SF. (SEE DETAILS "A" AND "B" FOR UNIT LAYOUTS)  
 EACH INDIVIDUAL CONDOMINIUM UNIT IS INTENDED TO ACCOMMODATE THE MAXIMUM BUILDING FOOTPRINT FOR BUILDING TYPE "C" AND "D". SEE UNIT FLOOR PLANS FOR THE BUILDING FOOTPRINTS.



**LEGEND**

- SECTION D/E
- ELEVATION
- - - - - BOUNDARY-W/ W LINE
- UNIT BOUNDARY
- PUBLIC UTILITY EASEMENT (PUE)
- FOUND 1" REBAR W/ PLASTIC CAP "MLS 11369"
- FOUND 1-1/2" BRASS CAP "MLS 4321"
- FOUND 1/2" REBAR "MLS 48706"
- MONUMENT TO BE SET

C.O.F. #FZ-18-0006



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# Brookfield Communities Final Plat Findings

Flagstaff Zoning Code: The proposed subdivision is in conformance with the HC and HR zones and the Resource Protection Overlay.

General Plans & Subdivisions Code: The proposed development has been reviewed and approved by city staff to meet all requirements of a condominium subdivision.

Engineering Design Standards and Specifications:

All engineering-related standards including utility easements and stormwater management have been reviewed and approved by city staff.



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# Recommendation

Staff recommends approving the final plat with no conditions and authorizing the Mayor to sign both the plat and City/Subdivider Agreement when notified by staff that documents are ready for recording.



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**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Rick Tadder, Management Services Director  
**Co-Submitter:** Brandi Suda, Finance Director  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



---

**TITLE:**

**Consideration and Adoption of Ordinance No. 2019-34:** An ordinance of the City Council of the City of Flagstaff, relating to the financing of certain projects, specifically approving publication of notice of proposed lease of land and buildings from, and lease-purchase back of such land and buildings to, the City and request for bids in connection therewith; authorizing the acceptance of a bid with respect thereto; approving the sale and execution and delivery of Certificates of Participation in a lease-purchase agreement to provide the necessary financing therefor; approving the form and authorization the execution and delivery of necessary agreements, instruments and documents related to the sale and issuance of the certificates; delegating authority to the Management Services Director of the City to determine certain matters and terms with respect to the foregoing; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance and ratifying all actions taken to further this ordinance; providing for severability, authority for clerical corrections, and establishing an effective date **(Certificate of Participation Debt Authorization - Municipal Court Facilities)**

**STAFF RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-34 by title only for the final time
- 2) City Clerk reads Ordinance no. 2019-34 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-34

**Executive Summary:**

This ordinance allows for the issuance of Certificates of Participation and to enter into a lease-purchase agreement for the purpose of financing construction for the Municipal Court Facilities. An ordinance for this action is required by City Charter ARTICLE VI - FINANCE AND TAXATION, Section 5 - WHEN ACTIONS ARE TO BE TAKEN BY ORDINANCE.

**Financial Impact:**

Series 2019 Certificates of Participation will be issued in an amount not to exceed \$4,000,000 related to the construction of the Municipal Court Facilities. The debt service payments will be made from the restricted revenues collected at the Municipal Court from Court Improvement Fees and Disposition Fees. Debt service expenditures are budgeted in the General Fund.

**Policy Impact:**

None

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Council Goals:

Transportation and Other Public Infrastructure-Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

Regional Plan:

Goal PF.2. Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics.

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

Yes. Council authorized the 2016 election in which voters approved the construction of the Municipal Court Facilities. On July 3, 2018, Council awarded a design/build contract. On March 2, 2019, Council approved Amendment #1 which included a guaranteed maximum price for hazardous waste abatement and demolition. On May 21, 2019, Council approved Amendment #2 that included a guaranteed maximum price for the construction of the court facility. On September 3, 2019, Council approved Resolution No. 2019-42, a reimbursement resolution related to the Municipal Court Facilities for an amount not to exceed \$16,000,000 (\$12,000,000 for General Obligation Bond debt).

**Options and Alternatives:**

- Approve the Ordinance as written allowing the City to move forward with the issuance of Certificates of Participation and the Lease-Purchase agreements. Pros-Allows for cash flow necessary to complete voter-approved projects. Cons-Increases City indebtedness.
- Recommend changes to the Ordinance modifying the issuance of either the Certificates of Participation or Lease-Purchase agreements. Pros and Cons are dependent on changes.
- Do not approve the issuance of Certificates of Participation and the Lease-Purchase agreements. Pros-Delays level of debt for the City. Cons-May put the Municipal Court Facilities in a negative cash flow situation, therefore, requiring the City to find the cash flow from other sources for work completed to date.

**Background/History:**

The physical condition of the existing City Court building located at 15 North Beaver Street has deteriorated to a point where significant financial resources will be needed to remediate, remodel and stabilize the structure. In addition, the need exists for current and future space to ensure continued operational viability. On April 12, 2016, staff came before Council to discuss the strategy for a new City Court Facility. As noted above, staff and Council had previously agreed that the most cost-effective solution would be to design, finance and construct a new City Court Facility. At this meeting Council directed staff to return in June of 2016 to present a proposed ballot question for funding and financing of a new Municipal Court Facility. On

November 8, 2016, the voters approved \$12,000,000 in bonds for the construction of Municipal Court Facilities. The design of the new courthouse is completed and construction began this year.

The new City Court Facility will provide a safe and efficient Municipal building that will greatly improve the Court's operations now and into the future, enhance the staff and user experience and provide an attractive amenity to downtown Flagstaff.

Staff began the discussion with the City's financial advisor, Stifel, Nicolaus & Company, earlier this fiscal year to determine the best method of financing the Municipal Court Fee portion of the debt. Options included revenue obligations or certificates of participation (annual appropriations). After detailed research and discussions with the financial advisor, staff chose the certificate of participation option utilizing the negotiated sale alternative with Piper Jaffray selected as the Underwriter. By using the Municipal Court Facility in this financing, staff believes we will receive a favorable market rating and interest rates. Annual debt service payments will be approximately \$200,000 to \$250,000, payable from the restricted court revenues described above.

Certificates of Participation (the "Certificates") involve a lease-purchase financing mechanism that allows the City to borrow for capital projects. The Certificates represent undivided proportionate interests in lease payments (the "Lease Payments") to be made by the City under a Lease-Purchase Agreement, expected to be dated as of December 1, 2019, by and between a trustee bank, as lessor (the "Trustee"), and the City, as lessee. The property which will be the subject of the Lease-Purchase Agreement (the "Leased Property") will be provided for by a Ground Lease, expected to be dated as of December 1, 2019, by and between the City, as lessor, and the Trustee, as lessee. The Certificates are expected to be executed by the Trustee, in its separate capacity as trustee, pursuant to a Trust Agreement, to be dated as of December 1, 2019, between the City and the Trustee. Under the Trust Agreement, the right to receive the Lease Payments will be assigned to the Trustee.

The Certificates will be payable solely from the Lease Payments. The City's obligation to pay the Lease Payments will be subject to annual appropriation – no funds or revenues of the City will be pledged to make the Lease Payments. If the City fails to appropriate for the Lease Payments, the Trustee will take possession of the Leased Property and exercise remedies provided in the Trust Agreement, including re-leasing or selling its leasehold interest in the Leased Property and applying any proceeds from such re-leasing or selling to payments due on the Certificates. Under such circumstances, possession of the Leased Property would be returned to the City at the expiration of the term of the Ground Lease, currently set for July 1, 2044.

The Trust Agreement allows for the issuance of additional certificates of participation under certain circumstances to expand or improve the Leased Property or to refund the Certificates.

### **Expanded Financial Considerations:**

As part of the planning process for delivering new Municipal Court Facilities, staff developed the project funding plan. The initial funding plan was as follows:

<b>Funding Source</b>	<b>Amount</b>
Voter-Approved Bonds, November 2016	\$ 12,000,000
Court Fees	2,080,000

Prior Sale of Property	520,000
Redevelopment Fund-General Fund	500,000
Capital Funding Transfer - General Fund	400,000
Sale of Existing Court Property	2,000,000
Capital Financing	4,000,000
Total	\$ 21,500,000

The current Municipal Court Facilities construction is for \$19,500,000 which does not including the funding from the sale of the existing Municipal Court property. The City will hold the existing property as surface parking and is in the process of developing a downtown master plan. This location may be considered as a future parking facility.

This Ordinance is related to the \$4,000,000 in capital financing which will be in the form of a lease-purchase agreement.

**Community Involvement:**

The process to construct a Municipal Court Facility was voted on by the public involved: Consult, Involve, Collaborate and Empower.

The process to authorize the issuance of indebtedness is to Inform the public.

- Attachments:**    [Ord. 2019-34](#)  
                           [Ordinance Exhibit](#)  
                           [Draft Preliminary Offering Statement \(POS\)](#)  
                           [Draft Ground Lease](#)  
                           [Draft Lease Purchase Agreement](#)  
                           [Draft Trust Agreement](#)  
                           [Draft Certificate Purchase Agreement](#)

**ORDINANCE NO. 2019-34**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, RELATING TO THE FINANCING OF CERTAIN PROJECTS, SPECIFICALLY APPROVING PUBLICATION OF NOTICE OF PROPOSED LEASE OF LAND AND BUILDINGS FROM, AND LEASE-PURCHASE BACK OF SUCH LAND AND BUILDINGS TO, THE CITY AND REQUEST FOR BIDS IN CONNECTION THEREWITH; AUTHORIZING THE ACCEPTANCE OF A BID WITH RESPECT THERETO; APPROVING THE SALE AND EXECUTION AND DELIVERY OF CERTIFICATES OF PARTICIPATION IN A LEASE-PURCHASE AGREEMENT TO PROVIDE THE NECESSARY FINANCING THEREFOR; APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS RELATED TO THE SALE AND ISSUANCE OF THE CERTIFICATES; DELEGATING AUTHORITY TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE AND RATIFYING ALL ACTIONS TAKEN TO FURTHER THIS ORDINANCE; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the Mayor and Council of the City of Flagstaff, Arizona (the "City"), have determined that it will be beneficial to its citizens to finance a portion of the construction of a municipal court facility in the City (the "Projects"); and

WHEREAS, the Mayor and Council of the City, upon due investigation and consideration, have found and determined that in order to finance the costs of the construction of the Projects it is desirable and necessary to lease-purchase certain property comprising the municipal court facility of the City [to be] located 101 West Cherry Avenue, Flagstaff (the "Property") in Coconino County, Arizona, which is described in the hereinafter described Notice; and

WHEREAS, in connection with the construction of the Projects, it is necessary that the City enter into a ground lease (the "Ground Lease") with respect to the Property with a lessee that will lease the Property, together with all improvements now or hereafter constructed thereon, to the City pursuant to a separate lease-purchase agreement (the "Lease-Purchase Agreement") pursuant to the terms and conditions described in the notice and request for bids in substantially the form of the Exhibit hereto (the "Notice"), which, among other things, provides for the construction of the Projects, in each case as determined by the Mayor and Council of the City; and

WHEREAS, the Mayor and Council of the City are authorized, pursuant to the Charter of the City (the "Charter"), to lease any land, buildings or equipment now or hereafter owned by the City on such terms and conditions as the Council of the City may prescribe, provided that all leases shall be made to the highest responsible bidder after publication of notice thereof for at least one time per week for two weeks, stating explicitly the time and conditions of the proposed lease; and

WHEREAS, pursuant to the Charter, the Notice will be published one time per week for two weeks in the Arizona Daily Sun; and

WHEREAS, the City intends that the Property be leased and awarded to the responsible bidder which submits the highest bid as determined by the requirements and responsive to the Notice; and

WHEREAS, the Mayor and Council of the City have determined that it is in the best fiscal interest of the City that financing for the Projects be undertaken through the sale and delivery to an investment bank of a series of certificates of participation (the "Certificates"), evidencing and representing proportionate interests of the owners thereof in the Lease-Purchase Agreement, specifically the lease payments to be made by the City pursuant thereto, and that the Mayor and Council of the City also approve and execute all required legal documents in connection therewith; and

WHEREAS, it is presently anticipated that the highest responsible bidder will finance its bid through the execution and delivery of the Certificates; and

WHEREAS, (A) the Certificates will be executed, delivered and paid pursuant to the terms and provisions of a trust agreement (the "Trust Agreement") to be executed and delivered by the City; (B) the Certificates will be offered for sale pursuant to a preliminary official statement (the "Preliminary Official Statement") which, with conforming changes, will become the final official statement (the "Final Official Statement") therefor and sold pursuant to a certificate purchase agreement (the "Purchase Agreement") between the City and Piper Jaffray & Co., as underwriter (the "Underwriter"); and (C) in connection with the execution and delivery of the Certificates, Securities and Exchange Commission Rule 15c2-12 will require the City to make certain agreements for the benefit of the beneficial owners from time to time of the Certificates, as evidenced by a continuing disclosure undertaking of the City (the "Continuing Disclosure Undertaking"); and

WHEREAS, the City has the general power and authority to enter into and deliver the Ground Lease, the Lease-Purchase Agreement, the Trust Agreement, the Purchase Agreement and the Continuing Disclosure Undertaking (collectively, the "City Documents") and to cause the sale and the execution and delivery of the Certificates, in order to construct the Projects; and

WHEREAS, it has been determined that Stifel, Nicolaus & Company, Incorporated (the "Financial Advisor") should act as financial advisor with respect to the sale of the Certificates pursuant to letter agreements dated September 5, 2019, between the City and the Financial Advisor;

**ENACTMENTS:**

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

**SECTION 1.**

(A) The publication one time per week for two weeks in the Arizona Daily Sun of the Notice, in substantially the form of the Exhibit attached hereto, by the Clerk of the City is hereby approved in all respects. The Management Services Director of the City is hereby authorized to determine when bids shall be accepted pursuant to the Notice. (An affidavit of the publication thereof will be attached as the Attachment hereto after the publication is completed.)

(B) If a bid of a bank with a corporate office in Phoenix, Arizona, and having the power to exercise corporate trust powers in the State of Arizona (the "Bank"), is submitted in response to the request made pursuant to the Notice and is satisfactory to the Management Services Director of the City on behalf of the City, then the Bank shall be appointed as the "Trustee", "Lessor" and "Lessee", as applicable, for all purposes of the City Documents, subject to the terms and conditions of the Notice which are incorporated herein by this reference.

SECTION 2. The forms, terms and provisions of the City Documents in the forms of such documents (including the exhibits thereto) presented at the meeting at which this Ordinance was adopted are hereby approved with such insertions, omissions and changes as shall be approved by the Mayor or, in the absence thereof, Vice Mayor of the City, or the Management Services Director of the City, the execution of such documents being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor of the City, the Management Services Director and Clerk of the City are hereby authorized and directed, for and on behalf of the City, to sign and attest the City Documents as well as any and all other documents necessary in connection with the foregoing, including a financial guaranty or other agreement to provide for credit enhancement for the Certificates.

SECTION 3. From and after the execution and delivery of the City Documents in definitive form by the City and the other parties thereto, as required, the officers, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such agreements, documents, instruments and certificates as may be necessary to carry out and comply with the provisions thereof.

SECTION 4. The Management Services Director of the City is hereby authorized and directed to determine on behalf of the City: (1) the entity to serve as "Trustee", "Lessor" and "Lessee", as applicable, for all purposes of the City Documents in the event no satisfactory bid is submitted in response to the request made pursuant to the Notice; (2) the dated date and total principal amount of the Lease-Purchase Agreement (but not to exceed \$4,000,000 in principal amount); (3) the final principal and maturity date schedules of the Lease-Purchase Agreement; (4) the interest rate on each maturity of the principal components of the Lease-Purchase Agreement and the dates for payment of such interest; (5) the provisions for redemption in advance of maturity of the payment of the principal components of the Lease-Purchase Agreement; (6) the sales price and terms of the Certificates (including for original issue discount, original issue premium and underwriter's compensation); and (7) the provision for credit enhancement, if any, for the Certificates upon the advice of the Underwriter, provided, however, that such determinations must result in a yield for federal income tax purposes of not to exceed ten percent (10%) with respect to the Lease-Purchase Agreement. (The solicitation of proposals from corporate trust banks for purposes of the foregoing is hereby ratified and confirmed in all respects.)

Section 5. (1) The preparation and distribution of the Preliminary Official Statement is hereby ratified and approved; (2) the Preliminary Official Statement in substantially the form presented at the meeting at which this Ordinance was adopted is hereby approved; (3) the preparation of the Final Official Statement in substantially the form of the Preliminary Official Statement, with such changes or revisions therein from the form of the Preliminary Official Statement as may be approved by the Management Services Director of the City, is hereby approved; and (4) the Mayor or, in the absence thereof, Vice Mayor of the City, or the Management Services Director of the City is hereby authorized, empowered and directed, in the name and on behalf of the City, to execute and deliver the same to the Underwriter, and to execute and deliver instruments confirming that the Preliminary Official Statement is "deemed final" in accordance with Securities and Exchange Commission Rule 15c2-12.

SECTION 6. The Management Services Director of the City is hereby designated and appointed as a “Lessee Representative” as defined in the Lease-Purchase Agreement and is authorized to execute in the name of and on behalf of the City any closing documents, certificates or other instruments or documents necessary or appropriate in connection with the transactions described in or contemplated by the City Documents and to do all acts and things as may be necessary or desirable to carry out the terms and intent of this Ordinance and of any of the documents referred to herein.

SECTION 7. All actions of the officers, agents and employees of the City which are in conformity with the purposes and intent of this Ordinance be, and the same are hereby, in all respects, authorized, approved, ratified and confirmed.

SECTION 8. After the Lease-Purchase Agreement is executed and delivered, this Ordinance shall be and remain irrevocable until the principal and interest represented thereby shall have been fully paid, cancelled and discharged.

SECTION 9. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 10. All orders, ordinances and resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, ordinance or resolution or any part thereof.

**SECTION 11. Repeal of Conflicting Ordinances**

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

**SECTION 12. Severability**

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 13. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 14. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November 2019.

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MAYOR

ATTEST:

---

CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

Exhibits:  
Notice of Proposed Lease and Lease-Purchase Back

## EXHIBIT

### NOTICE OF PROPOSED LEASE OF LAND AND BUILDINGS BY, AND LEASE-PURCHASE BACK OF SUCH LAND AND BUILDINGS TO, THE CITY OF FLAGSTAFF, ARIZONA, AND REQUEST FOR BIDS IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN THAT the parcel of land owned by the City of Flagstaff, Arizona (the "City"), and described as ..... in Document ..... recorded in the records of the Recorder of Coconino County, Arizona, containing approximately ..... acres, and the buildings located thereon which comprises [or will comprise] the municipal court facility of the City (collectively, the "Property"), will be leased to the highest responsible bidder therefor. Bids must be submitted to the Mayor and Council of the City c/o the Clerk of the City, 211 West Aspen Avenue, Flagstaff, Arizona 86001-5399 by .....:00 ..... .m., Mountain Standard Time, on ....., 2019, pursuant to the Charter of the City. The lessee of the Property will be required to lease the Property from the City pursuant to a ground lease (the "Ground Lease") and to lease-purchase back the Property to the City pursuant to a Lease-Purchase Agreement (the "Lease"). The Lease will be for a period commencing on or about ..... 1, 2019, and ending on or about July 2, 20..... The successful bidder must cause not less than \$\_\_\_\_,000 to be paid to the City as a result of entering into the Ground Lease. The amount paid under the Ground Lease will be used in the financing of a portion of a municipal court facility in the City (the "Projects").

The City reserves the right to reject any and all bids at the discretion of the Mayor and Council of the City and to waive any informality in any bid. Unless all bids are rejected, the Mayor and Council of the City will award the lease of the Property pursuant to the Ground Lease to the highest responsible bidder offering to lease the Property pursuant to the Ground Lease and agreeing to lease-purchase back the Property to the City pursuant to the Lease at the price most favorable to the City as described above before 5:00 p.m. Mountain Standard Time on ....., 2019. The award of the lease of the Property pursuant to the Ground Lease and the Lease will be contingent upon provision for the construction of the Projects on the date of the execution and delivery of the Lease with respect to the lease and lease-purchase back of the Property.

Bidders are to take note that, pursuant to Arizona law, if within three years from the award of the Ground Lease or the Lease, any person who was significantly involved in initiating, negotiating, securing, drafting, or creating the Ground Lease or the Lease on behalf of the City becomes an employee or agent of the winning bidder in any capacity or a consultant to the winning bidder with respect to the Ground Lease or the Lease, the City may cancel the award of the Ground Lease or the Lease without penalty or further obligation by the City. In addition to such cancellation, if such person becomes an employee or agent of the winning bidder with respect to the Ground Lease or the Lease, the City may recoup any fees or commissions paid or due to said winning bidder with respect to the award to said bidder and the actual lease of the Property pursuant to the Ground Lease or the Lease.

Further information may be obtained from the Clerk of the City, 211 West Aspen Avenue, Flagstaff, Arizona 86001-5399.

CITY OF FLAGSTAFF, ARIZONA

By /s/ Stacy Saltzburg.....  
City Clerk, City of Flagstaff, Arizona

DATED: \_\_\_\_\_, 2019

ATTACHMENT

[Attach Affidavit of Publication of Notice]

**NEW ISSUE — BOOK-ENTRY-ONLY**

**RATING: See “RATING” herein.**

*In the opinion of Special Counsel, assuming continuing compliance with certain tax covenants, under existing statutes, regulations, rulings and court decisions, the portion of each lease payment made by the City pursuant to the Lease Agreement and denominated as and comprising interest pursuant to the Lease Agreement and received by the Owners of the 2019 Certificates (the ‘Interest Portion’) is excludable from gross income for federal income tax purposes. Further, the Interest Portion is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and is exempt from income taxation under the laws of the State of Arizona so long as the Interest Portion is excludable from gross income for federal income tax purposes. See “TAX EXEMPTION” herein for a description of the certain other federal tax consequences of ownership of the 2019 Certificates.*

**\$3,575,000\***

**CERTIFICATES OF PARTICIPATION, SERIES 2019  
Evidencing Undivided Proportionate Interests of the Owners Thereof in  
Lease Payments to be Made by  
CITY OF FLAGSTAFF, ARIZONA,  
as Lessee of Certain Property Pursuant  
to a Lease-Purchase Agreement, Dated as of December 1, 2019\***

**Dated: Date of Initial Execution and Delivery**

**Due: July 1, as shown on the inside front cover page**

The captioned Certificates of Participation (the “2019 Certificates”) are being executed and delivered pursuant to a Trust Agreement, to be dated as of December 1, 2019\* (the “Trust Agreement”), between the City of Flagstaff, Arizona (the “City”) and \_\_\_\_\_, as trustee (the “Trustee”). Interest with respect to the 2019 Certificates will be payable semiannually on January 1 and July 1 of each year, commencing July 1, 2020\*. The 2019 Certificates will initially be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), for purposes of the book-entry-only system described herein and will be available to ultimate purchasers in the amounts of \$5,000 of principal represented by the 2019 Certificates due on a specific principal payment date, or any integral multiple thereof, pursuant to the book-entry-only system maintained by DTC. Payments of principal, premium, if any, and interest with respect to the 2019 Certificates will be paid by the Trustee to DTC for subsequent disbursements to DTC participants who will remit such payments to the beneficial owners of the 2019 Certificates. See APPENDIX G - “BOOK-ENTRY-ONLY SYSTEM.”

The 2019 Certificates are being executed and delivered for the purpose of (i) financing the herein-described Projects, constituting a portion of the costs of construction of a court facility in the City and (ii) paying costs incurred in connection with the execution and delivery of the 2019 Certificates. See “THE PROJECTS” and “SOURCES AND USES OF FUNDS” herein.

The 2019 Certificates will be subject to prepayment prior to their scheduled payment dates, including to the extent of condemnation, casualty insurance and certain other proceeds, as described herein.\* See “THE 2019 CERTIFICATES — Prepayment Provisions.”

**MATURITY SCHEDULE ON INSIDE FRONT COVER PAGE**

Certain real property of the City will be leased by the Trustee to the City (the “Leased Property”) pursuant to a Lease-Purchase Agreement, to be dated as of December 1, 2019\* (the “Lease Agreement”). The 2019 Certificates will be payable on a parity basis from lease payments to be made by the City pursuant to the Lease Agreement (the “Lease Payments”) and other funds held pursuant to the Trust Agreement and certain investment earnings thereon.

The Lease Agreement and the obligation of the City to make the Lease Payments will be terminated if on the last day of the then current Fiscal Period (defined herein) the Mayor and Council of the City have failed to adopt a budget containing an annual budgetary appropriation sufficient to make the Lease Payments coming due during the next Fiscal Period. In the event of such termination, the City will be relieved of any subsequent obligation pursuant to the Lease Agreement other than to surrender the Leased Property to the Trustee, and the 2019 Certificates will be payable only from such moneys, if any, as may be held pursuant to the Trust Agreement and any moneys realized from the Trustee’s exercise of remedies with respect to the Leased Property. **IN THE EVENT OF SUCH TERMINATION, THERE WILL BE NO ASSURANCE OF PAYMENT OF THE PRINCIPAL OR INTEREST EVIDENCED BY THE 2019 CERTIFICATES FROM FUNDS AVAILABLE PURSUANT TO THE TRUST AGREEMENT OR THAT ANY SUCH PAYMENTS EVIDENCING INTEREST, IF MADE, WILL REMAIN EXCLUDABLE FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES. SEE “RISK FACTORS” AND “TAX EXEMPTION” HEREIN. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA OR ANY POLITICAL SUBDIVISION THEREOF WILL BE PLEDGED TO THE 2019 CERTIFICATES. NEITHER THE 2019 CERTIFICATES NOR THE LEASE AGREEMENT WILL CONSTITUTE A DEBT OF THE CITY, THE STATE OF ARIZONA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. SEE “RISK FACTORS” HEREIN.**

The 2019 Certificates are offered when, as and if received by the underwriter identified below (the “Underwriter”), and subject to the approving opinion of Greenberg Traurig, LLP, Special Counsel, as to validity of the 2019 Certificates and tax-exemption. Certain legal matters will be passed upon for the Underwriter by its counsel, Squire Patton Boggs (US) LLP. It is expected that the 2019 Certificates will be available for delivery through the facilities of DTC on or about December 19, 2019\*.

This cover page contains only a brief description of the 2019 Certificates and the security therefor. It is not a summary of material information with respect to the 2019 Certificates. Investors should read this Official Statement in its entirety to obtain information necessary to make an informed investment decision.



\* Preliminary, subject to change.

**This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.**

**\$3,575,000\***  
**CERTIFICATES OF PARTICIPATION, SERIES 2019**  
**Evidencing Undivided Proportionate Interests of the Owners Thereof in**  
**Lease Payments to be Made by**  
**CITY OF FLAGSTAFF, ARIZONA,**  
**as Lessee of Certain Property Pursuant**  
**to a Lease-Purchase Agreement, Dated as of December 1, 2019\***

**MATURITY SCHEDULE\***

Principal Payment Date (July 1)	Principal Amount	Interest Rate	Yield	CUSIP® <sup>(1)</sup> No. 338430
2020	\$45,000	%	%	
2021	85,000			
2022	90,000			
2023	90,000			
2024	95,000			
2025	100,000			
2026	105,000			
2027	110,000			
2028	115,000			
2029	125,000			
2030	130,000			
2031	135,000			
2032	140,000			
2033	145,000			
2034	155,000			
2035	160,000			
2036	165,000			
2037	170,000			
2038	180,000			
2039	185,000			
2040	195,000			
2041	200,000			
2042	210,000			
2043	220,000			
2044	225,000			

\$ \_\_\_\_\_ Term Certificates @ \_\_\_\_\_ % Due July 1, \_\_\_\_\_, at a yield of \_\_\_\_\_ % - CUSIP (1) No. 338430

(1) CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (“CGS”) is managed on behalf of the American Bankers Association by S&P Global Market Intelligence. Copyright© 2019 CUSIP Global Services. All rights reserved. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. None of the City, the Financial Advisor, Special Counsel, the Underwriter or their agents or counsel assumes responsibility for the accuracy of such numbers.

\* Preliminary, subject to change.

**CITY OF FLAGSTAFF, ARIZONA**

**CITY COUNCIL**

Coral Evans, *Mayor*

Adam Shimoni, *Vice Mayor*

Charlie Odegaard, *Member*

Jamie Whelan, *Member*

Regina Salas, *Member*

Jim McCarthy, *Member*

Austin Aslan, *Member*

**ADMINISTRATIVE OFFICIALS**

Greg Clifton, *City Manager*

Shane Dille, *Deputy City Manager*

Shannon Anderson, *Deputy City Manager*

Rick Tadder, *Management Services Director, City Treasurer*

Sterling Solomon, *City Attorney*

Stacy Saltzburg, *City Clerk*

**FINANCIAL ADVISOR**

Stifel, Nicolaus & Company, Incorporated  
*Phoenix, Arizona*

**BOND COUNSEL**

Greenberg Traurig, LLP  
*Phoenix, Arizona*

**TRUSTEE, REGISTRAR AND PAYING AGENT**

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## REGARDING THIS OFFICIAL STATEMENT

No dealer, broker, salesperson or other person has been authorized by the City of Flagstaff, Arizona (the “City”), Stifel, Nicolaus & Company, Incorporated (the “Financial Advisor”) or Piper Jaffray & Co. (the “Underwriter”) to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor will there be any sale of the City’s Certificates of Participation, Series 2019 (the “2019 Certificates”) by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The information set forth in this Official Statement, which includes the cover page, inside front cover page and appendices hereto, has been obtained from the City, the Arizona Department of Revenue, and other sources that are considered to be accurate and reliable and customarily relied upon in the preparation of similar official statements, but such information has not been independently confirmed or verified by the City, the Financial Advisor or the Underwriter, is not guaranteed as to accuracy or completeness, and is not to be construed as the promise or guarantee of the City, Financial Advisor or the Underwriter.

None of the City, the Financial Advisor, the Underwriter, Special Counsel (as defined herein) or counsel to the Underwriter are actuaries. None of them have performed any actuarial or other analysis of the City’s share of the unfunded liabilities of the Arizona State Retirement System, the Public Safety Personnel Retirement System or the Elected Officials Retirement Plan.

The presentation of information, including tables of receipts from taxes and other sources, shows recent historical information and is not intended to indicate future or continuing trends in the financial position or other affairs of the City. All information, estimates and assumptions contained herein are based on past experience and on the latest information available and are believed to be reliable, but no representations are made that such information, estimates and assumptions are correct, will continue, will be realized or will be repeated in the future. To the extent that any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated to be such, they are made as such and not as representations of fact or certainty, and no representation is made that any of these statements have been or will be realized. All forecasts, projections, opinions, assumptions or estimates are “forward looking statements” that must be read with an abundance of caution and that may not be realized or may not occur in the future. Information other than that obtained from official records of the City has been identified by source and has not been independently confirmed or verified by the City, the Financial Advisor or the Underwriter and its accuracy cannot be guaranteed. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made pursuant hereto will, under any circumstances, create any implication that there has been no change in the affairs of the City or any of the other parties or matters described herein since the date hereof.

The 2019 Certificates will not be registered under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency will have passed upon the accuracy or adequacy of this Official Statement or approved the 2019 Certificates for sale.

The City will undertake to provide continuing disclosure as described in this Official Statement under the heading “CONTINUING DISCLOSURE” and in APPENDIX F – “FORM OF CONTINUING DISCLOSURE UNDERTAKING,” all pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

A wide variety of information, including financial information, concerning the City is available from publications and websites of the City and others. Any such information that is inconsistent with the information set forth in this Official Statement should be disregarded. No such information is a part of, or incorporated into, this Official Statement, except as expressly noted herein.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY ALLOW CONCESSIONS OR DISCOUNTS FROM THE INITIAL PUBLIC OFFERING PRICES TO DEALERS AND OTHERS, AND THE UNDERWRITER MAY OVERALLOT OR ENGAGE IN TRANSACTIONS INTENDED TO STABILIZE THE PRICES OF THE 2019 CERTIFICATES AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET IN ORDER TO FACILITATE THEIR DISTRIBUTION. SUCH STABILIZATION, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
THE PROJECT AND THE LEASE PROPERTY .....	<b>Error! Bookmark not defined.</b>
THE 2019 CERTIFICATES .....	3
General Provisions .....	3
Prepayment Provisions .....	4
Defeasance .....	5
SOURCES OF PAYMENT OF THE 2019 CERTIFICATES .....	5
SECURITY FOR THE 2019 CERTIFICATES .....	6
General .....	6
Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds .....	6
Events of Default or Termination Pursuant to Lease Agreement .....	7
Additional Certificates .....	7
RISK FACTORS .....	7
Limited Obligation .....	7
Other Obligations of City .....	8
Termination of Lease Agreement .....	8
Possible Restrictions on Transfer of, and Change of Status of Interest Represented by, the 2019 Certificates Upon Termination of Lease Agreement .....	9
Limitations on Remedies .....	9
SOURCES AND USES OF FUNDS .....	10
ESTIMATED LEASE PAYMENT REQUIREMENTS .....	11
LITIGATION .....	12
LEGAL MATTERS .....	12
TAX EXEMPTION .....	12
Original Issue Discount and Original Issue Premium .....	13
Changes in Federal and State Tax Law .....	14
Information Reporting and Backup Withholding .....	14
RATING .....	14
UNDERWRITING .....	14
RELATIONSHIP AMONG PARTIES .....	15
CONTINUING DISCLOSURE .....	15
FINANCIAL ADVISOR .....	16
FINANCIAL STATEMENTS .....	16
CONCLUDING STATEMENT .....	16
APPENDIX A – THE CITY OF FLAGSTAFF, ARIZONA – DEMOGRAPHIC AND ECONOMIC INFORMATION	
APPENDIX B – THE CITY OF FLAGSTAFF, ARIZONA – FINANCIAL INFORMATION	
APPENDIX C – CITY OF FLAGSTAFF, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018	
APPENDIX D – SUMMARIES OF LEGAL DOCUMENTS	
APPENDIX E – FORM OF APPROVING LEGAL OPINION	
APPENDIX F – FORM OF CONTINUING DISCLOSURE UNDERTAKING	
APPENDIX G – BOOK-ENTRY-ONLY SYSTE	

## OFFICIAL STATEMENT

**\$3,575,000\***

**CERTIFICATES OF PARTICIPATION, SERIES 2019**  
**Evidencing Undivided Proportionate Interests of the Owners Thereof in**  
**Lease Payments to be Made by**  
**CITY OF FLAGSTAFF, ARIZONA,**  
**as Lessee of Certain Property Pursuant**  
**to a Lease-Purchase Agreement, Dated as of December 1, 2019\***

### INTRODUCTION

This Official Statement, which includes the cover page, the inside front cover page and the Appendices hereto (this “Official Statement”), is provided to furnish certain information with respect to the sale, execution and delivery of \$3,575,000\* principal amount of the above-captioned Certificates of Participation, Series 2019 (the “2019 Certificates”), evidencing undivided proportionate interests of the Owners thereof in lease payments (the “Lease Payments”) to be made by the City of Flagstaff, Arizona, as lessee (the “City”), of certain real property and improvements thereon pursuant to a Lease-Purchase Agreement, to be dated as of December 1, 2019\* (the “Lease Agreement”), between the City, as lessee, and \_\_\_\_\_ (the “Trustee”), as lessor. The 2019 Certificates will be executed and delivered pursuant to a Trust Agreement, to be dated as of December 1, 2019\* (the “Trust Agreement”), between the City and the Trustee.

Certain capitalized terms used in this Official Statement and not otherwise defined herein shall have the meanings given to such terms in APPENDIX D — “SUMMARIES OF LEGAL DOCUMENTS - CERTAIN DEFINITIONS.”

The 2019 Certificates are being sold to (i) finance the costs of the hereinafter defined Projects and (ii) pay costs related to the initial execution and delivery of the 2019 Certificates. See “THE PROJECTS.” Certain real property, together with any improvements thereon (the “Leased Property”), will be leased to the Trustee through July 2, 2044\*, pursuant to a Ground Lease, to be dated as of December 1, 2019\* (the “Ground Lease”), between the City, as lessor, and the Trustee, as lessee, executed and delivered in connection with the 2019 Certificates. Simultaneously, the Trustee will lease the Leased Property back to the City pursuant to the Lease Agreement, which requires the City to pay the principal and interest evidenced by the 2019 Certificates on the scheduled payment dates, subject to annual appropriation of amounts sufficient for that purpose by the Mayor and Council of the City (the “City Council”). The Leased Property will be comprised of a municipal court building of the City. See “THE LEASED PROPERTY.” The 2019 Certificates will be payable on a parity basis from the Lease Payments to be made by the City pursuant to the Lease Agreement and other funds held pursuant to the Trust Agreement, and certain investment earnings thereon.

Unless and until use of the book-entry-only system is discontinued, the 2019 Certificates will be held in book-entry-only form by The Depository Trust Company, a registered securities depository (“DTC”), and beneficial interests therein may only be purchased and sold, and payments of principal, premium, if any, and interest evidenced by the 2019 Certificates will be made only to Beneficial Owners (as defined in APPENDIX G — “BOOK-ENTRY-ONLY SYSTEM”), through participants in the DTC system. Beneficial interests in the 2019 Certificates will be in amounts described on the inside front cover page hereof. See APPENDIX G — “BOOK-ENTRY-ONLY SYSTEM.”

The Trustee will make payments of principal and interest evidenced by the 2019 Certificates solely from moneys available pursuant to the Trust Agreement, including the Lease Payments required to be made by the City pursuant to the Lease Agreement. See “SOURCES OF PAYMENT OF THE 2019 CERTIFICATES” herein.

In general, the City will be required, in accordance with the Lease Agreement, to pay the Lease Payments equal to the principal and interest evidenced by the 2019 Certificates, unless the Lease Agreement is terminated as provided therein. See “SECURITY FOR THE 2019 CERTIFICATES” herein. The City will also be required to pay any taxes

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\* Preliminary, subject to change.

and assessments and the cost of maintenance and repair of the Leased Property. See “LEASE AGREEMENT — Maintenance, Utilities, Taxes and Modifications” in APPENDIX D hereto.

The Lease Agreement and the obligation of the City to make the Lease Payments will be terminated if on the last day of the then current Fiscal Period the City Council has failed to adopt a budget containing an annual budgetary appropriation sufficient to make the Lease Payments coming due during the next Fiscal Period. In the event of such termination, the City will be relieved of any subsequent obligation pursuant to the Lease Agreement other than to surrender the Leased Property to the Trustee, and the 2019 Certificates will be payable only from such moneys, if any, as may be held pursuant to the Trust Agreement and any moneys realized from the Trustee’s exercise of remedies with respect to the Leased Property. IN THE EVENT OF SUCH TERMINATION, THERE WILL BE NO ASSURANCE OF PAYMENT OF THE PRINCIPAL OR INTEREST EVIDENCED BY THE 2019 CERTIFICATES FROM FUNDS AVAILABLE PURSUANT TO THE TRUST AGREEMENT OR THAT ANY SUCH PAYMENTS EVIDENCING INTEREST, IF MADE, WILL REMAIN EXCLUDABLE FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES. SEE “RISK FACTORS” AND “TAX EXEMPTION” HEREIN. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA (THE “STATE” OR “ARIZONA”) OR ANY POLITICAL SUBDIVISION THEREOF WILL BE PLEDGED TO THE 2019 CERTIFICATES. NEITHER THE 2019 CERTIFICATES NOR THE LEASE AGREEMENT WILL CONSTITUTE A DEBT OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. SEE “RISK FACTORS” HEREIN.

For a discussion about the City, its sources of revenues and financial condition, see APPENDIX B herein. The audited financial statements of the City for the fiscal year ended June 30, 2018 are included in APPENDIX C — “CITY OF FLAGSTAFF, ARIZONA — AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018.”

The descriptions and summaries of various documents contained herein do not purport to be comprehensive or definitive and reference is made to each document for the complete details of all its terms and conditions. All statements herein are qualified by reference to each such document in its entirety and are further qualified in their entirety by reference to laws and principles of equity relating to or affecting the enforceability of creditors’ rights.

Copies of the form of the Lease Agreement, the Ground Lease and the Trust Agreement (collectively, the “Financing Documents”) referred to herein may be obtained, until the delivery of the 2019 Certificates, from the Financial Advisor (defined below) upon request to: Stifel, Nicolaus & Company, Incorporated, 2325 E. Camelback Road, Suite 750, Phoenix, AZ 85016, Attention: Municipal Finance. After delivery of the 2019 Certificates, copies of such documents may be obtained by Beneficial Owners from the Trustee upon request at: \_\_\_\_\_, Attention: Corporate Trust Services.

## **THE PROJECT AND THE LEASED PROPERTY**

### **The Project**

The proceeds from the 2019 Certificates, net of amounts used to pay costs of issuance of the 2019 Certificates, will be used by the Trustee to acquire from the City a ground leasehold interest in a site (the “Leased Land”) and to fund a portion of the costs of constructing improvements thereon (the “Improvements” and, together with the Leased Land, the “Project”) for use as a new municipal court building for the City. The Trustee will lease the Project to the City pursuant to the Lease Agreement and the Project will constitute the leased property (the “Leased Property”) under the Lease Agreement as described below. The \$19.5 million estimated total cost of the Project is expected to be funded with approximately \$4 million of proceeds from the 2019 Certificates, approximately \$12 million of proceeds from the sale of the City’s General Obligation Bonds, Series 2019 (the “2019 GO Bonds”) that are being offered concurrently with the 2019 Certificates pursuant to a separate official statement and that will close simultaneously with the delivery of the 2019 Certificates, with remaining costs paid from cash paid by the City from its General Fund.

### **The Leased Property**

The Leased Property will consist of a new “Municipal Court Building” for the City located at 101 West Cherry Avenue within downtown Flagstaff, Arizona, on the Leased Land which is a 0.51-acre site that the City has owned for over 15 years. When completed, the Municipal Court Building will consist of approximately 40,000 square feet, including courtrooms, hearing rooms, judicial chambers, jury assembly and deliberation space, spaces for security screening, customer service transaction area, conference rooms, training rooms, space for the court enforcement unit and prisoner holding, staging areas and support services, and office space for the prosecution division of the City Attorney’s office. The City estimates that the Municipal Court Building will house approximately 35 City employees. The new Municipal Court Building will replace the City’s current municipal court building, which will be torn down and used for City parking.

Construction of the Municipal Court Building started in May 2019 and is anticipated to be completed in July 2020. Following design and a public procurement process, the City has entered into a Design-Build Services Agreement (as supplemented and amended, the “Construction Contract”) with Kinney Construction Services, Flagstaff, Arizona (the “Contractor”), dated July 17, 2018. The Construction Contract represents a design-build construction contract, under which the Contractor will agree to construct the Municipal Court Building for a “guaranteed maximum price,” meant to represent the maximum cost to the City for completion of the construction. The guaranteed maximum price specified in the Construction Contract is \$18,668,897. The City has already paid \$3,001,884 of this amount, leaving a balance of \$15,667,013. The Contractor has provided payment and performance surety bonds in the usual form required for municipal construction projects. Despite the guaranteed maximum price feature and surety bonds, there are always risks associated with new construction. For example, even though the Construction Contract contains a guaranteed maximum price, there can be no guaranty that actual construction costs will not exceed such amount and allotted contingencies and amounts available to pay construction costs, whether due to change orders, unexpected developments during construction or otherwise. Further, contract retention amounts may be insufficient to cover additional costs arising due to factors such as unforeseen site conditions or contract omissions. In addition, they cannot protect against timing delays when projects run into difficulty (due to performance of contractors or any other reason).

The Contractor is required to maintain course of construction insurance on the Leased Property during the construction period. Following completion, the Leased Property will be insured as part of the City’s risk management program in with an assumed replacement value in excess of the principal amount of the 2019 Certificates. No title insurance is being obtained insuring the Trustee’s ground leasehold interest in the Leased Land due to the more than 15-year period that the City has owned the Leased Land without material claims questioning its state of title.

## **THE 2019 CERTIFICATES**

### **General Provisions**

The 2019 Certificates will be dated the date of initial execution and delivery thereof and will be issued in the form of fully registered certificates in amounts of \$5,000 of principal due on a principal payment date or any integral multiple

thereof. As described herein in APPENDIX G – “BOOK-ENTRY-ONLY SYSTEM,” the 2019 Certificates will be registered in the name of Cede & Co., as nominee of DTC. So long as DTC, or its nominee, is the registered owner of all of the 2019 Certificates, all payments on the 2019 Certificates will be made directly to DTC for payment to the Beneficial Owners as described herein in APPENDIX G – “BOOK-ENTRY-ONLY SYSTEM.”

The 2019 Certificates will bear interest from their dated date, payable semiannually on January 1 and July 1 of each year (each an “Interest Payment Date”), commencing July 1, 2020\*. The 2019 Certificates will bear interest at the rates and will be payable on the principal payment dates and in the amounts set forth on the inside front cover page of this Official Statement. Interest will be computed on the basis of a year comprised of three hundred sixty (360) days consisting of twelve (12) months of thirty (30) days each. Interest on the 2019 Certificates will be paid by the Trustee to the owners thereof (initially Cede & Co., as nominee of DTC) as shown on the registration books maintained by the Trustee, at the close of business on the fifteenth day of the month preceding each Interest Payment Date (the “Record Date”). So long as the 2019 Certificates are in DTC’s book-entry-only system, and thereafter at the written request and expense of the owners of \$1,000,000 or more in aggregate principal amount of 2019 Certificates delivered to the Trustee prior to a Record Date, interest and principal will be paid by wire transfer to a bank account in the continental United States.

**Prepayment Provisions\***

Optional Prepayment. The 2019 Certificates payable as to principal before or on \_\_\_\_\_ 1, 20\_\_ will not be subject to optional prepayment. The 2019 Certificates payable as to principal on or after \_\_\_\_\_ 1, 20\_\_ will be subject to optional prepayment, at the direction of the City, on any date on or after \_\_\_\_\_ 1, 20\_\_, in whole or in part, at a prepayment price equal to the principal amount evidenced thereby plus interest with respect thereto to the prepayment date, without premium.

Mandatory Prepayment. The 2019 Certificates payable as to principal on July 1, 20\_\_ (the “Term Certificates”), are subject to mandatory prepayment and shall be paid on July 1 in the respective years set forth below, in the amounts set forth below, by payment of a prepayment price equal to the principal amount of such Term Certificates called for prepayment plus the interest accrued to the date fixed for prepayment, but without premium.

Term Certificates Maturing July 1, 20\_\_

**Year**

**Sinking Fund Requirement**

\_\_\_\_\_  
\*Maturity

Whenever 2019 Certificates subject to mandatory prepayment are purchased, paid (other than pursuant to mandatory prepayment) or delivered by the City to the Trustee for cancellation, the principal amount of the 2019 Certificates so retired shall satisfy and be credited against the mandatory prepayment requirements for such 2019 Certificates for such years as the City may direct.

Extraordinary Prepayment. The 2019 Certificates will be subject to prepayment on any Interest Payment Date, in whole or in part, to the extent of any Net Proceeds that are deposited in the Lease Payment Fund for such purpose as provided in the Lease Agreement, at a prepayment price equal to the principal amount evidenced thereby, plus interest to the prepayment date, without premium.

As further described in APPENDIX D under the subheading “TRUST AGREEMENT — Funds -- Insurance and Condemnation Fund,” if all of the Leased Property is taken permanently pursuant to the power of eminent domain,

\_\_\_\_\_  
\* Preliminary, subject to change.

the term of the Lease Agreement will cease as of the day possession is so taken and the Net Proceeds will be deposited with the Trustee in the Lease Payment Fund and applied as hereinabove described. If less than all of the Leased Property is taken permanently, or if all of the Leased Property or any part thereof is taken temporarily, under the power of eminent domain, the Lease Agreement will not be terminated by virtue of such taking, but there will be a partial reduction of Lease Payments as a result of the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments deposited in the Lease Payment Fund as described in the Lease Agreement.

The Net Proceeds of any insurance award resulting from any damage to or destruction of any Leased Property by fire or other casualty will be deposited with the Trustee and, if the City determines within 45 days following such deposit that the replacement, repair, restoration, modification or improvement of such Leased Property is not economically feasible or is not in the best interest of the City, then, such Net Proceeds will be transferred to the Lease Payment Fund and applied as described in the Lease Agreement, provided, however, in the event of damage or destruction of the Leased Property in full, such Net Proceeds may be transferred to the Lease Payment Fund to be applied only if sufficient, together with other moneys available therefor, to cause the prepayment of all Outstanding 2019 Certificates; provided further, however, if the Net Proceeds are not sufficient to cause the prepayment of all Outstanding 2019 Certificates, the City will have the option to purchase the Leased Property for a price representing the difference between the amount of Net Proceeds received and available for transfer to the Lease Payment Fund and the amount required to redeem all Outstanding 2019 Certificates.

Any Net Proceeds resulting from a re-lease or re-rent of the Leased Property upon the occurrence and continuation of a default pursuant to the Lease Agreement will be deposited in the Lease Payment Fund and applied as described in the Lease Agreement.

Selection and Notice. Whenever less than all Outstanding 2019 Certificates are called for prepayment, the maturities of the 2019 Certificates to be selected for prepayment may be specified by the City. The Trustee will give notice of the prepayment of such 2019 Certificates to DTC not less than 30 days nor more than 60 days before the prepayment date as described in APPENDIX G.

### **Defeasance**

If the City (i) pays the principal and interest evidenced by all Outstanding 2019 Certificates, or (ii) at or before the scheduled principal payment dates of all Outstanding 2019 Certificates, deposits money or Defeasance Obligations with the Trustee that, together with other available funds, are sufficient to pay the principal and interest evidenced by all or a portion of the Outstanding 2019 Certificates when the same become due and payable, then the lien of the Trust Agreement and all covenants, agreements and obligations of the City and the Trustee with respect to the 2019 Certificates so provided for will terminate, except for the obligation of the Trustee to make payments with respect to such 2019 Certificates from such funds. See APPENDIX D — “SUMMARIES OF LEGAL DOCUMENTS — TRUST AGREEMENT — Defeasance.”

## **SOURCES OF PAYMENT OF THE 2019 CERTIFICATES**

In accordance with the terms of the Trust Agreement, the 2019 Certificates will be payable by the Trustee solely from: (1) the Lease Payments received by the Trustee from the City pursuant to the Lease Agreement, subject to termination of the Lease Agreement, as provided in the Lease Agreement, (2) amounts from time to time deposited in the funds created pursuant to the Trust Agreement and investment earnings on such funds (except for any investment earnings that are required to be rebated to the United States of America in order to continue the exclusion of the interest evidenced by the 2019 Certificates from gross income for federal income tax purposes), and (3) any Net Proceeds from insurance coverage or condemnation awards received by the Trustee from the damage, destruction or taking of the Leased Property or portion thereof pursuant to the Lease Agreement and the Trust Agreement or from exercise by the Trustee of any remedies or rights pursuant to the Lease Agreement or Trust Agreement upon default or failure to budget thereunder.

The City’s obligation to pay Lease Payments during the term of the Lease Agreement will be absolute and unconditional during the then-current Fiscal Period, but subject to (1) the City’s right to terminate the Lease Agreement and its obligation to pay the Lease Payments for any succeeding Fiscal Period upon its failure to make a

budgetary appropriation for the full amount necessary to make the Lease Payments coming due during the next occurring Fiscal Period and (2) termination of the Lease Agreement upon taking of all of the Leased Property by eminent domain as described above under the subheading “THE 2019 CERTIFICATES —Prepayment Provisions — Extraordinary Prepayment.”

No funds or revenues of the City will be pledged to make Lease Payments. Lease Payments will be made by the City from annually appropriated moneys. The City’s intention is to make the Lease Payments from available revenues within the City’s General Fund. See APPENDIX B -- “THE CITY OF FLAGSTAFF, ARIZONA — FINANCIAL INFORMATION.”

IN THE EVENT OF TERMINATION OF THE LEASE AGREEMENT, THERE WILL BE NO ASSURANCE THAT THE TRUSTEE WILL HAVE ADEQUATE FUNDS PURSUANT TO THE TRUST AGREEMENT TO PAY PRINCIPAL AND INTEREST EVIDENCED BY THE 2019 CERTIFICATES. SEE “RISK FACTORS — TERMINATION OF LEASE AGREEMENT” HEREIN.

## **SECURITY FOR THE 2019 CERTIFICATES**

### **General**

Each 2019 Certificate will evidence and represent an undivided proportionate interest in the Lease Payments and the Prepayments required to be paid by the City pursuant to the Lease Agreement.

The City will have the right to terminate the Lease Agreement and its obligation to pay Lease Payments as described below under the subheading “Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds.”

THE CITY’S OBLIGATION TO MAKE LEASE PAYMENTS WILL NOT CONSTITUTE A DEBT OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WILL BE PLEDGED TO MAKE PAYMENTS OF THE 2019 CERTIFICATES. PAYMENT OF THE PRINCIPAL AND INTEREST EVIDENCED BY THE 2019 CERTIFICATES WILL BE MADE BY THE TRUSTEE SOLELY FROM AMOUNTS DERIVED UNDER THE TERMS OF THE LEASE AGREEMENT, INCLUDING LEASE PAYMENTS, AND AMOUNTS FROM TIME TO TIME ON DEPOSIT WITH THE TRUSTEE PURSUANT TO THE TERMS OF THE TRUST AGREEMENT.

### **Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds**

The term of the Lease Agreement will begin as of the date thereof and continue until the end of the City’s then-current Fiscal Period, and thereafter for such additional Fiscal Periods as are necessary to complete the anticipated total lease term through and including July 1, 2044\*, unless terminated prior thereto.

If, on or before the third Business Day prior to the last date on which the City is required or permitted to adopt its budget for a Fiscal Period, the City Council fails to adopt a budget containing an annual budgetary appropriation sufficient to make all Lease Payments coming due during the Fiscal Period for which such budgeting and appropriation are made, the City will immediately notify the Trustee in writing of that fact. If, on the last date on which the City is required or permitted to adopt its budget for a Fiscal Period, no such proper budgeting and final appropriation by the City Council shall have been made, then all of the City’s right, title and interest in and future obligations pursuant to the Lease Agreement and to all of the Leased Property will terminate (subject to reinstatement as provided below), effective as of the last day of the last Fiscal Period for which such budgeting and appropriation was made. Upon such termination, the City will be relieved of any subsequent obligation pursuant to the Lease Agreement other than to

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\* Preliminary, subject to change.

return to the Trustee possession of the Leased Property as provided in the Lease Agreement and to pay any accrued and unpaid obligations.

If the Lease Agreement is terminated as described above and if, within 45 days after such date of termination, amounts sufficient to make all Lease Payments coming due during the then current Fiscal Period are determined to be available such that the Lease Agreement would have continued in effect with respect to the Leased Property if such amounts had been determined to be available before the termination date, then the Lease Agreement will be reinstated with respect thereto and deemed renewed as of the day following the date of such termination.

### **Events of Default or Termination Pursuant to Lease Agreement**

Upon an Event of Default pursuant to the Trust Agreement or a termination described above under the subheading “Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds,” the Trustee may exercise one or more of the remedies provided in the Trust Agreement, subject to receipt of indemnity satisfactory to it, including an option to re-lease or sell its leasehold interest in the Leased Property, and apply the proceeds of such disposition, if any, along with the moneys in the Lease Payment Fund, to the payment of the 2019 Certificates. However, there is no assurance that revenues from the Trustee’s re-lease or sale of its leasehold interest in the Leased Property would be sufficient to pay in full all Outstanding Certificates. Should such a shortfall occur, the principal and interest represented by the 2019 Certificates would be paid by the Trustee to the extent of moneys, if any, held by the Trustee in accordance with the Trust Agreement. In accordance with the terms of the Trust Agreement, the Trustee is not under any obligation to take any other action if the Trustee determines that to do so exposes the Trustee to a risk of financial liability or other liability (including environmental liability) for which it reasonably believes it will not be adequately indemnified. See “RISK FACTORS — Termination of Lease Agreement” herein.

### **Additional Certificates**

So long as no Event of Default or termination of the Lease Agreement as described above under the subheading “Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds” has occurred and will continue after execution and delivery of any Additional Certificates, the Trustee may execute and deliver, at the direction of the City, Additional Certificates from time to time to provide funds to expand or improve the Projects or to pay the costs of refunding Outstanding Certificates. Before the Trustee delivers any Additional Certificates executed pursuant to a supplement authorized by the Indenture, the Trustee shall have received the items identified in APPENDIX D – “SUMMARIES OF LEGAL DOCUMENTS – TRUST AGREEMENT – Additional Certificates.” When such documents have been received by the Trustee, the Trustee will execute and deliver the Additional Certificates to or on the order of the original purchaser thereof, but only upon payment of the agreed-upon purchase price for the Additional Certificates.

## **RISK FACTORS**

***THE PURCHASE OF THE 2019 CERTIFICATES INVOLVES CERTAIN INVESTMENT RISKS THAT ARE DISCUSSED THROUGHOUT THIS OFFICIAL STATEMENT. ACCORDINGLY, EACH PROSPECTIVE 2019 CERTIFICATE PURCHASER SHOULD MAKE AN INDEPENDENT EVALUATION OF ALL THE INFORMATION PRESENTED HEREIN. CERTAIN OF THESE INVESTMENT RISKS ARE DESCRIBED BELOW. THE LIST OF RISKS DESCRIBED BELOW IS NOT INTENDED TO BE DEFINITIVE OR EXHAUSTIVE AND THE ORDER IN WHICH THE FOLLOWING FACTORS ARE PRESENTED IS NOT NECESSARILY REFLECTIVE OF THE RELATIVE IMPORTANCE OF THESE RISKS.***

### **Limited Obligation**

The obligation of the City to pay the Lease Payments will not be secured by the levy or pledge of any tax or any other funds or revenues derived from the Leased Property or the Projects or any other property and does not constitute a debt or indebtedness of the City, the State or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. See “SECURITY FOR THE 2019 CERTIFICATES” herein. The Lease Payments will be payable by the City only from moneys lawfully budgeted and appropriated for such purpose.

The City Council must appropriate on an annual basis and have available funds for such purposes. A number of factors beyond the control of the City, including decreased tax or other State revenues, spending reductions or increased expenditures for other purposes mandated by legislation or voter referendum or initiative measures or governmental rules, policies or judicial decisions, could adversely affect the amount available to the City in any year for such budgeting and appropriation. See “SECURITY FOR THE 2019 CERTIFICATES — Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds.”

The Lease Agreement will obligate the City to lease the Leased Property. State courts have held that governing bodies such as the City Council cannot bind future governing bodies to perform governmental functions or activities. Thus, notwithstanding the commitment of the City to annually appropriate Lease Payments, to the extent permitted by law, such commitment may not be binding on future councils. Moreover, changes in the membership and political philosophies of the councils of the City and in administrative staff and management strategies may occur, and it cannot be determined at this time if future members of the councils of the City might refuse to budget sufficient amounts to make the Lease Payments in future Fiscal Periods.

No funds or revenues of the City will be pledged, obligated or restricted for the payment of the Lease Payments. In addition, the City Council has the right to refuse to annually appropriate for any reason. If the City Council refused to appropriate funds to pay the Lease Payments for any fiscal year, the Lease Agreement would terminate and there is no assurance that funds held pursuant to the Trust Agreement would be sufficient to pay principal and interest evidenced by the 2019 Certificates. See “SECURITY FOR THE 2019 CERTIFICATES — Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds.”

#### **Other Obligations of City**

In June 2018, the City issued its Certificates of Participation, Series 2018 (the “2018” Certificates) which funded the construction of a new “Core Maintenance Facility” for the City located on West Route 66. No title insurance policy was obtained in connection with the execution and delivery of the 2018 Certificates. See APPENDIX B -- “THE CITY OF FLAGSTAFF, ARIZONA — FINANCIAL INFORMATION – TABLE 4”

The City Council has the ability to enter into other obligations that will be payable from the same revenues from which it must budget monies to make the Lease Payments. See APPENDIX B — “THE CITY OF FLAGSTAFF, ARIZONA —FINANCIAL INFORMATION.” To the extent that such additional obligations are incurred by the City, the funds available for, and the City’s ability and willingness to make, Lease Payments may be decreased. The Lease Agreement imposes no restrictions upon the ability of the City to incur additional obligations.

#### **Termination of Lease Agreement**

In addition to termination of the Lease Agreement as described under the subheading “SECURITY FOR THE 2019 CERTIFICATES — Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds” herein, several other events may lead to a termination of the Lease Agreement:

- (1) an Event of Default on the part of the City and an election by the Trustee to terminate the Lease Agreement as described in “LEASE AGREEMENT— Events of Default” in APPENDIX D.
- (2) the taking of all of the Leased Property pursuant to the power of eminent domain as described under the subheading “THE 2019 CERTIFICATES — Prepayment Provisions — Extraordinary Prepayment,” and
- (3) violation of certain State statutes pertaining to conflicts of interest, described herein below.

As required by the provisions of Arizona Revised Statutes Section 38-511, the City may, within three years after its execution, cancel any contract (including the Financing Documents) without penalty or further obligation, made by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating such contract on behalf of the City is, at any time while such contract or any extension thereof is in effect, an employee of any other party to such contract in any capacity or a consultant to any other party to such contract with respect to the subject

matter thereof. The cancellation will be effective when written notice from the Mayor or the City Council is received by all other parties to such contract unless the notice specifies a later time. Upon cancellation of the Financing Documents, the Leased Property will revert to the City and the City will have no further obligation under the Financing Documents.

Pursuant to the Ground Lease, the Trustee has the power to re-lease or sell its leasehold estate in the Leased Property under such circumstances. The Net Proceeds from the re-leasing of the Leased Property or sale of the Trustee's interest therein, together with other moneys then held by the Trustee in accordance with the Trust Agreement, will be required to be used pursuant to the Trust Agreement to pay principal and interest evidenced by the 2019 Certificates as it becomes due, to the extent of such moneys. No assurance can be given that the amount of funds obtained from such re-leasing or sale of the leasehold estate and from funds held pursuant to the Trust Agreement will be sufficient to pay all 2019 Certificates when due.

[The Leased Property is a municipal court building. While the insurance value of the a municipal court building is estimated at approximately \$\_\_\_\_\_ million], it could be difficult to find a lessee or purchaser for the leasehold estate in the Leased Property and, upon any event of termination of the Lease Agreement or default by the City pursuant to the Lease Agreement, the Trustee may not realize sufficient moneys from the releasing or sale of its leasehold estate in the Leased Property to provide for the payment of the 2019 Certificates in full with interest to the scheduled dates of payment. In other words, due to the special purpose nature of the Leased Property and the uncertainties of the needs of others for facilities and of the special and limited demand for facilities, no assurance can be given that the proceeds from any re-lease, sale of the leasehold estate or other disposition of the Leased Property will be sufficient to pay the principal and interest evidenced by the 2019 Certificates.

#### **Possible Restrictions on Transfer of, and Change of Status of Interest Represented by, the 2019 Certificates Upon Termination of Lease Agreement**

Neither Special Counsel nor counsel to the Underwriter is rendering an opinion as to the applicability or inapplicability of the registration requirements of the Securities Act of 1933, as amended, to the transfer of any 2019 Certificates in the event Lease Payments are being made from sources other than funds made available by the City as a result of termination of the Lease Agreement for any reason. If the Lease Agreement is terminated while 2019 Certificates are Outstanding, the 2019 Certificates may be transferred by a 2018 Certificate Owner without compliance with the registration provisions of the Securities Act of 1933, as amended. Moreover the interest evidenced by the 2019 Certificates may no longer be treated as described under the heading "TAX EXEMPTION" herein.

#### **Limitations on Remedies**

No assurance can be given that the proceeds from any re-leasing or sale of the leasehold estate in the Leased Property will be sufficient to pay in full all Outstanding 2019 Certificates. The enforcement of any remedies provided in the Lease Agreement and the Trust Agreement could prove both expensive and time consuming. In addition, the enforceability of the Lease Agreement and the Trust Agreement will be subject to applicable bankruptcy laws, equitable principles affecting the enforcement of creditors' rights generally and liens securing such rights, and the police powers of the State and its political subdivisions. Because of delays inherent in obtaining judicial remedies, it should not be assumed that these remedies could be accomplished rapidly. Any delays in the ability of the Trustee to obtain possession of the Leased Property upon termination of the Lease Agreement or exercise of remedies upon default by the City will, of necessity, result in delays in the receipt of the funds needed to make payments on the 2019 Certificates.

Although the Lease Agreement and the Trust Agreement provide that the Trustee may take possession of the Leased Property and (upon receipt of indemnification satisfactory to the Trustee) re-lease it or sell its leasehold interest therein if there is a default by the City thereunder or if the Lease Agreement is terminated or cancelled, and the Lease Agreement provides that the Trustee may have such rights of access to the Leased Property as may be necessary to exercise any remedies, no assurance can be given that revenues from the Trustee's re-letting or sale of its interest in the Leased Property would be sufficient to pay in full all Outstanding 2019 Certificates.

Upon the termination of the Lease Agreement or if the City defaults in its obligation to make Lease Payments pursuant thereto, the Trustee will be required by the Trust Agreement to take action to force the City to surrender possession

of the Leased Property. However, in accordance with the terms of the Trust Agreement, the Trustee is not under any obligation to take any other action if the Trustee determines that to do so exposes the Trustee to a risk of financial liability or other liability (including environmental liability) for which it reasonably believes it will not be adequately indemnified. See “SOURCES OF PAYMENT OF THE 2019 CERTIFICATES — Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds” and “—Events of Default or Termination Pursuant to Lease Agreement” herein. Prior to taking other actions pursuant to the Trust Agreement, the Trustee may demand assurances from the Owners, such as indemnity satisfactory to the Trustee, that it will not incur liability by reason of any other action taken by the Trustee pursuant to the Trust Agreement.

### SOURCES AND USES OF FUNDS

#### Sources of Funds

Principal Amount of the 2019 Certificates	\$3,575,000.00*
[Net] Original Issue Premium (a)	_____
Total Sources of Funds	_____

#### Uses of Funds

Deposit to the Project Fund	
Payment of Costs of Issuance (b)	_____
Total Uses of Funds	_____

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(a) *Includes original issue premium on the 2019 Certificates, less original issue discount.*

(b) *Includes Underwriter's compensation.*

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\* Preliminary, subject to change.

## ESTIMATED LEASE PAYMENT REQUIREMENTS

The following table illustrates the estimated Lease Payments with respect to the 2019 Certificates.

**TABLE 1**  
**Estimated Annual Lease Payment Requirements (a)(b)**  
**City of Flagstaff, Arizona**

Fiscal Year	2019 Certificates*		Total Estimated Annual Lease Payment Requirements*
	Principal	Interest (c)	
2019/20	\$45,000	\$ 81,867(d)	\$ 126,867
2020/21	\$85,000	152,150	237,150
2021/22	90,000	148,750	238,750
2022/23	90,000	144,250	234,250
2023/24	95,000	139,750	234,750
2024/25	100,000	135,000	235,000
2025/26	105,000	130,000	235,000
2026/27	110,000	124,750	234,750
2027/28	115,000	119,250	234,250
2028/29	125,000	113,500	238,500
2029/30	130,000	107,250	237,250
2030/31	135,000	100,750	235,750
2031/32	140,000	94,000	234,000
2032/33	145,000	88,400	233,400
2033/34	155,000	82,600	237,600
2034/35	160,000	76,400	236,400
2035/36	165,000	70,000	235,000
2036/37	170,000	63,400	233,400
2037/38	180,000	56,600	236,600
2038/39	185,000	49,400	234,401
2039/40	195,000	42,000	237,000
2040/41	200,000	34,200	234,200
2041/42	210,000	26,200	236,200
2042/43	220,000	17,800	237,800
2043/44	225,000	9,000	234,000
	\$3,575,000		

(a) Prepared by the Financial Advisor.

(b) See APPENDIX B – “CITY OF FLAGSTAFF, ARIZONA – FINANCIAL INFORMATION – TABLE 4” and “-GENERAL FUND” for information regarding the City’s outstanding certificates of participation and the City’s general fund revenues for the budgeted fiscal year 2019/20, estimated actuals for fiscal year 2018/19, and audited fiscal years 2013/14 through and including 2017/18.

(c) Interest is estimated.

(d) The first interest payment due with respect to the 2019 Certificates will be on July 1, 2020\*. Thereafter, interest payments will be made semiannually on each January 1 and July 1, until the earlier of the final maturity or prepayment prior to maturity.

## **LITIGATION**

No litigation or administrative action or proceeding is pending or threatened against the City which questions its right to adopt or comply with the provisions of the Financing Documents or the validity or enforceability thereof or to consummate the transactions described therein or herein; nor is there any litigation or administrative action or proceeding threatened against the City which, if decided adversely to the City, would impair the City's ability to comply with all of the requirements set forth in the Financing Documents or have a material adverse effect upon the financial condition of the City. Representatives of the City will deliver a certificate to that effect at the time of the initial delivery of the 2019 Certificates.

## **LEGAL MATTERS**

Legal matters incident to the execution and delivery of the 2019 Certificates and with regard to the tax-exempt status of the Interest Portion (defined below) of the 2019 Certificates are subject to the legal opinion of Greenberg Traurig, LLP, Special Counsel, whose services have been retained by the City. The signed legal opinion of Special Counsel, dated and premised on the law in effect as of the date of the 2019 Certificates, will be delivered to the Underwriter at the time of original delivery of the 2019 Certificates.

The proposed text of the legal opinion is set forth as APPENDIX E – “FORM OF APPROVING LEGAL OPINION.” The legal opinion to be delivered may vary from the text of APPENDIX E if necessary to reflect the facts and law existing on the date of delivery. The opinion will speak only as of its date, and subsequent distribution, by recirculation of this Official Statement or otherwise, should not be construed as a representation that Special Counsel has reviewed or expressed any opinion concerning any matters relating to the 2019 Certificates subsequent to the original delivery of the 2019 Certificates.

Certain legal matters will be passed upon for the Underwriter by Squire Patton Boggs (US) LLP, as counsel to the Underwriter.

From time to time, there are legislative proposals (and interpretations of such proposals by courts of law and other entities and individuals) which, if enacted, could alter or amend numerous matters, both financial and nonfinancial, affecting the operations of municipalities which could have a material effect on the City and could adversely affect the secondary market value or marketability of the 2019 Certificates. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to obligations (such as the 2019 Certificates) issued prior to enactment.

The legal opinions to be delivered concurrently with the delivery of the 2019 Certificates will express the professional judgment of the attorneys rendering the opinion as to the legal issues explicitly addressed therein dated and speaking only as of the date of delivery of the 2019 Certificates. By rendering a legal opinion, the provider of the legal opinion does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

## **TAX EXEMPTION**

The Internal Revenue Code of 1986, as amended (the “Code”), includes requirements which the City must continue to meet after the execution and delivery of the 2019 Certificates in order that the portion of each of the Lease Payments made by the City pursuant to the Lease Agreement and denominated as and comprising interest pursuant to the Lease Agreement and received by the Owners of the 2019 Certificates (the “Interest Portion”) will be and remain excludable from gross income for federal income tax purposes. The City's failure to meet these requirements may cause the Interest Portion to be included in gross income for federal income tax purposes retroactively to the date of execution and delivery of the 2019 Certificates. The City has covenanted in the Lease Agreement to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of the Interest Portion.

In the opinion of Special Counsel, assuming the accuracy of certain representations and certifications of the City and continuing compliance by the City with the tax covenants referred to above, under existing statutes, regulations, rulings

and court decisions, the Interest Portion is excludable from gross income of the holders thereof for federal income tax purposes and is exempt from Arizona income taxation so long as the Interest Portion is excludable from gross income for federal income tax purposes. The Interest Portion is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. Special Counsel will express no opinion as to any other tax consequences regarding the Interest Portion or the 2019 Certificates. Prospective purchasers of the 2019 Certificates should consult their own tax advisors as to the status of the Interest Portion under the tax laws of any state other than Arizona.

Except as described above, Special Counsel will express no opinion regarding the federal income tax consequences resulting from the receipt or accrual of the Interest Portion, or the ownership or disposition of the 2019 Certificates. Prospective purchasers of 2019 Certificates should be aware that the ownership of 2019 Certificates may result in other collateral federal tax consequences, including (i) the denial of a deduction for interest on indebtedness incurred or continued to purchase or carry the 2019 Certificates, (ii) the reduction of the loss reserve deduction for property and casualty insurance companies by the applicable statutory percentage of certain items, including the Interest Portion, (iii) the inclusion of the Interest Portion in the earnings of certain foreign corporations doing business in the United States for purposes of a branch profits tax, (iv) the inclusion of the Interest Portion in the passive income subject to federal income taxation of certain Subchapter S corporations with Subchapter C earnings and profits at the close of the taxable year and (v) the inclusion of the Interest Portion in the determination of the taxability of certain Social Security and Railroad Retirement benefits to certain recipients of such benefits. The nature and extent of the other tax consequences described above will depend on the particular tax status and situation of each owner of the 2019 Certificates. Prospective purchasers of the 2019 Certificates should consult their own tax advisors as to the impact of these other tax consequences.

Special Counsel's opinions are based on existing law, which is subject to change. Such opinions are further based on factual representations made to Special Counsel as of the date thereof. Special Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Special Counsel's attention, or to reflect any changes in law that may thereafter occur or become effective. Moreover, Special Counsel's opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or the courts; rather, such opinions represent Special Counsel's professional judgment based on its review of existing law, and in reliance on the representations and covenants that it deems relevant to such opinion.

### **Original Issue Discount and Original Issue Premium**

Certain of the 2019 Certificates ("Discount Certificates") may be offered and sold to the public at an original issue discount ("OID"). OID is the excess of the stated redemption price at maturity (the principal amount) over the "issue price" of a Discount Certificate determined under Code Section 1273 or 1274 (i.e., for obligations issued for money in a public offering, the initial offering price to the public (other than to bond houses and brokers) at which a substantial amount of the obligation of the same maturity is sold pursuant to that offering). For federal income tax purposes, OID accrues to the owner of a Discount Certificate over the period to maturity based on the constant yield method, compounded semiannually (or over a shorter permitted compounding interval selected by the owner). The portion of OID that accrues during the period of ownership of a Discount Certificate (i) is interest excludable from the owner's gross income for federal income tax purposes to the same extent, and subject to the same considerations discussed above, as other interest on the 2019 Certificates, and (ii) is added to the owner's tax basis for purposes of determining gain or loss on the maturity, redemption, prior sale or other disposition of that Discount Certificate.

Certain of the 2019 Certificates ("Premium Certificates") may be offered and sold to the public at a price in excess of their stated redemption price (the principal amount) at maturity (or earlier for certain Premium Certificates callable prior to maturity). That excess constitutes bond premium. For federal income tax purposes, bond premium is amortized over the period to maturity of a Premium Certificate, based on the yield to maturity of that Premium Certificate (or, in the case of a Premium Certificate callable prior to its stated maturity, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on that Premium Certificate), compounded semiannually (or over a shorter permitted compounding interval selected by the owner). No portion of that bond premium is deductible by the owner of a Premium Certificate. For purposes of determining the owner's gain or loss on the sale, redemption (including redemption at maturity) or other disposition of a Premium Certificate, the owner's tax basis in the Premium Certificate is reduced by the amount of bond premium that accrues during the period of ownership. As a result, an owner may realize taxable gain for federal income tax

purposes from the sale or other disposition of a Premium Certificate for an amount equal to or less than the amount paid by the owner for that Premium Certificate.

Owners of Discount and Premium Certificates should consult their own tax advisors as to the determination for federal income tax purposes of the amount of OID or bond premium properly accruable or amortizable in any period with respect to the Discount or Premium Certificates and as to other federal tax consequences, and the treatment of OID and bond premium for purposes of state and local taxes on, or based on, income.

### **Changes in Federal and State Tax Law**

From time to time, there are legislative proposals suggested, debated, introduced or pending in congress or in the State legislature that, if enacted into law, could alter or amend one or more of the federal tax matters, or state tax matters, respectively, described above including, without limitation, the excludability from gross income of the Interest Portion, adversely affect the market price or marketability of the 2019 Certificates, or otherwise prevent the holders from realizing the full current benefit of the status of the Interest Portion. It cannot be predicted whether or in what form any such proposal may be enacted, or whether, if enacted, any such proposal would affect the 2019 Certificates. Prospective purchasers of the 2019 Certificates should consult their tax advisors as to the impact of any proposed or pending legislation.

### **Information Reporting and Backup Withholding**

Interest paid on tax-exempt obligations such as the 2019 Certificates is subject to information reporting to the Internal Revenue Service in a manner similar to interest paid on taxable obligations. This reporting requirement does not affect the excludability of the Interest Portion from gross income for federal income tax purposes. However, in conjunction with that information reporting requirement, the Code subjects certain non-corporate owners of the 2019 Certificates, under certain circumstances, to “backup withholding” at the rates set forth in the Code, with respect to payments on the 2019 Certificates and proceeds from the sale of the 2019 Certificates. Any amount so withheld would be refunded or allowed as a credit against the federal income tax of such owner of the 2019 Certificates. This withholding generally applies if the owner of the 2019 Certificates (i) fails to furnish the payor such owner’s social security number or other taxpayer identification number (“TIN”), (ii) furnished the payor an incorrect TIN, (iii) fails to properly report interest, dividends, or other “reportable payments” as defined in the Code, or (iv) under certain circumstances, fails to provide the payor or such owner’s securities broker with a certified statement, signed under penalty of perjury, that the TIN provided is correct and that such owner is not subject to backup withholding. Prospective purchasers of the 2019 Certificates may also wish to consult with their tax advisors with respect to the need to furnish certain taxpayer information in order to avoid backup withholding.

### **RATING**

S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC (“S&P”), has assigned a rating of “\_\_\_” to the 2019 Certificates. Such rating reflects only the view of S&P, and any desired explanation of the significance of this rating should be obtained from the rating agency at the following address: S&P at One California Street, 31<sup>st</sup> Floor, San Francisco, California 94111. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. The rating may subsequently be revised downward or withdrawn entirely by S&P if in its judgment, circumstances so warrant. Any subsequent downward revision or withdrawal of such rating may have an adverse effect on the market price and marketability of the 2019 Certificates. The City has covenanted in its continuing disclosure undertaking that it will file notice of any formal change in any ratings relating to the 2019 Certificates. See “CONTINUING DISCLOSURE” and APPENDIX F – “FORM OF CONTINUING DISCLOSURE UNDERTAKING” herein.

### **UNDERWRITING**

The 2019 Certificates are being purchased by Piper Jaffray & Co. (the “Underwriter”). The Underwriter has agreed to purchase from the City the 2019 Certificates at an aggregate purchase price of \$ \_\_\_\_\_ pursuant to a certificate purchase agreement between the City and the Underwriter. The aggregate purchase price reflects compensation to the Underwriter of \$ \_\_\_\_\_. The 2019 Certificates may be offered and sold to certain dealers (including the

Underwriter and other dealers depositing 2019 Certificates into investment trusts) at prices lower than the public offering prices stated on the inside front cover page hereof, and such public offering prices may be changed, from time to time, by the Underwriter. The Underwriter's obligations are subject to certain conditions precedent, and the Underwriter will be obligated to purchase all of the 2019 Certificates if any 2019 Certificates are purchased.

The Underwriter has entered into a distribution agreement ("Distribution Agreement") with Charles Schwab & Co., Inc. ("CS&Co") for the retail distribution of certain securities offerings, including the 2019 Certificates at the original issue prices. Pursuant to the Distribution Agreement, CS&Co will purchase the 2019 Certificates from the Underwriter at the original issue price less a negotiated portion of the selling concession applicable to any 2019 Certificates that CS&Co sells.

## **RELATIONSHIP AMONG PARTIES**

Special Counsel has and continues to represent the Underwriter with respect to financings other than for the City and will continue to do so if requested in the future. Special Counsel has also previously acted as bond counsel or special counsel with respect to other obligations underwritten by the Underwriter and will continue to do so if requested in the future. Underwriter's Counsel has also previously acted as bond counsel or underwriter's counsel with respect to other obligations underwritten by the Underwriter and will continue to do so if requested in the future.

## **CONTINUING DISCLOSURE**

As the "obligated person" with respect to the 2019 Certificates, the City will covenant for the benefit of certain owners of the 2019 Certificates to provide certain financial information and operating data relating to the City by no later than February 1 in each year commencing February 1, 2020 (the "Annual Reports"), and to provide notices of the occurrence of certain enumerated events (the "Notices of Listed Events"). The Annual Reports and the Notices of Listed Events will be filed with the Municipal Securities Rulemaking Board through its Electronic Municipal Markets Access System ("EMMA"). The specific nature of the information to be contained in the Annual Reports and the Notices of Listed Events and the method of dissemination through EMMA are set forth in APPENDIX F — "CONTINUING DISCLOSURE UNDERTAKING," attached hereto. These covenants have been made in order to assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) (the "Rule"). A failure by the City to comply with these covenants must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the 2019 Certificates in the secondary market. Also, pursuant to Arizona law the ability of the City to provide information pursuant to such covenants will be subject to annual appropriation of funds to cover the costs of, among other things, preparing and transmitting the Annual Reports and the Notices of Listed Events. Should the City not comply with such covenants due to a failure to appropriate, the City has covenanted to provide notice of such fact through EMMA. Absence of continuing disclosure due to a failure to comply with any such covenants or such non-appropriation could adversely affect the 2019 Certificates and specifically their market price and liquidity.

The City previously entered into continuing disclosure undertakings (the "Prior Undertakings") in connection with the issuance of certain bonds, which require the filing on or before February 1 of each year of audited financial statements and annual updates with respect to certain financial information and operating data related to the City (collectively, the "Prior Annual Report"). Until March 22, 2016, the Prior Annual Report with respect to the fiscal year ended June 30, 2015 was not associated with the nine-digit CUSIP numbers for the City's Refunding Certificates of Participation, Series 12 relating to the Arizona Municipal Financing Program. For fiscal years ending June 30, 2014 and June 30, 2015, certain information required by the Prior Undertakings was filed but not presented in the same format as within the official statements. The City did not file notices of the failure to provide the Prior Annual Report. The City did not provide a separate notice of defeasance in connection with the advance refunding in part of its General Obligation Bonds, Projects of 2004, Series A (2006). The correctly formatted data was filed on EMMA on March 22, 2016 and May 26, 2016. The City has implemented procedures to facilitate compliance with the Prior Undertakings, the continuing disclosure undertaking related to the Bonds and future similar undertakings in all material respects.

## FINANCIAL ADVISOR

The Financial Advisor's fee for services rendered with respect to the sale of the 2019 Certificates is contingent upon the execution and delivery of the 2019 Certificates. The Financial Advisor has not verified, and does not assume any responsibility for, the information, covenants and representations contained in any of the legal documents with respect to the federal income tax status of the 2019 Certificates, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

The Financial Advisor has provided the following sentence for inclusion in this Official Statement: "The Financial Advisor has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to the City and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Financial Advisor does not guarantee the accuracy or completeness of such information."

## FINANCIAL STATEMENTS

The financial statements of the City as of June 30, 2018 and for its fiscal year then ended, which are included as APPENDIX C of this Official Statement, have been audited by CliftonLarsonAllen LLP, as stated in their opinion which appears in APPENDIX C – "THE CITY – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018." The City neither requested nor obtained the consent of CliftonLarsonAllen LLP to include their report and CliftonLarsonAllen LLP has performed no procedures subsequent to rendering their opinion on the financial statements.

**THE FINANCIAL STATEMENTS INCLUDED IN APPENDIX C OF THIS OFFICIAL STATEMENT ARE CURRENT AS OF THEIR DATE ONLY AND MAY NOT REPRESENT THE CURRENT FINANCIAL CONDITION OF THE CITY.**

## CONCLUDING STATEMENT

The descriptions of certain provisions of the 2019 Certificates and the Financing Documents contained herein, and all references to other materials, are only brief descriptions of certain provisions thereof and do not constitute complete statements of such documents or provisions. Reference is hereby made to the complete documents for further information, copies of which are available as set forth under "INTRODUCTION" herein. Any statements made in this Official Statement involving matters of opinion or estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of such opinions or estimates will be realized.

The attached Appendices are integral parts of this Official Statement and must be read together with all of the foregoing.

The execution and delivery of this Official Statement have been duly authorized and approved by the City.

**CITY OF FLAGSTAFF, ARIZONA**

By: \_\_\_\_\_  
Management Services Director

**APPENDIX A**

**CITY OF FLAGSTAFF, ARIZONA  
DEMOGRAPHIC AND ECONOMIC INFORMATION**

***THE 2019 CERTIFICATES WILL BE PAYABLE ONLY FROM AND SECURED BY THE AMOUNTS DESCRIBED UNDER THE HEADINGS “SOURCES OF PAYMENT OF THE 2019 CERTIFICATES” AND “SECURITY FOR THE 2019 CERTIFICATES.” THE 2019 CERTIFICATES WILL NOT BE A GENERAL OBLIGATION OF THE CITY.***

**General**

The City is northern Arizona’s principal population, commerce and education center. The City is situated in a mountainous region at an elevation of 7,000 feet. At the base of the San Francisco Peaks, including Mount Humphreys (the highest point in the State with an elevation of 12,670 feet), the City is known for its proximity to such Arizona attractions as the Grand Canyon, Wupatki National Monument, Sunset Crater, Walnut Canyon, Oak Creek Canyon and Meteor Crater.

The City was originally founded in the late 1800’s as a work camp for construction crews working on the transcontinental railroad. It was incorporated as a town in 1894 and as a city in 1928. It has served as the county seat for Coconino County, Arizona (the “County”), since 1891.

Listed below are U.S. Census population figures for the City, the County and the State.

**POPULATION STATISTICS**

	<u>City of Flagstaff</u>	<u>Coconino County</u>	<u>State of Arizona</u>
2018 Estimated (a)	74,736	145,564	7,076,199
2010 Census	65,870	134,421	6,392,017
2000 Census	52,894	116,320	5,130,632
1990 Census	45,857	96,591	3,665,228
1980 Census	34,743	75,008	2,716,633
1970 Census	26,117	48,326	1,775,399

(a) *Estimates as of July 1, 2018 (data released December 2018).*

Source: Arizona Office of Economic Opportunity, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

**Municipal Government**

The City operates under a Council-Manager form of government as provided by its Charter, which was originally adopted on October 3, 1958. The City Council is comprised of a Mayor and six Council members. The Council members are elected on a non-partisan ballot for four-year staggered terms while the Mayor is elected at large for a two-year term. The Mayor and Council members have equal voting power. The Council is responsible for policy-making, as well as making appointments to advisory boards, commissions and committees. It also appoints Municipal Court Judges and the City Attorney. Additionally, the City Council hires the City Manager who has full responsibility for carrying out Council policies and administering City operations. The City Manager in turn appoints City employees and department heads under civil service procedures as specified in the Charter.

**Economy**

The economy of the City is based primarily on government, small and medium-sized manufacturing, the service industry, trade and tourism. As the home of Northern Arizona University (“NAU”), the City is a center of educational, governmental and scientific employment and is becoming a center for research and development as well as the distribution and manufacturing of high technology products. The location of the City at the junction of Interstates 40 and 17, plus the close proximity of seven national parks and monuments, makes tourism a major source of employment and a strong contributor to the revenue base of the City. In addition, the City serves as the major trade and service center for a wide area of northern Arizona.

The table below sets forth the major employers in the City.

**MAJOR EMPLOYERS  
City of Flagstaff, Arizona**

<b>Employer</b>	<b>Product/Service</b>	<b>Approximate Employment</b>
Northern Arizona University	Education	2,570
Flagstaff Medical Center	Healthcare	2,200
W.L. Gore & Associates	Medical Equipment Manufacturing	1,950
Flagstaff Unified School District	Education	1,375
Coconino County	Government	1,200
City of Flagstaff	Government	950
Wal-Mart	Retail	630
Grand Canyon Railways	Lodging and Travel	500
North Country Healthcare	Healthcare	345
Nestle Purina	Distribution Center	240

Source: City of Flagstaff, 2018 Comprehensive Annual Financial Report.

The table below sets forth the unemployment rate averages for the City, the County, the State and the United States for the years indicated.

**UNEMPLOYMENT RATE AVERAGES**

<b>Year</b>	<b>United States</b>	<b>State of Arizona</b>	<b>Coconino County</b>	<b>City of Flagstaff</b>
2019 (a)	4.5%	4.9%	5.9%	4.5%
2018	3.9	4.8	5.5	3.9
2017	3.9	4.9	5.5	3.9
2016	4.2	5.3	6.0	4.2
2015	5.3	6.0	6.5	4.5
2014	6.2	6.4	7.1	5.1

(a) Data through July 2019.

Source: Arizona Office of Economic Opportunity, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

The table below shows a comparison of the changes in annual average employment levels in the various non-agriculture sectors of the County for calendar years 2014 into 2019.

**LABOR FORCE AND NONFARM EMPLOYMENT  
Coconino County, Arizona**

	<b>2019 (a)</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
Mining and construction	2,600	2,500	2,400	2,300	2,200	2,100
Manufacturing	4,500	4,400	4,300	4,400	4,300	4,300
Trade, transportation, and utilities	9,200	9,600	9,500	9,800	10,000	10,000
Information	400	400	500	400	400	400
Financial activities	1,400	1,400	1,400	1,400	1,300	1,200
Professional and business services	3,500	3,400	3,100	3,100	3,200	3,000
Educational and health services	9,300	9,300	9,500	9,600	9,400	9,200
Leisure and hospitality	15,600	15,400	1,500	14,000	13,200	13,100
Other Services	1,600	1,700	1,700	1,800	1,800	1,600
Government	19,500	20,100	19,800	19,600	19,700	19,700
	<u>67,600</u>	<u>68,200</u>	<u>53,700</u>	<u>66,400</u>	<u>65,500</u>	<u>64,600</u>

(a) Data through July 2019.

Source: Arizona Office of Economic Opportunity, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

**Commerce**

The following table illustrates the past five years of sales tax collections.

**SALES TAX COLLECTIONS  
City of Flagstaff, Arizona  
(\$000s omitted)**

Fiscal Year	Amount
2018/19(a)	\$20,508
2017/18	21,128
2016/17	21,174
2015/16	19,090
2014/15	17,845

(a) Preliminary estimates, unaudited.

Source: The Comprehensive Annual Financial Reports for the City and the City.

**Tourism**

Flagstaff is located near such tourist attractions as the Grand Canyon, the Glen Canyon Dam and Lake Powell, Sunset Crater, Walnut Canyon, and the scenic recreational attraction of Oak Creek Canyon. Located near Flagstaff are various United States Forest Service park areas for camping, stream and lake fishing, swimming, water skiing and hunting. Snow-skiing is available in the winter at the Arizona Snowbowl, a few miles north of Flagstaff. Annual summer festivities in Flagstaff include an art, music, and theater festival. The J. Lawrence Walkup Skydome at NAU, with a seating capacity of 16,000, can be adapted to a variety of events including football, basketball, ice hockey, badminton, volleyball, track, intramurals, and cultural and entertainment events.

The following table sets forth the number of visitors to selected national parks and monuments which are located near Flagstaff.

**TOURISM STATISTICS BY NUMBER OF VISITORS**

Calendar Year	Grand Canyon National Park	Montezuma Castle National Monument	Sunset Crater National Monument	Walnut Canyon National Monument	Wupatki National Monument
2019 (a)	2,714,018	201,090	54,415	74,854	78,411
2018	6,380,495	390,151	104,583	167,736	205,122
2017	6,254,238	398,174	119,454	165,134	236,454
2016	5,969,811	392,170	106,809	152,444	223,172
2015	5,520,736	416,635	182,203	153,322	212,828
2014	4,756,771	407,017	176,723	135,230	195,962

(a) Data through June 2019.

Source: Arizona Office of Tourism.

## APPENDIX B

### CITY OF FLAGSTAFF, ARIZONA - FINANCIAL INFORMATION

***THE 2019 CERTIFICATES WILL BE PAYABLE ONLY FROM AND SECURED BY THE AMOUNTS DESCRIBED UNDER THE HEADINGS “SOURCES OF PAYMENT OF THE 2019 CERTIFICATES” AND “SECURITY FOR THE 2019 CERTIFICATES.” THE 2019 CERTIFICATES WILL NOT BE A GENERAL OBLIGATION OF THE CITY.***

#### **Introduction**

The City’s fiscal year is from July 1 through June 30. City budgeting for a fiscal year formally begins with the preparation of a proposed budget for submission to the City Council for tentative adoption in early June of each year. After publication of the budget and a public hearing, a final budget is adopted for the upcoming fiscal year. The budget must contain detailed information concerning the sums required to be expended for each purpose and the City’s tax levy is then set based on the adopted figures.

#### **Expenditure Limitation**

Beginning in fiscal year 1982/83, the City became subject to the annual expenditure limitation which is set by the Arizona Economic Estimates Commission. This limitation is based on the City’s annual expenditures for fiscal year 1979/80, with this base adjusted to reflect interim population, cost of living and boundary changes. Certain expenditures are specifically exempt from the limit, including expenditures made from federal funds and bond sale proceeds, as well as debt service payments. The limitations can be exceeded for certain emergency expenditures or if approved by the voters. The constitutional provisions that relate to the expenditure limitation provide four processes to exceed the spending limit: a local home rule option, a permanent base adjustment, a one-time override, and a capital project accumulation.

Since the inception of expenditure limitations, the City has not exceeded its limitation in any fiscal year.

#### **Budget Process**

The annual budget serves as the foundation for the City’s financial planning and control. The City Council formally adopts the budget and legally allocates, or appropriates, available monies for all funds and entities related to the City. All of these funds and entities are included in the basic financial statements. The City Manager submits to the Council each spring a proposed budget for the fiscal year commencing the following July 1. The budget includes proposed expenditures and the means of financing them. Two public hearings are held prior to the budget’s final adoption in order to obtain taxpayer comments. The budget is legally enacted through the passage of a resolution. The resolution sets the limit for expenditures during the fiscal year. The legal level of control for the budget is the division level. Additional expenditures may be authorized for unanticipated and/or inadequately budgeted events threatening the public health or safety as prescribed in the State Constitution, Article 9, Section 20.

The City’s financial plan requires many elements working in concert with one another. Some of these financial plan elements are financial resource planning, multi-year budget planning, strategic capital improvement project planning, and financial policy impacts, all of which are further identified below.

*Financial Resource Planning* – Strategic financial planning begins with determining the City’s fiscal capacity based upon long-term financial forecasts of recurring available revenues. Financial forecasts coupled with financial trend analysis help preserve the fiscal well-being of the City. Strategic financial capacity planning is a critical element to reach long-term financial stability goals and to determine special financial needs for critical objectives of the City Council.

*Multi-Year Budget Planning* – Multi-year budget planning encompasses long-range operating expenditure plans (including the operating impacts of capital projects), which are linked to the community expectations and broad goals

of the City Council. The multi-year approach provides a better opportunity for staff to change its financial paradigm from what do we need this year to how do we accomplish our service objectives over-time, given our financial capacity.

While the City is required to adopt an annual budget to meet State statutory requirements, the City builds a financial plan for five years to help anticipate future impacts and ensure achievement of City objectives within limited or decreasing resources.

*Strategic Capital Improvement Project Planning* – The City’s Capital Improvement Projects are planned for five or more years and analyzed using City specific prioritization criteria. The operating cost impacts of projects are also planned and considered in developing future operating budget plans. Projects with significant operating impacts are carefully timed to avoid contingent liabilities, which future operating resources cannot meet. Pay-as-you-go funding sources are also conservatively estimated to avoid over-committing to capital construction using revenues that are not certain. To the extent debt financing is used and/or required, capital project plans are sized to conform to existing debt management policies.

*Financial Policy Planning* – The City’s financial policies dictate minimum fund balance levels for the General, Special Revenue, and Enterprise Funds. The General Fund is required to maintain a fund balance of 15% of ongoing revenues and special revenue and enterprise funds are to maintain a 10% fund balance, as calculated against ongoing revenues. The City had a 15% fund balance in FY 2013 and made a commitment to increase the fund balance to 20% over the next few years. Since FY 2015, the City has adopted a General Fund budget with an excess of 20% fund balance in the five-year plan.

#### **Financial Reports and Examination of Accounts**

State law requires that the City’s financial books and records be audited by independent auditors, on an annual basis. Annually, independent certified public accountants audit the financial records as required by State law and the City’s Charter. See APPENDIX C – “THE CITY – AUDITED ANNUAL FINANCIAL STATEMENTS FOR FISCAL YEAR ENDED JUNE 30, 2018” for the financial statements from the City’s June 30, 2018, Comprehensive Annual Financial Report. The City received a Certificate of Achievement for Excellence in Financial Reporting from GFOA for its 2018 Comprehensive Annual Financial Report as well as in each of the 25 preceding years.

**TABLE 2**

**Current Year Statistics (For Fiscal Year 2019/20)  
City of Flagstaff, Arizona**

Total General Obligation Bonds Outstanding	\$45,619,491*(a)
Certificates of Participation Outstanding and to be Outstanding	7,370,000*(b)
Water and Wastewater Revenue Obligations Outstanding	33,864,696
Excise Tax and/or State Shared Revenue Supported Debt Outstanding	21,180,000
Net Limited Assessed Property Value	868,806,647
Net Full Cash Assessed Value	1,010,133,933
Estimated Net Full Cash Value	8,397,908,073(c)

- 
- (a) *Represents all general obligation bonded debt outstanding and to be outstanding after issuance of the General Obligation Bonds, Series 2019, which are expected to be issued by the City concurrently with the 2019 Certificates pursuant to a separate official statement.*
- (b) *Represents all certificates of participation outstanding and to be outstanding after issuance of the 2019 Certificates.*
- (c) *Estimated net full cash value is the total market value of the property less unsecured personal property and less estimated exempt property within the City, as projected by the Arizona Department of Revenue, Division of Property and Special Taxes.*

Source: *State and County Abstract of the Assessment Roll, Arizona Department of Revenue, Property Tax Rates and Assessed Values, Arizona Tax Research Association, the City and Assessor of the County.*

**TABLE 3**

**Direct General Obligation Bonded Debt Outstanding and to be Outstanding  
City of Flagstaff, Arizona**

Issue Series	Original Amount	Purpose	Final Maturity Date (July 1)	Balance Outstanding
2011	\$ 12,845,000	Various Purposes	2020	\$ 1,465,000
2011	1,633,828	Water System	2031	1,091,795(a)
2011	3,952,287	Public Safety Communications	2021	882,696
2013	11,460,000	Various Purposes	2028	7,460,000
2014A	6,600,000	Various Purposes	2034	5,345,000
2014B	8,270,000	Refunding	2021	4,305,000
2016	16,105,000	Various Purposes	2036	14,345,000
Total General Obligation Bonded Debt Outstanding				\$34,894,491
Plus: The General Obligation Bonds, Series 2019				10,725,000* (b)
Total General Obligation Bonded Debt Outstanding and to be Outstanding (c)				<u>\$45,619,491* (d)</u>

- (a) *The City has paid and may continue to pay the debt service requirements on these general obligation bonds from water and sewer system revenues which remain after payment of operation and maintenance expenses of the system and revenue bond debt service. In the event that these net revenues should prove insufficient, or should the City decide not to pay such general obligation bonds from such net revenues, such general obligation bonds would then be paid from ad valorem taxes.*
- (b) *The City expects to offer its General Obligation Bonds, Series 2019 concurrently with the 2019 Certificates pursuant to a separate official statement.*
- (c) *Does not include the approximate amount of \$6,000,000 of a loan agreement with WIFA that the City expects to enter into in the first quarter of 2020.*
- (d) *Does not include premium on the City's General Obligation Bonds, Series 2016 or the Series 2019 Bonds, which has been deposited for project cost use, and such amount reduces in equal amount the borrowing capacity of the City under State statutes and the Arizona Constitution and the principal amount of general obligation bonds authorized. Such capacity (but not authorization) will be recaptured as premium is amortized.*

**TABLE 4****Certificates of Participation Outstanding and to be Outstanding**

Issue Series	Original Amount	Purpose	Final Maturity Date (July 1)	Balance Outstanding and to be Outstanding
2018	\$3,880,000	Core Maintenance Facility	2043	\$ 3,795,000
Total Certificates of Participation Bonded Debt Outstanding				\$ 3,795,000
Plus: The 2019 Certificates				3,575,000*
Total Certificates of Participation Bonded Debt Outstanding and to be Outstanding				<u>\$ 7,370,000*</u>

**TABLE 5****Water and Wastewater Revenue Obligations Outstanding**

The following chart lists the water and wastewater revenue obligations of the City that are currently outstanding. The City's financial obligations are through loan agreements with the Water Infrastructure Finance Authority of Arizona, a State revolving fund. Also see footnote (a) to TABLE 3.

Issue Series	Original Amount	Purpose	Final Maturity Date (July 1)	Balance Outstanding
2007	\$23,100,000	Sewer Treatment Plant Improvements	2027	\$ 2,230,604
2008	8,500,000	Water Production Improvements & Acquisition	2028	4,608,778
2009	2,100,000	Water Feasibility Study	2029	1,209,666
2009	232,500	Well Improvements	2029	132,782
2009	1,100,000	Local Aquifer Study	2029	630,785
2010	594,950	Well Improvements Infrastructure	2029	302,081
2017	17,129,000	Utility System Refunding	2027	15,165,000
2019	9,585,000	Water and sewer improvements	2034	9,585,000
Total Water and Wastewater Revenue Obligations Outstanding				<u>\$33,864,696</u>

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\* Preliminary, subject to change.

**TABLE 6**

The City of Flagstaff Municipal Facilities Corporation (“MFC”) is an Arizona nonprofit corporation formed in January 1979. Debt secured by excise taxes and/or state shared revenues for which the City has primary repayment responsibility is shown below.

**Excise Tax and/or State Shared Revenue Supported Debt and to be Outstanding**

Issue Series	Original Amount	Purpose	Final Maturity Date (July 1)	Balance Outstanding and to be Outstanding
2010A	\$ 3,370,000	Construction of Business Incubator	2030	\$ 2,140,000(a)
2012	12,530,000	MFC Refunding	2020	2,165,000(b)
2016	3,370,000	Road Repair/Street Improvement Projects	2032	7,535,000
2018	9,700,000	Road Repair/Street Improvement Projects	2034	9,340,000
Total Excise Tax and/or State Shared Revenue Supported Debt Outstanding				<u>\$21,180,000</u>

- (a) *Under a loan agreement with the Greater Arizona Development Authority (“GADA”), the City has agreed to make semi-annual payments equal to the principal and interest on the GADA loan. The City has pledged state shared revenues to the payment of the GADA loan.*
- (b) *Under an agreement with the MFC, the City has agreed to make semi-annual rent payments equal to the principal and interest on the MFC’s bonds. The City has pledged certain transportation excise taxes to the payment of the MFC’s bonds.*

**TABLE 7**

**Other Obligations  
City of Flagstaff, Arizona**

The City has entered into lease agreements that generally require annual payments and the lease terms vary from 5 to 21 years. The lease agreement amounts outstanding are listed as follows: capital lease agreement for renewable energy solar equipment related to governmental activities of \$699,679, heart monitors of \$42,752, copy machine of \$81,271 and parking meter assets of \$770,332. Capital lease agreements related to business-type activities consist of airport hangars of \$1,084,510, renewable energy solar equipment of \$1,335,446 and a compactor of \$560,956.

The lease agreements qualify as capital leases for accounting purposes and, therefore have been recorded at the present value of their future minimum lease payments as of the date of inception.

<u>Year Ending June 30</u>	<u>Government Activities</u>	<u>Business-type Activities</u>
2020	\$276,628	\$557,873
2021	232,592	559,093
2022	230,773	560,363
2023	204,122	557,555
2024	204,839	403,164
2025-2029	642,483	793,280
Total future minimum lease payments	<u>\$1,791,437</u>	<u>\$3,431,328</u>
Less: interest costs	<u>(197,403)</u>	<u>(450,416)</u>
Present value of future minimum lease payments	<u><u>\$1,594,034</u></u>	<u><u>\$2,980,912</u></u>

## CITY EMPLOYEE RETIREMENT SYSTEM

### Pension and Retirement Plans / Other Post-Employment Benefits

The City contributes to the retirement plans described below and as referenced starting on page 76 in APPENDIX C – “CITY OF FLAGSTAFF, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018.” Benefits are established by State statute and generally provide retirement, death, long-term disability, survivor and health insurance premium benefits. The City and its members contribute to the following retirement systems: the Arizona State Retirement System (“ASRS”), the Public Safety Personnel Retirement System (“PSPRS”) and the Elected Officials Retirement Plan (“EORP”).

#### The Arizona State Retirement System

ASRS is a cost-sharing multiple-employer defined benefit pension plan, a cost-sharing multiple-employer defined benefit health insurance premium benefit plan, and a cost-sharing multiple-employer defined benefit long-term disability plan for approximately 600,000 Arizona public employees including qualified employees of the State, municipal governments, counties and K-12 education agencies. ASRS has reported increases in its unfunded liabilities. The most recent annual reports for the ASRS may be accessed at: <https://www.azasrs.gov>. The increase in ASRS’ unfunded liabilities is expected to result in increased future annual contributions to ASRS by the City and its employees.

The table below shows recent actuarially determined contribution rates that the active ASRS members and the City are/were required to contribute, the plan’s funded status and the pension contributions under the plan.

<u>Fiscal year ended</u>	<u>Retirement and Health Insurance Premiums</u>	<u>Long-term Disability</u>	<u>Total Contribution Rate</u>	<u>Funded Status</u>	<u>Pension Contribution</u>
June 30, 2020	11.94%	0.17%	12.11%	unavailable	unavailable
June 30, 2019	11.64	0.16	11.80	unavailable	unavailable
June 30, 2018	11.34	0.16	11.50	71.2%	\$3,478,329
June 30, 2017	11.34	0.14	11.48	70.5	3,357,591
June 30, 2016	11.35	0.12	11.47	77.6	3,168,876

#### Statutory Changes and Court Decisions Regarding the PSPRS and EORP

PSPRS and EORP are all operated under the umbrella of the Public Safety Personnel Retirement System and the Public Safety Personnel Retirement System Board of Trustees. Since 2011 there have been various modifications designed to mitigate increasing unfunded liabilities in the programs. Some of these modifications were enacted by the Arizona Legislature; some changes resulted from successful court challenges to those statutory changes; and other changes were implemented by voter approved amendments to the State Constitution. Substantively, the modifications have included changes to contribution rates, retirement criteria, funding horizons, retirement benefits and post-retirement benefit increase calculations.

#### The Public Safety Personnel Retirement System

PSPRS is an agent multiple-employer defined benefit pension plan and an agent multiple employer defined benefit health insurance premium benefit plan that covers public safety personnel who are regularly assigned to hazardous duties for which the Arizona State Legislature establishes active plan members’ contribution rates. PSPRS has reported increases in its unfunded liabilities. The most recent annual reports for the PSPRS may be accessed at <http://www.psprs.com>. The increase in the PSPRS’s unfunded liabilities is expected to result in increased future annual contributions to PSPRS by the City and its public safety employees, however the specific impact on the City, or on the City’s and its employees’ future annual contributions to the PSPRS, cannot be determined at this time.

As presented in the table below, PSPRS active membership is comprised of three separate “tiers” based on date of hire which are shown in the following table.

Tier 1 Members  
Hired into PSPRS position before  
January 1, 2012

Tier 2 Members  
Hired into PSPRS position on or  
after January 1, 2012 and  
before July 1, 2017

Tier 3 Members  
Hired into PSPRS position on or  
after July 1, 2017

Among other differences, the tiers vary in terms of employee contribution rate, retirement eligibility, and post retirement cost of living adjustment eligibility. Additionally, in lieu of the defined benefit program, there is a defined contribution option available to Tier 3 members and a hybrid defined benefit/defined contribution program for certain Tier 2 and Tier 3 members.

The employee retirement contribution rate for Tier 1 members is 7.65% of member compensation; with the exception of Tier 1 members hired from July 20, 2011 through December 31, 2011 who are subject to the same employee contribution rate as Tier 2 members. The Tier 2 employee rate is the lower of 11.65% of member compensation or 33.3% of the sum of the prior year employee contribution rate and the computed employer contribution rate. This employee contribution rate has a floor of 7.65%. For Tier 3 members, the annual contribution rate is determined actuarially and split evenly between employer and employee. This actuarial contribution rate is determined individually for the largest employers and as a consolidated pool for the remaining employers as a group.

The following table shows the actuarially determined annual employer contribution rates, funded status and total audited contribution amounts for the plan.

**Police**

	Fiscal Year Ended				
	6/30/2020	6/30/2019	6/30/2018	6/30/2017	6/30/2016
<u>Contribution Rates</u>					
Tier 1/2 Defined Benefit Employer (a)	48.09%	59.28%	54.73%	44.83%	43.29%
Tier 1 Defined Benefit Employee	7.65%	7.65%	7.65%	7.65%	7.65%
Tier 2 Defined Benefit Employee (a)(b)	11.65%	11.65%	11.65%	N/A	N/A
Tier 3 Defined Benefit Employer (a)(c)	46.10%	57.07%	49.74%	N/A	N/A
Tier 3 Defined Benefit Employee (a)	9.94%	9.94%	9.94%	N/A	N/A
Tier 3 Defined Contribution Employer (c)	46.67%	57.64%	50.35%	N/A	N/A
Tier 3 Defined Contribution Employee	10.51%	10.51%	10.55%	N/A	N/A
Pension Funded Status	N/A	N/A	38.4%	38.1%	37.4%
Health Funded Status	N/A	N/A	110.2%	113.7%	111.9%
Total City (Employer) Pension and Contribution	N/A	N/A	\$3,675,844	\$3,648,822	\$3,483,157

- (a) Not applicable for Tier 2 for fiscal years prior to Fiscal Year 2018. Does not include additional contribution percentage of 3% associated with Tier 2 defined benefit (“DB”) members additionally participating in the defined contribution (“DC”) plan. Employer rate is 4% for Tier 2 members for a period of time depending on the individual’s membership date.
- (b) Tier 2 employees contribute a maximum of 11.65%, but statutory requirements dictate only 7.65% is applied toward employer costs.
- (c) The amortization of unfunded liabilities for Tier 1 and Tier 2 is applied to the payroll for employees in all tiers, including Tier 3, on a level percent basis.

**Fire**

	Fiscal Year Ended				
	6/30/2020	6/30/2019	6/30/2018	6/30/2017	6/30/2016
<u>Contribution Rates</u>					
Tier 1/2 Defined Benefit Employer (a)	83.03%	84.17%	75.11%	70.05%	67.71%
Tier 1 Defined Benefit Employee	7.65%	7.65%	7.65%	7.65%	7.65%
Tier 2 Defined Benefit Employee (a)(b)	11.65%	11.65%	11.65%	N/A	N/A
Tier 3 Defined Benefit Employer (a)(c)	78.99%	80.08%	68.34%	N/A	N/A
Tier 3 Defined Benefit Employee (a)	9.94%	9.94%	9.94%	N/A	N/A
Tier 3 Defined Contribution Employer (c)	79.56%	80.65%	68.95%	N/A	N/A
Tier 3 Defined Contribution Employee	10.51%	10.51%	10.55%	N/A	N/A
Pension Funded Status	N/A	N/A	35.2%	35.5%	37.1%
Health Funded Status	N/A	N/A	174.1%	171.4%	168.1%
Total City (Employer) Pension and Contribution	N/A	N/A	\$3,755,920	\$4,107,600	\$3,769,503

- (a) Not applicable for Tier 2 for fiscal years prior to Fiscal Year 2018. Does not include additional contribution percentage of 3% associated with Tier 2 defined benefit (“DB”) members additionally participating in the defined contribution (“DC”) plan. Employer rate is 4% for Tier 2 members for a period of time depending on the individual’s membership date.
- (b) Tier 2 employees contribute a maximum of 11.65%, but statutory requirements dictate only 7.65% is applied toward employer costs.
- (c) The amortization of unfunded liabilities for Tier 1 and Tier 2 is applied to the payroll for employees in all tiers, including Tier 3, on a level percent basis.

**The Elected Officials Retirement Plan (“EORP”)** is a cost-sharing multiple-employer defined benefit pension plan and a cost-sharing, multiple-employer defined benefit health insurance premium plan that covers elected officials and judges of certain state and local governments. The EORP is governed by the same Board of Trustees that manages the PSPRS plan. As of January 1, 2014 EORP is closed to new members. Pursuant to Arizona statute, the annual contribution for active members of EORP is 13% of the members’ annual covered payroll. Additionally, the amount of the members’ contribution that exceeds 7% is not used to reduce the actuarially determined employer contribution.

As of July 1, 2018, pursuant to S.B. 1478 (2018 regular session), participating EORP employers are required to annually contribute at an actuarially determined employer contribution rate. The basis for the employer rate is the covered payroll for all eligible elected officials and eligible judges employed by the employer. The actuarially determined rate for 2019/20 is 61.43%. This amount is distributed to EORP, the Elected Officials Defined Contribution Retirement System (EODCRS) and the Arizona State Retirement (defined benefit) System (ASRS), depending on the retirement program in which each eligible employee participates. As a percent of covered payroll, the employer contribution, by statute, for EODCRS participating members is 6.00%; the employer contribution for ASRS participating members is 12.11% for fiscal year 2019/20; and all remaining employer contributions, up to the actuarially determined contribution rate of the covered payroll of all elected officials and eligible judges, are remitted to EORP. EORP is additionally funded each year with designated state and City court fees and a \$5,000,000 appropriation from the State general fund.

As referenced on page 90 in APPENDIX C of this Official Statement, the projection of cash flows of the plan assuming that plan member contributions will be made at the current contribution rate, employer contributions will be made at the statutorily set rates, and State contributions will be made as currently required by statute, the pension plan’s fiduciary net position was projected to be insufficient to make all projected future benefit payments of current plan members.

## **Potential Future State Legislation Affecting ASRS, PSPRS and EORP**

There are bills frequently introduced at sessions of the State Legislature that, if enacted, could impact the administration of the ASRS, PSPRS and EORP and the eligibility, timing and payment of benefits from such plans. The City is unable to determine whether any such bills will be enacted into legislation or in what form such legislation may be enacted and what the impact of any such legislation may be.

## **Other Post-Employment Retirement Benefits**

During the year ended June 30, 2018, the City implemented the provisions of GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* (“GASB 75”). The City is required to report the actuarially accrued cost of post-employment benefits, other than pension benefits (“OPEB”), such as health and life insurance for current and future retirees. GASB 75 addresses reporting by governments that provide OPEB by measuring and recognizing net assets or liabilities, deferred outflows of resources, deferred inflows of resources, and expenses/expenditures related to OPEB provided through defined benefit OPEB plan. Please refer to APPENDIX C of the Official Statement which includes the City’s audited financial statements and specifically “Note 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES.”

The City of Flagstaff provides post-retirement healthcare insurance benefits for its retirees as a single employer defined benefit OPEB plan which is administered through Northern Arizona Public Employee Benefit Trust (NAPEBT). Eligible retirees and their beneficiaries up to the age of 65 are allowed to participate in the same healthcare plan as active employees and pay the same premium for this benefit which results in an implicit rate subsidy. Even though the City makes no direct payments on behalf of the retirees the City is required to report this implicit cost for active employees who will be able to continue to purchase health insurance once they retire. Substantially, all the City’s employees may become eligible for those benefits when they qualify for retirement. To be eligible a retiree must qualify to receive retirement benefits from the Arizona State Retirement System and elect coverage at date of retirement. At June 30, 2018, the City reported a net OPEB liability of \$9,931,825. The net OPEB liability was measured as of June 30, 2017 and the total OPEB liability were determined from the actuarial valuations as of July 1, 2017. The City has chosen not to fund this plan; therefore, the total OPEB liability is the net OPEB liability.

## **Governmental Accounting Standards (“GASB”):**

The Governmental Accounting Standards Board adopted Governmental Accounting Standards Board Statement Number 68, *Accounting and Financial Reporting for Pensions* (“GASB 68”), which, beginning with fiscal years starting after June 15, 2014, requires cost-sharing employers to report their “proportionate share” of the plan’s net pension liability in their government-wide financial statements. GASB 68 also requires that the cost-sharing employer’s pension expense component include its proportionate share of the system’s pension expense, the net effect of annual changes in the employer’s proportionate share and the annual differences between the employer’s actual contributions and its proportionate share. Both the City and each covered employee contribute to the ASRS. As of June 30, 2018, the City reported a liability of \$48,706,334 for its proportionate share of the net pension liability under ASRS. The pension liability was measured as of June 30, 2017. Both the City and each covered employee contribute to the EORP. As of June 30, 2018, the City reported a liability of \$2,653,363 for its proportionate share of the net pension liability under EORP. The pension liability was measured as of June 30, 2017. See page 81 in APPENDIX C – “CITY OF FLAGSTAFF – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018” for further discussion of the City and its pension liability including the net pension liability associated with PSPRS.

*New Reporting Requirements* - Governmental Accounting Standards Board (“GASB”) Statement No. 67, *Financial Reporting for Pension Plans*, An Amendment of GASB Statement No. 25, is designed to improve financial reporting by state and local governmental pension plans. This statement replaces the requirements of Statements No. 25, *Financial Reporting for Defined Benefit Pension Plans* and *Note Disclosures for Defined Contribution Plans*, and No. 50, *Pension Disclosures*, as they relate to pension plans that are administered through trusts or equivalent arrangements (hereafter jointly referred to as trusts) that meet certain criteria.

## GENERAL FUND

Below are the City's general fund revenues, expenditures and changes in fund balance for the budgeted fiscal year 2019/20, estimated actuals for fiscal year 2018/19, and audited fiscal years 2013/14 through and including 2017/18. **THIS INFORMATION IS NOT INTENDED TO INDICATE FUTURE OR CONTINUING TRENDS OF THE FINANCIAL AFFAIRS OF THE CITY.**

	Budget (a)	Estimated Actuals (b)	Audited				
	2019/20	2018/19	2017/18	2016/17	2015/16	2014/15	2013/14
FUND BALANCE AT BEGINNING OF YEAR	\$ 32,441,167	\$ 34,320,827(c)	\$ 40,464,781	\$ 38,919,713	\$ 33,621,090	\$ 31,762,789	\$ 28,748,008
REVENUES							
Taxes	32,273,857	30,794,252	29,837,919	29,377,513	27,306,792	\$ 25,908,705	\$ 25,100,084
Intergovernmental	21,129,105	20,118,373	20,074,740	19,294,534	18,214,988	17,574,331	16,516,056
Grants and entitlements	5,204,979	3,010,320	1,535,930	1,209,967	1,217,424	1,294,384	1,726,644
Charges for services	3,267,437	3,314,641	3,445,482	3,454,567	2,916,164	2,986,151	2,734,095
Licenses and permits	2,706,716	3,234,688	3,473,740	2,839,407	3,153,135	1,866,792	1,952,731
Fines and forfeitures	1,420,489	1,427,226	1,350,689	1,430,686	1,524,856	1,389,663	1,428,401
Rents	1,400,042	919,405	1,163,215	1,602,727	1,615,190	1,603,322	1,606,932
Investment earnings	371,837	370,630	(1,255,945)	(1,081,720)	1,210,140	374,174	418,374
Contributions	10,303	10,201	496,159	421,444	566,242	262,095	440,360
Miscellaneous	410,152	671,221	534,494	719,684	390,086	305,932	393,760
TOTAL REVENUES	\$68,194,917	\$63,870,957	\$60,656,423	\$59,268,809	\$58,115,017	\$53,565,549	\$52,317,437
OTHER FINANCING SOURCES (USES)							
Issuance of capital debt			\$ -	\$ 133,531	\$ 204,956	\$ -	\$ -
Sale of capital assets			35,450	-	5,325	72,051	533,980
Insurance recoveries			-	-	-	-	3,033,042
Reserve and contingency			-	-	-	-	(3,287,452)
Transfers in	4,480,855	4,233,033	3,463,231	2,753,444	3,110,079	2,848,218	-
Transfers out	(4,658,738)	(4,163,652)	(8,457,705)	(5,546,718)	(2,063,183)	(4,132,795)	-
TOTAL OTHER FINANCING SOURCES (USES)	\$ 100,458,201	\$ 98,261,165	\$ 96,162,180	\$ 95,528,779	\$ 92,993,284	\$ 84,115,812	\$ 81,345,015
EXPENDITURES							
Current							
Current governmental	\$ 14,687,838	\$ 11,423,452	\$ 11,774,767	\$ 9,899,937	\$ 9,007,957	\$ 9,809,718	\$ 8,914,237
Public safety	41,610,134	36,943,710	32,290,732	30,849,989	30,074,183	27,583,880	26,564,902
Public works	3,340,163	1,918,352	1,254,865	1,472,485	1,207,776	1,081,157	999,999
Economic and physical development	5,927,930	5,724,457	5,555,083	4,807,862	4,787,402	4,682,707	4,441,463
Culture and recreation	7,358,045	7,150,667	6,981,549	6,329,040	5,949,635	5,750,634	6,084,457
Highways and streets	-	-	36,570	35,663	500	-	-
Contingency	1,662,750	-	-	-	-	-	-
Debt service							
Principal retirement	177,792	170,460	161,727	138,775	998,203	721,549	882,114
Interest and other charges	250,303	34,187	37,420	38,381	55,632	93,304	128,976
Capital outlay	5,222,222	2,454,713	1,020,983	1,491,866	1,992,283	771,773	1,566,078
TOTAL EXPENDITURES	\$ 80,237,177	\$ 65,819,998	\$ 59,113,696	\$ 55,063,998	\$ 54,073,571	\$ 50,494,722	\$ 49,582,226
FUND BALANCE AT END OF YEAR	\$ 20,221,024	\$ 32,441,167	\$ 37,048,484(c)	\$ 40,464,781	\$ 38,919,713	\$ 33,621,090	\$ 31,762,789

- (a) Reflects the City's budgeted figures for fiscal year 2019/20 which are unaudited and subject to change upon audit. These amounts are "forward looking" statements and should be considered with an abundance of caution.
- (b) Figures for fiscal year 2018/19 are based on unaudited actual figures and as such should be considered with an abundance of caution.
- (c) Beginning fund balance varies due to budget basis adjustments related to 60 day sales tax accrual, unrealized loss on investments and inventory.

**APPENDIX C**

**CITY OF FLAGSTAFF, ARIZONA  
AUDITED FINANCIAL STATEMENTS  
FOR THE FISCAL YEAR ENDED JUNE 30, 2018**

## APPENDIX D

### SUMMARIES OF LEGAL DOCUMENTS

The following are brief summaries of the provisions of the Financing Documents together with certain definitions in the Financing Documents not defined elsewhere in this Official Statement. These summaries are not intended to be definitive and should be read in conjunction with the additional information about the contents of the indicated documents included under the heading “THE 2019 CERTIFICATES” and “SECURITY FOR THE 2019 CERTIFICATES - Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds” and “- Events of Default or Termination Pursuant to the Lease Agreement.” Reference is made to the complete documents for the complete terms thereof. Copies of the documents are available as set forth in this Official Statement under the heading “INTRODUCTION.”

### CERTAIN DEFINITIONS

“Additional Certificates” means any certificates executed and delivered pursuant to the Trust Agreement.

“Additional Rent” means any payments requested to be made as described hereinbelow under the subheading “LEASE AGREEMENT - Additional Rent.”

“Aggregate Value” means, with respect to any Certificates, the Outstanding principal amount thereof.

“Business Day” means a day of the year other than (i) a Saturday or Sunday or (ii) a day on which banking institutions located in the city designated by the Trustee for the presentation and payment of Certificates are required or authorized to remain closed.

“Certificates” means the 2019 Certificates and any Additional Certificates executed and delivered pursuant to the Trust Agreement.

“Defeasance Obligations” has the meaning provided in the Trust Agreement.

“Delivery Costs Fund” means the fund by that name established and held by the Trustee pursuant to of the Trust Agreement.

“Event of Default” means an event of default described in the Lease Agreement.

“Fiscal Period” means a period of 12 consecutive months commencing on the first day of July and ending on the last day of June, or any other consecutive 12-month period that may be established hereafter as the fiscal year of the City for budgeting and appropriation purposes.

“Insurance and Condemnation Fund” means the fund by that name established and held by the Trustee pursuant to of the Trust Agreement.

“Net Proceeds” means any insurance proceeds (other than proceeds of any insurance policy resulting from liability to a third person for damages for bodily and personal injury, death or property damage connected with the construction or operation of the Leased Property) or condemnation award in excess of \$25,000, paid with respect to the Leased Property, or any proceeds resulting from the re-renting, re-leasing or sale of all or any portion of the Leased Property following an Event of Default, remaining after payment therefrom of all expenses incurred in the collection thereof.

“Outstanding” when used with reference to the Certificates, means, as of any date of determination, all Certificates theretofore executed and delivered except:

- (a) Certificates theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Certificates that are deemed paid and no longer Outstanding as provided in the Trust Agreement;

(c) Certificates in lieu of which other Certificates of the same series shall have been executed and delivered pursuant to the provisions of the Trust Agreement relating to Certificates destroyed, stolen or lost, unless evidence satisfactory to the Trustee has been received that any such Certificate is held by a bona fide purchaser; and

(d) For the purpose of any vote, consent, waiver or other action or any calculation of Outstanding Certificates provided for in the Trust Agreement, the Certificates owned or held by or for the account of the City or by any person directly or indirectly controlled by, or under direct or indirect common control with the City (except any Certificates held in any pension or retirement fund).

“Owner” or any similar term, when used with respect to any Certificate means the person in whose name such Certificate is registered.

“Permitted Encumbrances” means, as of any particular time (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to the Lease Agreement, permit to remain unpaid, (b) the Lease Agreement, (c) the Trust Agreement, (d) the Ground Lease, (e) easements, leases encumbrances, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions that exist as of the date of execution and delivery of the applicable Certificates and that the City certifies in writing does not materially impair the use of the Leased Property, and (f) easements, leases, encumbrances, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions to which the Trustee and the City consent in writing.

“Permitted Investments” means and includes (to the extent permitted by law):

(i) Defeasance Obligations.

(ii) Obligations of any of the following federal agencies, which obligations represent the full faith and credit of the United States of America including, but not limited to, the following: (A) the Export-Import Bank of the United States, (B) the Rural Economic Community Development Administration, (C) the U.S. Maritime Administration, (D) the Small Business Administration, (E) the U.S. Department of Housing and Urban Development (PHA’s), (F) the Federal Housing Administration, and (G) the Federal Financing Bank.

(iii) Direct obligations of any of the following federal agencies, which obligations are not fully guaranteed by the full faith and credit of the United States of America: (A) senior debt obligations issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC), (B) obligations of the Resolution Funding Corporation (REFCORP) and (C) senior debt obligations of the Federal Home Loan Bank System.

(iv) U.S. dollar denominated deposit accounts, federal funds and bankers’ acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of “P-1” by Moody’s and “A-1” or “A-1+” by S&P and maturing not more than 360 calendar days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank.)

(v) Commercial paper which is rated at the time of purchase in the single highest classification, “P-1” by Moody’s and “A-1+” by S&P and which matures not more than 270 calendar days after the date of purchase.

(vi) Investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P.

(vii) Pre-refunded Municipal Obligations, defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any

such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice, and

(A) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of Moody’s or S&P or any successors thereto; or

(B) (1) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (ii) of the definition of Defeasance Obligations, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (2) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

(viii) Municipal Obligations rated “Aaa/AAA” or general obligations of states with a rating of “A2/A” or higher by both Moody’s and S&P.

“Prepayment” means any payment of the principal portion of any Lease Payments, in whole or in part, pursuant to the Lease Agreement prior to the scheduled payment dates.

“Project Fund” means the fund by that name established and held by the Trustee pursuant to Article III of the Trust Agreement.

“Qualified Self-Insurance” means any program of self-insurance regarding which the Trustee has received a written evaluation of an independent insurance consultant or actuarial consultant having a favorable reputation for skill and experience and an opinion of such consultant that adequate reserves for such program are either maintained with an independent corporate trustee or otherwise held with appropriate safeguards to insure their availability.

## **GROUND LEASE**

Pursuant to the Ground Lease, the City leases the Leased Property to the Trustee and the Trustee leases the Leased Property from the City for the period commencing as of the date of the Ground Lease and terminating on July 2, 2044\*; *provided*, that in no event shall the Ground Lease of the Leased Property terminate before the termination of the Lease Agreement.

Fee title to the Leased Property shall at all times remain with the City.

The Trustee will prepay its rental payments pursuant to the Ground Lease upon execution and delivery of the Ground Lease concurrently with the initial execution and delivery of the 2019 Certificates.

The City has the right to terminate the Ground Lease upon written notice to the Trustee upon (a) defeasance of the Lease Agreement and the Trust Agreement with respect to all Certificates as permitted thereunder, or (b) the exercise of the City of its option to purchase the Leased Property pursuant to the Lease Agreement and defeasance of the Trust Agreement as permitted thereunder.

## **LEASE AGREEMENT**

### **Additional Rent**

In addition to Lease Payments, the City has agreed to pay when due as Additional Rent (a) all costs and expenses of the Trustee to comply with the provisions of the Trust Agreement, (b) certain payments required to

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\* \* Preliminary, subject to change.

maintain the status of the Certificates as obligations the interest income with respect to which is excludable from gross income for federal income tax purposes, (c) compensation and expenses of the Trustee, (d) certain indemnification amounts, (e) all costs and expenses of auditors, engineers and legal counsel other than costs and fees incurred in connection with the execution and delivery of the Certificates and (f) all rent for any holdover period during which the City stays in possession of the Leased Property after termination of the Lease Agreement.

### **Maintenance, Utilities, Taxes and Modifications**

The City, at its own expense, has agreed to maintain or cause to be maintained the Leased Property in good repair; the Trustee has no responsibility for such repair. The City has the power to make additions, modifications and improvements to the Leased Property that do not damage or reduce its value to a value substantially less than that which existed before such modification or improvement. The City must pay or cause to be paid all taxes, other governmental charges and utility charges with respect to the Leased Property, as well as any taxes and assessments, if any, that it is legally obligated to pay.

### **Insurance**

The Lease Agreement requires the City to maintain or cause to be maintained the following insurance against risk or physical damage to the Leased Property and other risks for the protection of the Trustee:

(a) General Liability. The City shall maintain or cause to be maintained, throughout the term of the Lease Agreement, either a standard commercial general liability insurance policy or policies, with a responsible insurance company or companies authorized under the laws of the State to assume such risks, of such types and in such amounts as are then customary for similar institutions carrying on similar activities.

(b) Fire and Extended Coverage, Vandalism and Malicious Mischief. The City shall maintain or cause to be maintained, throughout the term of the Lease Agreement, insurance against loss or damage to any structure or equipment constituting any part of the Leased Property by fire and lightning with extended coverage and malicious mischief insurance. Coverage shall be in an amount equal to 100 percent of the replacement cost of the Leased Property. Such insurance may be subject to deductible clauses of not to exceed \$25,000 for any one loss.

The insurance described in paragraphs (a) and (b) may be maintained as part of or in conjunction with any other liability or fire and extended coverage for insurance, respectively, carried or required to be carried by the City and may be maintained in the form of acceptable self-insurance, meeting certain standards provided in the Lease Agreement.

All policies of insurance or any Qualified Self-Insurance must provide that the Net Proceeds thereof shall be payable to the Trustee. The Net Proceeds of fire and extended coverage insurance shall be deposited in the Insurance and Condemnation Fund and applied to restore, replace, repair, modify or improve the Leased Property or to the prepayment of Lease Payments and the corresponding prepayment of Certificates. See "TRUST AGREEMENT - Funds - Insurance and Condemnation Fund." The Net Proceeds of general liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Proceeds of such insurance shall have been paid. The City has agreed to pay or cause to be paid when due the premiums on all insurance policies and to furnish evidence of any such payments promptly to the Trustee.

In the event the City maintains Qualified Self-Insurance for general liability insurance and fire and extended coverage insurance required pursuant to the Lease Agreement, the City shall cause to be delivered to the Trustee annually the documentation required for the determination that such self-insurance constitutes Qualified Self-Insurance, if any. Additionally, to the extent the Trustee cannot be named as an insured for the purposes of any Qualified Self-Insurance, the City assigns to the Trustee its rights to receive any or all proceeds received from such Qualified Self-Insurance as their respective rights under the Lease Agreement appear on the date of payment.

### **Option to Purchase Leased Property**

The City may on any date secure the payment of Lease Payments with respect to the Leased Property by deposit with the Trustee of Defeasance Obligations and cash, if required, in such amount as shall, in the opinion of an independent certified public accountant, together with interest to accrue thereon and, if required, all or a portion of the moneys or Defeasance Obligations then on deposit in the Lease Payment Fund and the Insurance and Condemnation Fund related to such Leased Property, be fully sufficient to pay all unpaid Lease Payments with respect to such Leased Property on the respective Lease Payment Dates as the City instructs at the time of said deposit.

### **Assignment; Subleases**

The City may not assign any of its rights in the Lease Agreement, and may not sublease the Leased Property without the written consent of the Trustee and satisfaction of the conditions contained in the Lease Agreement, including the condition that any such sublease not adversely affect the exclusion of the interest components of the Lease Payments from federal gross income when paid to the Owners of the 2019 Certificates.

### **Release or Exchange of Property**

If, during the term of the Lease Agreement, the City desires to acquire legal title to any of the Leased Property, unencumbered by the terms and conditions of the Lease Agreement, the Trustee will sell to the City any of such property so desired by the City, provided the following conditions are met, to wit:

- (a) Contemporaneously with any such sale by the Trustee (i) the City delivers to the Trustee the net sale proceeds or (ii) the City sells to the Trustee substitute property ("substitute property") for the property the City wishes to acquire;
- (b) The sale or exchange of property will not cause any decrease in the total Lease Payments required under the Lease Agreement or any change in the interest component or principal component thereof;
- (c) The City furnishes to the Trustee an opinion of counsel acceptable to the Trustee that the exchange of property will not adversely affect the exclusion of the interest payable on the 2019 Certificates (sold on the basis of the interest thereon being excluded from gross income for federal income tax purposes) from the federal gross income of the owners thereof;
- (d) Any substitute property shall be subject to all the terms and conditions of the Lease Agreement and shall be subjected to the lien of the Trust Agreement; and
- (e) All costs and expenses incurred in connection with the exchange of property must be borne by the City.

Any proceeds delivered to the Trustee pursuant to subsection (a)(i) above shall be applied to acquire, construct or improve additional Leased Property, or be applied to Lease Payments as directed by the Lessee, subject to any restrictions contained in the opinion of Special Counsel delivered pursuant to subsection (c) above.

### **Events of Default**

Each of the following constitutes an "Event of Default" described in the Lease Agreement:

- (a) Except when not paid due to the City not having lawfully available funds budgeted therefor, failure by the City to make any Lease Payment or other payment required under the Lease Agreement when due and continuation of such failure for five days;
- (b) Failure by the City to comply with any covenant, agreement or condition contained in the Lease Agreement or the Trust Agreement, other than default described in (a) above, and the continuance of such failure or default for a period of 30 days after written notice thereof has been given to the City by the

Trustee or the Owners of not less than five percent in aggregate principal amount evidenced by Certificates then Outstanding; provided, if the failure stated in the notice can be corrected, but not within such 30 day period, the Trustee or such Owners shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within such 30 day period and diligently pursued until the default is corrected; or

- (c) Certain events relating to bankruptcy of the City or the inability of the City to pay its debts.

Notwithstanding the foregoing, if, by reason of force majeure (as defined in the Lease Agreement), the City is unable to perform or observe any agreement, term or condition of the Lease Agreement, other than any obligation to make Lease Payments or Additional Rent and to comply with certain covenants relating to the tax-exempt status of the interest evidenced by the Certificates, the City shall not be deemed to be in default during the continuance of such inability. However, the City shall promptly give notice to the Trustee of the existence of any event of force majeure and shall use its best efforts to remove the effects thereof; *provided* that the settlement of strike or labor disturbances shall be entirely within the City's discretion.

Upon the occurrence and continuance of any Event of Default or a termination because of a failure to budget and appropriate Lease Payments by the City as described under the subheading "SECURITY FOR THE 2019 CERTIFICATES - Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds," the Trustee may elect to terminate the Lease Agreement or, with or without such termination, to re-enter and take possession of the Leased Property and relet or sell its leasehold interest in the Leased Property; *provided, however*, that notwithstanding anything in the Lease Agreement or the Trust Agreement to the contrary there shall be no right to accelerate the Lease Payments. Any amounts collected by the Trustee from the reletting of the Leased Property shall be credited towards the City's unpaid Lease Payments. Any Net Proceeds of sale, re-lease or other disposition of the Leased Property are required to be deposited in the Lease Payment Fund and applied to Lease Payments in order of payment date.

## **TRUST AGREEMENT**

### **Pledge and Security**

Pursuant to the Trust Agreement, the Trustee is authorized and directed to acquire, to receive and to hold as security for the Owners the following:

- (a) All right, title and interest of the Trustee in and to the Ground Lease and the Lease Agreement and the present and continuing right to (i) make claim for, collect or cause to be collected, receive or cause to be received all revenues, receipts and other sums of money payable or receivable pursuant thereto, (ii) bring actions and proceedings thereunder or for the enforcement thereof, and (iii) do any and all things that the Trustee is or may become entitled to do thereunder.

- (b) All right, title and interest of the Trustee in and to amounts on deposit from time to time in certain funds created pursuant to the Trust Agreement.

The Trust Agreement also represents an agreement by the Trustee that it holds the above rights and interests in trust for the benefit of the Owners.

### **Trustee**

The Trustee is appointed pursuant to the Trust Agreement and is authorized to execute and deliver the Certificates and to act as a depository of amounts held pursuant thereto. The Trustee is required to make deposits into and withdrawals from funds, and invest amounts held under the Trust Agreement in accordance with the provisions thereof.

## **Funds**

The Trust Agreement creates the Project Fund, the Delivery Costs Fund, the Lease Payment Fund and the Insurance and Condemnation Fund to be held in trust by the Trustee.

**Project Fund.** There shall be deposited into the Project Fund amounts necessary to acquire, construct and improve the Project. Moneys deposited in the Project Fund will be disbursed by the Trustee, upon the written order of the City representative, to pay the costs of acquisition, construction and improvement of the Project.

**Delivery Costs Fund.** There shall be deposited in the Delivery Costs Fund the amount necessary to pay costs relating to the execution, sale and delivery of 2019 Certificates, which amounts shall be disbursed by the Trustee upon the written order of the City.

**Lease Payment Fund.** There shall be deposited into the Lease Payment Fund, when received by the Trustee, all Lease Payments and Prepayments. Moneys on deposit in the Lease Payment Fund shall be used to pay principal, prepayment premiums, if any, and interest evidenced by Certificates.

**Insurance and Condemnation Fund.** Any Net Proceeds of insurance or condemnation awards shall be deposited in the Insurance and Condemnation Fund. See “THE 2019 CERTIFICATES - Prepayment Provisions - Extraordinary Prepayment” for a description of how such amounts are to be applied.

Net Proceeds of a condemnation award shall be used as follows: (a) if the Trustee determines, based upon a report of an independent engineer or other independent professional consultant, that such eminent domain proceedings have not materially affected the operation of the Leased Property or the City’s ability to meet its obligations pursuant to the Lease Agreement, and if the Trustee determines, based upon a report of an independent engineer or other independent professional consultant, that such proceeds are not needed for repair or rehabilitation of the Leased Property, the Trustee shall transfer such proceeds to the Lease Payment Fund as a credit against Lease Payments, (b) if the Trustee determines, based upon a report of an independent engineer or other independent professional consultant, that such proceedings have not materially affected the operations of any of the Leased Property or the City’s ability to meet its obligations pursuant to the Lease Agreement and such proceeds are needed for repair, rehabilitation or replacement of the Leased Property, the Trustee shall pay to the order of the City such portion of the proceeds required for such repair, rehabilitation or replacement, (c) to prepay Lease Payments and redeem Certificates if less than all of the Leased Property is taken and the Trustee determines that such proceedings have materially affected the operation of the Leased Property, or (d) if all of the Leased Property is taken, to prepay Lease Payments and thereby redeem Certificates.

## **Additional Certificates**

So long as no Event of Default or termination of the Lease Agreement as described under the heading “SECURITY FOR THE 2019 CERTIFICATES - Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds” has occurred and will continue after execution and delivery of any Additional Certificates, the Trustee may execute and deliver, at the direction of the City, Additional Certificates from time to time to provide funds to expand or improve the Projects or to pay the costs of refunding Outstanding Certificates.

Before the Trustee shall deliver any Additional Certificates executed pursuant to a supplement authorized by the Indenture, the following items shall have been received by the Trustee:

(i) Original executed counterparts of any amendments or supplements to the Lease Agreement and the Trust Agreement entered into in connection with the execution and delivery of the Additional Certificates that are necessary or advisable, in the opinion of Special Counsel, to provide that the Additional Certificates will be executed and delivered in compliance with the provisions of the Trust Agreement.

(ii) A written opinion of Special Counsel, reasonably satisfactory to the Trustee, to the effect that (A) the documents submitted to the Trustee in connection with the request then being made comply with the

requirements of this Trust Agreement, (B) any filings required to be made pursuant to the Trust Agreement have been made, and (C) all conditions precedent to the delivery of the Additional Certificates have been fulfilled.

(iii) A written opinion of Special Counsel (who also may be the counsel to whom or which reference is made in paragraph (ii) above), to the effect that (A) when executed and delivered by the Trustee, the Additional Certificates will be valid and binding in accordance with their terms and will be secured hereunder equally and on a parity with all other Certificates at the time Outstanding under the Trust Agreement as to the assignment to the Trustee of the amounts pledged under the Trust Agreement, and (B) the execution and delivery of the Additional Certificates will not result in the portion of the Lease Payments designated as interest evidenced by the Certificates Outstanding immediately before that execution and delivery of such Additional Certificates becoming includable in gross income for purposes of federal income taxation.

(iv) A written opinion of Special Counsel (who also may be the counsel to whom or which reference is made in paragraph (ii) above), reasonably satisfactory to the Trustee, to the effect that any amendments or supplements to the Lease Agreement entered into in connection with the execution and delivery of the Additional Certificates have been duly authorized, executed and delivered by the City, and that the Lease Agreement, as amended or supplemented, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms, subject to exceptions reasonably satisfactory to the Trustee for bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion.

(v) Evidence that the City has obtained the additional amount of insurance or self-insurance, if any, required to be maintained pursuant to the Lease Agreement as a result of the execution and delivery of the Additional Certificates.

(vi) Evidence satisfactory to the Trustee of confirmation that the ratings on any Outstanding Certificates will remain the same, immediately after execution and delivery of the Additional Certificates.

When the documents listed above have been received by the Trustee, the Trustee will execute and deliver the Additional Certificates to or on the order of the original purchaser thereof, but only upon payment of the agreed-upon purchase price for the Additional Certificates

### **Investment of Funds**

The Trustee is required to invest and reinvest all moneys held pursuant to the Trust Agreement upon order of a representative of the City in Permitted Investments. Except as otherwise provided, any earnings on investment of moneys in the funds created pursuant to the Trust Agreement shall be held in the fund from which invested. Any surplus remaining in the Lease Payment Fund after the payment of all Certificates, or provision for their payment has been made, shall be repaid to the City.

### **Rights, Duties and Responsibilities of Trustee**

Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in the Trust Agreement, the Lease Agreement and the Ground Lease; and in case an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by the Trust Agreement and such other agreements and use the same degree of care and skill in their exercise, as a prudent corporate indenture trustee would exercise or use under the circumstances. Except for the obligation (A) to make payment of principal, interest, or premium, if any, evidenced by the Certificates to the Owners thereof pursuant to the Trust Agreement or (B) to notify the Owners of any Event of Default pursuant to the Trust Agreement, no provision of the Trust Agreement or the other Financing Documents will require the Trustee to expend or risk its own funds or otherwise incur any financial liability (including, without limitation, any and all environmental liability) in the performance of any of its duties thereunder, or in the exercise of any of its rights or powers, if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity or other assurance against such risk or liability is not reasonably assured to it.

The Trustee may intervene on behalf of the Owners, and shall intervene if requested in writing to do so by an instrument or instruments in writing signed by the Owners of not less than a majority in Aggregate Value of the Certificates, in any judicial proceeding to which the Lessee is a party and that in the opinion of the Trustee and its counsel has a substantial bearing on the interest of Owners of the Certificates. The rights and obligations of the Trustee for such purpose are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it before it takes action under the Trust Agreement.

The Trustee will be under no obligation to exercise any of the rights or powers vested in it by the Trust Agreement at the request or direction of any of the Owners pursuant to the Trust Agreement, unless such Certificate Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction.

The Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

The Trustee will not be bound to ascertain or inquire as to the validity or genuineness of any collateral given or held by it. The Trustee will not be responsible for the recording or filing of any document or of any supplemental instruments or documents of further assurance as may be required by law in order to perfect liens or security interests. The permissive right of the Trustee to do things instrumental in the Trust Agreement will not be construed as a duty, and the Trustee will not be answerable for other than its own negligence or willful misconduct.

It will not be the duty of the Trustee, except as provided in the Trust Agreement, to ascertain or inquire whether any duties and obligations in the Trust Agreement or in the other Financing Documents imposed upon the City are performed or whether the terms and conditions thereof are observed.

### **Removal and Resignation of the Trustee**

The Trustee may resign at any time, or may be removed at any time by an instrument or instruments in writing signed by the City or the Owners of not less than a majority in Aggregate Value of the Certificates. Written notice of such resignation or removal will be given by the Trustee to the City and such resignation or removal will take effect only upon the appointment and qualification of a successor Trustee. In the event a successor Trustee has not been appointed and qualified within 60 days of the date notice of resignation is given, the Trustee or the City may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed.

In the event of the resignation or removal of the Trustee or in the event the Trustee is dissolved or otherwise becomes incapable to act as the Trustee, the City will be entitled to appoint a successor trustee, unless an Event of Default has occurred and is continuing.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor trustee will (i) be a trust company or bank in good standing in the State, (ii) be duly authorized to exercise trust powers in the State and subject to examination by a federal or state authority, and (iii) maintain a reported capital and surplus of not less than \$75,000,000.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it will be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible as a successor Trustee pursuant to the Trust Agreement in the case of the Trustee, will be the successor to such Trustee, without the execution or filing of any paper or any further act, anything in the Trust Agreement to the contrary notwithstanding.

## **Event of Default; No Acceleration**

The Trustee has the right to exercise such rights and remedies pursuant to the Lease Agreement as may be necessary or convenient (i) to enforce payment of the Lease Payments, Additional Rent, Prepayments and any other amounts required to be deposited in the Lease Payment Fund or the Insurance and Condemnation Fund, and (ii) otherwise take any action to protect the interests of the Trustee or the Owners in an Event of Default.

Upon the occurrence of an Event of Default or a termination because of a failure to budget by the City as described under the subheading "SECURITY FOR THE 2019 CERTIFICATES - Lease Agreement; Termination of Lease Agreement Upon Failure to Annually Appropriate Funds," the Trustee (i) will take action to exclude the City from the Leased Property, and (ii)(A) may, and (B) upon the request of the Owners of at least a majority in Aggregate Value of the Certificates, will exercise any and all remedies available at law or pursuant to the Lease Agreement including the option to re-rent, re-lease or sell all or any portion of the Leased Property pursuant to the Trust Agreement. Notwithstanding anything in the Lease Agreement or in the Trust Agreement to the contrary, there will be no right under any circumstances to accelerate the Lease Payments or Additional Rent or otherwise declare any Lease Payments or Additional Rent not then in default to be immediately due and payable. Upon the occurrence of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken will be applied by the Trustee in the order following upon presentation of the Certificates, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the ordinary and extraordinary fees and the costs and expenses of the Trustee in declaring and pursuing remedies in connection with such Event of Default, including reasonable compensation to its or their agents, attorneys and counsel and the creation of a reasonable reserve for anticipated fees, costs and expenses and

Second, to the payment of the whole amount then owing and unpaid with respect to the Certificates, for principal and interest with interest on the overdue principal, and, to the extent lawful, installments of interest at the rate of ten percent per annum (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest, and interest on overdue principal, as aforesaid), and in case such moneys shall insufficient to pay in full the whole amount so owing and unpaid with respect to the Certificates, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may and with the prior written consent of the Owners of a majority in Aggregate Value of the Certificates, will, proceed to protect or enforce its rights or the rights of the Owners of Certificates by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained in the Trust Agreement, the foreclosure of any lien granted in the Trust Agreement, or in aid of the execution of any power in the Trust Agreement granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties under the Trust Agreement.

In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties under the Trust Agreement, whether upon its own discretion or upon the request of the Owners of a majority in Aggregate Value of the Certificates, it will have full power, in the exercise of its discretion for the best interests of the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however*, that the Trustee shall not discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, without the consent of the Owners of a majority in Aggregate Value of the Certificates.

The Owner of any Certificate may institute any suit, action, or other proceedings in equity or at law for the protection or enforcement of any right under the Lease Agreement or Trust Agreement if and only if (a) such Owner has given written notice to the Trustee of such Event of Default, (b) a majority of owners of Outstanding principal amount evidenced by the Owners have first notified the Trustee in writing of the Event of Default and made written request on the Trustee to exercise such powers, (c) the Trustee shall have been offered reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request, and (d) the Trustee shall have refused

or omitted to comply with such request for 60 days following receipt of such written request and such tender of indemnity.

### **Limited Liability**

Except for the payment of Lease Payments and Prepayments when due in accordance with the Lease Agreement, the payment of Additional Rent and the performance of the other covenants and agreements of the City contained in the Lease Agreement, including the payment of fees and expenses and indemnities of the Trustee, the City will have no pecuniary obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Lease Payments to the Owners by the Trustee.

### **Amendment**

The Trust Agreement, the Lease Agreement and the Ground Lease may be amended by agreement among the parties thereto without the consent of the Owners but only (a) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power reserved in the Trust Agreement to the Trustee or the City, (b) to cure, correct or supplement any ambiguous or defective provision, or (c) in a manner, which does not, in the judgment of the Trustee, materially adversely affect the interests of the Owners. Any other amendment shall require the approval of the Owners of a majority in principal amount evidenced by the Certificates then Outstanding; *provided* that no such amendment shall (a) extend the maturity or time of interest payment of, or reduce the interest rate, amount of principal, or premium payable with respect to, any Certificate without such Owner's consent, (b) reduce the percentage of Owners required to consent to any amendment or modification, or (c) modify any of the Trustee's rights or obligations without its consent.

### **Defeasance**

If and when any Outstanding Certificates shall be paid and discharged in any one or more of the following ways:

(a) By well and truly paying or causing to be paid the principal and interest and prepayment premiums (if any) evidenced by such Certificates Outstanding, as and when the same become due and payable and all Additional Rent;

(b) By making an irrevocable deposit with the Trustee, in trust, at or before a scheduled payment date, of money that, together with the amounts then on deposit in the Lease Payment Fund is fully sufficient to pay such Certificates Outstanding, including all principal and interest and premium, if any, evidenced thereby and all Additional Rent;

(c) By making an irrevocable deposit with the Trustee, in trust, of Defeasance Obligations, together with money, if required, in such amount as will, in the opinion of an independent certified public accountant acceptable to the Trustee, together with the interest to accrue thereon, but without reinvestment thereof, and amounts then on deposit in the Lease Payment Fund together with the interest to accrue thereon, be fully sufficient to pay and discharge such Certificates (including all principal and interest) at their respective specified principal payment dates and pay all unpaid Additional Rent; or

(d) By making an irrevocable deposit with the Trustee, pursuant to an escrow deposit and trust agreement, of security for the payment of Lease Payments and Additional Rent as more particularly described in the Lease Agreement, said security to be held by the Trustee as agent for the Lessee to be applied by the Trustee to pay the Lease Payments and Additional Rent as the same become due and payable, pursuant to the Lease Agreement; notwithstanding that any Certificate shall not have been surrendered for payment; all obligations of the Trustee and the City with respect to such Outstanding Certificates shall cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, from Lease Payments paid by or on behalf of the City from funds deposited pursuant to paragraphs (b) through (d), to the Owners of the Certificates not so surrendered and paid all sums due with respect thereto, and in the event of deposits

pursuant to paragraphs (b) through (d), the Certificates will continue to represent direct and proportionate interests of the Owners thereof in Lease Payments pursuant to the Lease Agreement.

Any Certificate or portion thereof in authorized denominations may be paid as provided in the preceding paragraph; *provided, however*, that if any such Certificate or portion thereof is to be prepaid, notice of such prepayment shall have been given in accordance with the provisions of the Trust Agreement or the City will have submitted to the Trustee instructions expressed to be irrevocable as to the date upon which such Certificate or portion thereof is to be prepaid and as to the giving of notice of such prepayment; and *provided further*, that if any such Certificate or portion thereof is not scheduled to be paid or prepaid within 60 days of the deposit of the moneys or Defeasance Obligations, the Trustee shall give notice of such deposit by first class mail.

**APPENDIX E**

**FORM OF APPROVING LEGAL OPINION**

[LETTERHEAD OF GREENBERG TRAURIG, LLP]

[Closing Date]

\_\_\_\_\_, as trustee  
\_\_\_\_\_

Re: \$ \_\_\_\_\_ Certificates of Participation, Series 2019 Evidencing Undivided Proportionate Interests of the Owners Thereof in Lease Payments to be Made by City of Flagstaff, Arizona, as Lessee of Certain Property Pursuant to a Lease-Purchase Agreement, Dated as of December 1, 2019\*

We have examined the transcript of proceedings (the "Transcript") relating to the initial execution and delivery by \_\_\_\_\_, as trustee (the "Trustee"), of the captioned certificates of participation (the "Certificates"), pursuant to a Trust Agreement, dated as of December 1, 2019\* (the "Trust Agreement"), by and between the Trustee and the City of Flagstaff, Arizona (the "City"). Each of the Certificates represents a fractionalized interest in obligations of the City pursuant to a Lease-Purchase Agreement, dated as of December 1, 2019\* (the "Lease"), by and between the Trustee, in its separate capacity as lessor, and the City pursuant to which the City has agreed to lease certain property from the Trustee, in its separate capacity as lessor (the "Leased Property"). The real property comprising the Leased Property has been leased by the City to the Trustee, in its separate capacity as lessee, pursuant to a Ground Lease, dated as of December 1, 2019\* (the "Ground Lease"). In addition, we have examined such other proceedings, proofs, instruments, certificates and other documents as well as such other materials and such matters of law as we have deemed necessary or appropriate for the purposes of the opinions rendered herein below.

In such an examination, we have examined originals (or copies certified or otherwise identified to our satisfaction) of the foregoing and have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies and the accuracy of the statements contained in such documents. As to any facts material to our opinion, we have, when relevant facts were not independently established, relied upon the aforesaid documents contained in the Transcript. We have also relied upon the opinions of the City Attorney delivered even date herewith as to the matters provided therein.

Based upon such examination, we are of the opinion that, under the law existing on the date of this opinion:

(1) The Certificates, the Trust Agreement, the Lease and the Ground Lease are legal, valid, binding and enforceable in accordance with their respective terms, except that the binding effect and enforceability thereof are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws in effect from time to time affecting the rights of creditors generally and to the extent that the enforceability thereof may be limited by the application of general principles of equity and subject to the qualification that the enforcement of indemnification provisions against the City may be limited by federal or State securities laws.

(2) The term of the Lease is originally to June 30, 2020\*, and thereafter, at the option of the Mayor and Council of the City for such additional fiscal periods (July 1 through June 30) as are necessary to complete the anticipated term thereof through and including June 30, 2044\*.

(3) (a) Based on the representations and covenants of the City and subject to the assumption stated in the next unnumbered paragraph, under existing statutes, regulations, rulings and court decisions, the portion of each

\_\_\_\_\_  
\* \* Preliminary, subject to change.

\* Preliminary, subject to change.

Lease Payment made by the City pursuant to the Lease and denominated as and comprising interest pursuant to the Lease and received by the owners of the Certificates (the "Interest Portion") is excludable from the gross incomes of the owners thereof for federal income tax purposes and is not treated as an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals.

(b) Assuming the Interest Portion is so excludable for federal income tax purposes, the Interest Portion is exempt from present State of Arizona income taxation.

The Internal Revenue Code of 1986, as amended (the "Code"), includes requirements which the City must continue to meet after the execution and delivery of the Certificates in order that the Interest Portion not be included in gross income for federal income tax purposes. The failure of the City to meet these requirements may cause the Interest Portion to be included in gross income for federal income tax purposes retroactive to their date of execution and delivery. The City has covenanted in the Lease to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of the Interest Portion. (Subject to the same limitations in the first numbered paragraph hereof as they would relate to such covenants, the City has full legal power and authority to comply with such covenants.) In rendering the opinions expressed in paragraph 3 above, we have assumed continuing compliance with the tax covenants referred to hereinabove that must be met after the execution and delivery of the Certificates in order that the Interest Portion not be included in gross income for federal tax purposes. Except as stated in paragraph 3, we express no opinion as to any federal or State of Arizona tax consequences of the ownership of, receipt of interest on, or disposition of the Certificates. Moreover, we express no opinion as to the exemption from federal or State of Arizona income taxation of any other amounts paid to the owners of the Certificates in the event of termination of the Lease due to non-appropriation.

This opinion represents our legal judgment based upon our review of the law and the facts we deem relevant to render such opinion and is not a guarantee of a result. This opinion is given as of the date hereof, and we assume no obligation to review or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

**Respectfully submitted,**

APPENDIX F

FORM OF CONTINUING DISCLOSURE UNDERTAKING

**\$3,575,000\***  
**CERTIFICATES OF PARTICIPATION, SERIES 2019**  
**Evidencing Undivided Proportionate Interests of the Owners Thereof in**  
**Lease Payments to be Made by**  
**CITY OF FLAGSTAFF, ARIZONA,**  
**as Lessee of Certain Property Pursuant**  
**to a Lease-Purchase Agreement, dated as of December 1, 2019\***  
  
**(CUSIP BASE NUMBER 338430)**

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CONTINUING DISCLOSURE UNDERTAKING

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This Continuing Disclosure Undertaking (this “*Undertaking*”) is executed and delivered by the City of Flagstaff, Arizona (the “*City*”), in connection with the execution and delivery of \$3,575,000\* aggregate principal amount of Certificates of Participation, Series 2019 (the “*Obligations*”) Evidencing Undivided Proportionate Interests of the Owners Thereof in Lease Payments to be Made by City of Flagstaff, Arizona, as Lessee of Certain Property Pursuant to a Lease-Purchase Agreement, dated as of December 1, 2019\*. The Obligations are being executed and delivered pursuant to a Trust Agreement, dated as of December 1, 2019\* (the “*Trust Agreement*”), by and between the City and \_\_\_\_\_, as trustee (the “*Trustee*”). The City covenants and agrees as follows:

1. *Definitions.* In addition to those defined hereinabove, the terms set forth below shall have the following meanings in this Undertaking, unless the context clearly otherwise requires:

*Annual Financial Information* means the financial information and operating data set forth in the Audited Financial Statements.

*Annual Financial Information Disclosure* means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

*Audited Financial Statements* means the audited financial statements of the City prepared pursuant to the standards and as described in Exhibit I.

*Commission* means the Securities and Exchange Commission.

*Dissemination Agent* means any agent designated as such in writing by the City and which has filed with the City a written acceptance of such designation, and such agent’s successors and assigns.

*EMMA* means the Electronic Municipal Market Access system of the MSRB. Information regarding submissions to EMMA is available at <http://emma.msrb.org>.

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\* Preliminary, subject to change.

*Exchange Act* means the Securities Exchange Act of 1934, as amended.

*Final Official Statement* means the Final Official Statement relating to the Obligations, dated \_\_\_\_\_, 2019.

*Financial Obligation* means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule

*GAAP* means generally accepted accounting principles, as applied to governmental units as modified by the laws of the State.

*Lease Agreement* means the Lease-Purchase Agreement, dated as of December 1, 2019\*, by and between the City and the Trustee, in its separate capacity as “Lessor.”

*Listed Event* means the occurrence of any of the events set forth in *Exhibit II*.

*Listed Events Disclosure* means dissemination of disclosure concerning a Listed Event as set forth in Section 5.

*MSRB* means the Municipal Securities Rulemaking Board.

*Participating Underwriter* means each broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the Obligations.

*Rule* means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Exchange Act.

*State* means the State of Arizona.

2. *Purpose of this Undertaking.* This Undertaking is executed and delivered by the City as of the date set forth below, for the benefit of the beneficial owners of the Obligations and in order to assist the Participating Underwriter in complying with the requirements of the Rule. The City represents that it will be the only obligated person with respect to the Obligations at the time the Obligations are delivered to the Participating Underwriter and that no other person is expected to become so committed at any time after such delivery of the Obligations.

3. *CUSIP Numbers.* The CUSIP Numbers of the Obligations are as follows:

CUSIP No. (Base 338430)	Maturity Date (July 1)
_____	_____

\* Preliminary, subject to change.

CUSIP No.  
(Base 338430)

Maturity Date  
(July 1)

---

4. *Annual Financial Information Disclosure.* Subject to Section 8 of this Undertaking and annual appropriation of amounts necessary to pay costs of preparation and dissemination thereof, the City shall disseminate its Annual Financial Information and its Audited Financial Statements, if any (in the form and by the dates set forth in *Exhibit I*), through EMMA.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, the City will disseminate a statement to such effect as part of its Annual Financial Information for the year in which such event first occurs.

If any amendment is made to this Undertaking, the Annual Financial Information for the year in which such amendment is made shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

5. *Listed Events Disclosure.* Subject to Section 8 of this Undertaking and annual appropriation of amounts necessary to pay costs of preparation and dissemination thereof, the City shall disseminate in a timely manner, but not more than ten (10) business days after occurrence of the event, Listed Events Disclosure through EMMA. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any of the Obligations or defeasance of any Obligations need not be given under this Undertaking any earlier than the notice (if any) of such redemption or defeasance is given to the owners of the Obligations pursuant to the terms of the Obligations. Whether events subject to the standard “material” would be material shall be determined under applicable federal securities laws.

6. *Consequences of Failure of the City to Provide Information.* The City shall give notice in a timely manner through EMMA of any failure to provide Annual Financial Information Disclosure when the same is due hereunder.

In the event of a failure of the City to comply with any provision of this Undertaking, the beneficial owner of any Obligation may seek mandamus or specific performance by court order, to cause the City to comply with its obligations under this Undertaking. A default under this Undertaking shall not be deemed an event of default under the Lease Agreement or the Trust Agreement, and the sole remedy available to such owners of the Obligations under this Undertaking in the event of any failure of the City to comply with this Undertaking shall be an action to compel performance; provided, however, that such performance would be subject to annual appropriation of amounts necessary to pay costs of preparation and dissemination of the information required hereby.

7. *Amendments; Waiver.* Notwithstanding any other provision of this Undertaking, the City by certified resolution or ordinance authorizing such amendment or waiver, may amend this Undertaking, and any provision of this Undertaking may be waived only if:

(a) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted;

(b) This Undertaking, as amended or affected by such waiver, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not materially impair the interests of the beneficial owners of the Obligations, as determined by parties unaffiliated with the City (such as the Trustee) or by approving vote of the owners of the Obligations pursuant to the Trust Agreement at the time of the amendment.

The Annual Financial Information containing amended operating data or financial information resulting from such amendment or waiver, if any, shall explain, in narrative form, the reasons for the amendment or waiver and the impact of the change in the type of operating data or financial information being provided. If an amendment or waiver is made specifying GAAP to be followed in preparing financial statements and such changes are material, the Annual Financial Information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles. Such comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles in the presentation of the financial information in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, such comparison also shall be quantitative. If the accounting principles of the City change or the fiscal year of the City changes, the City shall file a notice of such change in the same manner as for a notice of Listed Event.

8. *Termination of Undertaking.* This Undertaking shall be terminated hereunder if the City shall no longer have liability for any obligation on or relating to repayment of the Obligations under the Trust Agreement. The City shall give notice in a timely manner if it no longer has such liability through EMMA.

9. *Dissemination Agent.* The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Undertaking, and may discharge any such Agent, with or without appointing a successor Dissemination Agent.

10. *Additional Information.* Nothing in this Undertaking shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of occurrence of a Listed Event, in addition to that which is required by this Undertaking. If the City chooses to include any information from any document or notice of occurrence of a Listed Event in addition to that which is specifically required by this Undertaking, the City shall have no obligation under this Undertaking to update such information or include it in any future Annual Financial Information Disclosure or Listed Events Disclosure.

11. *Beneficiaries.* This Undertaking has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Undertaking shall inure solely to the benefit of the City, the Dissemination Agent, if any, and the beneficial owners of the Obligations, and shall create no rights in any other person or entity.

12. *Recordkeeping.* The City shall maintain records of all Annual Financial Information Disclosure and Listed Events Disclosure including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

13. *Assignment.* The City shall not transfer obligations under the Lease Agreement unless the transferee agrees to assume all obligations of the City under this Undertaking or to execute an undertaking meeting the requirements of the Rule.

[Signature page follows.]

14. *Governing Law.* This Undertaking shall be governed by the laws of the State.

Dated: [Closing Date]

CITY OF FLAGSTAFF, ARIZONA

By.....  
Mayor

ATTEST:

.....  
City Clerk

ATTACHMENTS:

- Exhibit I - Annual Financial Information and Timing and Audited Financial Statements
- Exhibit II - Events for Which Listed Events Disclosure Is Required

EXHIBIT I

ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED  
FINANCIAL STATEMENTS

All or a portion of the Annual Financial Information and the Audited Financial Statements as set forth below may be included by reference to other documents which have been submitted through EMMA, or filed with the Commission. If the information included by reference is contained in a final official statement, the final official statement must be available from the MSRB; the final official statement need not be available from the Commission. The City shall clearly identify each such item of information included by reference.

Audited Financial Statements will be prepared according to GAAP. Audited Financial Statements will be provided through EMMA within 30 days after availability to the City, but in no case later than the first business day in February of each year, commencing February 1, 2020. If Audited Financial Statements are not available by the first business day in February of each year, unaudited financial statements shall be included, to be followed up by Audited Financial Statements when available.

If any change is made to the Annual Financial Information as permitted by Section 4 of the Agreement, the City will disseminate a notice of such change as required by Section 4, including changes in fiscal year or GAAP.

## EXHIBIT II

### EVENTS FOR WHICH LISTED EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies
2. Non-payment related defaults, if material
3. Unscheduled draws on debt service reserves reflecting financial difficulties
4. Unscheduled draws on credit enhancements reflecting financial difficulties
5. Substitution of credit or liquidity providers, or their failure to perform
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations, in each case, with respect to the tax status of the security, or other Listed Events affecting the tax status of the security
7. Modifications to the rights of security holders, if material
8. Bond calls, if material, or tender offers
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities, if material
11. Rating changes
12. Bankruptcy, insolvency, receivership or similar events of the City, being if any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under State or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City
13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties

## APPENDIX G

### BOOK-ENTRY-ONLY SYSTEM

THE INFORMATION PROVIDED IN THIS APPENDIX HAS BEEN PROVIDED BY DTC. NO REPRESENTATION IS MADE BY THE CITY, SPECIAL COUNSEL, THE FINANCIAL ADVISOR OR THE UNDERWRITER AS TO THE ACCURACY OR ADEQUACY OF SUCH INFORMATION PROVIDED BY DTC OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF.

DTC will act as securities depository for the 2019 Certificates. The 2019 Certificates will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the 2019 Certificates, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of 2019 Certificates under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2019 Certificates on DTC's records. The ownership interest of each actual purchaser of each 2019 Certificate ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2019 Certificates are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in 2019 Certificates, except in the event that use of the book-entry system for the 2019 Certificates is discontinued.

To facilitate subsequent transfers, all 2019 Certificates deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of 2019 Certificates with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2019 Certificates; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2019 Certificates are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of 2019 Certificates may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2019 Certificates, such as redemptions, tenders, defaults, and proposed amendments to the Trust Agreement. For example, Beneficial Owners of 2019 Certificates may wish to ascertain that the nominee holding the 2019 Certificates for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Trustee and request that copies of notices be provided directly to them.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to 2019 Certificates unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Trustee as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts 2019 Certificates are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, interest and redemption payments on the 2019 Certificates will be made by the Trustee to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, interest and redemption proceeds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the 2019 Certificates at any time by giving reasonable notice to the Trustee or the City. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

NEITHER THE CITY NOR THE TRUSTEE WILL HAVE RESPONSIBILITY OR OBLIGATION TO PARTICIPANTS WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (2) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE 2019 CERTIFICATES UNDER THE TRUST AGREEMENT; (3) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE 2019 CERTIFICATES; (4) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE 2019 CERTIFICATES; (5) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF 2019 CERTIFICATES; OR (6) ANY OTHER MATTERS.

So long as Cede & Co. is the registered owner of the 2019 Certificates, as nominee of DTC, references herein to "Owner" or registered owners of the 2019 Certificates (other than under the caption "TAX EXEMPTION") shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of such 2019 Certificates.

When reference is made to any action which is required or permitted to be taken by the Beneficial Owners, such reference shall only relate to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owners for such purposes. When notices are given, they shall be sent by the City or the Trustee to DTC only.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but the City takes no responsibility for the accuracy thereof.

When recorded, please return to:

Paul M. Gales, Esq.  
Greenberg Traurig, LLP  
Suite 700  
2375 East Camelback Road  
Phoenix, Arizona 85016

EXEMPT FROM AFFIDAVIT AND FEE  
PURSUANT TO SECTION 11-1134(A)(3),  
ARIZONA REVISED STATUTES, AS  
AMENDED

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**GROUND LEASE**

**by and between**

**CITY OF FLAGSTAFF, ARIZONA,  
as Lessor**

**and**

**[ZIONS BANCORPORATION, NATIONAL ASSOCIATION], as trustee,  
as Lessee**

**Dated as of \_\_\_\_\_ 1, 2019**

## GROUND LEASE

THIS GROUND LEASE, dated as of \_\_\_\_\_ 1, 2019 (this “*Ground Lease*”), by and between CITY OF FLAGSTAFF, ARIZONA, as lessor (the “*Lessor*” or the “*City*”), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as trustee, as lessee (the “*Lessee*”);

### WITNESSETH:

WHEREAS, the Lessor owns the parcel of real property situated in Coconino County, Arizona, and more fully described in the Exhibit hereto (the “*Leased Land*”); and

WHEREAS, pursuant to the laws of the State of Arizona (the “*State*”), the Lessor may lease such property owned by the Lessor; and

WHEREAS, in connection with the financing of the construction and acquisition of certain improvements (the “*Projects*”), the City and the Lessee will execute and deliver a Lease-Purchase Agreement, dated as of even date herewith (the “*Lease Agreement*”), pursuant to which the Leased Land and the improvements thereon (collectively, the “*Leased Property*”) will be leased by the Lessee, as lessor, to the City, as lessee, and the City has concurrently herewith entered into a Trust Agreement, dated as of even date herewith (the “*Trust Agreement*”), with the Lessee, pursuant to which the Lessee will execute and deliver \$\_\_\_\_,000 aggregate principal amount of “Certificates of Participation, Series 2019 Evidencing Undivided Proportionate Interests of the Owners Thereof in Lease Payments to be Made by City of Flagstaff, Arizona, as Lessee of Certain Property Pursuant to a Lease-Purchase Agreement, dated as of \_\_\_\_\_ 1, 2019” (the “*Certificates*”), and cause payment of the proceeds of the sale thereof to be deposited into various funds established pursuant to the Trust Agreement; and

WHEREAS, in order to effect such financing it is necessary to set forth the terms and provisions to be in effect hereafter; and

WHEREAS, the Lessor and the Lessee have entered into the Lease Agreement, pursuant to which the Lessee, as lessor, has agreed to lease the Leased Property to the Lessor, as lessee, and the Lessor acknowledges that, as provided in the Lease Agreement, if an event of default or termination occurs under the Lease Agreement by the Lessor, the Lessee shall have the right to relet or otherwise dispose of its interest in the Leased Property or portions thereof as to which such event relates without affecting or terminating this Ground Lease;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

**Section 1. Term.** The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the Leased Property for the period commencing as of the date hereof and terminating on July 2, 20\_\_\_. This Ground Lease shall be subject to earlier termination in accordance with Section 5 hereof.

**Section 2. Merger.** No merger of the leasehold estates of the Lessor shall occur by operation of law by reason of this Ground Lease and the Lease Agreement, and more particularly (i) the leasehold interest granted by the Lessor to the Lessee pursuant to this Ground Lease is and shall be independent of the Lease Agreement, (ii) the Lease Agreement shall not be deemed to be an assignment or surrender of the leasehold interest granted to the Lessee by this Ground Lease, and (iii) the Lease Agreement shall not operate as a merger or extinguishment of the leasehold interest granted to the Lessee by this Ground Lease.

**Section 3. Title to Leased Land.** Title to the Leased Land shall at all times remain with the Lessor.

**Section 4. Rent.** A one-time lease payment is being paid to the Lessor, in an amount equal to the proceeds of the sale of the Certificates, which represents fair market rental value for the Leased Land. The Lessee shall not be responsible for any additional payments hereunder, including any lease or real estate taxes levied with respect to this Ground Lease or the transactions contemplated hereby.

**Section 5. Early Rights of Termination by Lessor.** The Lessor shall have the right to terminate this Ground Lease upon written notice to the Lessee after the defeasance of both (i) the Lease Agreement in accordance with Article X thereof, and (ii) the Trust Agreement in accordance with Section 14.1 thereof.

**Section 6. Surrender.** Upon the expiration or termination of this Ground Lease, the Lessee shall surrender to the Lessor the Leased Land together with all improvements thereon. At the time of such surrender, the Leased Land shall be free and clear of all liens and encumbrances other than (i) those existing on the date hereof and (ii) those placed upon the Leased Land by the Lessor.

**Section 7. Notices.** All notices to be given under this Ground Lease shall be made in writing and mailed by first class mail, postage prepaid, to the party at its address stated below or at such other address as the party may provide in writing from time to time:

If to Lessor:

City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001-5399  
Attention: Management Services Director

If to Lessee:

Zions Bancorporation, National Association  
6001 North 24th Street  
Phoenix, Arizona 85016  
Attention: Corporate Trust Services

## **Section 8. Incorporation of State Statutes.**

(a) This Ground Lease is subject to cancellation by the Lessor pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein. No basis exists for the Lessor to cancel this Ground Lease pursuant to Section 38-511, Arizona Revised Statutes, as amended, as of the date hereof. The Lessee covenants not to employ as an employee, an agent or, with respect to the subject matter of this Ground Lease, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Ground Lease on behalf of the Lessor within three years from execution of this Ground Lease, unless a waiver of Section 38-511, Arizona Revised Statutes, as amended, is provided by the Lessor.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, as amended, the Lessee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by the Lessee of the foregoing shall be deemed a material breach of this Ground Lease. The Lessor retains the legal right to randomly inspect the papers and records of the Lessee to ensure that the Lessee is complying with the above-mentioned warranty. The Lessee shall keep such papers and records open for random inspection during normal business hours by the Lessee. The Lessee shall cooperate with the random inspections by the Lessor including granting the Lessor entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, the Lessee hereby certifies that it is not currently engaged in, and for the duration of this Ground Lease shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Lessor determines that the Lessee’s certification above is false or that either has breached such agreement, the Lessor may impose remedies as provided by law.

## **Section 9. Entire Agreement; Amendment; Headings; Severability.**

(a) This Ground Lease, together with attachments, exhibits and other documents or instruments executed by the Lessor and the Lessee in connection with this Ground Lease, constitutes the entire agreement between the parties with respect to the lease of the Leased Land.

(b) This Ground Lease may not be modified, amended, altered or changed except with the prior written consent of the Lessor and the Lessee.

(c) All section headings contained in this Ground Lease are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Ground Lease.

(d) If any provision of, or any covenants, obligation or agreement contained in, this Ground Lease is determined by a court to be invalid or unenforceable, that determination

shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Ground Lease. That invalidity or unenforceability shall not affect any valid or enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 10. Execution in Counterparts.** This Ground Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the Lessor has caused this Ground Lease to be executed in its name by its duly authorized officer, and the Lessee has caused this Ground Lease to be executed in its corporate name by its duly authorized officer, as of the date first above written.

CITY OF FLAGSTAFF, ARIZONA, as Lessor

By .....  
Mayor

ATTEST:

.....  
City Clerk

ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION, as trustee, as Lessee

By .....  
Authorized Representative

STATE OF ARIZONA        )  
  ) ss:  
COUNTY OF COCONINO    )

On this, the ..... day of \_\_\_\_\_ 2019, before me, the undersigned Notary Public, personally appeared Coral Evans and Stacy Saltzburg, who acknowledged themselves to be the Mayor and City Clerk, respectively, of the City of Flagstaff, Arizona, a municipal corporation, and that they, as such officers, being authorized so to do, executed the foregoing Ground Lease for the purposes therein contained by signing the name of the municipal corporation by themselves as such officers.

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

.....  
Notary Public

My Commission Expires:

.....

STATE OF ARIZONA        )  
  ) ss:  
COUNTY OF MARICOPA    )

On this, the ..... day of \_\_\_\_\_ 2019, before me, the undersigned Notary Public, personally appeared ....., who acknowledged him/herself to be an Authorized Representative of Zions Bancorporation, National Association, and that, as such officer, being authorized so to do, he/she executed the foregoing Ground Lease for the purposes therein contained by signing the name of the corporation by him/herself as such officer.

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

.....  
Notary Public

My Commission Expires:

.....

Notice required by A.R.S. Section 41-313: The foregoing notarial certificate(s) relate(s) to the Ground Lease, dated as of \_\_\_\_\_ 1, 2019, executed by the City of Flagstaff, Arizona, an Arizona municipal corporation, and Zions Bancorporation, National Association, a national banking association (the “Notarized Document”). The Notarized Document contains a total of ..... pages.

**EXHIBIT**  
**DESCRIPTION OF LEASED LAND**

When recorded, please return to:

Paul M. Gales, Esq.  
Greenberg Traurig, LLP  
Suite 700  
2375 East Camelback Road  
Phoenix, Arizona 85016

EXEMPT FROM AFFIDAVIT AND FEE  
PURSUANT TO SECTION 11-1134(A)(3),  
ARIZONA REVISED STATUTES, AS  
AMENDED

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**LEASE-PURCHASE AGREEMENT**

**by and between**

**[ZIONS BANCORPORATION, NATIONAL ASSOCIATION], as trustee,  
as Lessor**

**and**

**CITY OF FLAGSTAFF, ARIZONA,  
as Lessee**

**Dated as of \_\_\_\_\_ 1, 2019**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
ARTICLE I DEFINITIONS; EXHIBITS .....	1
Section 1.1    Definitions.....	1
Section 1.2    Exhibits .....	5
ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES.....	5
Section 2.1    Representations, Covenants and Warranties of the Lessee.....	5
Section 2.2    Representations, Covenants and Warranties of the Lessor .....	7
Section 2.3    Tax Covenants .....	7
Section 2.4    Arbitrage Rebate Covenants .....	9
ARTICLE III DEPOSIT OF MONEYS; CONSTRUCTION OF PROJECT .....	13
Section 3.1    Deposit of Moneys.....	13
Section 3.2    Construction of Projects.....	13
Section 3.3    Payment of Delivery Costs .....	13
Section 3.4    Unexpended Proceeds and Other Moneys .....	13
Section 3.5    Additional Certificates .....	14
ARTICLE IV AGREEMENT TO LEASE; TERMINATION OF LEASE AGREEMENT; LEASE PAYMENTS; TITLE TO THE LEASED PROPERTY .....	14
Section 4.1    Lease .....	14
Section 4.2    Term of Agreement; Termination.....	14
Section 4.3    Possession .....	15
Section 4.4    Lease Payments; Additional Rent; Other Payments. ....	15
Section 4.5    Quiet Enjoyment .....	16
Section 4.6    Title.....	17
Section 4.7    Additional Rent.....	17
ARTICLE V MAINTENANCE; TAXES; INSURANCE; OTHER MATTERS .....	17
Section 5.1    Maintenance, Utilities, Taxes and Assessments .....	17
Section 5.2    Modification of Leased Property .....	18
Section 5.3    General Liability Insurance.....	18
Section 5.4    Fire and Extended Coverage Insurance .....	19
Section 5.5    Insurance Net Proceeds; Form of Policies .....	19
Section 5.6    Advances .....	20
Section 5.7    Installation of Lessee’s Equipment.....	20
Section 5.8    Liens.....	20
Section 5.9    Delivery of Leased Property Upon Termination .....	20
ARTICLE VI DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS .....	21
Section 6.1    Eminent Domain .....	21
Section 6.2    Application of Net Proceeds. ....	21
Section 6.3    Reduction of Rental in the Event of Prepayment of Lease Payments .....	22

**TABLE OF CONTENTS (cont.)**

	<b><u>Page</u></b>
ARTICLE VII ACCESS TO LEASED PROPERTY.....	22
Section 7.1    Access to the Leased Property .....	22
Section 7.2    Release and Indemnification Covenants.....	23
ARTICLE VIII ASSIGNMENT, SUBLEASING AND AMENDMENT .....	23
Section 8.1    Assignment and Subleasing by the Lessee .....	23
Section 8.2    Amendment of this Lease Agreement.....	24
Section 8.3    Release or Exchange of Property .....	24
ARTICLE IX EVENTS OF DEFAULT AND REMEDIES .....	25
Section 9.1    Events of Default Defined .....	25
Section 9.2    Remedies on Default and Failure to Budget.....	26
Section 9.3    No Remedy Exclusive.....	27
Section 9.4    Agreement to Pay Attorneys’ Fees and Expenses .....	27
Section 9.5    No Additional Waiver Implied by One Waiver .....	27
Section 9.6    Application of Proceeds .....	27
Section 9.7    Lessor to Exercise Rights.....	27
ARTICLE X PREPAYMENT OF LEASE PAYMENTS .....	28
Section 10.1    Security Deposit.....	28
Section 10.2    Optional Prepayment .....	28
Section 10.3    Mandatory Prepayment From Net Proceeds .....	28
Section 10.4    Credit for Amounts on Deposit.....	28
ARTICLE XI MISCELLANEOUS .....	29
Section 11.1    Notices .....	29
Section 11.2    Binding Effect.....	29
Section 11.3    Severability .....	29
Section 11.4    Net-net-net Lease .....	29
Section 11.5    Further Assurances and Corrective Instruments .....	30
Section 11.6    Execution in Counterparts.....	30
Section 11.7    Applicable Law .....	30
Section 11.8    Lessor and Lessee Representatives .....	30
Section 11.9    Captions .....	30
Section 11.10    Incorporation of State Statutes.....	30
EXHIBIT A:	Schedule of Lease Payments Evidenced by 2019 Certificates
EXHIBIT B:	Description of Leased Land
EXHIBIT C:	Certificate of Completion

## LEASE-PURCHASE AGREEMENT

THIS LEASE-PURCHASE AGREEMENT, dated as of \_\_\_\_\_ 1, 2019 (this “*Lease Agreement*”), by and between ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as trustee, as lessor (the “*Lessor*”), and CITY OF FLAGSTAFF, ARIZONA, as lessee (the “*Lessee*” or the “*City*”), a municipal corporation duly organized and existing pursuant to the laws of the State of Arizona;

WITNESSETH:

WHEREAS, pursuant to a Ground Lease, dated as of even date herewith (the “*Ground Lease*”), the Lessee has leased to the Lessor certain real property, as more fully set forth on Exhibit B hereto (the “*Leased Land*”) and improvements thereon; and

WHEREAS, in order to facilitate the financing of construction of a portion of a municipal court facility in the City (the “*Projects*”), the Lessor has proposed to re-lease the Leased Land together with the improvements now or hereafter existing on the Leased Land (the “*Leased Property*”) to the Lessee, and the Lessee is authorized pursuant to the laws of the State of Arizona to enter into leasehold agreements for such purposes;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS; EXHIBITS

**Section 1.1 Definitions.** Unless the context otherwise requires, the terms used herein shall have the meanings given to them in the Recitals hereto as well as the following:

“*2019 Certificates*” means the \$\_\_\_\_,000 aggregate principal amount of Certificates of Participation, Series 2019 Evidencing Undivided Proportionate Interests of the Owners Thereof in Lease Payments to be made by City of Flagstaff, Arizona, as Lessee of Certain Property Pursuant to a Lease-Purchase Agreement dated as of \_\_\_\_\_ 1, 2019, to be executed and delivered in denominations of \$5,000 denominated as principal or integral multiples thereof payable as to interest semiannually as provided in Article II of the Trust Agreement.

“*2019 Underwriter*” means Piper Jaffray & Co., as original purchaser of the 2019 Certificates.

“*Additional Certificates*” means any certificates executed and delivered pursuant to Section 2.11 of the Trust Agreement.

“*Additional Rent*” means any payments to be made pursuant to Section 4.7 of this Lease Agreement in addition to the Lease Payments.

“*Business Day*” means a day of the year other than (i) a Saturday or Sunday or (ii) a day on which banking institutions located in the city designated for the presentation and payment of Certificates are required or authorized to remain closed.

“*Certificates*” means, jointly, the 2019 Certificates and any Additional Certificates executed and delivered pursuant to the Trust Agreement.

“*Closing Date*” means \_\_\_\_\_, 2019.

“*Code*” means the Internal Revenue Code of 1986, as amended and supplemented from time to time, and any regulations promulgated pursuant thereto.

“*Costs*” means the costs incurred in constructing and acquiring, as applicable, the Projects.

“*Defeasance Obligations*” means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following clause) and (ii) obligations of, or obligations guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America, including (A) U.S. treasury obligations, (B) all direct or fully guaranteed obligations, (C) Farmers Home Administration, (D) General Services Administration, (E) Guaranteed Title XI financing, (F) Government National Mortgage Association (GNMA), and (G) State and Local Government Series. Any security used for defeasance must provide for the timely payment of principal and interest and cannot be callable or prepayable prior to maturity or earlier redemption of the rated debt (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date).

“*Delivery Costs*” means all items of expense directly or indirectly payable by or reimbursable to the Lessee or the Lessor relating to the execution, sale and delivery, as applicable, of the Ground Lease, this Lease Agreement, the Trust Agreement or the Certificates, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Lessor, legal fees and charges, accountants’ verification fees, insurance fees and charges, costs of any title insurance policy, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Certificates and any other costs, expenses, fees and charges in connection with the foregoing.

“*Delivery Costs Fund*” means the fund by that name established and held pursuant to Section 3.2 of the Trust Agreement.

“*Fiscal Period*” means a period of 12 consecutive months commencing on the first day of July and ending on the last day of June, or any other consecutive 12-month period that may be established hereafter as the fiscal year of the Lessee for budgeting purposes.

“*Hazardous Substances*” means any substance or material at the level defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic

chemical, a hazardous, toxic or radioactive substance, petroleum or other similar term, by any federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time, including, but not limited to, the statutes listed below:

Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq.

Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq.

Federal Emergency Planning and Community Right-to-Know Act of 1986 42 U.S.C. Sections 11001, et seq.

Federal Clean Air Act, 42 U.S.C. Sections 7401-7642.

Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. Sections 1251, et seq.

Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136, et seq.

*“Independent Counsel”* means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Lessor or the Lessee.

*“Insurance and Condemnation Fund”* means the fund by that name established and held pursuant to Article VII of the Trust Agreement.

*“Lease Payments”* means the payments required to be paid by the Lessee in the amounts and on the dates as set forth in Exhibit A hereto.

*“Lease Payment Fund”* means the fund by that name established and held pursuant to Article V of the Trust Agreement.

*“Lessee Representative”* means the Management Services Director of the City, or any other person designated by the Management Services Director of the City to act on behalf of the Lessee pursuant to or with respect to the Trust Agreement and this Lease Agreement by a certificate filed with the Lessor containing the specimen signature of such person signed by the Management Services Director of the City.

*“Lessor Representative”* means any officer properly designated in writing to act as such by an appropriate document of the governing body of the Lessor filed with the Lessee containing the specimen signature of such person.

*“Net Proceeds”* means any insurance proceeds (other than proceeds of any insurance policy maintained pursuant to Section 5.3 of this Lease Agreement) or condemnation award in excess of \$25,000, paid with respect to the Leased Property, or any proceeds resulting

from the re-renting, re-leasing or sale of all or any portion of the Leased Property pursuant to Section 9.2(c) of this Lease Agreement, remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Outstanding*,” when used with reference to the Certificates, means, as of any date of determination, all Certificates theretofore executed and delivered except:

- (i) Certificates theretofore canceled or delivered for cancellation;
- (ii) Certificates that are deemed paid and no longer Outstanding as provided herein;
- (iii) Certificates in lieu of which other Certificates of the same series shall have been executed and delivered pursuant to the provisions hereof relating to Certificates destroyed, stolen or lost, unless satisfactory evidence has been received that any such Certificate is held by a bona fide purchaser; and
- (iv) For the purposes described in Section 10.3 of the Trust Agreement, the Certificates described in said Section 10.3.

“*Owner*” or “*Owner of a Certificate*,” or any similar term, when used with respect to a Certificate, means the person in whose name such Certificate shall be registered.

“*Permitted Encumbrances*” mean, as of any particular time (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or that the Lessee may, pursuant to provisions of Article V of this Lease Agreement, permit to remain unpaid; (ii) this Lease Agreement; (iii) the Trust Agreement; (iv) the Ground Lease; (v) easements, leases, encumbrances, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions that exist as of the Closing Date and that the Lessee certifies in writing will not materially impair the use of the Leased Property; and (vi) easements, leases, encumbrances, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions to which the Lessor and the Lessee consent in writing.

“*Prepayment*” means any payment made, in whole or in part, pursuant to Article X of this Lease Agreement as a prepayment of the Lease Payments.

“*Project Fund*” means the fund by that name established and held pursuant to Section 3.1 of the Trust Agreement.

“*Special Counsel*” means any law firm, acceptable to the Lessee Representative and the Lessor, having a national reputation in the field of law relating to municipal bonds whose opinions are generally accepted by purchasers of municipal obligations.

“*State*” means the State of Arizona.

“*Tax Certificate*” means the Certificate Relating To Federal Tax Matters, dated the Closing Date, executed and delivered by the Lessee.

“*Term*” or “*Term of this Lease Agreement*” means the time during which the Lease Agreement is in effect, as provided in Section 4.2 of this Lease Agreement.

“*Trust Agreement*” means the Trust Agreement, dated as of even date herewith, by and between the Lessor, in its separate capacity as trustee, and the City, together with any amendments or supplements thereto permitted to be made pursuant thereto.

**Section 1.2 Exhibits.** The following Exhibits are attached to, and by reference made a part of, this Lease Agreement:

Exhibit A: The schedule of the Lease Payments.

Exhibit B: The description of the Leased Land.

Exhibit C: The form of “Certificate of Completion” required to be delivered by the Lessee to the Lessor pursuant to Section 4.3 hereof.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**Section 2.1 Representations, Covenants and Warranties of the Lessee.** The Lessee represents, covenants and warrants, as applicable, to the Lessor as follows:

(a) The Lessee is a municipal corporation duly organized and existing in accordance with the laws of the State.

(b) The Constitution and the laws of the State authorize the Lessee to enter into this Lease Agreement, the Ground Lease and the Trust Agreement and to enter into the transactions contemplated by, and to carry out its obligations pursuant to, all of the aforesaid agreements, and the Lessee has duly authorized and executed all of the aforesaid agreements.

(c) Neither the execution and delivery of this Lease Agreement, the Ground Lease or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any law, regulation, court order, restriction or any agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, or constitutes a default with respect to any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the Lessee, or upon the Leased Property, except Permitted Encumbrances.

(d) The Lessee has duly authorized, executed and delivered this Lease Agreement in accordance with the laws of the State and upon such execution and delivery the Lease Agreement will be a valid and binding agreement of the Lessee.

(e) The Lessee has an immediate need for, and expects to make immediate use of, all of the Leased Property, which need is not temporary or expected to

diminish in the foreseeable future, and there are no circumstances presently affecting the Lessee that could alter its foreseeable need for the Leased Property or adversely affect its ability or willingness to budget funds for the payment of Lease Payments, Additional Rent and other payments due hereunder.

(f) The Leased Property shall be used during the Term of this Lease Agreement only by the Lessee to carry out the governmental purposes of the Lessee.

(g) The Lessee shall perform all obligations and duties imposed on it pursuant to this Lease Agreement, the Ground Lease and the Trust Agreement. Immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting its estates in the Leased Property, the Lessee will deliver the same, or a copy thereof, to the Lessor.

(h) The Lessee shall promptly, upon request of the Lessor or any assignee, from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Leased Property, whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and shall, to the extent permitted by applicable law, indemnify and save the Lessor and every assignee harmless for, from and against all loss cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceeding.

(i) Except as disclosed in writing to the Lessor prior to the date hereof, the Lessee has not been informed of, nor does the Lessee have any knowledge of (A) the presence of any Hazardous Substances on any of the Leased Property, or (B) any spills, releases, threatened releases, discharges or disposal of Hazardous Substances that have occurred or are presently occurring on or onto any of the Leased Property or any properties adjacent to any of the Leased Property, or (C) any spills or disposal of Hazardous Substances that have occurred or are presently occurring on any other properties as a result of any construction on or operation and use of any such Leased Property.

(ii) In connection with the construction on or operation and use of any of the Leased Property, there has not been any failure to comply with any applicable local, state or federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, treatment, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances.

(iii) The Lessee has not given any release or waiver of liability that would impair any claim based upon Hazardous Substances to a previous owner of any of the Leased Property or to any party who may be potentially responsible for the presence of Hazardous Substances thereon nor has it made promises of indemnification regarding Hazardous Substances on or associated with any of the Leased Property to any person other than the Lessor.

(iv) In the event that the Lessee becomes aware of the release of any Hazardous Substances on, or other environmental condition, problem or liability with respect to, any of the Leased Property, the Lessee shall promptly notify the Lessor in writing of such condition. The Lessee further agrees to take actions to investigate and clean up the release of any Hazardous Substances on, or other environmental condition, problem or liability affecting, any of the Leased Property, promptly after the Lessee becomes aware of any such condition and to keep the Lessor advised of all such actions taken by the Lessee.

(i) With respect to the execution and delivery of the 2019 Certificates, the Lessee shall, subject to annual appropriation to cover the costs of preparation and mailing thereof, comply with the applicable reporting requirements for obligated persons included in Rule 15c2-12 adopted pursuant to the Securities Exchange Act of 1934, as amended, or any successor provision, including entering into a continuing disclosure undertaking or agreement, if necessary, in form and substance satisfactory to the 2019 Underwriter for such purpose.

**Section 2.2 Representations, Covenants and Warranties of the Lessor.** The Lessor represents, covenants and warrants, as applicable, to the Lessee as follows:

(a) The Lessor is a national banking association with full power and authority to enter into and perform this Lease Agreement, the Ground Lease and the Trust Agreement and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) The Lessor shall not pledge the Lease Payments, Additional Rent or other amounts derived from the Leased Property or from its other rights pursuant to this Lease Agreement and will not transfer, mortgage or encumber its interest in the Leased Property, except as provided pursuant to the terms of this Lease Agreement and the Trust Agreement.

(c) None of (i) the execution and delivery of this Lease Agreement, the Ground Lease or the Trust Agreement, (ii) the fulfillment of or compliance with the terms and conditions hereof or thereof, or (iii) the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default with respect to any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Leased Property, except Permitted Encumbrances.

(d) Except as provided herein, the Lessor shall not assign this Lease Agreement, its right to receive Lease Payments, Additional Rent or other amounts derived from the Leased Property or from its other rights pursuant to this Lease Agreement or its duties and obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.2.

**Section 2.3 Tax Covenants.**

(a) (i) As described in further detail in the Tax Certificate, no direction for the making of any investment or other use of the proceeds of any of the 2019

Certificates shall be made which would cause the 2019 Certificates to be “arbitrage bonds” as that term is defined in section 148 (or any successor provision thereto) of the Code or “private activity bonds” as that term is defined in section 141 (or any successor provision thereto) of the Code, and the requirements of such sections and related regulations of the Code shall be complied with throughout the term of the 2019 Certificates. (Particularly, the Lessee shall be the owner of the Projects for federal income tax purposes. The Lessee shall not enter into any management or service contract with any entity other than a governmental entity for the operation of any portion of the Projects unless the management or service contract complies with the requirements of such authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion thereof.) In consideration of the purchase and acceptance of the 2019 Certificates by the owners from time to time thereof and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, the Lessee shall, and the appropriate officials of the Lessee are hereby directed, to take all action required to retain such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(ii) (A) The Lessee shall take all necessary and desirable steps, as determined by the Mayor and Council of the Lessee, to comply with the requirements hereunder in order to ensure that the interest on the 2019 Certificates is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event the Lessee receives a Special Counsel’s Opinion (as such term is defined in the next Section) that either compliance with such requirement is not required to maintain the exclusion from gross income of the interest on the 2019 Certificates or compliance with some other requirement will meet the requirements of the Code. In the event the Lessee receives such a Special Counsel’s Opinion, the parties agree to amend this Lease Agreement to conform to the requirements set forth in such opinion.

(B) If for any reason any requirement hereunder is not complied with, the Lessee shall take all necessary and desirable steps, as determined by the Lessee, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and the Lessee shall pay any required interest or penalty under hereinafter described Regulations section 1.148-3(h) with respect to the Code.

(iii) Written procedures have been established for the Lessee to ensure that all nonqualified obligations are remediated according to the requirements under the Code and related Regulations and to monitor the requirements of section 148 of the Code relating to arbitrage, with which the Lessee will comply.

(iv) The procedures required by any arbitrage rebate provision or separate agreement executed in connection with the execution and delivery of the 2019 Certificates (initially, those in the next Section) shall be complied with for so long as compliance is necessary pursuant to the Code.

## **Section 2.4 Arbitrage Rebate Covenants.**

(a) Terms not otherwise defined in Subsection (b) hereof shall have the meanings given to them in the Tax Certificate.

(b) The following terms shall have the following meanings:

Bond Year shall mean each one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of execution and delivery of the 2019 Certificates and shall end on the date selected by the Lessee, provided that the first Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last 2019 Certificate.

Bond Yield is as indicated in the Tax Certificate. Bond Yield shall be recomputed if required by Regulations section 1.148-4(b)(4) or 4(h)(3). Bond Yield shall mean the discount rate that produces a present value equal to the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the 2019 Certificates as determined under Regulations section 1.148-4(b). The present value of all such payments shall be computed as of the date of execution and delivery of the 2019 Certificates and using semiannual compounding on the basis of a 360-day year.

Gross Proceeds shall mean:

(i) any amounts actually or constructively received by the Lessee from the sale of the 2019 Certificates but excluding amounts used to pay accrued interest on the 2019 Certificates within one year of the date of execution and delivery of the 2019 Certificates;

(ii) transferred proceeds of the 2019 Certificates under Regulations section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii); and

(iv) replacement proceeds of the 2019 Certificates within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the 2019 Certificates, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the 2019 Certificates in the event the Lessee or the Lessor encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4). Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Trust Agreement.

Investment Property shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

Issue Price is as indicated in the Tax Certificate and shall be determined as provided in Regulations section 1.148-1(b).

Nonpurpose Investment shall mean any Investment Property acquired with Gross Proceeds and which is not acquired to carry out the governmental purposes of the 2019 Certificates.

Payment shall mean any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement shall mean at any time the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Payments in accordance with Regulations section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under section 148(f)(4) of the Code or Regulations section 1.148-7.

Receipt shall mean any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations shall mean the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

Special Counsel's Opinion shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the Lessee.

(c) Within 60 days after the end of each Bond Year, unless an exception to the requirement to do is properly established, the Lessee shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(1) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the 2019 Certificates (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with respect to the 2019 Certificates (determined as of the last day of such Bond Year); and

(2) not later than 60 days after the retirement of the last 2019 Certificate, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last 2019 Certificate).

Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

(d) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(e) For purposes of Subsection (d), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(1) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(2) Except as provided in Subsection (f) or (g), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(3) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(f) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(1) the yield on reasonably comparable direct obligations of the United States; and

(2) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(g) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(1) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Lessee or any other person (whether or not in connection with the 2019 Certificates), and that the bid is not being submitted

solely as a courtesy to the Lessee or any other person for purposes of satisfying the requirements in the Regulations that the Lessee receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the 2019 Certificates.

(2) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(3) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the 2019 Certificates (e.g., a lead underwriter within 15 days of the issue date of the 2019 Certificates or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If the Lessee uses an agent to conduct the bidding, the agent may not bid.

(4) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(5) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(7) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(8) The Lessee retains until three years after the last outstanding 2019 Certificate is retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the Lessee and a copy of the provider's certification described in (7) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviate from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(h) Such experts and consultants shall be employed by the Lessee to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with section 148(f) of the Code with respect to the 2019 Certificates.

## ARTICLE III

### DEPOSIT OF MONEYS; CONSTRUCTION OF PROJECT

**Section 3.1 Deposit of Moneys.** On the Closing Date, the proceeds of sale of the 2019 Certificates shall be deposited as provided in Section 2.6 of the Trust Agreement for disbursement pursuant to the Trust Agreement.

**Section 3.2 Construction of Projects.**

(a) The Lessor shall construct the Projects through the payment of such funds/deposit and disbursement of funds in accordance with Article III of the Trust Agreement.

(b) The Lessor hereby appoints the Lessee as its agent to plan and design the Projects and thereafter as its agent to carry out all phases of the acquisition, construction, installation and equipping of the Projects. The Lessee, as agent of the Lessor, assumes all rights, duties and responsibilities of the Lessor regarding acquisition, construction, installation and equipping of the Projects and any items related thereto, except as limited herein.

(c) The Lessee, as agent, may enter directly into any purchase order or contract without further written approval of the Lessor. The written approval of the Lessee Representative shall be required to authorize any payments of costs of the Projects from the proceeds of the Certificates deposited in the Project Fund.

(d) The Lessee, as agent of the Lessor, shall have the right to supervise the acquisition, construction, installation and equipping of the Projects, and to monitor the performance by the contractors selected to construct and install the Projects in whatever manner the Lessee, in its sole discretion, deems appropriate.

(e) The Lessor hereby assigns to the Lessee all of its rights and powers under all such purchase orders and contracts as it enters into with respect to the Projects and the Lessee shall have the right to enforce, in its own name or the name of the Lessor, if necessary, such purchase orders or contracts at law or in equity; provided, however, that this assignment shall not prevent the Lessor from asserting said rights and powers in its own behalf.

**Section 3.3 Payment of Delivery Costs.** Payment of the Delivery Costs relating to the 2019 Certificates shall be made from the moneys deposited in the Delivery Costs Fund as provided in Section 3.1 hereof, which moneys shall be disbursed for this purpose in accordance and upon compliance with Article III of the Trust Agreement.

**Section 3.4 Unexpended Proceeds and Other Moneys.** All excess moneys remaining in the Project Fund and the Delivery Costs Fund and not required for payment of Costs payable from such fund and Delivery Costs relating to the 2019 Certificates, respectively, shall be transferred to the Lease Payment Fund pursuant to Section 3.1 and Section 3.2 of the Trust Agreement and applied to pay the next-succeeding Lease Payments as the same become due and payable.

**Section 3.5 Additional Certificates.** The Lessor, in its separate capacity as Trustee, upon the request of the City, may, in its discretion, execute and deliver Additional Certificates upon the terms and conditions provided herein and in Section 2.11 of the Trust Agreement. Additional Certificates may be executed and delivered to the extent permitted by law and to provide funds to expand or improve the Projects or to pay the costs of refunding Outstanding Certificates. In the event of the execution and delivery of Additional Certificates for such purpose, the amount of Additional Certificates executed and delivered may include all applicable Delivery Costs as shall be approved by Special Counsel. Before any Additional Certificates are executed and delivered (a) the City and the Lessor shall have entered into an amendment to this Lease Agreement, to provide, among other things, for additional Lease Payments in an amount at least sufficient to pay the principal and interest represented by the Additional Certificates when due, and (b) the City and the Lessor shall have otherwise complied with the provisions herein and in Section 2.11 of the Trust Agreement with respect to the execution and delivery of such Additional Certificates.

#### **ARTICLE IV**

#### **AGREEMENT TO LEASE; TERMINATION OF LEASE AGREEMENT; LEASE PAYMENTS; TITLE TO THE LEASED PROPERTY**

**Section 4.1 Lease.** The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the Leased Property upon the terms and conditions set forth in this Lease Agreement.

#### **Section 4.2 Term of Agreement; Termination.**

(a) The Term of this Lease Agreement shall commence on the date hereof, and continue until the end of the current Fiscal Period, and thereafter for such additional Fiscal Periods as are necessary to complete the Term, being the time through and including July 1, 20\_\_, unless terminated prior thereto. If, before July 1, 20\_\_, the Trust Agreement shall be discharged in accordance with its terms, the Term of this Lease Agreement shall thereupon terminate.

(b) If, on or before the third Business Day prior to the last date on which the Lessee is required or permitted to adopt its budget for a Fiscal Period, the Lessee fails to adopt a budget containing an annual budgetary appropriation sufficient to make all Lease Payments coming due during the Fiscal Period for which such budgeting and appropriation are made, the Lessee will immediately notify the Lessor in writing of that fact. If, on the last date on which the Lessee is required or permitted to adopt its budget for a Fiscal Period, no such proper budgeting and final appropriation by the Mayor and Council of the Lessee shall have been made, then all of the Lessee's right, title and interest in and future obligations pursuant to this Lease Agreement shall terminate (subject to reinstatement as provided in subsection (c)), effective as of the last day of the last Fiscal Period for which such budgetary appropriation was properly obtained, and the Lessee shall be relieved of any subsequent obligation pursuant to this Lease Agreement with respect thereto, other than to return to the Lessor possession of the Leased Property as provided in this Lease Agreement and to pay any accrued and unpaid obligations.

(c) If this Lease Agreement terminates pursuant to subsection (b) hereof and if, within 45 days following such date of termination, amounts described in subsection (b) are determined to be available that would have permitted this Lease Agreement to have continued in effect with respect to the Leased Property if such amounts had been determined to be available before the termination of the prior Fiscal Period, then this Lease Agreement shall be reinstated with respect thereto and deemed renewed as of the day following the date of such termination, and no such termination shall be deemed to have occurred.

**Section 4.3 Possession.** After execution and delivery of the Ground Lease, the Lessee shall take immediate possession of the Leased Property. Thereafter, the Lessee shall notify the Lessor of the completion of the construction of the Projects by delivery to the Lessor of a Certificate of Completion in the form attached hereto as Exhibit C, as promptly as possible after such completion. The Lessee agrees to surrender possession of the Leased Property upon termination of the Lease Agreement for any reason (i) on the day following the 45 day reinstatement period provided in Section 4.2(c) hereof or (ii) on the date set by the Lessor pursuant to Section 9.2(c) hereof. To the extent permitted by law, the Lessee agrees to hold the Lessor harmless for, from and against any costs, loss or damage whatsoever arising from or occasioned by any removal of property by the Lessor due to such termination.

**Section 4.4 Lease Payments; Additional Rent; Other Payments.**

(a) Subject to the provisions of Section 4.2 and Articles VI and X hereof, the Lessee shall pay to the Lessor, its successors and assigns, as rental for the use and occupancy of the Leased Property, the Lease Payments in the respective principal and interest amounts specified in Exhibit A, to be due and payable on the respective Lease Payment Dates specified in Exhibit A. Any amount held in the Lease Payment Fund on any Lease Payment Date (other than (i) amounts resulting from the Prepayment of the Lease Payments in part but not in whole pursuant to Article X hereof and (ii) amounts required for payment of past due principal or interest evidenced by any Certificates not presented for payment) shall be credited towards the Lease Payments then due and payable, and no Lease Payments need be made on any Lease Payment Date if the amounts then held in the Lease Payment Fund (other than (y) amounts resulting from the Prepayment of the Lease Payments in part but not in whole pursuant to Article X hereof and (z) amounts required for payment of past due principal or interest evidenced by any Certificates not presented for payment) are at least equal to the Lease Payments then required to be paid. Lease Payments for each Fiscal Period shall be for the use of the Leased Property during such Fiscal Period.

The obligations of the Lessee to pay Lease Payments and Additional Rent as required in this Lease Agreement and the performance and observance of the other covenants and agreements on the Lessee's part contained herein shall be absolute and unconditional in all respects, except as specifically otherwise provided herein with respect to termination upon nonappropriation. During the Term hereof, the Lessee (A) shall not suspend or discontinue payment of the Lease Payments or Additional Rent, and (B) shall perform and observe all of its agreements contained herein and, other than pursuant to Section 4.2(b), will not terminate this Lease Agreement for any reason, including, without limitation, any acts or circumstances that may constitute destruction of or damage to the Leased Property, frustration of purpose, any

failure of the Lessor to perform and observe any agreement whether express or implied or any duty, liability or obligation arising out of or connected with this Lease Agreement.

The Lessor acknowledges that, pursuant to State law, the Lessee's obligation to make Lease Payments is a current expense of the Lessee, payable exclusively from budgeted and appropriated funds during each Fiscal Period, and is not a general obligation or indebtedness of the Lessee or the State.

(b) In the event that the Lessee prepays all remaining Lease Payments and Additional Rent in full pursuant to Article X hereof, the obligations of the Lessee pursuant to this Lease Agreement shall thereupon cease and terminate, including but not limited to the obligation of the Lessee to pay Lease Payments pursuant to this Section. In the event the Lessee prepays less than all of the remaining Lease Payments and Additional Rent pursuant hereto, the principal and interest components of the remaining Lease Payments shall be reduced proportionately such that the remaining Lease Payments correspond to the remaining payments of principal and interest evidenced by the Outstanding Certificates (determined by reference to the Trust Agreement).

(c) In the event the Lessee should fail to pay any of the Lease Payments and Additional Rent required in this Section 4.4, the payment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent permitted by law, from the date of default to the date of payment at the rate of 10 percent per annum.

(d) The Lease Payments and Additional Rent for each rental payment period during the Term of this Lease Agreement shall constitute the total rental for the Leased Property for such rental payment period and shall be paid by the Lessee in each rental payment period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of, the Leased Property during each such period for which said rental is to be paid. The parties hereto have agreed and determined that the total Lease Payments and Additional Rent represent the fair rental value of the Leased Property. In making such determination, consideration has been given to the appraised value of the Leased Property, other obligations of the parties pursuant to this Lease Agreement, the uses and purposes of which may be served by the Leased Property and the benefits therefrom that will accrue to the Lessee and the general public.

(e) All interest of the Lessor in and to this Lease Agreement and in and to the Lease Payments and Additional Rent to be paid pursuant hereto for the Leased Property are held in trust pursuant to the Trust Agreement for the benefit of the Owners from time to time of the Certificates. The Lessor hereby directs the Lessee, and the Lessee hereby agrees to pay at the designated corporate trust office, all Lease Payments and Additional Rent payable by the Lessee pursuant to this Lease Agreement.

**Section 4.5 Quiet Enjoyment.** During the Term of this Lease Agreement, the Lessee shall have quiet use and enjoyment of the Leased Property, and the Lessee shall during such Term peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Lessor, except as expressly set forth in this Lease Agreement. The

Lessor will, at the request of the Lessee and at the Lessee's cost, join in any legal action in which the Lessee asserts its right to such possession and enjoyment to the extent the Lessor may lawfully do so. Notwithstanding the foregoing, the Lessor have the right to inspect the Leased Property as provided in Section 7.1 hereof.

**Section 4.6 Title.** Title to the Leased Land will remain with the Lessee pursuant to Section 3 of the Ground Lease.

If the Lessee prepays the Lease Payments and Additional Rent in full pursuant to Article X hereof or makes the advance deposit required by Section 10.1 hereof, or pays all Lease Payments and Additional Rent during the Term of this Lease Agreement as the same become due and payable, all right, title and interest of the Lessor in and to the Leased Property shall be transferred to and vested in the Lessee clear of this Lease Agreement. Such title shall be vested in the Lessee hereunder without the necessity of any additional payments or of any further instrument of transfer. The Lessor agrees, at the Lessee's expense, to take any and all steps and execute and record any and all documents reasonably required by the Lessee to confirm such vesting of title.

**Section 4.7 Additional Rent.** In addition to the Lease Payments described in Section 4.4 hereof, the Lessee shall pay when due (i) all costs and expenses incurred by the Lessor to comply with the provisions of the Trust Agreement, (ii) payments required to be made pursuant to Sections 2.3 and 2.4 hereof, (iii) compensation, expenses and any other amounts payable pursuant to Section 9.8 of the Trust Agreement, (iv) all amounts payable by the Lessee pursuant to Section 7.2 hereof, (v) all costs and expenses of auditors, engineers, accountants and legal counsel, if necessary, but excluding Delivery Costs (which shall be paid by the Lessor from moneys deposited in the Delivery Costs Fund), and (vi) all rent for any holdover period during which Lessee stays in possession of the Leased Property after termination of this Lease Agreement, which rent shall be calculated as: (A) number of days of holdover divided by (B) 365 multiplied by (C) the Lease Payments for such Fiscal Period.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; OTHER MATTERS

**Section 5.1 Maintenance, Utilities, Taxes and Assessments.** Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Leased Property, the Lessee shall keep in good repair and maintain the Leased Property, and the Lessee shall pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the Lessee or any assignee or sublessee thereof. In exchange for the Lease Payments and Additional Rent herein provided, the Lessor agrees to provide only the Leased Property, as herein provided.

The Lessee also shall pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Lessor or the Lessee affecting the Leased Property, the respective interests or estates therein or the taxability of any payments pursuant to this Lease Agreement; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The Lessee or any sublessee may, at the Lessee's or such sublessee's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Lessor shall notify the Lessee or such sublessee that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Lessor in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the Lessee or such sublessee shall promptly pay such taxes, assessments or charges or provide the Lessor with full security against any loss that may result from nonpayment, in form satisfactory to the Lessor.

**Section 5.2 Modification of Leased Property.** The Lessee and any sublessee shall, at their own expense, have the right to remodel any portion of the Leased Property or to make additions, modifications and improvements to any portion of the Leased Property. All such additions, modifications and improvements which cannot be removed without damaging the Leased Property shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Leased Property or cause it to be used for purposes other than those authorized pursuant to the provisions of State and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section, shall be of a value that is not substantially less than the value of such Leased Property immediately before the making of such additions, modifications and improvements. The Lessee shall not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the Lessee or any sublessee or assignee pursuant to this Section; provided that if any such lien is established and the Lessee shall first notify or cause to be notified the Lessor of the Lessee's or any sublessee's intention to do so, the Lessee or any sublessee may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Lessor with full security against any loss or forfeiture that might arise from the nonpayment of any such item, in form satisfactory to the Lessor. The Lessor shall cooperate fully in any such contest, upon the request and at the expense of the Lessee or such sublessee.

**Section 5.3 General Liability Insurance.** The Lessee shall maintain or cause to be maintained, throughout the Term of this Lease Agreement, a standard commercial general insurance policy or policies or Qualified Self-Insurance (as defined in the Trust Agreement), with a responsible insurance company or companies authorized pursuant to the laws of the State

to assume such risks, of such types and in such amounts as are determined by the Lessee to be customary for similar institutions carrying on similar activities. Said policy or policies, or any Qualified Self-Insurance as discussed below, shall name the Lessor as an additional insured and shall provide for coverage against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the construction or operation of the Leased Property; provided, however, to the extent the Lessor is not named as an additional insured for the purposes of any insurance or Qualified Self-Insurance, the Lessee hereby assigns to the Lessor its rights to receive any or all proceeds received from such insurance or Qualified Self-Insurance as their respective interests or rights pursuant to this Lease Agreement may appear on the date of payment thereof. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the Lessee and may be maintained in the form of Qualified Self-Insurance by the Lessee. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the proceeds of such insurance shall have been paid.

**Section 5.4 Fire and Extended Coverage Insurance.** The Lessee shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, insurance or Qualified Self-Insurance against loss or damage to any structures or equipment constituting any part of the Leased Property by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance then in existence. Such insurance shall be in an amount equal to 100 percent of the replacement cost of the Leased Property then in existence. Such insurance may be subject to deductible clauses of not to exceed \$25,000 for any one loss. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the Lessee and may be maintained in the form of Qualified Self-Insurance by the Lessee. Said policy or policies, or any Qualified Self-Insurance, shall provide for insuring the Lessor and the Lessee against such loss or damage; provided, however, to the extent the Lessor is not named as an additional insured for the purposes of any insurance or Qualified Self-Insurance, the Lessee hereby assigns to the Lessor its rights to receive any or all proceeds received from such insurance or Qualified Self-Insurance as their respective interests or rights pursuant to this Lease Agreement may appear on the date of payment thereof. The Net Proceeds of such insurance shall be applied as provided in Section 6.2(a) hereof.

**Section 5.5 Insurance Net Proceeds; Form of Policies.** Each policy of insurance required by Sections 5.3 and 5.4 hereof shall provide that all proceeds thereunder shall be payable to the Lessor or assigned to the Lessor by the Lessee pursuant to Sections 5.3 and 5.4 hereof and such proceeds shall be applied as provided in Section 6.2 hereof. The Lessee shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement. All such policies shall provide that the Lessor shall be given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Lessor shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Lessee. The Lessee shall cause to be delivered annually to the Lessor a certificate stating that the insurance policies required by this

Lease Agreement are in full force and effect. In the event the Lessee maintains self-insurance for the insurance required by Sections 5.3 and 5.4 hereof, the Lessee shall cause to be delivered annually to the Lessor the documentation required for the determination that such self-insurance constitutes Qualified Self-Insurance.

**Section 5.6 Advances.** If the Lessee shall fail to perform any of its obligations pursuant to this Article, the Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the Lessee shall be obligated to repay all such advances as Additional Rent as soon as possible, with interest at the rate of 10 percent per annum from the date of the advance to the date of repayment.

**Section 5.7 Installation of Lessee's Equipment.** The Lessee and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items shall remain the sole property of such party, in which the Lessor shall not have any interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the Lessee and any sublessee from purchasing or leasing items to be installed in accordance with this Section pursuant to any lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Leased Property.

**Section 5.8 Liens.** The Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than the respective rights of the Lessor and the Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in this Article, the Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The Lessee shall reimburse the Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**Section 5.9 Delivery of Leased Property Upon Termination.** The Lessee shall, (i) subject to Section 4.2(c) hereof, upon the early termination of the full Term of this Lease Agreement pursuant to Section 4.2(b) hereof or (ii) on the date set by the Lessor pursuant to Section 9.2(c) hereof, deliver the Leased Property to the Lessor, or another person, as directed by the Lessor, in at least as good condition and repair as when delivered to Lessee, ordinary wear and tear excepted. The Leased Property shall be delivered to the Lessor, or another person, as directed by the Lessor, as herein required, free and clear of all liens, encumbrances and rights of others except Permitted Encumbrances (other than this Lease Agreement).

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

**Section 6.1 Eminent Domain.** If all of the Leased Property shall be taken permanently pursuant to the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken and the Net Proceeds shall be deposited pursuant to Section 7.2 of the Trust Agreement. If less than all of the Leased Property shall be taken permanently, or if all of the Leased Property or any part thereof shall be taken temporarily, pursuant to the power of eminent domain, (i) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (ii) there shall be a partial reduction of Lease Payments as a result of the application of the Net Proceeds of any eminent domain award to the Prepayment of the Lease Payments hereunder as provided in Section 6.3 hereof.

The Lessee agrees, to the extent permitted by law, that it shall use its best efforts to effect any condemnation award in an amount at least equal to the principal amount of the then Outstanding Certificates plus accrued interest thereon.

### **Section 6.2 Application of Net Proceeds.**

(a) The Net Proceeds of any insurance award resulting from any damage to or destruction of any Leased Property by fire or other casualty shall be deposited in the Insurance and Condemnation Fund created pursuant to Article VII of the Trust Agreement promptly upon receipt thereof and, if the Lessee determines, within 45 days following such deposit, that the replacement, repair, restoration, modification or improvement of such Leased Property is not economically feasible (e.g., the Net Proceeds together with any additional funds from other available sources are insufficient therefor) or is not in the best interest of the Lessee, then, upon receipt of written notice of such determination by the Lessee Representative, such Net Proceeds shall be promptly transferred to the Lease Payment Fund and applied as provided in Section 10.3 hereof; provided, however, in the event of damage or destruction of the Leased Property in full, such Net Proceeds may be transferred to the Lease Payment Fund to be applied as provided in Section 10.3 hereof only if sufficient, together with other moneys available therefor, to cause the prepayment of all Outstanding Certificates; provided further, however, if the Net Proceeds are not sufficient to cause the prepayment of all Outstanding Certificates, the Lessee shall have an option to purchase the Leased Property for a price representing the difference between the amount of Net Proceeds received and available for transfer to the Lease Payment Fund and the amount required to redeem all Outstanding Certificates. If the Lessee exercises its option to purchase the Leased Property as described in the preceding sentence, the proceeds from said sale and the Net Proceeds shall then be deposited in the Lease Payment Fund and applied as provided in Section 10.3 hereof. Except in the event of damage or destruction of the Leased Property in full, all Net Proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Lease Payment Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Leased Property by the Lessee, upon

receipt of a requisition signed by the Lessee Representative stating with respect to each payment to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due, (iii) the amount to be paid, and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. Any balance of the Net Proceeds remaining in the Insurance and Condemnation Fund because (A) the Leased Property was damaged or destroyed in full and the Net Proceeds, together with other available moneys, were insufficient to cause the prepayment of all Outstanding Certificates, or (B) after all work to replace, repair, restore, modify or improve the Leased Property has been completed, shall be deposited in the Lease Payment Fund and applied toward subsequent Lease Payments.

(b) The Net Proceeds of any eminent domain award resulting from any event described in Section 6.1 hereof shall be deposited in the Insurance and Condemnation Fund to be held and applied pursuant to Section 7.2 of the Trust Agreement.

(c) The parties hereto agree that the provisions of this Section 6.2 are not intended and shall not be construed in any way to apply to the proceeds of any insurance or condemnation award less than or equal to \$25,000. Such proceeds shall be paid to the Lessee and applied by the Lessee in its sole discretion.

**Section 6.3 Reduction of Rental in the Event of Prepayment of Lease Payments.** In the event the Net Proceeds of any insurance or condemnation awards are deposited in the Lease Payment Fund and credited towards Prepayments pursuant to Section 10.3 hereof, the amount of remaining Lease Payments shall be reduced proportionately as to the principal and interest components thereof such that the resulting Lease Payments will correspond to the remaining payments of principal and interest evidenced by the Outstanding Certificates (after any prepayment of Certificates pursuant to Section 4.2 of the Trust Agreement resulting from such Prepayments), which resulting Lease Payments are hereby deemed to represent fair consideration for the use and occupancy of the portions of the Leased Property not taken, damaged or destroyed. In the event of any such reduction, this Lease Agreement shall continue in full force and effect and the Lessee waives any right to terminate this Lease Agreement by virtue of any damage or destruction of the Leased Property causing such reduction of Lease Payments.

## ARTICLE VII

### ACCESS TO LEASED PROPERTY

**Section 7.1 Access to the Leased Property.** The Lessor and any Lessor Representative shall have the right at all reasonable times to enter upon the Leased Land and to examine and inspect the Leased Property. The Lessee further agrees that the Lessor, any Lessor Representative and the Lessor's successors or assigns shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the Lessee to perform its obligations hereunder.

**Section 7.2 Release and Indemnification Covenants.** To the extent permitted by law, the Lessee shall indemnify and save the Lessor harmless for, from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the ownership, use, maintenance, condition or management of, or from any work or thing done on, the Leased Property, including any environmental condition relating to the Leased Property, (ii) any breach or default on the part of the Lessee in the performance of any of its obligations pursuant to this Lease Agreement or of any of its representations or warranties pursuant to this Lease Agreement, (iii) any act or negligence of the Lessee or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, (iv) any act or negligence of any sublessee of the Lessee with respect to the Leased Property, or (v) the acquisition and construction of the Projects, the execution and delivery of this Lease Agreement and the Trust Agreement, the acceptance and/or the administration of the Trust created by the Trust Agreement, and the execution, delivery and sale of the Certificates. No indemnification is provided pursuant to this Section or elsewhere in this Lease Agreement for claims, suits and actions successfully brought against the Lessor for failure to perform and carry out the duties specifically imposed upon and to be performed by it pursuant to this Lease Agreement, or for claims, suits and actions successfully brought for willful misconduct, negligence, or breach of duty pursuant to this Lease Agreement by the Lessor or its respective officers, agents, employees, successors or assigns. The indemnification provided herein shall survive the termination or expiration of this Lease Agreement, the prepayment or defeasance of the Certificates and the resignation or removal of the Lessor.

## **ARTICLE VIII**

### **ASSIGNMENT, SUBLEASING AND AMENDMENT**

**Section 8.1 Assignment and Subleasing by the Lessee.** This Lease Agreement may not be assigned by the Lessee. The Leased Property may be subleased only with the written consent of the Lessor, which consent shall not be unreasonably withheld, and subject to all of the following conditions:

- (i) This Lease Agreement and the obligation of the Lessee to make Lease Payments hereunder shall remain obligations of the Lessee;
- (ii) The Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Lessor a true and complete copy of such sublease;
- (iii) No such sublease by the Lessee shall cause any of the Leased Property to be used for a purpose other than a governmental or proprietary function authorized pursuant to the provisions of the Constitution and laws of the State; and
- (iv) The Lessee shall furnish the Lessor with a written opinion of Special Counsel, with respect to any such sublease, stating that such sublease shall not adversely affect the exclusion of the interest components of the Lease Payments from gross income for federal income tax purposes when paid to the

Owners of the 2019 Certificates and any Additional Certificates, sold on the basis of the interest thereon being excluded from gross income for federal income tax purposes.

**Section 8.2 Amendment of this Lease Agreement.** Neither the Lessor nor the Lessee will alter, modify or (subject to Section 8.3 hereof) cancel, or agree or consent to alter, modify or (subject to Section 8.3 hereof) cancel this Lease Agreement, excepting only such alteration or modification as may be permitted by Article X of the Trust Agreement.

**Section 8.3 Release or Exchange of Property.** If, during the Term of this Lease Agreement, the Lessee desires to acquire legal title to any of the improvements on the Leased Land and the related portion of the Leased Land, unencumbered by the terms and conditions of the Lease Agreement, the Lessor shall sell to the Lessee any of such improvements on the Leased Land and portion of the Leased Land so desired by the Lessee, provided the following conditions are met, to wit:

(a) Contemporaneously with any such sale by the Lessor (i) the Lessee delivers to the Lessor the net proceeds from the sale of such improvements on the Leased Land and related portion of the Leased Land, or (ii) the Lessee sells to the Lessor substitute property (“substitute property”) for the Leased Property which the Lessee wishes to acquire from the Lessor;

(b) The sale or exchange of property will not cause any decrease in the total Lease Payments required pursuant to this Lease Agreement or any change in the interest component or principal component thereof;

(c) The Lessee furnishes to the Lessor an opinion of Special Counsel acceptable to the Lessor that the sale or exchange of property will not adversely affect the exclusion of the interest payable on the 2019 Certificates and any Additional Certificates (sold on the basis of the interest thereon being excluded from gross income for federal income tax purposes) from the federal gross income of the owners thereof;

(d) Any substitute property shall be subject to all the terms and conditions of this Lease Agreement and shall be subjected to the lien of the Trust Agreement; and

(e) All costs and expenses incurred in connection with the sale or exchange of property contemplated by this Section shall be borne by the Lessee.

Any proceeds delivered pursuant to subsection (a)(i) above shall be applied to acquire, construct or improve additional Leased Property, or be applied to Lease Payments as directed by the Lessee, subject to any restrictions contained in the opinion of Special Counsel delivered pursuant to subsection (c) above.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1 Events of Default Defined.** The following shall be “events of default” for the purposes of this Lease Agreement and the terms “events of default” and “default” means, whenever they are used in this Lease Agreement, with respect to the Leased Property, any one or more of the following events:

(i) Except when not paid due to the Lessee not having lawfully available funds budgeted therefor, failure by the Lessee to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein, and the continuation of such failure for a period of five days.

(ii) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed pursuant to the Trust Agreement or this Lease Agreement, other than as referred to in clause (i) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Lessor, the Owners of not less than five percent in aggregate principal amount evidenced by Certificates then Outstanding; provided, however, if the failure stated in the notice can be corrected, but not within the applicable period, none of the Lessor or such Owners shall unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted pursuant to the provisions of the federal bankruptcy statute, as amended, or pursuant to any similar acts that may hereafter be enacted.

Notwithstanding the foregoing, if, by reason of force majeure, the Lessee is unable to perform or observe any agreement, term or condition of this Lease Agreement, other than any obligation to make Lease Payments or Additional Rent required pursuant to this Lease Agreement and to comply with Section 2.3 hereof, the Lessee shall not be deemed in default during the continuance of such inability. However, the Lessee shall promptly give notice to the Lessor of the existence of any event of force majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strike or labor disturbances shall be entirely within the Lessee’s discretion.

## **Section 9.2 Remedies on Default and Failure to Budget.**

(a) Whenever any event of default described in Section 9.1 hereof or a termination pursuant to Section 4.2(b) hereof shall have occurred and be continuing, the Lessor may exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; provided, however, that notwithstanding anything herein or in the Trust Agreement to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or Additional Rent or otherwise declare any Lease Payments or Additional Rent not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the Lessee is expressly made a condition and upon the breach thereof the Lessor may terminate this Lease Agreement; provided, that no such termination shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided.

(b) If, upon the occurrence and continuation of an event of default described in Section 9.1 hereof or a termination pursuant to Section 4.2(b) hereof, the Lessor does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subsection (c) of this Section, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee to enter upon the Leased Land and relet the Lessee's interests in the Leased Property and to remove all personal property not constituting Leased Property whatsoever situated upon the Leased Land and the Leased Property and to place such property in storage or other suitable place in Coconino County, Arizona, for the account of and at the expense of the Lessee, and, to the extent permitted by law, the Lessee hereby exempts and agrees to save harmless the Lessor for, from and against any costs, loss or damage whatsoever arising or occasioned by any such entry upon and reletting of the Leased Property and the removal and storage of personal property by the Lessor or its duly authorized agents in accordance with the provisions herein contained. The Lessee hereby waives any and all claims for damages caused or that may be caused by the Lessor in reentering and taking possession of the Leased Property as herein provided and all claims for damages that may result from the destruction of or injury to the Leased Property and all claims for damages to or loss of any property belonging to the Lessee that may be in or upon the Leased Property.

The Lessee agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Lessor to re-rent the Leased Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Lessor in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the Lessee the right to terminate this Lease Agreement shall vest in the Lessor to be effected in the sole and exclusive manner hereinafter provided for in subsection (c) of this Section.

(c) Upon the occurrence and continuation of an event of default described in Section 9.1 hereof or a termination pursuant to Section 4.2(b) hereof, the Lessor at its option may terminate this Lease Agreement and re-rent or re-lease all or any portion of its interests in the Leased Property. Neither notice to pay rent or to deliver up possession of the

premises given pursuant to law nor any proceeding in unlawful detainer taken by the Lessor shall of itself operate to terminate this Lease Agreement and no termination of this Lease Agreement on account of default by the Lessee shall be or become effective by operation of law, or otherwise, unless and until the Lessor shall have given written notice to the Lessee of the election on the part of the Lessor to terminate this Lease Agreement. The Lessee covenants and agrees that no surrender of the Leased Property or of the remainder of the term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Lessor by such written notice. Additionally, to the extent permitted by law, the Lessee hereby exempts and agrees to save harmless the Lessor for, from and against any costs, loss or damage whatsoever arising or occasioned by any removal of the Leased Property by the Lessor or its duly authorized agents in accordance with the provisions contained in this Lease Agreement.

**Section 9.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given pursuant to this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.4 Agreement to Pay Attorneys' Fees and Expenses.** In the event either party to this Lease Agreement should default in the performance of any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, to the extent permitted by law, the fees of such attorneys and such other expenses so incurred by the nondefaulting party.

**Section 9.5 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 9.6 Application of Proceeds.** All Net Proceeds received from the sale, re-lease or other disposition of the Leased Property pursuant to this Article IX, and all other amounts derived by the Lessor as a result of an event of default hereunder, shall be applied as provided in the Trust Agreement.

**Section 9.7 Lessor to Exercise Rights.** Such rights and remedies as are given to the Lessor pursuant to this Article IX shall be exercised by the Lessor and the Owners of the Certificates as provided in the Trust Agreement.

## ARTICLE X

### PREPAYMENT OF LEASE PAYMENTS

**Section 10.1 Security Deposit.** Notwithstanding any other provision of this Lease Agreement, the Lessee may on any date secure the payment of Lease Payments by a deposit of (i) an amount of cash that, as required by the Trust Agreement, together with amounts on deposit in the Lease Payment Fund and the Insurance and Condemnation Fund, is sufficient to pay all unpaid Lease Payments and Additional Rent, including the principal and interest components thereof, in accordance with the Lease Payment Schedule set forth in Exhibit A hereto or (ii) Defeasance Obligations, together with cash, if required, in such amount as will, in the opinion of an independent certified public accountant pursuant to the terms of the Trust Agreement, together with interest to accrue thereon but without reinvestment thereof and, if required, all or a portion of moneys or Defeasance Obligations then on deposit in the Lease Payment Fund and the Insurance and Condemnation Fund, be fully sufficient to pay all unpaid Lease Payments and Additional Rent on their respective Lease Payment Dates, as the Lessee shall instruct at the time of said deposit. In the event of a deposit pursuant to this Section and upon the defeasance of all the Certificates pursuant to Section 14.1 of the Trust Agreement, all obligations of the Lessee pursuant to this Lease Agreement (except those that survive termination of this Lease Agreement), and all security provided by this Lease Agreement for said obligations, shall cease and terminate, excepting only the obligations of the Lessee to make, or cause to be made, Lease Payments and Additional Rent from the deposit made by the Lessee pursuant to this Section, and title to the Leased Property shall vest in the Lessee on the date of said deposit automatically and without further action by the Lessee or the Lessor. Said deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments and Additional Rent in accordance with the provisions of this Lease Agreement.

**Section 10.2 Optional Prepayment.** The Lessee may prepay the Lease Payments, in whole or in part, at any time. Such Prepayments shall be deposited in the Lease Payment Fund and applied to the payment or prepayment of Certificates as provided in Articles II and IV of the Trust Agreement or, if the Certificates are not subject to prepayment at the time of such deposit, shall be applied as provided in Section 14.1 of the Trust Agreement to provide for the payment of Certificates as directed by the Lessee.

**Section 10.3 Mandatory Prepayment From Net Proceeds.** The Lessee shall be obligated to prepay the Lease Payments allocable to the Leased Property, in whole or in part, on any December 15 or June 15 with respect to the Lease Payments specified on Exhibit A or the next succeeding Business Day if such date is not a Business Day, from and to the extent of any Net Proceeds theretofore deposited in the Lease Payment Fund. Such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the Lessee's obligations pursuant to this Section and shall be applied to the mandatory prepayment of Certificates required by Section 4.2 of the Trust Agreement or similar provision of any supplement to the Trust Agreement executed in connection with Additional Certificates.

**Section 10.4 Credit for Amounts on Deposit.** In the event of Prepayment of the principal components of the Lease Payments and Additional Rent in full pursuant to this

Article X, such that the Trust Agreement shall be discharged by its terms as a result of such Prepayment, all amounts then on deposit in the Lease Payment Fund or the Insurance and Condemnation Fund shall be credited towards the amounts then required to be so prepaid.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.1 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon deposit in the United States mail postage prepaid, except that notice to the Lessor shall be effective only upon receipt by an officer of the Lessor responsible for the performance of the duties and obligations pursuant to this Lease Agreement:

If to the Lessee:

City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001-5399  
Attention: Management Services Director

If to the Lessor:

Zions Bancorporation, National Association  
6001 North 24th Street  
Phoenix, Arizona 85016  
Attention: Corporate Trust Services

The Lessor and the Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 11.2 Binding Effect.** This Lease Agreement shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns.

**Section 11.3 Severability.** In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 11.4 Net-net-net Lease.** This Lease Agreement shall be deemed and construed to be a “net-net-net lease,” and the Lessee hereby agrees that the Lease Payments shall be an absolute net return to the Lessor, free and clear of any expenses, charges or set-offs whatsoever, irrespective of any defense or any right of recoupment or counterclaim that the Lessee may have against the Lessor.

**Section 11.5 Further Assurances and Corrective Instruments.** The Lessor and the Lessee agree that they will, from time to time, at the Lessee's expense, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be for carrying out the expressed intention of this Lease Agreement.

**Section 11.6 Execution in Counterparts.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.7 Applicable Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State. The venue for any proceedings on any and all controversies arising from the terms and provisions of this Lease Agreement will be Coconino County, Arizona.

**Section 11.8 Lessor and Lessee Representatives.** Whenever pursuant to the provisions of this Lease Agreement the approval of the Lessor or the Lessee is required, or the Lessor or the Lessee is required to take some action at the request of the other, such approval or such request shall be given for the Lessor by a Lessor Representative and for the Lessee by a Lessee Representative, and any party hereto shall be authorized to rely upon any such approval or request.

**Section 11.9 Captions.** The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

**Section 11.10 Incorporation of State Statutes.**

(a) As required by the provisions of Section 38-511, Arizona Revised Statutes, as amended, notice is hereby given that the Lessee, a political subdivision of the State, may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the Lessee if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Lessee is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time. The Lessor covenants not to employ as an employee, an agent or, with respect to the subject matter of this Lease Agreement, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease Agreement on behalf of the Lessee within three years from the execution of this Lease Agreement, unless a waiver of Section 38-511, Arizona Revised Statutes, as amended, is provided by the Lessee. No basis exists for the Lessee to cancel this Lease Agreement pursuant to Section 38-511, Arizona Revised Statutes, as amended, as of the date hereof.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, as amended, the Lessor shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by the Lessor of the foregoing shall be deemed a material breach of this Lease Agreement and may result in the termination of the services of the Lessor. The Lessee retains the legal right to randomly inspect the papers and records of the Lessor to ensure that the Lessor is complying with the above-mentioned warranty. The Lessor shall keep such papers and records open for random inspection during normal business hours by the Lessee. The Lessor shall cooperate with the random inspections by the Lessee including granting the Lessee entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, the Lessor hereby certifies that it is not currently engaged in, and for the duration of this Lease Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Lessee determines that the Lessor’s certification above is false or that either has breached such agreement, the Lessee may impose remedies as provided by law.

[Signature page follows.]

IN WITNESS WHEREOF, the Lessor has caused this Lease Agreement to be executed in its corporate name by its duly authorized officer, and the Lessee has caused this Lease Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as trustee, as Lessor

By .....  
Authorized Representative

CITY OF FLAGSTAFF, ARIZONA, as Lessee

By .....  
Mayor

ATTEST:

.....  
City Clerk

STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF MARICOPA        )

On this, the ..... day of \_\_\_\_\_ 2019, before me, the undersigned Notary Public, personally appeared ....., who acknowledged himself/herself to be an Authorized Representative of Zions Bancorporation, National Association, and that he/she, as such officer, being authorized so to do, executed the foregoing Lease Agreement for the purposes therein contained by signing the name of the corporation by himself/herself as such officer.

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

.....  
Notary Public

My Commission Expires:  
.....

STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF COCONINO        )

On this, the ..... day of \_\_\_\_\_ 2019, before me, the undersigned Notary Public, personally appeared Coral Evans and Stacy Saltzburg, who acknowledged themselves to be the Mayor and City Clerk, respectively, of the City of Flagstaff, Arizona, a municipal corporation, and that they, as such officers, being authorized so to do, executed the foregoing Lease Agreement for the purposes therein contained by signing the name of the municipal corporation by themselves as such officers.

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

.....  
Notary Public

My Commission Expires:  
.....

Notice required by A.R.S. Section 41-313: The foregoing notarial certificate(s) relate(s) to the Lease-Purchase Agreement, dated as of \_\_\_\_\_ 1, 2019, executed by the City of Flagstaff, Arizona, an Arizona municipal corporation, and Zions Bancorporation, National Association a national banking association (the “Notarized Document”). The Notarized Document contains a total of ..... pages.

**EXHIBIT A**

**SCHEDULE OF LEASE PAYMENTS EVIDENCED BY 2019 CERTIFICATES**

The following are the Lease Payments evidenced by the 2019 Certificates to be paid pursuant to the Lease Agreement.

<u>Lease Payment Dates</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Lease Payment</u>
06/15/20			
12/15/20			
06/15/21			
12/15/21			
06/15/22			
12/15/22			
06/15/23			
12/15/23			
06/15/24			
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12/15/36			
06/15/37			
12/15/37			
06/15/38			
12/15/38			
06/15/39			
12/15/39			

<u>Lease Payment Dates</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Lease Payment</u>
06/15/40			
12/15/40			
06/15/41			
12/15/41			
06/15/42			
12/15/42			
06/15/43			
<b>TOTAL</b>			

**EXHIBIT B**  
**DESCRIPTION OF LEASED LAND**

**EXHIBIT C**

**CERTIFICATE OF COMPLETION**

To: ....., as trustee, as lessor pursuant to a Lease-Purchase Agreement, dated as of \_\_\_\_\_ 1, 2019 (the "Lease Agreement"), between ....., as trustee, and City of Flagstaff, Arizona, as lessee

Pursuant to Section 4.3 of the Lease Agreement, the undersigned Lessee Representative hereby certifies as follows:

1. That the acquisition and construction of the Projects, as such term is defined in the Lease Agreement, has been substantially completed, and includes all of the items described in the Lease Agreement;

2. That all other facilities necessary in connection with the Projects have been acquired, constructed, installed, equipped and improved;

3. That the acquisition, construction, installation, equipment and improvement of the Projects and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental and other similar governmental regulations;

4. That except as provided in subparagraph 5 below, all costs of the acquisition, construction, installation, equipment and improvement of the Projects then or theretofore due and payable have been paid; and

5. That for the reasons stated below, the following amount should be retained in the Project Fund for the Projects:

- (a) Amount to be retained \$..... ;
- (b) Reasons for retention: .....

This certificate is given without prejudice to any rights against third parties which exist at the date hereof or which may come into being subsequent to the date hereof.

Dated as of ....., 20.....

.....  
Lessee Representative

---

---

**TRUST AGREEMENT**

**by and between**

**[ZIONS BANCORPORATION, NATIONAL ASSOCIATION],  
as Trustee,**

**and**

**CITY OF FLAGSTAFF, ARIZONA,  
as Lessee**

**Dated as of \_\_\_\_\_ 1, 2019**

**relating to**

**\$\_\_\_\_,000**

**Certificates of Participation, Series 2019  
Evidencing Undivided Proportionate Interests of the Owner Thereof in  
Lease Payments to be Made by  
City of Flagstaff, Arizona,  
as Lessee of Certain Property Pursuant  
to a Lease-Purchase Agreement, dated as of \_\_\_\_\_ 1, 2019**

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**TABLE OF CONTENTS**

**Page**

**ARTICLE I  
DEFINITIONS**

Section 1.1 Definitions..... 2  
Section 1.2 Authorization ..... 8  
Section 1.3 Interpretation..... 9  
Section 1.4 Execution and Delivery of 2019 Certificates..... 9

**ARTICLE II  
THE 2019 CERTIFICATES; ADDITIONAL CERTIFICATES**

Section 2.1 Authorization of the 2019 Certificates..... 9  
Section 2.2 Date of the 2019 Certificates ..... 9  
Section 2.3 Terms of the 2019 Certificates..... 10  
Section 2.4 Form of the 2019 Certificates ..... 11  
Section 2.5 Execution ..... 11  
Section 2.6 Application of Proceeds and Other Moneys ..... 11  
Section 2.7 Registration, Transfer and Exchange of 2019 Certificates. .... 11  
Section 2.8 Mutilated, Lost, Destroyed and Stolen Certificates ..... 12  
Section 2.9 Payment..... 12  
Section 2.10 Execution of Documents and Proof of Ownership ..... 13  
Section 2.11 Execution and Delivery of Additional Certificates..... 13  
Section 2.12 Book-Entry-Only System..... 15

**ARTICLE III  
PROJECT FUND AND DELIVERY COSTS FUND**

Section 3.1 Project Fund ..... 16  
Section 3.2 Delivery Costs Fund ..... 17

**ARTICLE IV  
PREPAYMENT OF 2019 CERTIFICATES**

Section 4.1 Right to Prepay Certificates ..... 17  
Section 4.2 Prepayment ..... 17  
Section 4.3 Selection of Certificates to be Prepaid..... 18  
Section 4.4 Partial Prepayment of Certificates ..... 19  
Section 4.5 Effect of Call for Prepayment..... 19  
Section 4.6 Notice of Prepayment. .... 19

**TABLE OF CONTENTS (cont.)**

**Page**

**ARTICLE V**

**LEASE PAYMENTS; LEASE PAYMENT FUND**

Section 5.1	Rights in Lease Agreement.....	20
Section 5.2	Establishment of Lease Payment Fund.....	20
Section 5.3	Deposits.....	21
Section 5.4	Application of Moneys .....	21
Section 5.5	Transfers of Investment Earnings to Lease Payment Fund .....	21
Section 5.6	Surplus .....	21

**ARTICLE VI**

[RESERVED TO PRESERVE NUMBERING SCHEME]

**ARTICLE VII**

**INSURANCE AND CONDEMNATION FUND; INSURANCE; EMINENT DOMAIN**

Section 7.1	Establishment of Insurance and Condemnation Fund; Application of Net Proceeds of Insurance Award.....	21
Section 7.2	Application of Net Proceeds of Eminent Domain Award .....	22
Section 7.3	Cooperation.....	22

**ARTICLE VIII**

**MONEYS IN FUNDS; INVESTMENT**

Section 8.1	Held in Trust .....	23
Section 8.2	Investments Authorized .....	23
Section 8.3	Accounting.....	23
Section 8.4	Allocation of Earnings .....	23
Section 8.5	Valuation and Disposition of Investments .....	23
Section 8.6	Deposit and Investment of Moneys in Funds. ....	24
Section 8.7	Liability of Trustee for Investments .....	24
Section 8.8	Tax Covenants. ....	24

## TABLE OF CONTENTS (cont.)

Page

### ARTICLE IX

#### THE TRUSTEE

Section 9.1	Certain Duties and Responsibilities.....	25
Section 9.2	Certain Rights of Trustee.....	27
Section 9.3	Employment of Experts.....	28
Section 9.4	Enforcement of Performance by Others.....	28
Section 9.5	Right to Deal in Certificates and Take Other Actions.....	28
Section 9.6	Removal and Resignation of the Trustee.....	28
Section 9.7	Proof of Claim.....	29
Section 9.8	Trustee's Fees and Expenses.....	29
Section 9.9	Intervention by Trustee.....	30
Section 9.10	Destruction of Certificates.....	30
Section 9.11	Separate or Co-Trustee.....	30
Section 9.12	Recitals and Representations.....	32

### ARTICLE X

#### MODIFICATION OR AMENDMENT OF AGREEMENTS

Section 10.1	Amendments Permitted.....	32
Section 10.2	Procedure for Amendment with Written Consent of Certificate Owners.....	33
Section 10.3	Disqualified Certificates.....	34
Section 10.4	Effect of Supplemental Agreement.....	34
Section 10.5	Endorsement or Replacement of Certificates Delivered After Amendments.....	34
Section 10.6	Amendatory Endorsement of Certificates.....	35

### ARTICLE XI

#### COVENANTS

Section 11.1	Compliance With and Enforcement of Lease Agreement.....	35
Section 11.2	Observance of Laws and Regulations.....	35
Section 11.3	Prosecution and Defense of Suits.....	36
Section 11.4	Recordation and Filing.....	36
Section 11.5	Further Assurances.....	36
Section 11.6	Action Upon Termination of Lease.....	36

**TABLE OF CONTENTS (cont.)**

**Page**

**ARTICLE XII**

**LIMITATION OF LIABILITY**

Section 12.1	Limited Liability of Lessee.....	36
Section 12.2	No Liability of the Lessee for Trustee Performance.....	37
Section 12.3	Indemnification.....	37
Section 12.4	Opinion of Counsel.....	37
Section 12.5	Limitation of Rights to Parties and Certificate Owners.....	37
Section 12.6	No Liability of the Trustee for Payment of Lease Payments by Lessee.....	37

**ARTICLE XIII**

**EVENTS OF DEFAULT AND REMEDIES OF CERTIFICATE OWNERS**

Section 13.1	Rights Pursuant to the Lease.....	38
Section 13.2	Remedies.....	38
Section 13.3	Application of Funds.....	38
Section 13.4	Institution of Legal Proceedings.....	38
Section 13.5	Non-waiver.....	39
Section 13.6	Remedies Not Exclusive.....	39
Section 13.7	Power of Trustee to Control Proceedings.....	39
Section 13.8	Limitation on Certificate Owners' Right to Sue.....	39
Section 13.9	Notice of Default.....	40

**ARTICLE XIV**

**MISCELLANEOUS**

Section 14.1	Defeasance.....	40
Section 14.2	Records.....	42
Section 14.3	Notices.....	42
Section 14.4	Governing Law.....	42
Section 14.5	Binding Effect; Successors.....	43
Section 14.6	Execution in Counterparts.....	43
Section 14.7	Destruction of Canceled Certificates.....	43
Section 14.8	Headings.....	43
Section 14.9	Waiver of Notice.....	43
Section 14.10	Separability of Invalid Provisions.....	43
Section 14.11	Filing; Bills of Sale.....	43
Section 14.12	Incorporation of State Statutes.....	44
Section 14.13	Exchange of Leased Property; Release and Conveyance.....	45

EXHIBIT A: Form of 2019 Certificate

EXHIBIT B: Order for Disbursement

## TRUST AGREEMENT

THIS TRUST AGREEMENT dated as of \_\_\_\_\_ 1, 2019 (this “*Trust Agreement*”), by and between ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as trustee (the “*Trustee*” or “*Lessor*”), and CITY OF FLAGSTAFF, ARIZONA (the “*Lessee*”), a municipal corporation duly organized and existing pursuant to the laws of the State of Arizona;

### WITNESSETH:

WHEREAS, the Lessee and the Trustee have entered into a Ground Lease, dated as of even date herewith, pursuant to which the Lessee has leased certain real property (the “*Leased Land*”), to the Lessor, and the Lessor has leased the Leased Land from the Lessee; and

WHEREAS, in order to finance construction of a municipal court facility for the Lessee (the “*Projects*”), the Lessee and the Lessor have entered into a Lease-Purchase Agreement, dated as of even date herewith (the “*Lease Agreement*”), whereby the Lessor has agreed to lease its interest in the Leased Land together with improvements now or hereafter existing on the Leased Land (collectively, the “*Leased Property*”) to the Lessee and the Lessee has agreed to lease the Leased Property from the Lessor; and

WHEREAS, for the purpose of obtaining moneys in an amount sufficient to finance the Projects, the Trustee has agreed to execute and deliver the herein described 2019 Certificates, evidencing undivided proportionate interests in the Lease Agreement and the Lease Payments and Prepayments (as such terms and other capitalized terms used herein are hereinafter defined) to be made by the Lessee pursuant thereto,

## GRANTING CLAUSES

NOW, THEREFORE, in order to secure (i) all Certificates executed, delivered and Outstanding pursuant to this Trust Agreement, (ii) the payment of the principal and interest evidenced by the Certificates, and (iii) the rights of the Owners of the Certificates and the performance and observance of the covenants and conditions contained in the Certificates, the Lease Agreement, the Ground Lease and herein, the Trustee is hereby directed to acquire, to receive and to hold as security for the Owners of the Certificates and does hereby declare an irrevocable trust and acknowledge its acceptance of all right, title and interest in and to, the following described property (the “*Trust Estate*”) and the Trustee and the Lessee hereby agree as thereafter provided:

### GRANTING CLAUSE FIRST

All right, title and interest of the Lessor in and to the Ground Lease and the Lease Agreement and the present and continuing right (i) to make claim for, collect or cause to be collected, receive or cause to be received all revenues, receipts and other sums of money payable or receivable pursuant to the Lease Agreement, (ii) to bring actions and proceedings pursuant thereto or for the enforcement thereof, and (iii) to do any and all things that the Lessor is or may become entitled to do pursuant thereto; provided that this clause shall not transfer, impair or

diminish any right of the Lessor pursuant to any of the assigned instruments for indemnification, reimbursement of fees, costs and expenses or to receive notices or approve amendments, and

## GRANTING CLAUSE SECOND

All right, title and interest of the Lessor in and to amounts on deposit from time to time in the funds created pursuant hereto, subject to the provisions of this Trust Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein.

All such rights and interest held by the Trustee pursuant hereto shall be exercised, held and administered according to the provisions of this Trust Agreement and for the equal and proportionate benefit of the Owners from time to time of Certificates.

## ARTICLE I

### DEFINITIONS

**Section 1.1 Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Trust Agreement, have the following meanings:

“*2019 Certificates*” means the \$\_\_\_\_,000 aggregate principal amount of Certificates of Participation, Series 2019 Evidencing Undivided Proportionate Interests of the Owners Thereof in Lease Payments to be made by City of Flagstaff, Arizona, as Lessee of Certain Property Pursuant to a Lease-Purchase Agreement dated as of \_\_\_\_\_ 1, 2019, to be executed and delivered in denominations of \$5,000 denominated as principal or integral multiples thereof payable as to interest semiannually as provided in Article II hereof .

“*2019 Underwriter*” means Piper Jaffray & Co. as original purchaser of the 2019 Certificates.

“*Additional Certificates*” means any certificates executed and delivered pursuant to Section 2.11 hereof.

“*Additional Rent*” means any payments to be made pursuant to Section 4.7 of the Lease Agreement in addition to the Lease Payments.

“*Aggregate Value*” means, with respect to any Certificates, the Outstanding principal amount thereof.

“*Authorized Denominations*” means \$5,000 denominated as principal and any integral multiple thereof.

“*Bankruptcy Code*” means the Bankruptcy Reform Act of 1978, as amended (Title 11 of the United States Code, as amended).

“*Beneficial Owner*” means any person on behalf of whom a DTC Participant holds an interest in the 2019 Certificates.

“*Business Day*” means a day of the year other than (i) a Saturday or Sunday or (ii) a day on which banking institutions located in the city designated by the Trustee for the presentation and payment of Certificates are required or authorized to remain closed.

“*Certificates*” means, jointly, the 2019 Certificates and any Additional Certificates executed and delivered pursuant hereto.

“*Closing Date*” means \_\_\_\_\_, 2019.

“*Code*” means the Internal Revenue Code of 1986, as amended and supplemented from time to time, and any regulations promulgated pursuant thereto.

“*Costs*” means the costs incurred in acquiring, constructing or improving the Projects.

“*Defeasance Obligations*” means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following clause) and (ii) obligations of, or obligations guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America, including (A) U.S. treasury obligations, (B) all direct or fully guaranteed obligations, (C) Farmers Home Administration, (D) General Services Administration, (E) Guaranteed Title XI financing, (F) Government National Mortgage Association (GNMA), and (G) State and Local Government Series. Any security used for defeasance must provide for the timely payment of principal and interest and cannot be callable or prepayable prior to maturity or earlier redemption of the rated debt (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date).

“*Delivery Costs*” means all items of expense directly or indirectly payable by or reimbursable to the Lessee or the Lessor relating to the execution, sale and delivery, as applicable, of the Ground Lease, the Lease Agreement, this Trust Agreement or the Certificates, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee and the Lessor, legal fees and charges, accountants’ verification fees, insurance fees and charges, costs of any title insurance policy, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Certificates and any other costs, expenses, fees and charges in connection with the foregoing.

“*Delivery Costs Fund*” means the fund by that name established and held by the Trustee pursuant to Section 3.2 hereof.

“*DTC*” means The Depository Trust Company, New York, New York, and any successor corporation.

“*DTC Participant*” means those broker-dealers, banks and other financial institutions reflected on the books of DTC as holding beneficial interests in the 2019 Certificates.

“*Electronically*” or “*Electronic*” notice means notice transmitted through email, a time-sharing terminal, computer network or facsimile machine, if operative as between any two parties, or if not operative, by telephone (promptly confirmed in writing).

“*Event of Bankruptcy*” means the commencement of a case by or against the Lessee pursuant to the Bankruptcy Code or pursuant to any other domestic bankruptcy act or any similar act which hereafter may be enacted (other than such proceedings initiated by the Lessee against third parties other than the Lessee), unless such case shall have been dismissed and such dismissal shall be final and not subject to appeal.

“*Event of Default*” means an event of default described in Section 9.1 of the Lease Agreement.

“*Fiscal Period*” means a period of 12 consecutive months commencing on the first day of July and ending on the last day of June, or any other consecutive 12-month period that may be established hereafter as the fiscal year of the Lessee for budgeting purposes.

“*Ground Lease*” means the Ground Lease, dated as of even date herewith, by and between the Lessor and the Lessee, relating to the Leased Land, together with any duly authorized and executed amendment thereto permitted hereunder.

“*Independent Counsel*” means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Lessor, the Trustee or the Lessee.

“*Insurance and Condemnation Fund*” means the fund by that name established and held by the Trustee pursuant to Article VII hereof.

“*Interest Payment Date*” means, with respect to the 2019 Certificates, July 1 and January 1 of each year, commencing July 1, 2020, or, if any such date is not a Business Day, the next succeeding Business Day and (b) with respect to any Additional Certificates, the date or dates specified in the supplement to this Trust Agreement authorizing the execution and delivery of such Additional Certificates.

“*Lease Agreement*” means the Lease-Purchase Agreement, dated as of even date herewith, by and between the Lessee and the Lessor, together with any duly authorized and executed amendment thereto permitted hereunder.

“*Lease Payment*” means all payments required to be paid by the Lessee on any date pursuant to Section 4.4 of the Lease Agreement, as set forth in Exhibit A thereto.

“*Lease Payment Fund*” means the fund by that name established and held by the Trustee pursuant to Article V hereof.

“*Leased Land*” means that certain real property located in Coconino County, Arizona, described in the Lease Agreement which is being leased by the Lessee to the Lessor pursuant to the Ground Lease.

“*Leased Property*” means the Leased Land, together with all improvements now and hereafter existing thereon, which is being leased by the Lessor to the Lessee pursuant to the Lease Agreement.

“*Lessee*” means City of Flagstaff, Arizona.

“*Lessee Representative*” means the Management Services Director of the Lessee, or any other person designated by the Management Services Director of the Lessee to act on behalf of the Lessee pursuant to or with respect to this Trust Agreement and the Lease Agreement by a certificate filed with the Trustee containing the specimen signature of such person signed by the Management Services Director of the Lessee.

“*Lessor*” means Zions Bancorporation, National Association, as trustee, and its successors and assigns pursuant to the Lease Agreement.

“*Moody’s*” means Moody’s Investors Service, Inc., or any successor nationally recognized securities rating agency.

“*Net Proceeds*” means any insurance proceeds (other than proceeds of any insurance policy maintained pursuant to Section 5.3 of the Lease Agreement) or condemnation award in excess of \$25,000, paid with respect to the Leased Property, or any proceeds resulting from the re-renting or re-leasing of all or any portion of the Leased Property pursuant to Section 9.2(c) of the Lease Agreement, remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Outstanding*,” when used with reference to the Certificates, means, as of any date of determination, all Certificates theretofore executed and delivered except:

- (i) Certificates theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (ii) Certificates that are deemed paid and no longer Outstanding as provided herein;
- (iii) Certificates in lieu of which other Certificates of the same series shall have been executed and delivered pursuant to the provisions hereof relating to Certificates destroyed, stolen or lost, unless evidence satisfactory to the Trustee has been received that any such Certificate is held by a bona fide purchaser; and
- (iv) For the purposes described in Section 10.3 hereof, the Certificates described in said Section 10.3.

“*Owner*” or “*Certificate Owner*” or “*Owner of a Certificate*,” or any similar term, when used with respect to a Certificate, means the person in whose name such Certificate shall be registered.

“*Paying Agent*” means the Trustee.

“*Permitted Encumbrances*” mean, as of any particular time (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or that the Lessee may, pursuant to provisions of Article V of the Lease Agreement, permit to remain unpaid; (ii) the Lease Agreement; (iii) this Trust Agreement; (iv) the Ground Lease; (v) easements, leases, encumbrances, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions that exist as of the Closing Date and that the Lessee certifies in writing will not materially impair the use of the Leased Property; and (vi) easements, leases, encumbrances, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions to which the Lessor and the Lessee consent in writing.

“*Permitted Investments*” means and includes (to the extent permitted by law):

- (a) Defeasance Obligations;
- (b) Obligations of any federal agencies, which obligations represent the full faith and credit of the United States of America, including, but not limited to, the following:
  - (i) Export-Import Bank,
  - (ii) Rural Economic Community Development Administration,
  - (iii) U.S. Maritime Administration,
  - (iv) Small Business Administration,
  - (v) U.S. Department of Housing & Urban Development (PHAs),
  - (vi) Federal Housing Administration, and
  - (vii) Federal Financing Bank;
- (c) Direct obligations of any of the following federal agencies, which obligations are not fully guaranteed by the full faith and credit of the United States of America:
  - (i) Senior debt obligations issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC),
  - (ii) Obligations of the Resolution Funding Corporation (REFCORP),and

(iii) Senior debt obligations of the Federal Home Loan Bank System;

(d) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" or "A-1+" by S&P and maturing not more than 360 calendar days after the date of purchase; provided, however, ratings on holding companies are not considered as the rating of the bank;

(e) Commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P and which matures not more than 270 calendar days after the date of purchase;

(f) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P;

(g) Pre-refunded "Municipal Obligations", defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice, and

(i) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Moody's or S&P or any successors thereto; or

(ii) (A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (ii) of the definition of Defeasance Obligations, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate and

(h) Municipal Obligations rated "Aaa/AAA" or general obligations of states with a rating of "A2/A" or higher by both Moody's and S&P.

"*Prepayment*" means any payment made, in whole or in part, pursuant to Article X of the Lease Agreement as a prepayment of the Lease Payments.

"*Projects*" means the "Projects" to be constructed or acquired with the proceeds of the sale of the Certificates as described in this Trust Agreement.

“*Project Fund*” means the fund by that name established and held by the Trustee pursuant to Section 3.1 hereof.

“*Qualified Self-Insurance*” means any program of self-insurance regarding which the Trustee has received a written evaluation of an independent insurance consultant or actuarial consultant having a favorable reputation for skill and experience and an opinion of such consultant that adequate reserves for such program are either maintained with an independent corporate trustee or otherwise held with appropriate safeguards to insure their availability.

“*Register*” means the registration books maintained by the Trustee or the Registrar pursuant to Section 2.7(b) hereof.

“*Registrar*” means the Trustee.

“*Regular Record Date*” means the close of business on the 15th day of the month preceding an Interest Payment Date.

“*S&P*” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, or any successor nationally recognized securities rating agency.

“*Special Counsel*” means any law firm, acceptable to the Lessee Representative and the Trustee, having a national reputation in the field of law relating to municipal bonds whose opinions are generally accepted by purchasers of municipal obligations.

“*Special Interest Payment Date*” means the Business Day established by the Trustee for the payment of overdue interest evidenced by the 2019 Certificates pursuant to Section 2.2 hereof.

“*Special Record Date*” means the Business Day established by the Trustee for determination of the registered Owners entitled to receive overdue interest evidenced by the 2019 Certificates pursuant to Section 2.2 hereof.

“*State*” means the State of Arizona.

“*Term*” or “*Term of the Lease Agreement*” means the time during which the Lease Agreement is in effect, as provided in Section 4.2 of the Lease Agreement.

“*Trust Agreement*” means this Trust Agreement, together with any amendments or supplements hereto permitted to be made pursuant hereto.

“*Trustee*” means Zions Bancorporation, National Association, and any successor thereto acting as trustee pursuant to this Trust Agreement.

**Section 1.2 Authorization.** Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement and has taken all actions necessary to authorize the execution of this Trust Agreement by the officers and persons signing it.

### **Section 1.3 Interpretation.**

(a) Any reference herein to the Lessor, Trustee or Lessee or any officer thereof shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

(b) Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender.

(c) Any terms not defined herein, but defined in the Lease Agreement shall have the same meaning herein.

(d) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

**Section 1.4 Execution and Delivery of 2019 Certificates.** To accomplish the construction and acquisition, as applicable, of the Projects as set forth in Section 3.2 of the Lease Agreement, the 2019 Certificates shall be executed and delivered in an amount sufficient to pay costs of the Projects and other costs incurred in connection with the execution and delivery of the 2019 Certificates as set forth in this Trust Agreement.

## **ARTICLE II**

### **THE 2019 CERTIFICATES; ADDITIONAL CERTIFICATES**

#### **Section 2.1 Authorization of the 2019 Certificates.**

(a) The Trustee is hereby authorized and directed to prepare and execute and deliver or cause to be delivered to the 2019 Underwriter the 2019 Certificates, in an aggregate amount denominated as principal of \$\_\_\_\_,000. The 2019 Certificates shall evidence undivided proportionate interests in the Lease Agreement and in the Lease Payments and the Prepayments to be made pursuant thereto.

(b) Except as provided in Section 2.11 hereof, the Trustee shall not at any time while the Certificates are Outstanding execute and deliver additional certificates payable from the Lease Payments or secured by a lien and charge upon the Leased Property on a parity with or prior to the lien and charge securing the Outstanding Certificates hereunder.

**Section 2.2 Date of the 2019 Certificates.** Each 2019 Certificate shall bear the dated date of the date of initial execution and delivery thereof, and interest evidenced by each 2019 Certificate shall be payable from such dated date and then from the Interest Payment Date next preceding the date of execution thereof, unless (i) it is executed as of an Interest Payment Date, in which event interest evidenced thereby shall be payable from such date of execution or (ii) it is executed after a Regular Record Date and before the following Interest Payment Date, in

which event interest evidenced thereby shall be payable from such Interest Payment Date; provided, however, that if, as of the date of execution of any 2019 Certificate, interest evidenced by any Outstanding 2019 Certificate is in default, interest evidenced by such 2019 Certificate shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding 2019 Certificates unless it is executed after a Special Record Date and before the following Special Interest Payment Date, in which event interest evidenced thereby shall be payable from the scheduled Interest Payment Date next preceding such date of execution.

In the event there are insufficient funds available on any Interest Payment Date to pay the interest then due on the 2019 Certificates, the Regular Record Date shall no longer be applicable with respect to the 2019 Certificates. If sufficient funds for the payment of such interest thereafter become available, the Trustee shall immediately establish a Special Interest Payment Date for the payment of the overdue interest and a Special Record Date for determining the Owners entitled to such payments. Notice of the establishment of any such Special Interest Payment Date and Special Record Date shall be mailed by the Trustee to each Owner not less than ten days before the Special Record Date nor more than 30 days before the Special Interest Payment Date. Such overdue interest shall be paid on the Special Interest Payment Date to the Owners of the 2019 Certificates as of the Special Record Date.

**Section 2.3 Terms of the 2019 Certificates.** The 2019 Certificates shall be executed and delivered only in fully registered form, without coupons, and shall be numbered from one upwards, in the order of their execution, with any other designation as the Trustee deems appropriate. The 2019 Certificates shall be in Authorized Denominations, except that no 2019 Certificate may evidence principal scheduled for payment on more than one date, and shall be payable as to principal on the dates and in the amounts, and interest evidenced thereby shall be computed at the rates, as shown below:

Scheduled Payment Date <u>(July 1)</u>	<u>Amount</u>	Interest <u>Rate</u>
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Interest evidenced by the 2019 Certificates shall be payable on the Interest Payment Dates. Said interest shall represent the portion of Lease Payments designated as interest and paid during the six month or shorter period preceding each Interest Payment Date with respect to the 2019 Certificates. The proportionate share of the Lease Payments designated as interest with respect to any 2019 Certificate shall be computed by multiplying the portion of the Lease Payments designated as principal evidenced by such 2019 Certificate by the rate of

interest applicable to such 2019 Certificate (on the basis of a 360-day year consisting of twelve 30-day months).

**Section 2.4 Form of the 2019 Certificates.** The 2019 Certificates and the assignment to appear thereon shall be substantially in the form set forth in Exhibit A attached hereto and by this reference incorporated herein with necessary or appropriate variations, omissions and insertions.

**Section 2.5 Execution.** The 2019 Certificates shall be executed by and in the name of the Trustee by the manual signature of an authorized officer or representative of the Trustee. If any such officer or representative whose signature appears on any 2019 Certificate ceases to be such officer or representative before the date of delivery thereof, such signature shall nevertheless be as effective as if the officer or representative had remained as such until such date of delivery. Any 2019 Certificate may be executed on behalf of the Trustee by such person as at the actual date of the execution of such 2019 Certificate shall be the proper officer or representative of the Trustee although at the nominal date of such 2019 Certificate such person shall not have been such officer or representative of the Trustee.

**Section 2.6 Application of Proceeds and Other Moneys.** The proceeds received by the Trustee from the sale of the 2019 Certificates shall forthwith be set aside by the Trustee in the following respective amounts and funds:

- (a) \$\_\_\_\_\_ into the Delivery Costs Fund; and
- (b) \$\_\_\_\_\_ into the Project Fund.

**Section 2.7 Registration, Transfer and Exchange of 2019 Certificates.**

(a) All 2019 Certificates executed and delivered hereunder shall be negotiable, subject to the provisions for registration and transfer thereof contained herein or in the 2019 Certificates.

(b) So long as any 2019 Certificates are Outstanding, the Trustee shall maintain at its designated office the Register and shall provide for the registration and transfer of any 2019 Certificate pursuant to such reasonable regulations as the Trustee may prescribe. The Trustee shall act as registrar for purposes of exchanging and registering 2019 Certificates in accordance with the provisions hereof.

(c) Each 2019 Certificate shall be transferable only upon the Register by the Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner thereof or his duly authorized attorney. Upon surrender for transfer of any 2019 Certificate, the Trustee shall authenticate and deliver, in the name of the transferee, one or more new 2019 Certificates of the same aggregate principal amount and scheduled payment date as the surrendered 2019 Certificate.

(d) Any 2019 Certificate, upon surrender thereof to the Trustee together with written instructions satisfactory to the Trustee, duly executed by the Owner thereof or his attorney duly authorized in writing, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of 2019 Certificates with the same scheduled payment date of any other Authorized Denominations.

(e) All 2019 Certificates surrendered in any exchange or transfer of 2019 Certificates shall forthwith be canceled by the Trustee.

(f) In connection with any such exchange or transfer of 2019 Certificates, the Owner requesting such exchange or transfer shall as a condition precedent to the exercise of the privilege of making such exchange or transfer, remit to the Trustee an amount sufficient to pay any tax or other governmental charge required to be paid with respect to such exchange or transfer.

(g) The Trustee may but shall not be obligated to exchange or register the transfer of any 2019 Certificate (i) that has been called or selected for call for prepayment in whole or in part, or (ii) during a period of 15 days preceding the giving of a notice of prepayment. If the transfer of any 2019 Certificate that has been called or selected for call for prepayment in whole or in part is registered, any notice of prepayment that has been given to the transferor shall be binding upon the transferee and a copy of the notice of prepayment shall be delivered by the Trustee to the transferee along with the 2019 Certificate or 2019 Certificates.

**Section 2.8 Mutilated, Lost, Destroyed and Stolen Certificates.** If (i) any mutilated 2019 Certificate is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any 2019 Certificate, and (ii) there is delivered to the Trustee such security or indemnity as may be required by the Trustee to hold it harmless, then, in the absence of written notice to the Trustee that such 2019 Certificate has been acquired by a bona fide purchaser and upon the Owner paying the reasonable expenses of the Trustee, the Trustee shall cause to be executed and shall authenticate and deliver, in exchange for such mutilated 2019 Certificate or in lieu of such destroyed, lost or stolen 2019 Certificate, a new 2019 Certificate of like principal amount, date and tenor. If the principal amount evidenced by any such mutilated, destroyed, lost or stolen 2019 Certificate has become, or will on or before the next Interest Payment Date become, due and payable, the Trustee may, in its discretion, pay such 2019 Certificate when due instead of delivering a new 2019 Certificate.

**Section 2.9 Payment.** Payment of interest evidenced by any 2019 Certificate on any Interest Payment Date or any Special Interest Payment Date shall be made to the person appearing on the Register as the Owner thereof as of the Regular Record Date immediately preceding such Interest Payment Date or, if applicable, the Special Record Date immediately preceding such Special Interest Payment Date, such interest to be paid by (i) check or draft mailed to such Owner at his address as it appears on the Register or at such other address as he may have filed with the Trustee for that purpose, or (ii) to any Owner of \$1,000,000 or more in aggregate principal amount evidenced by 2019 Certificates as of the close of business of the Trustee on the Regular Record Date for a particular Interest Payment Date or, if applicable, the Special Record Date for a Special Interest Payment Date, by wire transfer in immediately available funds sent (at such Owner's expense) on the Interest Payment Date or Special Interest

Payment Date in accordance with written notice from such Owner containing the wire transfer address (which shall be in the United States) to which such Owner wishes to have such wire transfer directed, which written notice is received not later than ten days before the Regular Record Date with respect to such Interest Payment Date or, if applicable, the Special Record Date for a Special Interest Payment Date, it being understood that such notice may refer to multiple interest payments.

**Section 2.10 Execution of Documents and Proof of Ownership.** Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by 2019 Certificate Owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such 2019 Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of 2019 Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

(i) The fact and date of the execution by any Owner or his attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate of an officer of any bank or trust company located within the United States of America, which need not be acknowledged or verified. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership or limited liability company on behalf of such corporation, association, partnership or limited liability company, such certificate shall also constitute sufficient proof of his authority.

(ii) The fact of the ownership of 2019 Certificates by any person and the amount, the scheduled payment date and the numbers of such 2019 Certificates and the date of his holding the same shall be proved by the Register maintained pursuant to Section 2.7(b) hereof.

Nothing contained in this Article II shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated that the Trustee may deem sufficient. Any request or consent of the Owner of any 2019 Certificate shall bind every future Owner of the same 2019 Certificate in respect of anything done or suffered to be done by the Trustee in pursuance of such request or consent.

**Section 2.11 Execution and Delivery of Additional Certificates.** So long as no Event of Default or termination of the Lease Agreement pursuant to Section 4.2(b) of the Lease Agreement has occurred and will continue after execution and delivery of any Additional Certificates, the Trustee may execute and deliver, at the direction of the Lessee, Additional Certificates from time to time to provide funds to expand or improve the Projects or to pay the costs of refunding Outstanding Certificates.

Before the Trustee shall deliver any Additional Certificates executed pursuant to a supplement authorized by Article X hereof, the following items shall have been received by the Trustee:

(i) Original executed counterparts of any amendments or supplements to the Lease Agreement and of this Trust Agreement entered into in connection with the execution and delivery of the Additional Certificates that are necessary or advisable, in the opinion of Special Counsel, to provide that the Additional Certificates will be executed and delivered in compliance with the provisions of this Trust Agreement.

(ii) A written opinion of Special Counsel, reasonably satisfactory to the Trustee, to the effect that (A) the documents submitted to the Trustee in connection with the request then being made comply with the requirements of this Trust Agreement, (B) any filings required to be made pursuant to Section 11.4 of this Trust Agreement have been made, and (C) all conditions precedent to the delivery of the Additional Certificates have been fulfilled.

(iii) A written opinion of Special Counsel (who also may be the counsel to whom or which reference is made in paragraph (ii) above), to the effect that (A) when executed and delivered by the Trustee, the Additional Certificates will be valid and binding in accordance with their terms and will be secured hereunder equally and on a parity with all other Certificates at the time Outstanding hereunder as to the assignment to the Trustee of the amounts pledged hereunder, and (B) the execution and delivery of the Additional Certificates will not result in the portion of the Lease Payments designated as interest evidenced by the Certificates Outstanding immediately before that execution and delivery of such Additional Certificates becoming includable in gross income for purposes of federal income taxation.

(iv) A written opinion of Special Counsel (who also may be the counsel to whom or which reference is made in paragraph (ii) above), reasonably satisfactory to the Trustee, to the effect that any amendments or supplements to the Lease Agreement entered into in connection with the execution and delivery of the Additional Certificates have been duly authorized, executed and delivered by the Lessee, and that the Lease Agreement, as amended or supplemented, constitutes a legal, valid and binding obligation of the Lessee, enforceable in accordance with its terms, subject to exceptions reasonably satisfactory to the Trustee for bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion.

(v) Evidence that the Lessee has obtained the additional amount of insurance or self-insurance, if any, required to be maintained pursuant to Sections 5.3 and 5.4 of the Lease Agreement as a result of the execution and delivery of the Additional Certificates.

(vi) Evidence satisfactory to the Trustee of confirmation that the ratings on any Outstanding Certificates will remain the same, immediately after execution and delivery of the Additional Certificates.

When the documents listed above have been received by the Trustee, the Trustee shall execute and deliver the Additional Certificates to or on the order of the original purchaser thereof, but only upon payment of the agreed-upon purchase price for the Additional Certificates.

**Section 2.12 Book-Entry-Only System.** The 2019 Certificates shall be initially executed and delivered in the form of a single fully registered certificate for each scheduled principal payment date of the 2019 Certificates. Upon initial execution and delivery, the ownership of such 2019 Certificates shall be registered in the Register in the name of Cede & Co., as nominee of DTC, and except as hereinafter provided, all of the Outstanding 2019 Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to the 2019 Certificates registered in the Register in the name of Cede & Co., as nominee of DTC, the Trustee shall have no responsibility or obligation to any DTC Participant or to any Beneficial Owner, nor any responsibility or obligation to any DTC Participant, any Beneficial Owner or any other person claiming a beneficial ownership interest in the 2019 Certificates pursuant to or through DTC or any DTC Participant, or any other person with respect to (i) the accuracy of any records maintained by DTC or any DTC Participant, (ii) the payment by DTC or any DTC Participant of any amount in respect of the 2019 Certificates, (iii) the giving of any notice that is permitted or required to be given to Owners pursuant to this Trust Agreement, or (iv) any consent given or other action taken by DTC as an Owner.

Notwithstanding any other provision of this Trust Agreement to the contrary, the Trustee shall be entitled to treat and consider the person in whose name each 2019 Certificate is registered in the Register as an absolute Owner of such 2019 Certificate for the purpose of payment, for the purpose of giving notices of prepayment with respect to any 2019 Certificate, for the purpose of registering transfers with respect to such 2019 Certificate, and for all other purposes whatsoever. The Trustee shall pay all principal, premium, if any, and interest evidenced by any 2019 Certificate only to or upon the order of the respective 2019 Certificate Owners, as shown in the Register as provided in this Trust Agreement, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the obligations with respect to payment of principal, premium, if any, and interest evidenced by the 2019 Certificates to the extent of the sum or sums so paid. No person other than a 2019 Certificate Owner, as shown in the Register, shall receive a 2019 Certificate evidencing the obligation to make payments of principal, premium, if any, and interest pursuant to this Trust Agreement.

Notwithstanding any other provision of this Trust Agreement or the 2019 Certificates, so long as the 2019 Certificates are held in book-entry form and registered in the name of Cede & Co., as nominee or DTC, or registered in the name of any successor securities depository, or its nominee, the following provisions shall apply:

- (i) Presentation of 2019 Certificates to the Paying Agent at prepayment or at scheduled payment date, or delivery of 2019 Certificates to the Paying Agent in connection with a purchase of tendered 2019 Certificates, shall be deemed made to the Paying Agent when the right to exercise ownership rights in the 2019 Certificates through DTC or a DTC Participant is transferred by DTC on its books.
- (ii) DTC may present notices, approvals, waivers, votes or other communications required or permitted to be made by Owners pursuant to this Trust

Agreement on a fractionalized basis on behalf of some or all of those persons entitled to exercise ownership rights in the 2019 Certificates through DTC or DTC Participants.

The 2019 Certificate Owners have no right to a depository for the 2019 Certificates. Subject to the consent of DTC or the DTC Participants, the Lessee or the Trustee may remove DTC or any successor thereto for any reason at any time. In such event, the Trustee shall (i) appoint a successor securities depository qualified to act as such pursuant to Section 17(i) of the Securities Exchange Act of 1934, as amended, notify DTC of the appointment of such successor securities depository and transfer one or more separate 2019 Certificates to such successor securities depository, or (ii) notify DTC of the availability through DTC of 2019 Certificates and transfer one or more separate 2019 Certificates to DTC Participants having 2019 Certificates credited to their DTC accounts as directed by DTC. In such event, the 2019 Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names the DTC Participants receiving 2019 Certificates shall designate, in accordance with the provisions of this Trust Agreement. The Lessee and the Trustee may conclusively rely upon (i) a certificate of the DTC as to the identity of the DTC Participants and (ii) a certificate of such DTC Participants as to the identity of, and the respective principal amounts of 2019 Certificates beneficially owned by, the beneficial owners.

The Trustee and the Lessee may execute the letter of representations in connection with the execution and delivery of the 2019 Certificates. The letter of representation is for the purpose of effectuating the book-entry-only system only and shall not be deemed to amend, supersede or supplement the terms of this Trust Agreement that are intended to be complete without reference to the letter of representation. In the event of any conflict between the terms of the letter of representations and the terms of this Trust Agreement, the terms of this Trust Agreement shall control. DTC may exercise the rights of a 2019 Certificate Owner hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

### **ARTICLE III**

#### **PROJECT FUND AND DELIVERY COSTS FUND**

**Section 3.1 Project Fund.** The Trustee shall establish a special fund designated the “*Project Fund*”. The Trustee shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided herein and in the Lease Agreement. Proceeds from the sale of the 2019 Certificates shall be deposited in the Project Fund as described in Section 2.6(b) hereof.

The Trustee shall make disbursements from the Project Fund to pay or reimburse any Costs that may be approved as provided herein. Each of the payments referred to in this Section 3.1 shall be made only upon a written order signed by the Lessee Representative substantially in the form attached hereto as Exhibit B entitled “Order for Disbursement.” Any amount remaining in the Project Fund on the earlier of completion of the Projects (as evidenced by the Lessee’s filing with the Trustee of the Certificate of Completion contemplated by Section

4.3 of the Lease Agreement) or \_\_\_\_\_ 1, 2022, and after provision for payment of any necessary and related Costs as authorized herein which are then due and payable, shall be immediately transferred to the Lease Payment Fund.

The Trustee shall be responsible for the safekeeping and investment, upon the written direction of the Lessee Representative, of the moneys held in the Project Fund in Permitted Investments and the disbursement thereof in accordance with this Section. Notwithstanding the foregoing, the Trustee shall be entitled to rely conclusively on the requisitions and written orders supplied to it by any Lessee Representative in connection with disbursements made pursuant to this Section.

**Section 3.2 Delivery Costs Fund.** The Trustee shall establish a special fund designated the “*Delivery Costs Fund.*” The Trustee shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided herein and in the Lease Agreement. Proceeds from the sale of the 2019 Certificates shall be deposited in the Delivery Costs Fund as described in Section 2.6(a) hereof.

The Trustee shall make disbursements from the Delivery Costs Fund only upon a requisition signed by the Lessee Representative, substantially in the form attached hereto as Exhibit B entitled “Order for Disbursement”, setting forth the amounts to be disbursed for payment or reimbursement of Delivery Costs and the person or persons to whom such amounts are to be disbursed, stating that the amounts to be disbursed are for Delivery Costs properly chargeable to the Delivery Costs Fund. Amounts remaining in the Delivery Costs Fund after June 1, 2020, or such earlier date as the Lessee has notified the Trustee that all Delivery Costs relating to the 2019 Certificates have been paid, shall be transferred to the Lease Payment Fund.

The Trustee shall be responsible for the safekeeping and investment, upon the written direction of the Lessee Representative, of the moneys held in the Delivery Costs Fund in Permitted Investments and the disbursement thereof in accordance with this Section. Notwithstanding the foregoing, the Trustee shall be entitled to rely conclusively on the requisitions and written orders supplied to it by the Lessee Representative in connection with disbursements made pursuant to this Section.

## ARTICLE IV

### PREPAYMENT OF 2019 CERTIFICATES

**Section 4.1 Right to Prepay Certificates.** The 2019 Certificates shall be subject to prepayment at such times, to the extent and in the manner provided herein.

**Section 4.2 Prepayment.**

(a) The 2019 Certificates scheduled for payment on or after July 1, 20\_\_, are subject to optional prepayment prior to such dates, at the direction of the Lessee, on any date on or after July 1, 20\_\_, in whole or in part, in any order designated by the Lessee (or by the Trustee by lot in the event that no designation accompanies the direction of the Lessee to prepay the 2019 Certificates pursuant to this Section 4.2(a)) and by lot within a scheduled

payment date, at a prepayment price equal to the principal amount evidenced by the 2019 Certificates to be prepaid plus interest accrued with respect thereto to the date fixed for prepayment, without premium.

(b) (1) The 2019 Certificates scheduled for payment on July 1 of the following years shall be subject to mandatory prepayment prior to their stated payment dates on July 1 of the years set forth below and in the amounts set forth below, at a prepayment price equal to the principal amount thereof plus interest accrued to the date fixed for prepayment, without premium.

2019 Certificates Payable July 1, 20

<u>Prepayment Date</u>	<u>Principal Amount</u>
------------------------	-------------------------

\*

2019 Certificates Payable July 1, 20

<u>Prepayment Date</u>	<u>Principal Amount</u>
------------------------	-------------------------

\*

\* Stated Payment Date

(2) Whenever 2019 Certificates subject to mandatory prepayment are purchased, redeemed (other than because of mandatory prepayment) or are delivered by the Lessee to the Trustee for cancellation, the principal amount of the 2019 Certificates represented thereby so retired shall satisfy and be credited against the mandatory prepayment therefor in any order specified by the Lessee.

(c) The 2019 Certificates are subject to prepayment on any July 1 or January 1, in whole or in part, from the Net Proceeds, which Net Proceeds have been deposited in the Lease Payment Fund and credited towards the Prepayment made by the Lessee pursuant to Section 10.3 of the Lease Agreement, in any order designated by the Lessee (or by the Trustee by lot in the event that no such designation is received by the Trustee at the time such Net Proceeds are deposited with the Trustee) and by lot within a scheduled payment date, at a prepayment price equal to the principal amount evidenced by the 2019 Certificates to be prepaid plus accrued interest with respect thereto to the date fixed for prepayment, without premium.

**Section 4.3 Selection of Certificates to be Prepaid.** If less than all of the 2019 Certificates of the same scheduled payment date are to be prepaid hereunder, the Lessee may timely select the 2019 Certificates to be prepaid or, if the Lessee does not so select, the Trustee shall select the 2019 Certificates to be prepaid by lot or in such other manner as the

Trustee shall deem fair. In making such selection, the Trustee shall treat each 2019 Certificate as evidencing that number of 2019 Certificates of \$5,000 denominations as is obtained by dividing the principal amount evidenced by such 2019 Certificate by \$5,000.

**Section 4.4 Partial Prepayment of Certificates.** Upon the selection and call for prepayment of, and the surrender of, any 2019 Certificate for prepayment in part only, the Trustee shall cause to be executed and delivered to or upon the written order of the Owner thereof, at the expense of the Lessee, a new 2019 Certificate or 2019 Certificates of Authorized Denominations in an aggregate principal amount equal to the unrepaid portion of the 2019 Certificate surrendered, in accordance with instructions received from the Owner thereof, with one 2019 Certificate being delivered in the absence of such instructions.

**Section 4.5 Effect of Call for Prepayment.** On the date designated for prepayment by notice given as herein provided, the 2019 Certificates so called for prepayment shall become and be payable at the prepayment price provided for prepayment of such 2019 Certificates on such date. If on the date fixed for prepayment moneys for payment of the prepayment price and accrued interest are held by the Trustee as provided herein, interest evidenced by the 2019 Certificates so called for prepayment shall cease to accrue, such 2019 Certificates shall cease to be entitled to any benefit or security hereunder except the right to receive payment from the moneys held by the Trustee and the amount of such 2019 Certificates so called for prepayment shall be deemed paid and no longer Outstanding.

**Section 4.6 Notice of Prepayment.**

(a) Whenever prepayment of 2019 Certificates is to be made, the Trustee shall give notice of the prepayment of such 2019 Certificates, which notice shall specify the prepayment date, the prepayment price and the place or places where such prepayment price will be payable and, if less than all of the 2019 Certificates are to be prepaid, the numbers or other distinguishing marks of such 2019 Certificates so to be prepaid, and, in the case of 2019 Certificates to be prepaid in part only, such notice shall also specify the respective portions of the principal amounts thereof to be prepaid. Such notice shall further state that on such date there shall become due and payable upon each 2019 Certificate to be prepaid the price of such 2019 Certificate or the specified portion thereof in the case of a 2019 Certificate to be prepaid in part only, together with interest accrued to the prepayment date, and that from and after such date interest thereon shall cease to accrue and be payable on such 2019 Certificate or portion thereof so to be prepaid. In the case of an optional prepayment pursuant to Section 4.2(a) hereof, such notice shall further state that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the prepayment, with the Trustee no later than the prepayment date and such notice and optional prepayment shall be of no effect if such moneys are not so deposited.

(b) Such notice shall be given by mailing a copy of such notice, first class United States mail postage prepaid, not less than 30 days nor more than 60 days before the prepayment date, to all Owners of any 2019 Certificates or portions of 2019 Certificates that are to be prepaid at their last addresses appearing upon the Register, but failure so to mail any such notice, or a defect in such notice, as to any 2019 Certificate shall not affect the validity of the proceedings for the prepayment of any other 2019 Certificate.

(c) In addition to the notice called for in subsections (a) and (b), further notice shall be given by the Trustee as set out below, but no defect in said further notice or any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for prepayment or result in a breach of trust by the Trustee of notice thereof given as above prescribed:

(i) Each further notice of prepayment given hereunder shall contain the information required above for an official notice of prepayment plus (A) the CUSIP numbers of all 2019 Certificates being prepaid; (B) the date of execution and delivery of the 2019 Certificates as originally executed and delivered; (C) the rate of interest borne by each 2019 Certificate being prepaid; (D) the specified principal payment date of each 2019 Certificate being prepaid; and (E) any other descriptive information needed to identify accurately the 2019 Certificates being prepaid.

(ii) Each further notice of prepayment shall be sent at least 35 days before the prepayment date, return receipt requested, to all registered securities depositories that are registered owners of the 2019 Certificates then in the business of holding substantial amounts of obligations of types such as the 2019 Certificates (such as, at the time of execution and delivery of this Trust Agreement, DTC) and to one or more national information services that disseminate notices of prepayment of obligations such as the 2019 Certificates (such as, at the time of execution and delivery of this Trust Agreement, the Electronic Municipal Market Access System of the Municipal Securities Rulemaking Board).

(d) A second notice of prepayment shall be given within 60 days after the prepayment date in the manner required above to each of the Owners of the 2019 Certificates designated for prepayment that have not been presented for payment within 30 days after the prepayment date.

## ARTICLE V

### LEASE PAYMENTS; LEASE PAYMENT FUND

**Section 5.1 Rights in Lease Agreement.** The Trustee acknowledges and agrees that its right, title and interest as lessor in and to the Lease Agreement, including but not limited to the rights of the Lessor to receive and collect Lease Payments, Additional Rent, Prepayments and any other amounts required to be deposited in the Lease Payment Fund, is held in trust pursuant to the provisions hereof. All Lease Payments, Additional Rent and Prepayments to which the Trustee, as lessor, may at any time be entitled shall be received, held and disposed of by the Trustee pursuant to the provisions of this Trust Agreement for the benefit of the Owners from time to time of the Certificates.

**Section 5.2 Establishment of Lease Payment Fund.** The Trustee shall establish a special fund designated the "*Lease Payment Fund.*" All moneys at any time deposited by the Trustee in the Lease Payment Fund shall be held by the Trustee in trust for the benefit of the Owners of the Certificates. So long as any Certificates are Outstanding, neither the

Lessee nor the Lessor shall have any beneficial right or interest in the Lease Payment Fund or the moneys deposited therein, except only as provided in this Trust Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

**Section 5.3 Deposits.** There shall be deposited in the Lease Payment Fund all Lease Payments and Prepayments received by the Trustee, including any moneys received by the Trustee for deposit therein pursuant to Section 4.4 or Articles VI, IX or X of the Lease Agreement, all income and gain on investments of the Lease Payment Fund and any other moneys required to be deposited therein pursuant to the Lease Agreement or pursuant to this Trust Agreement.

**Section 5.4 Application of Moneys.** All amounts in the Lease Payment Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal, interest and prepayment premiums (if any) with respect to the Certificates as the same shall become due and payable, in accordance with the provisions of Article II and Article IV hereof.

**Section 5.5 Transfers of Investment Earnings to Lease Payment Fund.** All income and gain on investments of the Project Fund shall be retained therein until the completion of the construction and acquisition of the Projects, and any balance in the Project Fund on such date shall be transferred to the Lease Payment Fund. All income and gain on investments of the Delivery Costs Fund shall be retained therein until June 1, 2020, and any balance in the Delivery Costs Fund on such date shall be transferred to the Lease Payment Fund.

**Section 5.6 Surplus.** Any surplus remaining in the Lease Payment Fund, after prepayment and payment of all Certificates, including premiums and accrued interest (if any) and payment of any Additional Rent, or provision for such prepayment or payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the Lessee.

## ARTICLE VI

[RESERVED TO PRESERVE NUMBERING SCHEME]

## ARTICLE VII

### INSURANCE AND CONDEMNATION FUND; INSURANCE; EMINENT DOMAIN

**Section 7.1 Establishment of Insurance and Condemnation Fund; Application of Net Proceeds of Insurance Award.** Any Net Proceeds of insurance against accident to or destruction of any structure constituting any part of the Leased Property collected by the Lessee in the event of any such accident or destruction shall be transferred to the Trustee pursuant to Section 6.2 of the Lease Agreement and deposited by the Trustee in a special fund designated the “*Insurance and Condemnation Fund*” to be applied and disbursed by the Trustee as provided in Section 6.2(a) of the Lease Agreement.

**Section 7.2 Application of Net Proceeds of Eminent Domain Award.** If all or any part of the Leased Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited with the Trustee in the Insurance and Condemnation Fund pursuant to Section 6.2(b) of the Lease Agreement and shall be applied and disbursed by the Trustee as follows:

(i) If the Trustee determines, based upon a report of an independent engineer or other independent professional, that (A) such eminent domain proceedings have not materially affected the operation of any of the Leased Property or the ability of the Lessee to meet any of its obligations pursuant to the Lease Agreement, and (B) that such proceeds are not needed for repair or rehabilitation of the Leased Property, the Trustee shall transfer such proceeds to the Lease Payment Fund to be credited towards the Prepayments required to be paid pursuant to Section 10.3 of the Lease Agreement and applied to the prepayment of Certificates in the manner provided in Article IV hereof.

(ii) If the Trustee determines, based upon a report of an independent engineer or other independent professional, that (A) such eminent domain proceedings have not materially affected the operation of any of the Leased Property or the ability of the Lessee to meet any of its obligations pursuant to the Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Leased Property, the Trustee shall pay to the Lessee, or to its order, from said proceeds such amounts as the Lessee may expend for such repair, rehabilitation or replacement, upon the filing of requisitions of the Lessee Representative, certificates of architects or engineers and other documents as the Trustee may at its discretion request.

(iii) If (A) less than all of the Leased Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the Trustee determines, based upon a report of an independent engineer or other independent professional, that such eminent domain proceedings have materially affected the operation of any of the Leased Property, or (B) all of the Leased Property shall have been taken in such eminent domain proceedings, then the Trustee shall transfer such proceeds to the Lease Payment Fund to be credited toward the Prepayment required to be paid pursuant to Section 10.3 of the Lease Agreement and applied to the prepayment of Certificates in the manner provided in Article IV hereof.

The Lessee shall be required to obtain, at its own expense, and provide to the Trustee the report of an independent engineer or other independent professional consultant before the Trustee is required to make any determination pursuant to this Section 7.2. Any such determination by the Trustee shall be made within 45 days after the conclusion of such eminent domain proceeding and shall be final.

**Section 7.3 Cooperation.** The Trustee shall cooperate fully with the Lessee at the request and expense of the Lessee in filing any proof of loss with respect to any insurance policy maintained pursuant to Article V of the Lease Agreement and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any part thereof.

## ARTICLE VIII

### MONEYS IN FUNDS; INVESTMENT

**Section 8.1 Held in Trust.** Except as otherwise provided in Section 8.8 hereof, the moneys and investments held by the Trustee pursuant to this Trust Agreement are irrevocably held in trust for the benefit of the Owners of the Certificates, and for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Trust Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Lessor, the Trustee or the Lessee or any Owner of Certificates.

**Section 8.2 Investments Authorized.** Permitted Investments acquired hereunder, if registrable, shall be registered in the name of the Trustee and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment.

**Section 8.3 Accounting.** The Trustee shall quarterly, or at such other intervals as the Trustee and the Lessee shall from time to time agree upon (but in no event less frequently than semiannually or more frequently than monthly), prepare and furnish to the Lessee an accounting of all moneys received and all payments, expenditures and investments made by the Trustee hereunder since the last previous accounting. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Sections 8.2 and 8.6 hereof.

**Section 8.4 Allocation of Earnings.** Any loss on investments shall be charged to the respective funds from which such investments were made, and any interest, income or profit on any deposit of funds shall be deposited and transferred as provided in Sections 5.3, 5.5 and 8.8 hereof.

**Section 8.5 Valuation and Disposition of Investments.** For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued at fair market value. The Trustee shall determine the fair market value based on accepted industry standards and from accepted industry providers. The Trustee shall value certificates of deposit and bankers' acceptances at the face amount thereof plus accrued interest thereon. The value of any investment not specified above shall be established by prior agreement among the Lessee and the Trustee.

The Trustee may sell at the best price reasonably obtainable, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment.

### **Section 8.6 Deposit and Investment of Moneys in Funds.**

(a) Moneys in all funds held by the Trustee shall be invested by the Trustee, as soon as possible upon receipt of immediately available funds at its designated office, to the fullest amount possible in Permitted Investments as directed, in writing, by the Lessee; provided that the maturity date or the date on which such Permitted Investments may be prepaid at the option of the holder thereof shall coincide as nearly as practicable with (but in no event shall be later than) the date or dates on which moneys in the funds for which the investments were made will be required for the purposes thereof. In the absence of direction from the Lessee, the Trustee shall invest in investments permitted pursuant to paragraph (f) of the definition of Permitted Investments.

(b) Amounts credited to a fund may be invested, together with amounts credited to one or more other funds, in the same Permitted Investment, provided that (i) each such investment complies in all respects with the provisions of subsection (a) of this Section as they apply to each fund for which the joint investment is made, and (ii) the Trustee maintains separate records for each fund and such investments are accurately reflected therein.

(c) The Trustee may make any investment permitted by this Section, through or with its own commercial banking or investment departments unless otherwise directed by the Lessee.

(d) The Trustee shall sell at the best price reasonably obtainable, or present for prepayment, any Permitted Investment purchased by it as an investment whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the fund for which such investment was made.

**Section 8.7 Liability of Trustee for Investments.** The Trustee shall not be liable for any loss resulting from the making of any investment made in accordance with the provisions hereof, except for its own negligence, willful misconduct or breach of trust.

### **Section 8.8 Tax Covenants.**

(a) The Lessee shall not direct the Trustee to make any investment at a “yield” in excess of the maximum yield, if any, stated with respect to the source of moneys therefor in any arbitrage or other similar certificate executed and delivered pursuant to section 148 of the Code or any successor section of the Code, issued in connection with the execution and delivery of the Certificates sold on the basis of the interest thereon being excluded from gross income for federal income tax purposes, including the 2019 Certificates, except during any “temporary period” stated in any arbitrage or other certificate, and the Trustee shall make and keep appropriate records of such investments, yields and temporary periods as required by section 148 of the Code or any successor section thereof. Notwithstanding the foregoing, investments may be made at a higher “yield” or for a different “temporary period” or both in accordance with written instructions of Special Counsel filed with and addressed to the Trustee.

(b) The Trustee shall not knowingly use or direct or permit the use of any moneys in its possession or control in any manner which would cause any 2019 Certificate

to be an “arbitrage obligation” within the meaning ascribed to such term in section 148 of the Code, or any successor section of the Code.

## ARTICLE IX

### THE TRUSTEE

#### Section 9.1 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default:

(i) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Trust Agreement, the Lease Agreement and the Ground Lease (collectively referred to herein as the “*Agreements*”), and no implied covenants or obligations shall be read into the *Agreements* against the Trustee; and

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of the *Agreements*; but in the case of any such certificates or opinions that are required by any provision hereof or thereof the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of the *Agreements*.

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Trust Agreement and the other *Agreements*, including those described in (a) above, and use the same degree of care and skill in their exercise, as a prudent corporate indenture trustee would exercise or use under the circumstances.

(c) No provision of this Trust Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct or breach of trust, except that:

(i) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) The Trustee shall not be liable for any error of judgment made in good faith and without negligence by a chairman or vice-chairman of the board of directors, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any cashier or assistant cashier, any trust officer or assistant trust officer, the controller and any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers or, with respect to a particular matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject;

(iii) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith and without negligence in accordance with the direction of the Owners of the Outstanding Certificates as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, pursuant to this Trust Agreement or the other Agreements; and

(iv) Except for the obligation (A) to make payment of principal, interest, or premium, if any, evidenced by the Certificates to the Owners thereof pursuant to Section 5.4 hereof or (B) to notify the Owners of any Event of Default pursuant to Section 13.9 hereof, no provision of this Trust Agreement or the other Agreements shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability (including, without limitation, any and all environmental liability) in the performance of any of its duties hereunder or thereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity or other assurance against such risk or liability is not reasonably assured to it. Without limiting the generality of the foregoing, such other assurance may include, but shall not be limited to, environmental audits or other evidence satisfactory to the Trustee that it will not incur liability by reason of any remedial action taken pursuant hereto. The Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment properly to be done by it as the Trustee, without prior assurance of indemnity, and in such case shall be entitled to reimbursement by the Lessee for all reasonable costs, expenses, attorneys, and other fees, and all other reasonable disbursements, including its own fees, and for all liability and damages suffered by the Trustee in connection therewith except for the Trustee's negligence, willful misconduct or breach of trust.

(d) Whether or not therein expressly so provided, every provision of this Trust Agreement or the other Agreements relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

(e) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("*unavoidable delay*") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other occurrences beyond the control of the Trustee; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

(f) The Trustee shall accept and act upon facsimile transmissions of written instructions and/or directions pursuant to this Trust Agreement provided, however, that: (a) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions and (b) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions.

**Section 9.2 Certain Rights of Trustee.** Except as otherwise provided in Section 9.1 hereof:

(a) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request or direction of the Lessee mentioned herein shall be sufficiently evidenced by a certificate of a Lessee Representative, and any action of the Mayor and Council of the Lessee may be sufficiently evidenced by a copy of a resolution certified by the City Clerk of the Lessee to have been duly adopted by the Mayor and Council of the Lessee and to be in full force and effect on the date of such certification and delivered to the Trustee.

(c) Whenever in the administration of this Trust Agreement the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of a Lessee Representative.

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any of the Certificate Owners pursuant to this Trust Agreement, unless such Certificate Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(f) The Trustee may engage agents and attorneys to assist it in executing any of the trusts or powers hereunder or performing any duties hereunder or pursuant to the other Agreements and shall not be liable for the negligence or misconduct of such agents and attorneys so long as the Trustee exercises due care in the selection thereof.

(g) The Trustee may consult with counsel and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder or pursuant to the other Agreements in good faith and in reliance thereon.

(h) The Trustee shall not be bound to ascertain or inquire as to the validity or genuineness of any collateral given or held by it. The Trustee shall not be responsible for the recording or filing of any document relating to the Agreements or of any supplemental instruments or documents of further assurance as may be required by law in order to perfect liens or security interests. The permissive right of the Trustee to do things enumerated in this Trust

Agreement shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default.

**Section 9.3 Employment of Experts.** The Trustee is hereby authorized to employ as its agents such attorneys at law, certified public accountants and recognized authorities in their fields (who are not employees of the Trustee), as it reasonably may deem necessary to assist it to carry out any of its obligations hereunder or pursuant to the other Agreements, and shall be reimbursed by the Lessee for all reasonable expenses and charges in so doing.

**Section 9.4 Enforcement of Performance by Others.** It shall not be the duty of the Trustee, except as herein provided, to ascertain or inquire whether any duties and obligations herein or in the applicable Agreements imposed upon the Lessee are performed or whether the terms and conditions thereof are observed.

**Section 9.5 Right to Deal in Certificates and Take Other Actions.** The Trustee may in good faith buy, sell or hold and deal in any Certificates with like effect as if it were not such Trustee and may commence or join in any action that a Owner is entitled to take with like effect as if the Trustee were not the Trustee. It is understood and agreed that the Trustee engages in a general banking business and no provision hereof is to be construed to limit or restrict the right of the Trustee to engage in such business with the Lessee or any Owner. So engaging in such business shall not constitute a breach of trust on the part of the Trustee, but neither shall engaging in such business abrogate, alter or diminish any duty or obligation of the Trustee as Trustee hereunder.

**Section 9.6 Removal and Resignation of the Trustee.** The Trustee may resign at any time, or may be removed at any time by an instrument or instruments in writing signed by the Lessee or the Owners of not less than a majority in Aggregate Value of the Certificates. Written notice of such resignation or removal shall be given by the Trustee to the Lessee and such resignation or removal shall take effect only upon the appointment and qualification of a successor Trustee. In the event a successor Trustee has not been appointed and qualified within 60 days of the date notice of resignation is given, the Trustee or the Lessee may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

In the event of the resignation or removal of the Trustee or in the event the Trustee is dissolved or otherwise becomes incapable to act as the Trustee, the Lessee shall be entitled to appoint a successor Trustee, unless an Event of Default has occurred and is continuing.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall (i) be a trust company or bank in good standing in the State, (ii) be duly authorized to exercise trust powers in the State and subject to examination by a Federal or state authority, and (iii) maintain a reported capital and surplus of not less than \$75,000,000.

Every successor Trustee howsoever appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Lessee an instrument in writing, accepting such appointment hereunder, and thereupon such successor Trustee, without further action, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, and such predecessor shall execute and deliver an instrument transferring to such successor Trustee all the rights, power and trusts of such predecessor. The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible as a successor Trustee pursuant to this Section 9.6 in the case of the Trustee, shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

**Section 9.7 Proof of Claim.** The Trustee shall have the right and power to take actions in the name and place of the Lessee or Owners to make proof of claim in any proceeding, bankruptcy, reorganization or otherwise where proof of claim may be required. Any amount recovered as a result of any such claim, after payment of all fees (including reasonable attorneys' fees), costs, expenses and advances incurred by the Trustee or its agents in pursuing such claim, shall be for the equal benefit of all of the Owners.

**Section 9.8 Trustee's Fees and Expenses.** The Lessee shall (i) pay as Additional Rent to the Trustee reasonable compensation for all services rendered by it hereunder and pursuant to the other Agreements (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (ii) reimburse as Additional Rent the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Trust Agreement and the other Agreements (including the reasonable compensation and the expenses and disbursements of its counsel and its agents), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith or willful misconduct or breach of trust, and (iii) to the extent permitted by applicable law, indemnify and hold the Trustee harmless for, from and against any loss, liability or expense, arising out of or in connection with the acceptance or administration of this trust or its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder; provided, however, that such indemnification shall not extend to claims successfully brought against the Trustee for, or losses, liabilities or expenses incurred as a result of, the Trustee's negligence, bad faith, willful misconduct or breach of trust. The Trustee's rights to compensation, reimbursement and indemnity while serving as Trustee hereunder and in its respective capacity pursuant to the other Agreements shall survive resignation or removal of the Trustee or discharge of the Trust Agreement and the other Agreements.

Any provision hereof to the contrary notwithstanding, if the Lessee fails to make any payment properly due the Trustee for its reasonable fees, costs, expenses and fees of attorneys, certified public accountants, recognized authorities in their field and agents (not employees of the Trustee) incurred in performance of its duties or for which the Trustee is entitled to indemnity, the Trustee may reimburse itself from any surplus moneys on hand in any fund created pursuant hereto, provided that application of funds upon an Event of Default shall be governed by Section 13.3 hereof.

**Section 9.9 Intervention by Trustee.** The Trustee may, and shall intervene, if requested by an instrument or instruments in writing signed by the Owners of not less than a majority in Aggregate Value of the Certificates, in any judicial proceeding to which the Lessee is a party and that in the opinion of the Trustee and its counsel has a substantial bearing on the interest of Owners of the Certificates. The rights and obligations of the Trustee pursuant to this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it in accordance with Section 9.1 hereof before it takes action hereunder.

**Section 9.10 Destruction of Certificates.** Upon payment of or surrender to the Trustee for cancellation of any Certificate, the Trustee shall destroy such Certificate.

**Section 9.11 Separate or Co-Trustee.** At any time or times, solely for the purpose of meeting the legal requirements of any jurisdiction, the Lessee and the Trustee shall have power to appoint, and, upon the request of the Trustee or the Owners of at least a majority in Aggregate Value of Certificates then Outstanding, the Lessee shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons, approved by the Trustee and, unless an Event of Default has occurred and is continuing by the Lessee, either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the pledged property, or to act as separate trustee or separate trustees of all or any part of the pledged property, and to vest in such person or persons, in such capacity, such title to the pledged property or any part thereof, and such rights, powers, duties, trusts or obligations as the Lessee and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

If the Lessee shall not have joined in such appointment within 15 days after the receipt by it of a request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have power to make such appointment.

The Lessee shall execute, acknowledge and deliver all such instruments as may reasonably be required by any such co-trustee or separate trustee for more fully and certainly vesting in such co-trustee or separate trustee the property, rights, powers and duties intended to be vested in such co-trustee or separate trustee. The Lessee shall be under no obligation to prepare any such instruments.

Every co-trustee or separate trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(i) The Certificates shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations hereby conferred upon the Trustee in respect to the custody, control and management of moneys, papers, securities and other personal property shall be exercised solely by the Trustee.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees or separate trustee or separate trustees jointly, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, pursuant to the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(iii) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee and such co-trustee or separate trustee shall abide by such request.

(iv) Any co-trustee or separate trustee may, to the extent permitted by law, delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee may at any time, by any instrument in writing, with the concurrence of the Lessee, accept the resignation of or remove any co-trustee or separate trustee appointed pursuant to this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Lessee. Upon the request of the Trustee, the Lessee shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. The Lessee shall be under no obligation to prepare, record or file any such instruments or agreements.

(vi) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder, nor will the act or omission of any trustee hereunder be imputed to any other trustee.

(vii) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee.

(viii) Any moneys, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it shall be vested jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) with such title to the pledged property or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment subject to all the terms hereof. Every such acceptance shall be filed with the Trustee. To the extent permitted by law, any co-trustee or separate trustee may, at any time by an instrument in writing, constitute the Trustee, its or his attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its or his behalf and in its or his name.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the pledged property, and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

**Section 9.12 Recitals and Representations.** The recitals, statements and representations contained herein, in the Lease Agreement, the Ground Lease or in any certificate (excluding the Trustee's execution of the Certificates or any recitals or representations concerning the Trustee or its powers) shall not be taken or construed as made by the Trustee, and the Trustee neither assumes nor shall be under any responsibility for the correctness of the same.

The Trustee makes no representation as to, and is not responsible for, the validity or sufficiency hereof, of the Certificates, or the validity or sufficiency of insurance to be provided or, except as herein required, the filing or recording or registering of any document. The Trustee shall be deemed not to have made representations as to the security afforded hereby or hereunder or as to the validity or sufficiency of such security. The Trustee shall not be concerned with or accountable to anyone for the use or application of any moneys that shall be released or withdrawn in accordance with the provisions hereof. The Trustee shall have no duty of inquiry with respect to any default or Events of Default described herein without actual knowledge of or receipt by the Trustee of written notice of a default or an Event of Default from the Lessee or any Owner. As used herein, "*actual knowledge*" means the actual fact or state of knowing without any duty to make investigations with regard thereto.

The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed in connection with the execution and delivery of the Certificates.

## ARTICLE X

### MODIFICATION OR AMENDMENT OF AGREEMENTS

**Section 10.1 Amendments Permitted.** This Trust Agreement, the rights and obligations of the Owners of the Certificates, the Lease Agreement and the Ground Lease, and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental agreement that shall become effective when the Owners of a majority in Aggregate

Value of the Certificates, exclusive of Certificates disqualified as provided in Section 10.3 hereof, shall have been filed with the Trustee; provided, however, that no such modification or amendment shall (i) extend or have the effect of extending the scheduled principal payment date of any Certificate or reducing the interest rate with respect thereto or extending the time of payment of interest, reducing the amount of principal evidenced thereby or reducing any premium payable upon the prepayment thereof, without the express consent of the Owner of such Certificate, (ii) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification of the Lease Agreement or this Trust Agreement, or (iii) modify any of the rights or obligations of the Trustee without its written assent thereto without its written assent thereto. Any such supplemental agreement shall become effective as provided in Section 10.2 hereof.

This Trust Agreement, the rights and obligations of the Owners of the Certificates, the Lease Agreement and the Ground Lease, and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental agreement, without the consent of any Owners of the Certificates, but only to the extent permitted by law and only (w) to add to the covenants and agreements of any party other covenants to be observed or to surrender any right or power herein reserved to the Lessor or the Lessee, (x) to cure, correct or supplement any ambiguous or defective provision contained herein or therein, (y) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and that shall not, in the judgment of the Trustee, materially adversely affect the interests of the Owners of the Certificates, or (z) to provide additional terms and conditions in connection with the execution and delivery of Additional Certificates in accordance with Section 2.11 hereof and that shall not, in the judgment of the Trustee, materially adversely affect the interests of the Owners of the Certificates. Any such supplemental agreement shall become effective upon execution and delivery by the parties hereto or thereto as the case may be.

**Section 10.2 Procedure for Amendment with Written Consent of Certificate Owners.** This Trust Agreement, the Lease Agreement and the Ground Lease may be amended by supplemental agreement as provided in this Section 10.2 in the event the consent of the Owners of the Certificates is required pursuant to Section 10.1 hereof. A copy of such supplemental agreement, together with a request to the Certificate Owners for their consent thereto, shall be mailed by first class United States mail postage prepaid by the Trustee to each Owner of a Certificate at his address as set forth on the Certificate Register maintained pursuant to Section 2.7(b) hereof, but failure to mail copies of such supplemental agreement and request shall not affect the validity of the supplemental agreement when assented to as in this Section provided.

Such supplemental agreement shall not become effective unless there shall be filed with the Trustee the written consents of the Owners of a majority in Aggregate Value of the Certificates (exclusive of Certificates disqualified as provided in Section 10.3 hereof) and a notice shall have been mailed as hereinafter in this Section provided. The consent of an Owner of a Certificate shall be effective only if ownership of the Certificates for which such consent is given is proved in accordance with Section 2.10 hereof. Any such consent shall be binding upon the Owner of the Certificate giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the

Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee before the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Aggregate Value of Certificates shall have filed their consents to such supplemental agreement, the Trustee shall mail a notice to the Owners of the Certificates in the manner hereinbefore provided in this Section for the mailing of such supplemental agreement of the notice of adoption thereof, stating in substance that such supplemental agreement has been consented to by the Owners of the required percentage of Aggregate Value of Certificates and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental agreement shall be deemed conclusively binding upon the parties hereto and the Owners of all Certificates at the expiration of 60 days after the filing of the papers required by this Section, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60-day period.

**Section 10.3 Disqualified Certificates.** Neither Certificates owned or held by or for the account of the Lessee or by any person directly or indirectly controlled by, or under direct or indirect common control with, the Lessee (except any Certificates held in any pension or retirement fund) shall be deemed Outstanding for the purpose of any vote, consent, waiver or other action or any calculation of Outstanding Certificates provided for in this Trust Agreement and shall not be entitled to vote upon, consent to or take any other action provided for in this Trust Agreement; provided that only Certificates which the Trustee knows to be so owned shall be disregarded unless all Certificates are owned by the Lessee or any affiliate thereof and/or held by the Trustee for the account of the Lessee and/or an affiliate thereof, in which case such Certificates shall be considered Outstanding for the purpose of such determination.

**Section 10.4 Effect of Supplemental Agreement.** From and after the time any supplemental agreement becomes effective pursuant to this Article X, this Trust Agreement, the Lease Agreement or the Ground Lease, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Certificates Outstanding, as the case may be, shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental agreement shall be deemed to be part of the terms and conditions of this Trust Agreement, the Lease Agreement or the Ground Lease, as the case may be, for any and all purposes.

The Trustee may require each Certificate Owner, before his consent provided for in this Article X shall be deemed effective, to certify that the Certificates as to which such consent is given are not disqualified as provided in Section 10.3 hereof.

**Section 10.5 Endorsement or Replacement of Certificates Delivered After Amendments.** The Trustee may determine that Certificates delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by endorsement or otherwise,

in form approved by the Trustee, as to such action. No such notation shall be made by the Trustee unless the Trustee shall have received an opinion of Special Counsel to the effect that such modification of the Certificate form will not adversely affect the exclusion from gross income for federal income tax purposes of the interest component of Lease Payments paid with respect to the 2019 Certificates and any Additional Certificates sold on the basis of the interest thereon being excluded from gross income for federal income tax purposes. In that case, upon demand of the Owner of any Certificate Outstanding at such effective date and presentation of his Certificate for such purpose at the designated corporate trust office of the Trustee, a suitable notation shall be made on such Certificate. The Trustee may determine that the delivery of substitute Certificates, so modified as in the opinion of the Trustee is necessary to conform to such Certificate Owners' action, is necessary and such substitute Certificates shall thereupon be prepared, executed and delivered. In that case, upon demand of the Owner of any Certificate then Outstanding, such substitute Certificate shall be exchanged at the designated corporate trust office of the Trustee, without cost to such Owner, for a Certificate of the same character then Outstanding, upon surrender of such Outstanding Certificate.

**Section 10.6 Amendatory Endorsement of Certificates.** The provisions of this Article X shall not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by him, provided that proper notation thereof is made on such Certificates.

## **ARTICLE XI**

### **COVENANTS**

**Section 11.1 Compliance With and Enforcement of Lease Agreement.** The Lessee covenants and agrees with the Owners of the Certificates to perform all obligations and duties imposed on it pursuant to the Lease Agreement. The Trustee, as lessor pursuant to the Lease Agreement, covenants and agrees with the Owners of the Certificates to perform all obligations and duties imposed on it pursuant to the Lease Agreement.

Subject to Section 4.2(b) of the Lease Agreement, the Lessee shall not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of the Lease Agreement by the Lessor thereunder. The Lessee, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting its estate in the Leased Property, which may or can in any manner affect such estate of the Lessee, will deliver the same, or a copy thereof, to the Trustee.

**Section 11.2 Observance of Laws and Regulations.** The Lessee shall well and truly keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract or prescribed by any law of the United States, of the State or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the Lessee, including its right to exist as a body corporate pursuant to the laws of the State, to the

end that such rights, privileges and franchises shall be maintained and preserved and shall not become abandoned, forfeited or in any manner impaired.

**Section 11.3 Prosecution and Defense of Suits.** The Lessee shall promptly, upon request of the Trustee or any Certificate Owner, from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Leased Property, whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and, to the extent permitted by law, shall indemnify and save the Trustee and every Certificate Owner harmless for, from and against all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceeding.

**Section 11.4 Recordation and Filing.** Except as provided in Section 14.11, the Lessee shall record and file the Lease Agreement, and all such documents as may be required by law (and shall take all further actions that may be necessary or be reasonably required by the Trustee), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee and the Certificate Owners.

**Section 11.5 Further Assurances.** The Trustee and the Lessee will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Trust Agreement and the Lease Agreement, and for the better assuring and confirming unto the Owners of the Certificates the rights and benefits provided herein.

**Section 11.6 Action Upon Termination of Lease.** In the event the Lease Agreement is terminated pursuant to Section 4.2(b) thereof, the Trustee shall take possession of the Leased Property on the day following the 45-day reinstatement period provided in Section 4.2(c) of the Lease Agreement or seek a judicial order excluding, or take other action preventing, the Lessee from using the Leased Property and use its best efforts to re-let or sell the same. This covenant shall be enforceable by the Owners (subject to the requirements set forth in Section 13.8 hereof).

## ARTICLE XII

### LIMITATION OF LIABILITY

**Section 12.1 Limited Liability of Lessee.** Except for the payment of Lease Payments and Prepayments when due in accordance with the Lease Agreement, the payment of Additional Rent and the performance of the other covenants and agreements of the Lessee contained in said Lease Agreement, including the payment of fees and expenses and indemnities of the Trustee, the Lessee shall have no pecuniary obligation or liability to any of the other parties or to the Owners of the Certificates with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Lease Payments to the Owners by the Trustee.

**Section 12.2 No Liability of the Lessee for Trustee Performance.** The Lessee shall not have any obligation or liability to any of the Trustee or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it pursuant to this Trust Agreement.

**Section 12.3 Indemnification.** To the extent permitted by law, the Lessee agrees to indemnify and save the Trustee harmless for, from and against (i) all claims, suits and actions brought against it, or to which it is made a party, and from all losses and damages and expenses, including attorneys fees, suffered or incurred by it as a result thereof, where and to the extent such claim, suit or action arises out of the actions of any other party to this Trust Agreement including but not limited to the ownership, operation or use of the Leased Property by the Lessee, and (ii) any taxes required to be paid by the Trustee as a result of the receipt of any amounts pursuant to the Lease Agreement. Such indemnification shall not extend to claims, suits and actions successfully brought against the Trustee for failure to perform and carry out the duties specifically imposed upon and to be performed by it pursuant to this Trust Agreement or for claims, suits and actions successfully brought for willful misconduct, negligence, or breach of duty pursuant to this Trust Agreement by the Trustee or its respective officers, agents, employees, successors or assigns. In the event the Lessee is required to indemnify the Trustee as herein provided, the Lessee shall be subrogated to the rights of the Trustee to recover such losses or damages from any other person or entity.

**Section 12.4 Opinion of Counsel.** Before being required to take any action, the Trustee may require an opinion of Independent Counsel acceptable to the Trustee, which opinion shall be made available to the other parties hereto upon request, which counsel may be counsel to any of the parties hereto, or a certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, Trustee shall be absolutely protected in relying thereon so long as the Trustee exercises due care in the selection of such counsel.

**Section 12.5 Limitation of Rights to Parties and Certificate Owners.** Nothing in this Trust Agreement or in the Certificates expressed or implied is intended or shall be construed to give any person other than the Lessee, the Trustee and the Owners of the Certificates, any legal or equitable right, remedy or claim pursuant to or in respect of this Trust Agreement or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the Lessee, the Trustee and said Owners.

**Section 12.6 No Liability of the Trustee for Payment of Lease Payments by Lessee.** Except as expressly provided herein, the Trustee shall have no obligation or liability to the Owners of the Certificates with respect to the payment of the Lease Payments by the Lessee when due, or with respect to the performance by the Lessee of any other covenant made by it in the Lease Agreement or the Ground Lease.

## ARTICLE XIII

### EVENTS OF DEFAULT AND REMEDIES OF CERTIFICATE OWNERS

**Section 13.1 Rights Pursuant to the Lease.** The Trustee has the right to exercise such rights and remedies conferred on the Lessor pursuant to the Lease Agreement as may be necessary or convenient (i) to enforce payment of the Lease Payments, Additional Rent, Prepayments and any other amounts required to be deposited in the Lease Payment Fund or the Insurance and Condemnation Fund, and (ii) otherwise to exercise the Lessor's rights and take any action to protect the interests of the Trustee or the Certificate Owners in an Event of Default.

**Section 13.2 Remedies.** If an Event of Default or termination pursuant to Section 4.2(b) of the Lease Agreement, shall happen, then and in each and every such case during the continuance of such Event of Default or termination pursuant to Section 4.2(b) of the Lease Agreement, the Trustee (i) shall take action to exclude the Lessee from the Leased Property, and (ii)(A) may, and (B) upon request of the Owners of not less than a majority in Aggregate Value of the Certificates, shall, exercise any and all other remedies available pursuant to law or granted pursuant to the Lease Agreement including the option to re-rent or re-lease all or any portion of the Leased Property pursuant to Article IX thereof.

**Section 13.3 Application of Funds.** Upon an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken pursuant to the provisions of this Article XIII or Article IX of the Lease Agreement shall be applied by the Trustee in the order following upon presentation of the Certificates, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the ordinary and extraordinary fees and the costs and expenses of the Trustee in declaring and pursuing remedies in connection with such Event of Default, including reasonable compensation to its or their agents, attorneys and counsel and the creation of a reasonable reserve for anticipated fees, costs and expenses, and

Second, to the payment of the whole amount then owing and unpaid with respect to the Certificates, for principal and interest with interest on the overdue principal, and, to the extent lawful, installments of interest at the rate of ten percent per annum (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest, and interest on overdue principal, as aforesaid), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid with respect to the Certificates, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

**Section 13.4 Institution of Legal Proceedings.** If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Owners of a majority in Aggregate Value of the Certificates shall, proceed to protect or enforce its rights or the rights of the Owners of Certificates by a suit in equity or action

at law, either for the specific performance of any covenant or agreement contained herein, the foreclosure of any lien granted herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties hereunder.

**Section 13.5 Non-waiver.** Nothing in this Article XIII or in any other provision of this Trust Agreement or in the Certificates, shall affect or impair the obligation of the Lessee, which is absolute and unconditional, to pay or prepay the Lease Payments and Additional Rent as provided in the Lease Agreement, or affect or impair the right of action, which is also absolute and unconditional, of the Certificate Owners to institute suit to enforce and collect such payment. No delay or omission of the Trustee or any Owner of any of the Certificates to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article XIII to the Trustee or the Owners of Certificates may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Certificate Owners.

**Section 13.6 Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Trustee or to the Certificate Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

**Section 13.7 Power of Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in Aggregate Value of the Certificates, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, without the consent of the Owners of a majority in Aggregate Value of the Certificates.

**Section 13.8 Limitation on Certificate Owners' Right to Sue.** No Owner of any Certificate executed and delivered hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy pursuant to or upon this Trust Agreement, unless (i) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default hereunder, (ii) the Owners of at least a majority in Aggregate Value of all the Certificates shall have made written request upon the Trustee to exercise the powers herein granted or to institute such action, suit or proceeding in its own name, (iii) said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses, and liabilities to be incurred in compliance with such request and (iv) the Trustee shall have refused or omitted to comply with such request for a period of 60 days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Certificates of any remedy hereunder; it being understood and intended that no one or more Owners of Certificates shall have any right in any manner whatever by his or their action to enforce any right pursuant to this Trust Agreement, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Certificates.

The right of any Owner of any Certificate to receive payment of said Owner's proportionate interest in the Lease Payments as the same become due or to institute suit for the enforcement of such payment, shall not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Trust Agreement.

### **Section 13.9 Notice of Default.**

(a) Within 30 days after receipt, in writing or otherwise, by the Trustee of actual knowledge or notice of an Event of Default, the Trustee shall give written notice thereof by first-class mail to each Owner of a Certificate then Outstanding, unless such Event of Default shall have theretofore been cured; provided that, except in the case of a default in the payment of principal or interest evidenced by or the prepayment price of any of the Certificates, the Trustee may withhold such notice if, in its sole judgment, it determines that the withholding of such notice is in the best interests of the Owners.

(b) The Trustee shall immediately notify the Lessee upon receipt by the Trustee of actual knowledge or notice, in writing or otherwise, of an Event of Default.

## **ARTICLE XIV**

### **MISCELLANEOUS**

**Section 14.1 Defeasance.** If and when any Outstanding Certificates shall be paid and discharged in any one or more of the following ways:

- (a) By well and truly paying or causing to be paid the principal and interest and prepayment premiums (if any) evidenced by such Certificates Outstanding, as and when the same become due and payable and all Additional Rent;
- (b) By making an irrevocable deposit with the Trustee, in trust, at or before a scheduled payment date, of money that, together with the amounts then on deposit in the Lease Payment Fund is fully sufficient to pay such Certificates Outstanding, including all principal and interest and premium, if any, evidenced thereby and all Additional Rent;

- (c) By making an irrevocable deposit with the Trustee, in trust, of Defeasance Obligations, together with money, if required, in such amount as will, in the opinion of an independent certified public accountant acceptable to the Trustee, together with the interest to accrue thereon, but without reinvestment thereof, and amounts then on deposit in the Lease Payment Fund together with the interest to accrue thereon, be fully sufficient to pay and discharge such Certificates (including all principal and interest) at their respective specified principal payment dates and pay all unpaid Additional Rent; or
- (d) By making an irrevocable deposit with the Trustee, pursuant to an escrow deposit and trust agreement, of security for the payment of Lease Payments and Additional Rent as more particularly described in Section 10.1 of the Lease Agreement, said security to be held by the Trustee as agent for the Lessee to be applied by the Trustee to pay the Lease Payments and Additional Rent as the same become due and payable, pursuant to Section 10.1 of the Lease Agreement;

notwithstanding that any Certificates shall not have been surrendered for payment, all obligations of the Lessor, the Trustee and the Lessee with respect to such Outstanding Certificates shall cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, from Lease Payments paid by or on behalf of the Lessee from funds deposited pursuant to paragraphs (b) through (d) of this Section, to the Owners of the Certificates not so surrendered and paid all sums due with respect thereto, and in the event of deposits pursuant to paragraphs (b) through (d) of this Section, the Certificates shall continue to evidence direct and proportionate interests of the Owners thereof in Lease Payments pursuant to the Lease Agreement.

Any funds held by the Trustee, at the time of one of the events described in paragraphs (a) through (d) of this Section, that are not required for the payment to be made to Owners, shall first be applied to the payment of Additional Rent and, thereafter, be paid over to the Lessee, subject to Section 9.8 hereof.

Any Certificate or portion thereof in Authorized Denominations may be paid and discharged as provided in this Section; provided, however, that if any such Certificate or portion thereof is to be prepaid, notice of such prepayment shall have been given in accordance with the provisions hereof or the Lessee shall have submitted to the Trustee instructions expressed to be irrevocable as to the date upon which such Certificate or portion thereof is to be prepaid and as to the giving of notice of such prepayment; provided further, that if any such Certificate or portion thereof will not be paid or prepaid as to principal within 60 days of the deposit referred to in paragraphs (b) through (d) of this Section, the Trustee shall give notice of such deposit by first class mail to the Owners.

If the Lessee prepays the Lease Payments and Additional Rent in full pursuant to Article X of the Lease Agreement, makes the advance deposit required by Section 10.1 of the Lease Agreement or pays all Lease Payments and Additional Rent during the term of the Lease Agreement as the same become due and payable, all right, title and interest of the Trustee and the Lessor in and to each element of the Leased Property shall be transferred to and vested in the

Lessee. Title shall be vested in the Lessee hereunder without the necessity for any further instrument of transfer; but the Trustee and the Lessor agree to take any and all steps and execute and record any and all documents reasonably required by the Lessee to consummate such vesting of title.

**Section 14.2 Records.** The Trustee shall keep complete and accurate records of all moneys received and disbursed pursuant to this Trust Agreement, which shall be available for inspection by the Lessee and any Owner, or the agent of any of them, at any time during regular business hours of the designated corporate trust office of the Trustee.

Current and prospective Owners and Beneficial Owners of the Certificates may examine the documents provided by the Lessee pursuant to Section 11.1 of the Lease Agreement at the designated corporate trust office of the Trustee and, at their expense, may obtain copies thereof upon request to the Trustee. The Trustee has no duty to review and evaluate the contents of such documents, to notify the Certificate Owners of the contents thereof or, except as set forth above, to send such documents to current or prospective Owners or Beneficial Owners of the Certificates.

**Section 14.3 Notices.** All written notices to be given pursuant to this Trust Agreement shall be given by mail, personal delivery or confirmed facsimile to the party entitled thereto at its address and/or facsimile set forth below, or at such address and/or facsimile as the party may provide to the other party in writing from time to time. Notice shall be effective upon deposit in the United States mail, postage prepaid or, in the case of personal delivery, upon delivery to the address set forth below or, in the case of facsimile notice, upon receipt at the facsimile number set forth below, except that notice to the Trustee shall be effective only upon receipt by an officer of the Trustee responsible for the administration of the trusts created pursuant to this Trust Agreement:

If to the Lessee:

City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001-5399  
Attention: Management Services Director

If to the Lessor or the Trustee:

Zions Bancorporation, National Association  
6001 North 24th Street  
Phoenix, Arizona 85016  
Attention: Corporate Trust Services

**Section 14.4 Governing Law.** This Trust Agreement shall be construed and governed in accordance with the laws of the State. Venue for any proceeding with respect to this Trust Agreement shall be in the Coconino County Superior Court.

**Section 14.5 Binding Effect; Successors.** This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Trust Agreement either the Lessor, the Lessee or the Trustee is named or referred to, such reference shall be deemed to include successors or assigns thereof, and all the covenants and agreements in this Trust Agreement contained by or on behalf of the Lessor, the Lessee or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 14.6 Execution in Counterparts.** This Trust Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 14.7 Destruction of Canceled Certificates.** Whenever in this Trust Agreement provision is made for the surrender to or cancellation by the Trustee and the delivery to the Lessee of any Certificates, the Trustee may, upon the request of the Lessee Representative, in lieu of such cancellation and delivery, destroy such Certificates and deliver a certificate of such destruction to the Lessee.

**Section 14.8 Headings.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement. All references herein to “*Articles*,” “*Sections*,” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement, and the words “*herein*,” “*hereof*,” “*hereunder*” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

**Section 14.9 Waiver of Notice.** Whenever in this Trust Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 14.10 Separability of Invalid Provisions.** In case any one or more of the provisions contained in this Trust Agreement or in the Certificates shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Trust Agreement, and this Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Trust Agreement may be held illegal, invalid or unenforceable.

**Section 14.11 Filing; Bills of Sale.** The Trustee shall hold all bills of sale, and transfer same, as required by the provisions of this Trust Agreement.

#### **Section 14.12 Incorporation of State Statutes.**

(a) As required by the provisions of Section 38-511, Arizona Revised Statutes, as amended, notice is hereby given that the Lessee may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the Lessee if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Lessee is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time. The Trustee covenants not to employ as an employee, an agent or, with respect to the subject matter of this Trust Agreement, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Trust Agreement on behalf of the Lessee within three years from the execution of this Trust Agreement, unless a waiver of Section 38-511, Arizona Revised Statutes, as amended, is provided by the Lessee. No basis exists for the Lessee to cancel this Trust Agreement pursuant to Section 38-511, Arizona Revised Statutes, as amended, as of the date hereof.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, as amended, the Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by the Trustee of the foregoing shall be deemed a material breach of this Trust Agreement and may result in the termination of the services of the Trustee. The Lessee retains the legal right to randomly inspect the papers and records of the Trustee to ensure that the Trustee is complying with the above-mentioned warranty. The Trustee shall keep such papers and records open for random inspection during normal business hours by the Trustee. The Trustee shall cooperate with the random inspections by the Lessee including granting the Lessee entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, the Trustee hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Lessee determines that the Trustee’s certification above is false or that it has breached such agreement, the Lessee may impose remedies as provided by law.

**Section 14.13 Exchange of Leased Property; Release and Conveyance.** If the Lessee exercises its rights to exchange or release Leased Property pursuant to Section 8.3 of the Lease Agreement, the Trustee shall, upon advice of counsel that all conditions contained in said Section 8.3 have been complied with and are satisfied, release the lien of the Trust Agreement from any Leased Property being conveyed to the Lessee in connection with such exchange or release, and shall accept the substitute Leased Property or moneys coming under the lien of the Trust Agreement. The Trustee shall take any and all steps and execute any and all documents reasonably required by the Lessee to consummate the transfer of title in connection with such exchange or release.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Trust Agreement as of the date and year first above written.

ZIONS BANCORPORATION, NATIONAL ASSOCIATION as trustee

By.....  
Authorized Representative

CITY OF FLAGSTAFF, ARIZONA, as Lessee

By.....  
Mayor

ATTEST:

.....  
City Clerk

**EXHIBIT A**

**FORM OF 2019 CERTIFICATE**

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE EXECUTED AND DELIVERED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CEDE & CO. OR TO SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

CERTIFICATE OF PARTICIPATION, SERIES 2019  
Evidencing an Undivided Proportionate Interest of the Owner  
Hereof in Lease Payments to be Made by  
CITY OF FLAGSTAFF, ARIZONA,  
as Lessee of Certain Property Pursuant  
to a Lease-Purchase Agreement, Dated as of \_\_\_\_\_ 1, 2019

No. .... Denomination: \$.....

Interest Rate:                      Principal Payment Date:                      Dated Date:                      CUSIP:  
.....                      July 1, 20.....                      \_\_\_\_\_, 2019                      338430 .....

REGISTERED OWNER: .....

PRINCIPAL AMOUNT: ..... DOLLARS

THIS IS TO CERTIFY that the Registered Owner identified above, or registered assigns, as the Registered Owner of this Certificate is the owner of an undivided proportionate interest in the Lease-Purchase Agreement, dated as of \_\_\_\_\_ 1, 2019 (the “Lease Agreement”), by and between ....., as trustee, as lessor (the “Lessor”), and City of Flagstaff, Arizona, as lessee (the “Lessee”), together with the right to receive certain “Payments” and “Prepayments” made pursuant thereto, which Payments and Prepayments and certain other rights and interests pursuant to the Lease Agreement are held by ....., as trustee (the “Trustee”).

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Lease Agreement, on the Principal Payment Date set forth above, the Principal Amount set forth above, evidencing a portion of Payments designated as principal coming due during the

preceding 12 months, and to receive on July 1, 2020, and semiannually thereafter on January 1 and July 1 of each year (the “*Interest Payment Dates*”) until payment in full of said portion of principal, the Registered Owner’s proportionate share of Payments designated as interest coming due during the six months or shorter period immediately preceding each of the Interest Payment Dates; provided that interest with respect hereto shall be payable from the Dated Date indicated above and then from the Interest Payment Date next preceding the date of execution of this Certificate (unless (i) this Certificate is executed on a Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (ii) this Certificate is executed after the close of business on the 15th day of the month preceding an Interest Payment Date, whether or not such 15th day is a Business Day (as defined in the hereinafter described Trust Agreement), in which event interest shall be payable from such Interest Payment Date). If, as of the date of execution hereof, interest is in default with respect to any Certificates of the issue of which this is one, interest hereon shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment, unless this Certificate is executed after a Special Record Date (as defined in the Trust Agreement) and before the following Special Interest Payment Date (as defined in the Trust Agreement), in which event interest shall be payable from the scheduled Interest Payment Date next preceding such date of execution. Said proportionate share of the portion of Payments designated as interest is the result of the multiplication of the aforesaid portion of Payments designated as principal by the rate per annum set forth above.

Said amounts evidencing the Registered Owner’s share of Payments designated as interest are payable in lawful money of the United States of America, unless a wire transfer is elected as described below, by check or draft mailed by the Trustee to the Registered Owner at the close of business on the 15th day of the month preceding an Interest Payment Date (the “*Record Date*”), whether or not such 15th day is a Business Day, at his address as it appears on the registration books of the Trustee or at such other address as he may have filed with the Trustee for that purpose. Payment of portions of overdue Payments designated as interest shall be made on the Special Interest Payment Dates designated by the Trustee to the Registered Owner hereof as of the Special Record Date designated by the Trustee. A Registered Owner of \$1,000,000 or more in aggregate principal amount evidenced by Certificates as of the close of business of the Trustee on the Record Date for a particular Interest Payment Date or, if applicable, the Special Record Date for a particular Special Interest Payment Date, may request interest to be paid by wire transfer in immediately available funds sent (at the Registered Owner’s expense) on the Interest Payment Date or Special Interest Payment Date to such Registered Owner in accordance with written request from such Registered Owner containing the wire transfer address (which shall be in the United States) to which such Registered Owner wishes to have such wire transfer directed, received not later than ten days before the Record Date with respect to such Interest Payment Date or, if applicable, the Special Record Date for such Special Interest Payment Date. Said amounts evidencing the Registered Owner’s share of Payments designated as principal are payable when due upon surrender of this Certificate at the designated office of the Trustee.

This Certificate has been executed and delivered by the Trustee pursuant to the terms of a Trust Agreement, dated as of \_\_\_\_\_ 1, 2019 (the “*Trust Agreement*”), between the Trustee and the Lessee, and is one of a series of certificates limited in aggregate principal

amount to \$\_\_\_\_,000 (the “2019 Certificates”). The proceeds of sale of the 2019 Certificates will be used to finance construction of a municipal court facility for the Lessee. The Lessee is authorized to enter into the Lease Agreement and the Trust Agreement pursuant to the laws of the State of Arizona. Reference is hereby made to the Lease Agreement and the Trust Agreement (copies of which are on file at said office of the Trustee) for the definition of certain capitalized terms used herein, a description of the terms on which the 2019 Certificates are delivered, the rights thereunder of the Registered Owners of the 2019 Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the Lessee pursuant to the Lease Agreement, to all of the provisions of which Lease Agreement and Trust Agreement the Registered Owner of this Certificate, by acceptance hereof, assents and agrees.

**The obligation of the Lessee to pay Payments does not constitute an obligation of the Lessee for which the Lessee is obligated to levy or pledge any form of taxation or for which the Lessee has levied or pledged any form of taxation. The obligation of the Lessee to pay Payments does not constitute a debt of the Lessee or the State of Arizona or any of its political subdivisions, and does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.**

The term of the Lease Agreement is from the date thereof until the end of the Lessee’s then current Fiscal Period, and thereafter for such additional Fiscal Periods as are necessary to complete the anticipated total lease term through and including July 2, 20\_\_\_, unless terminated prior thereto in accordance with the provisions of the Lease Agreement. If, on or before the third Business Day prior to the last date on which the Lessee is required or permitted to adopt its budget for a Fiscal Period, the Lessee fails to adopt a budget containing a annual budgetary appropriation sufficient to make all Lease Payments coming due during the Fiscal Period for which such budgeting and appropriation are made, the Lessee will immediately notify the Lessor in writing of that fact. If, on the last date on which the Lessee is required or permitted to adopt its budget for a Fiscal Period, no such proper budgeting and final appropriation by the Mayor and Council of the Lessee shall have been made all of the Lessee’s right, title and interest in and future obligations pursuant to the Lease Agreement shall terminate (subject to reinstatement as provided therein), effective as of the last day of the last Fiscal Period for which such budgetary appropriation was properly obtained, and the Lessee shall be relieved of any subsequent obligation pursuant to this Lease Agreement with respect thereto, other than to return the Lessor possession of all of the leased property as provided in the Lease Agreement and to pay any accrued and unpaid obligations. If the Lease Agreement terminates pursuant to the preceding sentence and if, within 45 days following such date of termination, amounts described in the preceding sentence are determined to be available that would have permitted the Lease Agreement to have continued in effect with respect to the leased property if such amounts had been determined to be available before the termination of the prior Fiscal Period, then the Lease Agreement shall be reinstated with respect thereto and deemed renewed as of the day following the date of such termination, and no such termination shall be deemed to have occurred.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the Owners of a majority in Aggregate Value of the 2019 Certificates and may be amended without such Owners’ consent under certain circumstances but in no event such that the

interests of the Owners of the 2019 Certificates are adversely affected; provided that no such amendment shall impair the right of any Owner to receive in any case such Owner's proportionate share of any Lease Payment or Prepayment thereof in accordance with such Owner's 2019 Certificate.

This Certificate is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such transfer a new Certificate or Certificates, of authorized denomination or denominations, for the same aggregate principal amount will be delivered to the transferee in exchange herefor. The Lessee, the Lessor and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, whether or not this Certificate shall be overdue, and the Lessee, the Lessor and the Trustee shall not be affected by any notice to the contrary.

As provided in the Trust Agreement, the 2019 Certificates scheduled for payment on or after July 1, 20\_\_, are subject to optional prepayment at the direction of the Lessee, on any date on or after July 1, 20\_\_, in whole or in part in any order designated by the Lessee or, under certain circumstances, by lot by the Trustee, and by lot within a scheduled payment date, at a prepayment price equal to the principal amount evidenced thereby to be prepaid plus interest accrued to the date fixed for prepayment, without premium.

As provided in the Trust Agreement, the 2019 Certificates scheduled for payment on July 1 of the following years shall be subject to mandatory prepayment prior to their stated payment dates on July 1 of the years set forth below and in the amounts set forth below, at a prepayment price equal to the principal amount thereof plus interest accrued to the date fixed for prepayment, without premium.

2019 Certificates Payable July 1, 20\_\_

<u>Prepayment Date</u>	<u>Principal Amount</u>
------------------------	-------------------------

\*

2019 Certificates Payable July 1, 20\_\_

<u>Prepayment Date</u>	<u>Principal Amount</u>
------------------------	-------------------------

\*

\* Stated Payment Date

Whenever 2019 Certificates subject to mandatory prepayment are purchased, redeemed (other than because of mandatory prepayment) or are delivered by the Lessee to the Trustee for cancellation, the principal amount of the 2019 Certificates represented thereby so retired shall satisfy and be credited against the mandatory prepayment therefor in any order specified by the Lessee.

The 2019 Certificates are subject to prepayment on any Interest Payment Date in whole, or in part in any order designated by the Lessee, or, under certain circumstances, by lot by the Trustee, and by lot within any scheduled payment date, from the net proceeds of insurance or condemnation credited towards the prepayment of the Lease Payments by the Lessee pursuant to the Lease Agreement, at a prepayment price equal to the principal amount evidenced thereby to be prepaid plus interest accrued to the date fixed for prepayment, without premium.

Notice of prepayment shall be mailed not less than 30 days nor more than 60 days before the date set for prepayment to each Registered Owner of a 2019 Certificate to be so prepaid at the address shown on the books of the Trustee, but failure so to mail any such notice or any defect in such notice as to any 2019 Certificate shall not affect the validity of the proceedings for the prepayment of any other 2019 Certificate. On the specified prepayment date all 2019 Certificates called for prepayment shall cease to bear or accrue interest and shall no longer be secured by the Trust Agreement provided funds for prepayment are on deposit at the place of payment at that time.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

Date of Execution: .....

....., as trustee

By .....  
Its: Authorized Representative

ABBREVIATIONS

The following abbreviations, when used in the inscription on this Certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	--	as tenants in common	UNIF GIFT/TRANS MIN ACT--
TEN ENT	--	as tenants by the	..... Custodian ..... entireties
			(Cust) (Minor)
JT TEN	--	as joint tenants with	Under Uniform Gifts/Transfers
		right of survivorship	to Minors Act .....
		and not as tenants in	(State)
		common	

Additional abbreviations may also be used, though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto .....

(Please Print or Typewrite Name, Address and Social Security Number or other Federal Tax Identification Number of Transferee)

the within certificate and all rights thereunder, and hereby irrevocably constitutes and appoints ..... attorney to transfer the within certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated .....

Signature Guaranteed:

.....  
(Signature guarantee should be made by a guarantor institution participating in the securities transfer agents medallion program or in such other guarantee program acceptable to the Trustee.

.....  
Note: The signature(s) on this assignment must correspond with the name(s) as written on the within registered certificate in every particular without alteration or enlargement or any change whatsoever.

**EXHIBIT B**

**ORDER FOR DISBURSEMENT**

Pursuant to Section [3.1/3.2] of the Trust Agreement, dated as of \_\_\_\_\_ 1, 2019 (the “Trust Agreement”), between ....., as trustee (the “Trustee”) and City of Flagstaff, Arizona, as lessee (the “Lessee”), the undersigned Lessee Representative (as defined in the Trust Agreement) hereby requests and authorizes the Trustee pursuant to the Trust Agreement, as custodian of the [Project Fund/Delivery Costs Fund] created by the Trust Agreement, to pay to the Lessee or to the person(s) listed as payee out of the monies deposited in the [Project Fund/Delivery Costs Fund] the aggregate sum of \$..... to pay such person(s) or to reimburse the Lessee in full for the advances, payments and expenditures made by it.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item for which disbursement is requested hereunder is properly payable out of the [Project Fund/Delivery Costs Fund] and none of these items has formed the basis for any disbursement heretofore made from said [Project Fund/Delivery Costs Fund].
- (b) Each such item is or was a necessary [Cost/Delivery Cost] as defined in the Trust Agreement.
- (c) This statement and all exhibits hereto shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto.
- (d) This statement constitutes approval by the Lessee of the disbursement hereby requested and authorized.

Explanation of this Payment: Name and Address of Payee:

Account #

Claim to be paid on:

.....  
Dated

.....  
Lessee Representative

**CERTIFICATE PURCHASE AGREEMENT**

**[\$PAR]  
CERTIFICATES OF PARTICIPATION, SERIES 2019  
Evidencing Undivided Proportionate Interests of the Owners Thereof in  
Lease Payments to be Made by  
CITY OF FLAGSTAFF, ARIZONA,  
as Lessee of Certain Property Pursuant  
to a Lease-Purchase Agreement, Dated as of December 1, 2019**

\_\_\_\_\_, 2019

City of Flagstaff, Arizona  
c/o The Honorable Mayor and Council  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

The undersigned, on behalf of Piper Jaffray & Co. (the “Underwriter”), acting on its own behalf, offers to enter into this Certificate Purchase Agreement (this “Agreement”) with the City of Flagstaff, Arizona (the “City”), which, upon written acceptance of this offer, will be binding upon the City and the Underwriter. This offer is made subject to written acceptance hereof by the City before 5:00 p.m., Arizona time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the City at any time prior to the acceptance hereof. Terms not defined in this Agreement shall have the same meanings assigned to them in the Trust Agreement and the Official Statement (both defined herein).

**1. Purchase and Sale of the Certificates.**

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter shall purchase all, but not less than all, and the City shall cause \_\_\_\_\_, as trustee (the “Trustee”), to execute, sell and deliver to the Underwriter all, of the \$[PAR] principal amount of Certificates of Participation, Series 2019 (the “Certificates”) evidencing proportionate ownership interests in the hereinafter defined Lease Payments to be made by the City.

(b) Inasmuch as this purchase and sale represents a negotiated transaction, the City acknowledges and agrees that: (i) the primary role of the Underwriter, as an underwriter, is to purchase securities, for resale to investors, in an arm’s-length commercial transaction between the City and the Underwriter and that the Underwriter has financial and other interests that differ from those of the City; (ii) the Underwriter is not acting as a municipal advisor, financial advisor,

or fiduciary to the City and has not assumed any advisory or fiduciary responsibility to the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the City on other matters); (iii) the only obligations the Underwriter has to the City with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the City has consulted its own legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate.

(c) The principal amount of the Certificates to be executed and delivered, the dated date thereof and the maturities, redemption provisions and interest rates and yields per annum therefor are set forth in Schedule I hereto. The Certificates shall be as described in, and shall be executed, delivered and secured under and pursuant to the provisions of, a Trust Agreement, dated as of December 1, 2019 (the "Trust Agreement"), between the City and the Trustee, and authorized by an Ordinance of the Council of the City (the "Council") adopted on November 5, 2019 (the "Ordinance").

(d) The Certificates represent undivided proportionate interests of the owners thereof in lease payments (the "Lease Payments") to be received from the City pursuant to a Lease-Purchase Agreement, dated as of December 1, 2019 (the "Lease"), by and between the City and the Trustee, as the rental price for certain real property and improvements thereto (the "Leased Property"). The obligations of the City under the Lease will be payable exclusively from appropriated funds and will not be a general obligation or indebtedness of the City for any purpose.

(e) The purchase price of the Certificates shall be \$\_\_\_\_\_, which represents an aggregate principal amount of the Certificates of \$\_\_\_\_\_, plus [net] original issue premium of \$\_\_\_\_\_, less an underwriting discount of \$\_\_\_\_\_.

**2. Public Offering.** The Underwriter shall make a *bona fide* public offering of all of the Certificates at yields not less than the public offering yields set forth on the inside cover page of the Official Statement and may subsequently change such offering yields without any requirement of prior notice. The Underwriter may offer and sell Certificates to certain dealers (including dealers depositing Certificates into investment trusts) and others at yields higher than the public offering yields stated on the inside cover of the Official Statement.

**3. Establishment of Issue Price.**

(a) The Underwriter agrees to assist the City in establishing the issue price of the Certificates and shall execute and deliver to the City on the Closing Date (as defined herein) an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Greenberg Traurig, LLP ("Special Counsel"), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Certificates.

(b) [Except as otherwise set forth in Schedule [II] attached hereto,] the City will treat the first price at which 10% of each maturity of the Certificates (the "10% test") is sold to the public as the issue price of that maturity. At or promptly after the execution of this Agreement,

the Underwriter shall report to the City the price or prices at which it has sold to the public each maturity of Certificates. [If at that time the 10% test has not been satisfied as to any maturity of the Certificates, the Underwriter agrees to promptly report to the City the prices at which it sells the unsold Certificates of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) the Underwriter has sold all Certificates of that maturity or (ii) the 10% test has been satisfied as to the Certificates of that maturity, provided that, the Underwriter's reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the City or Special Counsel.] For purposes of this Section, if Certificates mature on the same date but have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Certificates.

(c) [The Underwriter confirms that it has offered the Certificates to the public on or before the date of this Agreement at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in Schedule [II] attached hereto, except as otherwise set forth therein. Schedule [II] also sets forth, as of the date of this Agreement, the maturities, if any, of the Certificates for which the 10% test has not been satisfied and for which the City and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the City to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the "hold-the-offering-price rule"). So long as the hold-the-offering-price rule remains applicable to any maturity of the Certificates, the Underwriter will neither offer nor sell unsold Certificates of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) The close of the fifth (5th) business day after the sale date; or
- (2) The date on which the Underwriter has sold at least 10% of that maturity of the Certificates to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the City promptly after the close of the fifth (5th) business day after the sale date whether it has sold 10% of that maturity of the Certificates to the public at a price that is no higher than the initial offering price to the public.]

(d) [The Underwriter confirms that:

(1) any selling group agreement and any third-party distribution agreement relating to the initial sale of the Certificates to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(i) (a) to report the prices at which it sells to the public the unsold Certificates of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Certificates of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Certificates of that

maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter, and (b) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter,

(ii) to promptly notify the Underwriter of any sales of Certificates that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Certificates to the public (each such term being used as defined below), and

(iii) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(2) any selling group agreement relating to the initial sale of the Certificates to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Certificates to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Certificates of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Certificates of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Certificates of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.]

(e) [The City acknowledges that, in making the representations set forth in this section, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Certificates to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Certificates, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Certificates, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Certificates to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Certificates, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Certificates, as set forth in the third-party distribution agreement and the related pricing wires. The City further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Certificates, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Certificates.]

(f) The Underwriter acknowledges that sales of any Certificates to any person that is a related party to an underwriter participating in the initial sale of the Certificates to the

public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Certificates to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Certificates to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Certificates to the public),

(3) a purchaser of any of the Certificates is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Agreement by all parties.

#### **4. The Official Statement.**

(a) The Preliminary Official Statement dated \_\_\_\_\_, 2019 (including the cover page, the inside cover page and Appendices thereto, the “Preliminary Official Statement”), of the City relating to the Certificates, to be subsequently revised to reflect the changes resulting from the sale of the Certificates and including amendments or supplements thereto, is hereinafter called the “Official Statement.”

(b) The Preliminary Official Statement has been prepared for use by the Underwriter in connection with the public offering, sale and distribution of the Certificates. The City hereby deems the Preliminary Official Statement “final” as of its date, except for the omission of such information which is dependent upon the final pricing of the Certificates for completion, all as permitted to be excluded by Section (b)(1) of Rule 15c2 12 under the Securities Exchange Act of 1934 (the “Rule”).

(c) The City represents that appropriate officials of the City have reviewed and approved the information in the Official Statement and that the Council has authorized the Official Statement and the information therein contained to be used by the Underwriter in connection with the public offering and the sale of the Certificates. The City shall provide, or cause to be provided, to the Underwriter as soon as practicable after the date of the acceptance by the City of this

Agreement (but, in any event, not later than within seven (7) business days after the acceptance by the City of this Agreement and in sufficient time to accompany any confirmation that requests payment from any customer) copies of the Official Statement which is complete as of the date of its delivery to the Underwriter in such quantity as the Underwriter shall request in order for the Underwriter to comply with Section (b)(4) of the Rule and the rules of the Municipal Securities Rulemaking Board (the “MSRB”).

(d) If, after the date of this Agreement to and including the date the Underwriter is no longer required to provide the Official Statement to potential customers who request the same pursuant to the Rule (the earlier of (i) 90 days from the “end of the underwriting period” (as defined in Rule) and (ii) the time when the Official Statement is available to any person from the MSRB, but in no case less than twenty-five (25) days after the “end of the underwriting period” for the Certificates), the City becomes aware of any fact or event which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or if it is necessary to amend or supplement the Official Statement to comply with law, the City will notify the Underwriter (and for the purposes of this clause provide the Underwriter with such information as it may from time to time request) and if, in the opinion of the Underwriter, such fact or event requires preparation and publication of a supplement or amendment to the Official Statement, the City will forthwith prepare and furnish, at the expense of the City (in a form and manner approved by the Underwriter), a reasonable number of copies of either amendments or supplements to the Official Statement so that the statements in the Official Statement as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or so that the Official Statement will comply with law. If such notification shall be subsequent to the Closing, the City shall furnish such legal opinions, certificates, instruments and other documents as the Underwriter may deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement.

(e) Unless otherwise notified in writing by the Underwriter, the City can assume that the “end of the underwriting period” for purposes of the Rule is the Closing Date.

**5. Representations, Warranties, and Covenants of the City.** The undersigned on behalf of the City, but not individually, represents and warrants to and covenants with, as applicable, the Underwriter that:

(a) The City is validly existing as a municipal corporation duly created, organized and existing under the laws of the State of Arizona (the “State”) with powers specifically required for purposes of this Agreement and has now and at the Closing Date will have full legal right, power and authority to cause the Ordinance to be adopted and (i) to enter into, execute and deliver the Ground Lease, dated as of December 1, 2019 (the “Ground Lease”), by and between the City and the Trustee, the Ordinance, the Trust Agreement, the Lease, this Agreement, and an Undertaking of the City which satisfies the requirements of Section (b)(5)(i) of the Rule (the “Undertaking” and such documents referred to in this clause (i) hereinafter collectively referred to as the “City Documents”), (ii) to cause the sale and execution and delivery of the Certificates as provided herein and (iii) to carry out and consummate the transactions contemplated by the City Documents and the Official Statement, and the City has complied, and will at the Closing Date be

in compliance in all material respects, with the terms of the City Documents as they pertain to such transactions;

(b) By all necessary official action of the City prior to or concurrently with the acceptance hereof, the City has duly authorized all necessary action to be taken by it for (i) the adoption of the Ordinance and the sale and execution and delivery of the Certificates, (ii) the approval, execution and delivery of, and the performance by the City of the obligations on its part contained in, the Certificates and the City Documents and (iii) the consummation by it of all other transactions contemplated by the Official Statement and the City Documents and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the City in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(c) The City Documents constitute legal, valid and binding obligations of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights and, in the case of the Undertaking, annual appropriation of amounts to pay for compliance therewith; the Certificates, when paid for and executed and delivered, in accordance with the Ordinance, the Trust Agreement and this Agreement, will constitute legal, valid and binding obligations of the City entitled to the benefits of the Trust Agreement and enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; and upon the execution and delivery of the Certificates as aforesaid, the Trust Agreement will provide, for the benefit of the holders, from time to time, of the Certificates, the legally valid and binding pledge of and lien it purports to create as set forth in the Trust Agreement;

(d) The City is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party or to which the City is otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the City under any of the foregoing, and the execution and delivery of the Certificates and the City Documents and the adoption of the Ordinance and compliance with the provisions on the part of the City contained herein and therein will not conflict with or constitute a breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party or to which the City is or to which any of its property or assets are otherwise subject nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City pledged to secure the Certificates or under the terms of any such law, regulation or instrument, except as provided by the Certificates and the Trust Agreement;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition

precedent to, or the absence of which would materially adversely affect the due performance by the City of its obligations under the City Documents and the Certificates have been duly obtained, except such approvals, consents and orders as may be required under the “blue sky” or securities laws of any jurisdiction in connection with the offering and sale of the Certificates;

(f) The Certificates conform to the descriptions thereof contained in the Official Statement under the caption “THE 2019 CERTIFICATES”; the proceeds of the sale of the Certificates will be applied generally as described in the Official Statement under the caption “THE 2019 CERTIFICATES” and the Undertaking conforms to the description thereof contained in the Official Statement in Appendix F – “FORM OF CONTINUING DISCLOSURE UNDERTAKING”;

(g) There is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the City after due inquiry, threatened against the City, affecting the existence of the City or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale or execution and delivery of the Certificates or the appropriation of Lease Payments to pay the principal of and interest on the Certificates or in any way contesting or affecting the adoption of the Ordinance or the validity or enforceability of the Certificates or the City Documents, or contesting the exclusion from gross income of interest on the Certificates for federal income tax purposes or State income tax purposes, or contesting in any way the completeness or accuracy of the Official Statement or any supplement or amendment thereto or contesting the powers of the City or any authority for the execution and delivery of the Certificates, the adoption of the Ordinance or the execution and delivery of the City Documents, nor, to the best knowledge of the City, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Certificates or the City Documents;

(h) As of the date thereof and hereof, the Preliminary Official Statement (excluding information under the headings “TAX EXEMPTION,” “RATING” and “UNDERWRITING” and in Appendix G) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) As of the date of the City’s acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (d) of Section 4 of this Agreement) at all times subsequent thereto during the period up to and including the Closing Date, the Official Statement (excluding information under the headings “TAX EXEMPTION,” “RATING” and “UNDERWRITING” and in Appendix G) does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(j) If the Official Statement is supplemented or amended pursuant to paragraph (d) of Section 4 of this Agreement, at the time of each supplement or amendment thereto and (unless subsequently supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the Closing Date, the Official Statement as so supplemented or amended (excluding information under the headings “TAX EXEMPTION,”

“RATING” and “UNDERWRITING” and in Appendix G) will not contain any untrue statement or a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(k) The City will apply, or cause to be applied, the proceeds from the sale of the Certificates as provided in and subject to all of the terms and provisions of the Trust Agreement and not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes or State income tax purposes of the interest on the Certificates;

(l) The City will furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriter may reasonably request (A) to (y) qualify the Certificates for offer and sale under the “blue sky” or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriter may designate and (z) determine the eligibility of the Certificates for investment under the laws of such states and other jurisdictions and (B) to continue such qualifications in effect so long as required for the distribution of the Certificates (provided, however, that the City will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Underwriter immediately of receipt by the City of any notification with respect to the suspension of the qualification of the Certificates for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(m) The financial statements of, and other financial information regarding, the City in the Official Statement fairly present the financial position and results of the City as of the dates and for the periods therein set forth in accordance with generally accepted governmental accounting principles as applicable to governmental units and have been prepared in accordance with generally accepted governmental accounting principles consistently applied throughout the periods covered (except as otherwise disclosed in the Official Statement or financial statements);

(n) Except as otherwise disclosed in the Official Statement, since June 30, 2018, the City has not incurred any material liabilities, direct or contingent, nor has there been any material adverse change in the financial position, result of operations or condition, financial or otherwise, of the City that are not described in the Official Statement, whether or not arising from transactions in the ordinary course of business;

(o) Prior to the Closing, there will be no adverse change of a material nature in such financial position, results of operations or condition, financial or otherwise, of the City and the City is not a party to any litigation or other proceeding pending or, to its knowledge, threatened which, if decided adversely to the City, would have a materially adverse effect on the financial condition of the City;

(p) Prior to the Closing, the City will not offer or issue any bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by any of the revenues or assets which secure the Certificates without prior approval of the Underwriter;

(q) Any certificate, signed by any official of the City authorized to do so in connection with the transactions contemplated by this Agreement, shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein;

(r) The City has submitted to the Arizona Department of Revenue, the Arizona State Treasurer's Office or the Arizona Department of Administration, as applicable, the information required with respect to previous issuances of bonds, securities and lease-purchase agreements of the City pursuant to Section 35-501, Arizona Revised Statutes, and will file the information relating to the Certificates required to be submitted to the Arizona Department of Administration pursuant thereto within 60 days of the date of Closing; and

(s) Except as otherwise indicated in the Official Statement, the City has been and is in full compliance in all material respects during the last five years with the terms of all continuing disclosure undertakings previously executed by the City pursuant to the Rule.

## **6. Closing.**

(a) Before 10:00 a.m., Arizona time, on \_\_\_\_\_, 2019 (the "Closing Date"), or at such other time and date as shall have been mutually agreed upon by the City and the Underwriter, the City will, subject to the terms and conditions hereof, cause the Certificates to be delivered to the Underwriter duly executed, together with the other documents hereinafter mentioned, and the Underwriter will, subject to the terms and conditions hereof, accept such delivery and pay the purchase price of the Certificates as set forth in Section 1 of this Agreement by wire transfer payable in immediately available funds to the order of the City (the "Closing"). Payment for the Certificates as aforesaid shall be made at the offices of Special Counsel, or such other place as shall have been mutually agreed upon by the City and the Underwriter and

(b) Delivery of the Certificates shall be made through the facilities of The Depository Trust Company, New York, New York ("DTC"), or, in the case of a "Fast Automated Securities Transfer" with the Trustee or by such other means as shall have been mutually agreed upon by the City and the Underwriter. The Certificates shall be prepared in definitive fully registered form, bearing CUSIP numbers without coupons, with one Certificate for each maturity of the Certificates, registered in the name of Cede & Co., all as provided in the Trust Agreement, and shall be made available to the Underwriter at least one business day before the Closing for purposes of inspection.

**7. Closing Conditions.** The Underwriter has entered into this Agreement in reliance upon the representations, warranties and agreements of the City contained herein, and in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the City and the Trustee of their obligations hereunder and thereunder, both as of the date hereof and as of the Closing Date. Accordingly, the obligations of the Underwriter under this Agreement to purchase, to accept delivery of and to pay for the Certificates shall be conditioned upon the performance by the City and the Trustee of their obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and shall also be subject to the following additional conditions, including the delivery by the City and the Trustee of such documents as are enumerated herein, in form and substance reasonably satisfactory to the Underwriter:

(a) The representations and warranties of the City contained herein shall be true, complete and correct on the date hereof and on and as of the Closing Date, as if made on the Closing Date;

(b) The City and the Trustee shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing Date;

(c) At the time of the Closing, (i) the City Documents, the hereinafter defined Trustee Documents and the Certificates shall be in full force and effect in the form heretofore approved by the Underwriter and shall not have been amended, modified or supplemented, and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Underwriter and (ii) all actions of the City and the Trustee required to be taken by the City and the Trustee shall be performed and in full force and effect in order for Special Counsel and Counsel to the Underwriter to deliver their respective opinions referred to hereafter;

(d) At or prior to the Closing, the Ordinance shall have been duly adopted and delivered by the City and the Trustee shall have duly executed and delivered the Certificates;

(e) At the time of the Closing, there shall not have occurred any change or any development involving a prospective change in the condition, financial or otherwise, or in the revenues or operations of the City, from that set forth in the Official Statement that in the reasonable judgment of the Underwriter, is material and adverse and that makes it, in the judgment of the Underwriter, impracticable to market the Certificates on the terms and in the manner contemplated in the Official Statement;

(f) At the Closing Date, no "event of default" shall have occurred or be existing under the City Documents or the Trustee Documents nor shall any event have occurred which, with the passage of time or the giving of notice, or both, shall constitute an event of default under the City Documents or the Trustee Documents;

(g) The City shall not have failed to pay principal or interest when due on any of its outstanding obligations for borrowed money;

(h) All steps to be taken and all instruments and other documents to be executed, and all other legal matters in connection with the transactions contemplated by this Agreement shall be reasonably satisfactory in legal form and effect to the Underwriter;

(i) At or prior to the Closing, the Underwriter shall have received two copies of the transcript of all proceedings of the City relating to the authorization and delivery of the City Documents, executed and certified, as necessary, by appropriate officials of the City, and the Trustee relating to the authorization and delivery of the Trustee Documents, executed and certified, as necessary, by appropriate officials of the Trustee, including each of the following documents:

(1) the Official Statement, and each supplement or amendment thereto, if any, executed on behalf of the City by the Management Services Director, or such other

official as may have been agreed to by the Underwriter, and the reports and audits referred to or appearing in the Official Statement;

(2) the City Documents and the Trustee Documents;

(3) the approving opinion of Special Counsel, dated the Closing Date, with respect to the Certificates, in substantially the form attached to the Official Statement along with a reliance letter with respect thereto, dated the Closing Date and addressed to the Underwriter;

(4) a supplemental opinion of Special Counsel dated the Closing Date, addressed to the Underwriter, substantially to the effect that:

(i) the Ordinance has been duly adopted and is in full force and effect;

(ii) it is not necessary, in connection with the offering and sale of the Certificates, to register the Certificates under the Securities Act of 1933, as amended (the "1933 Act") or to qualify the Trust Agreement under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act");

(iii) the information contained in the Official Statement on the cover page thereof, under the headings entitled "INTRODUCTION," "THE 2019 CERTIFICATES," "SOURCES OF PAYMENT OF THE 2019 CERTIFICATES," "SECURITY FOR THE 2019 CERTIFICATES," "TAX EXEMPTION" and "CONTINUING DISCLOSURE" (other than matters relating to the City's compliance with prior undertakings as to which no opinion shall be expressed) therein, and in Appendices D, E and F thereto, insofar as such information summarizes certain provisions of the Certificates, the City Documents and certain provisions of Arizona and federal law, including the federal and Arizona income status of interest on the Certificates, fairly present the information purported to be shown; provided, however, that such information does not purport to summarize all the provisions of, and is qualified in their entirety by, the complete documents which are summarized and, based solely on our participation in the transaction as Special Counsel, nothing has come to their attention that would lead them to believe that the information and statements in the Preliminary Official Statement, as of its date and as of the date hereof, and the Official Statement, as of the date hereof and as of the date of Closing, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that they express no view as to the financial statements of the City, any other financial forecast, technical or statistical data, and any information in the Preliminary Official Statement or the Official Statement regarding DTC. They have not undertaken to review or determine independently, and assume no responsibility for, the accuracy or completeness of the information in the Preliminary Official Statement or the Official Statement except to the extent indicated hereinabove;

(iv) this Agreement has been duly authorized, executed and delivered by the City and (assuming due authorization and execution by the Underwriter) is a legal, valid and binding obligation of the City, enforceable in accordance with its terms, subject to customary exceptions for bankruptcy and judicial discretion;

(v) the Undertaking has been duly authorized, executed and delivered by the City and is a legal, valid and binding obligation of the City, enforceable in accordance with its terms; subject to customary exceptions for bankruptcy and judicial discretion and

(vi) no consent of any other party and no consent, license, approval or authorization of, exemption by, or registration with any governmental body, authority, bureau or agency (other than those that have been obtained or will be obtained prior to the delivery of the Ground Lease, the Lease, the Trust Agreement, the Undertaking and this Agreement) is required in connection with the execution, delivery and performance by the City of the Ground Lease, the Lease, the Trust Agreement, the Undertaking and this Agreement;

(5) An opinion of the counsel to the City that, based on an investigation of the records of the Superior Court of Coconino County and the United States District Court, District of Arizona, Phoenix Division, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to his or her knowledge (upon due inquiry), threatened (i) in any way affecting the powers of the City, the existence of the City or the title to office of any of the officials of the City, (ii) seeking to restrain or enjoin the sale, execution and delivery of the Certificates, or the appropriation of Lease Payments to pay the principal of and interest on the Certificates, (iii) in any way contesting or affecting the validity or enforceability of the Certificates, the City Documents or any agreements entered into in connection therewith, (iv) contesting the use of the Leased Property as contemplated by the City Documents, (v) contesting in any way the completeness or accuracy of the Official Statement, (vi) which may adversely affect the City or its properties or (vii) questioning the applicable tax-exempt status of the Certificates; nor, to the best knowledge of such counsel, is there any reasonable basis therefor;

(6) An opinion of Counsel to the Underwriter, dated the Closing Date, addressed to the Underwriter to the effect that:

(i) the Certificates are exempt securities under the 1933 Act and the Trust Indenture Act and it is not necessary, in connection with the offering and sale of the Certificates, to register the Certificates under the 1933 Act and the Trust Agreement need not be qualified under the Trust Indenture Act;

(ii) the Undertaking meets the requirements of paragraph (b)(5)(i) of the Rule and

(iii) based upon their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriter

and their participation at conferences at which the Preliminary Official Statement and the Official Statement was discussed, but without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement, such counsel has no reason to believe that the Preliminary Official Statement, as of its date and as of the date hereof, and the Official Statement, as of the date hereof and as of the date of Closing, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except for any financial, forecast, technical and statistical statements and data included in the Preliminary Official Statement and the Official Statement and the information regarding DTC and its book-entry system, in each case as to which no view need be expressed);

(7) A certificate, dated the Closing Date, of appropriate representatives of the City to the effect that, to the best knowledge, information and belief of those executing the certificate:

(i) the representations and warranties of the City contained herein are true and correct in all material respects on and as of the Closing Date as if made on the Closing Date;

(ii) except as otherwise described in the Official Statement, no litigation or proceeding against it is pending or, to their knowledge, threatened in any court or administrative body nor is there a basis for litigation which would (a) contest the right of the members or officials of the City to hold and exercise their respective positions, (b) contest the due organization and valid existence of the City, (c) contest the validity, due authorization and execution of the Certificates, the City Documents or the Trustee Documents, (d) attempt to limit, enjoin or otherwise restrict or prevent the City from functioning and appropriating Lease Payments or other amounts, including payments on the Certificates pursuant to the City Documents or (e) which if resolved adversely to the City, would have a material adverse effect on (I) the functioning of the City, the operations of the City, its revenues or its properties, or payment by the City of the amounts due under the Lease in the manner and time required thereby or (II) the validity or enforceability of the Lease or the financial condition of the City or its operations;

(iii) the Ordinance has been duly adopted by the City, is in full force and effect and has not been modified, amended or repealed;

(iv) the audited financial statements included in the Official Statement were true and correct as of June 30, 2018, and the other financial statements and other financial statistical data included in the Official Statement are true and correct as of the date of such certificate;

(v) no event affecting the City has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein, in light of the circumstances under which made, not

misleading in any respect as of the time of the Closing, and the information contained in the Official Statement (excluding the information under the headings “TAX EXEMPTION,” “RATING” and “UNDERWRITING” and in Appendix G) is correct in all material respects and, as of the date of the Official Statement, did not, and, as of the Closing Date, does not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(8) A certificate, dated the Closing Date, of appropriate representatives of the City in form and substance satisfactory to Special Counsel (a) setting forth the facts, estimates and circumstances in existence on the Closing Date, which establish that it is not expected that the proceeds of the Certificates will be used in a manner that would cause the Certificates to be “arbitrage bonds” within the meaning of section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and any applicable regulations (whether final, temporary or proposed), issued pursuant to the Code and (b) certifying that to the best of the knowledge and belief of the City there are no other facts, estimates or circumstances that would materially change the conclusions, representations and expectations contained in such certificate;

(9) Any other certificates and opinions required by the Ordinance or the Trust Agreement for the execution and delivery thereunder of the Certificates;

(10) Evidence satisfactory to the Underwriter that the Certificates have been rated “\_\_\_” by S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, and that such rating is in effect as of the Closing Date;

(11) A certificate or certificates, dated the Closing Date, of an authorized officer of the Trustee that:

(i) The Trustee is a national banking association, duly organized and validly existing under the laws of the United States of America with the power and authority to exercise corporate trust powers in the State and has full power and authority to (A) acquire and hold title to or a leasehold interest in, as applicable, the Leased Property and (B) execute and deliver and perform its obligations under the Certificates, the Ground Lease, the Lease and the Trust Agreement (such documents referred to in this clause (B) hereinafter collectively referred to as the “Trustee Documents”) and all other documents executed and delivered by the Trustee in connection with the issuance of the Certificates and the acquisition and the lease-purchase of the Leased Property;

(ii) The Trustee has by proper corporate action duly authorized (A) the acquisition of title to or a leasehold interest in, as applicable, the Leased Property and (B) the execution and delivery of, and the due performance of its obligations under the Trustee Documents and the taking of any and all other actions as may be required on the part of the Trustee to carry out, give effect to and consummate the transaction contemplated by such Trustee Documents;

(iii) The Trustee Documents (when executed and delivered by the other parties thereto) will be, legal, valid and binding obligations of the Trustee, enforceable in accordance with their terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and to the availability of equitable relief;

(iv) No approval, permit, consent, authorization or order of any court or any governmental or public agency, authority or person not already obtained (other than any approvals that may be required under the “blue sky” laws of any jurisdiction) is required with respect to the Trustee in connection with the issuance and sale of the Certificates, the acquisition of title to or a leasehold interest in, as applicable, the Leased Property or the execution and delivery by the Trustee of, or the performance by the Trustee of its obligations under, the Trustee Documents;

(v) The execution and delivery by the Trustee of the Trustee Documents and the compliance by the Trustee with the provisions thereof do not and will not materially conflict with or result in a material breach or violation of any of the terms or provisions of, or constitute a default under any resolution, indenture, deed of trust, mortgage commitment, agreement or other instrument to which the Trustee is a party or by which the Trustee is bound, or any constitutional provision, existing law, administrative regulation, court order or consent decree to which the Trustee or its property is subject;

(vi) There is no litigation, action, suit or proceeding pending or threatened by or before any court, administrative agency, arbitrator or governmental body that challenges (A) the authority of the Trustee, its officers or its employees to acquire the Leased Property, (B) the proper authorization, execution and delivery of the Trustee Documents, (C) the assignment of its rights under the Lease, or (D) the ability of the Trustee to otherwise perform its obligations under the Trustee Documents and to carry out the transactions contemplated thereby and

(vii) The representations and warranties of the Trustee set forth in the Trustee Documents are, and as of the Closing Date will be, true, accurate and complete as if made on the Closing Date;

(12) The filing copy of the Information Return Form 8038-G (IRS) for the Certificates;

(13) The filing copy of the information required to be submitted pursuant to Section 35-501(B), Arizona Revised Statutes;

(14) Evidence of insurance or Qualified Self-Insurance required by the Lease to be maintained on the Leased Property; and

(15) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations and warranties of the City contained herein and of the statements and information contained in the Official

Statement and the due performance or satisfaction by the City on or prior to the Closing Date of all the respective agreements then to be performed and conditions then to be satisfied by the City.

All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Certificates contained in this Agreement, or if the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Certificates shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and the Underwriter, the City shall not be under any further obligation hereunder, except that the respective obligations of the City and the Underwriter set forth in Section 9(c) hereof shall continue in full force and effect.

**8. Termination.** The Underwriter shall have the right to cancel its obligation to purchase the Certificates if, between the date of this Agreement and time of the Closing, the market price or marketability of the Certificates shall be materially adversely affected, in the sole judgment of the Underwriter, by the occurrence of any of the following:

(a) legislation shall be enacted by or introduced in the Congress of the United States or recommended to the Congress for passage by the President of the United States, or the Treasury Department of the United States or the Internal Revenue Service or any member of the Congress or the State legislature or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States or of the State or the United States Tax Court shall be rendered, or and order, ruling, regulation (final, temporary, or proposed), press release, statement or other form of notice by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed, the effect of any or all of which would be to impose, directly or indirectly, federal income taxation or State income taxation upon interest received on obligations of the general character of the Certificates or, with respect to State taxation, of the interest on the Certificates as described in the Official Statement, or other action or events shall have transpired which may have the purpose or effect, directly or indirectly, of changing the federal income tax consequences or State income tax consequences of any of the transactions contemplated herein;

(b) legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree, or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary, or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Certificates, including any or all underlying arrangements, are not exempt from registration under or other requirements of the 1933 Act, or that the Trust Agreement is not exempt from qualification under or other requirements of the Trust Indenture Act, or that the issuance, offering, or sale of obligations of the general character of the Certificates, including any or all underlying

arrangements, as contemplated hereby or by the Official Statement or otherwise, is or would be in violation of the federal securities law as amended and then in effect;

(c) any state “blue sky” or securities commission or other governmental agency or body shall have withheld registration, exemption or clearance of the offering of the Certificates as described herein, or issued a stop order or similar ruling relating thereto;

(d) a general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, the establishment of minimum prices on either such exchange, the establishment of material restrictions (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, a general banking moratorium declared by federal, State of New York, or State officials authorized to do so;

(e) the New York Stock Exchange or other national securities exchange or any governmental authority, shall impose, as to the Certificates or as to obligations of the general character of the Certificates, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, Underwriter;

(f) any amendment to the federal or state Constitution or action by any federal or state court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the City, its property, income securities (or interest thereon), or the validity or enforceability of the Certificates;

(g) any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) there shall have occurred since the date of this Agreement any materially adverse change in the affairs or financial condition of the City;

(i) the United States shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency or there shall have occurred any other outbreak or escalation of hostilities or a national or international calamity or crisis, financial or otherwise;

(j) any fact or event shall exist or have existed that, in the judgment of the Underwriter, requires or has required an amendment of or supplement to the Preliminary Official Statement or the Official Statement;

(k) there shall have occurred any withdrawal or downgrading, or any notice shall have been given of (A) any intended or potential withdrawal or downgrading or (B) any review or possible change that does not indicate a possible upgrade, in the rating accorded any of the obligations of the City (including the rating to be accorded the Certificates); and

(1) the purchase of and payment for the Certificates by the Underwriter, or the resale of the Certificates by the Underwriter, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission.

**9. Expenses.**

(a) The Underwriter shall be under no obligation to pay, and the City shall pay, all expenses incident to the performance of the City's obligations hereunder, including, but not limited to (i) the cost of preparation and printing of the Certificates, the Preliminary Official Statement and the Official Statement and any amendment or supplement thereto, (ii) the fees and disbursements of Special Counsel, Counsel to the Trustee and counsel to the Underwriter; (iii) the fees and disbursements of Stifel, Nicolaus & Company, Incorporated as financial advisor to the City; (iv) the fees and disbursements of the Trustee and the lessor pursuant to the Lease, and any engineers, accountants, and other experts, consultants or advisers retained by the City, if any; and (v) the fees for bond ratings. The City shall also pay for any expenses (included in the expense component of the Underwriter's discount) incurred by the Underwriter which are incidental to implementing this Agreement and the execution and delivery of the Certificates, including miscellaneous closing costs.

(b) Except as provided for above, the Underwriter shall pay (i) all advertising expenses in connection with the public offering of the Certificates; and (ii) all other expenses incurred by it in connection with its public offering and distribution of the Certificates.

(c) If this Agreement shall be terminated by the Underwriter because of any failure or refusal on the part of the City to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the City shall be unable to perform its obligations under this Agreement, the City will reimburse the Underwriter for all "out-of-pocket expenses" reasonably incurred by the Underwriter in connection with this Agreement or the offering contemplated hereunder.

(d) The City acknowledges that it has had an opportunity to evaluate and consider the fees and expenses being incurred as part of the execution and delivery of the Certificates.

**10. Notice Concerning Cancellation.** To the extent applicable by provision of law, this Agreement is subject to cancellation pursuant to Section 38 511, Arizona Revised Statutes, the provisions of which are incorporated herein.

**11. Notices.** Any notice or other communication to be given under this Agreement must be given by delivering the same in writing to:

To the City: City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attention: Management Services Director

To the Trustee: \_\_\_\_\_  
\_\_\_\_\_

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Attention: Corporate Trust Services

To the Underwriter: Piper Jaffray & Co.  
2525 E. Camelback Rd., Ste. 925  
Phoenix, AZ 85016  
Attention: William C. Davis, Managing Director

**12. Parties in Interest.** This Agreement as heretofore specified shall constitute the entire agreement between us and is made solely for the benefit of the City and the Underwriter (including successors or assigns of the Underwriter), and no other person shall acquire or have any right hereunder or by virtue hereof, this Agreement may not be assigned by the City. All of the representations, warranties and agreements of the City contained in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigations made by or on behalf of the Underwriter; (ii) delivery of and payment for the Certificates pursuant to this Agreement; and (iii) any termination of this Agreement.

**13. Effectiveness.** This Agreement shall become effective upon the acceptance hereof by the City and shall be valid and enforceable at the time of such acceptance.

**14. Choice of Law.** This Agreement shall be governed by and construed in accordance with the law of the State.

**15. Severability.** If any provision of this Agreement shall be held or deemed to, or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

**16. Business Day.** For purposes of this Agreement, “business day” means any day on which the New York Stock Exchange is open for trading.

**17. Section Headings.** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

**18. Counterparts; Electronic Signature.** This Agreement may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document. The electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (pdf) or other replicating image attached to an email or internet message.

[Signature page follows.]

If you agree with the foregoing, please sign the enclosed counterpart of this Agreement and return it to the Underwriter. This Agreement shall become a binding agreement between you and the Underwriter when at least the counterpart of this letter shall have been signed by or on behalf of each of the parties hereto.

Very truly yours,

PIPER JAFFRAY & CO.

By \_\_\_\_\_  
Name: William C. Davis  
Title: Managing Director

Accepted and agreed at ..... m.,  
MST, this ..... of ....., 2019

CITY OF FLAGSTAFF, ARIZONA

By \_\_\_\_\_  
Name: Rick Tadder  
Title: Management Services Director

ACKNOWLEDGED AND APPROVED:

\_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Vice President

*[Signature page to Certificate Purchase Agreement]*

**SCHEDULE I**

**[\$[PAR]]  
CERTIFICATES OF PARTICIPATION, SERIES 2019  
Evidencing Undivided Proportionate Interests of the Owners Thereof in  
Lease Payments to be Made by  
CITY OF FLAGSTAFF, ARIZONA,  
as Lessee of Certain Property Pursuant  
to a Lease-Purchase Agreement, Dated as of December 1, 2019**

DATED DATE: CLOSING DATE

Maturity Date (July 1)	Principal Amount	Interest Rate	Yield
	\$	%	%

*Optional Redemption.* The Certificates payable as to principal before or on July 1, 20\_\_ will not be subject to optional prepayment. The Certificates payable as to principal on or after July 1, 20\_\_ will be subject to optional prepayment, at the direction of the City, on any date on or after July 1, 20\_\_, in whole or in part, at a prepayment price equal to the principal amount evidenced thereby plus interest with respect thereto to the prepayment date, without premium.

Mandatory Prepayment. The Certificates payable as to principal on July 1 in the years 20\_\_ and 20\_\_ (the “Term Certificates”), are subject to mandatory prepayment and shall be paid on July 1 in the respective years set forth below, in the amounts set forth below, by payment of a prepayment price equal to the principal amount of such Term Certificates called for prepayment plus the interest accrued to the date fixed for prepayment, but without premium.

Term Certificates Maturing July 1, 20\_\_

Year

Sinking Fund Requirement

\$

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\*Maturity

Term Certificates Maturing July 1, 20\_\_

Year

Sinking Fund Requirement

\$

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\*Maturity

Whenever Certificates subject to mandatory prepayment are purchased, paid (other than pursuant to mandatory prepayment) or delivered by the City to the Trustee for cancellation, the principal amount of the Certificates so retired shall satisfy and be credited against the mandatory prepayment requirements for such Certificates for such years as the City may direct.

Extraordinary Redemption. The Certificates will be subject to prepayment on any Interest Payment Date, in whole or in part, to the extent of any Net Proceeds that are deposited in the Lease Payment Fund for such purpose as provided in the Lease Agreement, at a prepayment price equal to the principal amount evidenced thereby, plus interest to the prepayment date, without premium.

**SCHEDULE II**

**[\$[PAR]]  
CERTIFICATES OF PARTICIPATION, SERIES 2019  
Evidencing Undivided Proportionate Interests of the Owners Thereof in  
Lease Payments to be Made by  
CITY OF FLAGSTAFF, ARIZONA,  
as Lessee of Certain Property Pursuant  
to a Lease-Purchase Agreement, Dated as of December 1, 2019**

**Maturities for Which the 10% Test Has Been Met**

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>
	\$	%	%	%

**Maturities for Which the 10% Test Has Not Been Met**

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>
	\$	%	%	%

## EXHIBIT A

### FORM OF ISSUE PRICE CERTIFICATE

Piper Jaffray & Co. (“Piper”), as Underwriter for the Certificates of Participation, Series 2019 (the “Certificates”) executed and delivered on behalf of the City of Flagstaff, Arizona (the “City”), based on its knowledge regarding the sale of the Certificates, certifies as of this date as follows:

**[If the issue price is determined using only the general rule (actual sales of at least 10%) in Regulations § 1.148-1(f)(2)(i):**

(A) As of the date of this certificate, for each Maturity of the Certificates, the first price at which at least 10% of such Maturity of the Certificates was sold to the Public is the respective price listed on Schedule A (the “Sale Price” as applicable to respective Maturities). The aggregate of the Sale Prices of each Maturity is \$[\_\_\_\_\_] (the “Issue Price”).]

**[If the issue price is determined using a combination of actual sales (Regulations § 1.148-1(f)(2)(i)) and hold-the-offering-price (Regulations § 1.148-1(f)(2)(ii):**

(A) As of the date of this certificate, for each Maturity listed on Schedule A as the “General Rule Maturities,” the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A (the “Sale Price” as applicable to each Maturity of the General Rule Maturities).

(B) On or before the Sale Date, Piper offered the Maturities listed on Schedule A as the “Hold-the-Offering-Price Maturities” to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices” as applicable to each Maturity of the Hold-the-Offering-Price Maturities). A copy of the pricing wire or equivalent communication for the Certificates is attached to this certificate as Schedule B.

(C) As set forth in the Certificate Purchase Agreement, dated \_\_\_\_\_, 2019, between Piper and the City, Piper has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any portion of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, Piper has not offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Certificates during the Holding Period.

(D) The aggregate of the Sale Prices of the General Rule Maturities and the Initial Offering Prices of the Hold-the-Offering-Price Maturities is \$[\_\_\_\_\_] (the “Issue Price”).]

**[If the issue price is determined using only the hold-the-offering-price rule in Regulations § 1.148-1(f)(2)(ii):**

(A) Piper offered, on or before the Sale Date, each Maturity of the Certificates to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”). A copy of the pricing wire or equivalent communication for the Certificates is attached to this certificate as Schedule B. The aggregate of the Initial Offering Prices of each Maturity is \$[\_\_\_\_\_] (the “Issue Price”).

(B) As set forth in the Certificate Purchase Agreement, dated \_\_\_\_\_, 2019, between Piper and the City, Piper has agreed in writing that, (i) for each Maturity of the Certificate, it would neither offer nor sell any portion of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, Piper has not offered or sold any Maturity of the Certificate at a price that is higher than the respective Initial Offering Price for that Maturity of the Certificate during the Holding Period.]

[(B),(E), or (C)] Definitions. [NOTE: If issue price is determined using only the general rule (actual sales of 10%), delete the definitions of “Holding Period” and “Sale Date.”]

[“Holding Period” means, for each Hold-the-Offering-Price Maturity of the Certificates, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date ([DATE]), or (ii) the date on which Piper has sold at least 10% of such Maturity of the Certificates to the Public at a price that is no higher than the Initial Offering Price for such Maturity.]

“Maturity” means Certificates with the same credit and payment terms. Certificates with different maturity dates, or Certificates with the same maturity date but different stated interest rates, are treated as separate Maturities.

“Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

[“Sale Date” means the first day on which there is a binding contract in writing for the sale of a Maturity of the Certificates. The Sale Date of the Issue is [DATE].]

“Underwriter” means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Certificates to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Certificates to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Certificates to the Public).

All capitalized terms not defined in this Certificate have the meaning set forth in City's Certificate Relating to Federal Tax Matters.

The signer is an officer of Piper and duly authorized to execute and deliver this Certificate of Piper. The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Piper's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the City with respect to certain of the representations set forth in the Certificate Relating to Federal Tax Matters and with respect to compliance with the federal income tax rules affecting the Certificates, and by Greenberg Traurig, LLP, as special counsel, in connection with rendering its opinion that the interest on the Certificates is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the City from time to time relating to the Certificates.

Dated: \_\_\_\_\_, 2019

PIPER JAFFRAY & CO.

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

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

SCHEDULE A

**General Rule Maturities**

<u>Maturity Date</u> <u>(July 15)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>Issue Price</u>
	\$	%	%	%	\$

**Hold-the-Offering-Price Maturities**

<u>Maturity Date</u> <u>(July 15)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>Issue Price</u>
	\$	%	%	%	\$

SCHEDULE B

[Actual Sales for Undersold Maturities as of the Closing Date

<u>Maturity/CUSIP</u>	<u>Date Sold</u>	<u>Time Sold</u>	<u>Par Amount</u>	<u>Sale Price</u>
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[PRICING WIRE OR EQUIVALENT COMMUNICATION]

(Attached)

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Rick Tadder, Management Services Director  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Adoption of Ordinance No. 2019-35:** An ordinance of the City Council of the City of Flagstaff, (1) providing for the sale and issuance of City of Flagstaff, Arizona General Obligation Bonds, Series 2019 and for the annual levy of a tax for the payment of the bond; (2) approving the form and authorizing the execution and delivery of necessary agreements, instruments and documents related to the sale and issuance of the bonds; (3) delegating authority to the Management Services Director of the City to determine certain matters and terms with the respect to the foregoing; (4) adopting continuing disclosure procedures in connection with issuance of obligations of the City; and (5) authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance and ratifying all actions taken to further this; providing for severability, authority for clerical corrections, and establishing an effective date ***(General Obligation Debt Authorization - Public Safety Communication Equipment and Municipal Court Facilities)***

**RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-35 by title only for the final time
- 2) City Clerk reads Ordinance no. 2019-35 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-35

**Executive Summary:**

This ordinance allows for the issuance of General Obligation debt as approved by voters in 2010 and 2016. Debt will be issued for the Public Safety Communication project and the Municipal Court Facilities. An ordinance for this action is required by City Charter ARTICLE VI - FINANCE AND TAXATION, Section 5 - WHEN ACTIONS ARE TO BE TAKEN BY ORDINANCE.

**Financial Impact:**

Series 2019 General Obligation Bonds will be issued as New Money Bonds in an amount not to exceed \$12,362,713 to include all or a portion of the following:

- 2010 authorization - \$4,720,000 for Public Safety Communication System. Anticipate issuing the remaining \$362,713 of the authorization.
- 2016 authorization - \$12,000,000 for Municipal Court Facilities Project. Anticipate issuing the entire authorization

These bonds will be issued as General Obligation Bonds and will be repaid through secondary property tax collections within the current rate of \$0.8366 per \$100 of assessed valuation.

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

Council Goals:

Transportation and Other Public Infrastructure-Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

Regional Plan:

Goal PF.2. Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics.

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

Yes. Council authorized the 2010 and 2016 elections which voters approved the issuance of debt for the specific projects. Issuing debt was anticipated when the voters approved the questions on the ballots. On April 3, 2018, Council adopted Reimbursement Resolution 2018-18 for the Public Safety Communication equipment. On September 3, 2019, Council adopted Reimbursement Resolution 2019-42 for the Municipal Court Facilities.

### **Options and Alternatives:**

- Approve the Ordinance as written allowing the City to move forward with the issuance of New Money Bonds as General Obligation debt. Pros-Allows for cash flow necessary to complete voter-approved projects while maintaining the current secondary property tax rate. Cons-Increases City debt.
- Recommend changes to the Ordinance modifying the issuance of either the New Money Bonds. Pros and Cons are dependent on changes.
- Do not approve the issuance of General Obligation Debt. Pros-Delays level of debt for the City. Cons-Projects may need to stop and the City will need to find the cash flow for work completed to date.

### **Background/History:**

On November 6, 2010, the City of Flagstaff voters approved \$4,720,000 in General Obligation debt to be issued and used for the Public Safety/City Operations Communication Systems. The City has substantially completed the replacement of the communication system and issued \$4,357,287 in debt. The remaining \$362,713 is available for this debt authorization. The City's intended use for this remaining amount is to replace and upgrade radios for police and fire.

On November 8, 2016, the City voters approved \$12,000,000 in General Obligation bonds to be issued and used for the construction of Municipal Court Facilities. The City has not issued any bonds to date. The Municipal Court Construction began this summer. The total project estimate is \$19.5 million and is funded with \$3.5 million court fees and general funds transfers as well as

\$4.0 million in financing with a Certificate of Purchase, lease-purchase finance. The City will not be selling the existing court property at this time. The property will initially be used for temporary surface parking while the City teams with the Downtown Business Association to develop a downtown master plan which may help determine best uses in the future for that property, which may include a permanent parking facility. The new City Court Facility will provide a safe and efficient Municipal building that will greatly improve the Court's operations now and into the future, enhance the staff and user experience and provide an attractive amenity to downtown Flagstaff.

The proposed ordinance includes the maximums contemplated to be issued to provide the greatest flexibility in both amount and timing. This authorization allows us to go into the market with the most favorable factors in play including market saturation, rates, and ratings.

While the purpose of this agenda item is to approve an ordinance to allow the City to issue debt, we have included a draft Preliminary Official Statement and Purchase Agreement as informational documents for your review. These documents have been reviewed by our Financial Advisors and Bond Counsel. These are substantially complete however may have some changes prior to completion of the debt transactions. Final documents will be available upon request to the Management Services Director.

#### **Expanded Financial Considerations:**

The New Money Bonds will be paid through the assessment of secondary property taxes. To meet the promise made to the public to hold the secondary property rate flat, the City will use strategies including using the secondary property tax reserves and issuing debt that is layered in so that the City can maintain the existing secondary property tax rate of \$0.8366 per \$100 of assessed valuation.

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

The community benefits by having the City complete the projects as promised to the voters in the 2010 and 2016 elections.

#### **Community Involvement:**

The process to select the projects that were voted on by the public involved: Consult, Involve, Collaborate and Empower.

The process to authorize the issuance of debt is to INFORM the public.

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**Attachments:**    [Ord. 2019-35](#)  
                          [Ordinance Exhibit](#)  
                          [Draft Preliminary Offering Statement \(POS\)](#)  
                          [Draft Bond Purchase Agreement](#)  
                          [Procedure for Continuing Disclosure](#)

**ORDINANCE NO. 2019-35**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, (1) PROVIDING FOR THE SALE AND ISSUANCE OF CITY OF FLAGSTAFF, ARIZONA GENERAL OBLIGATION BONDS AND FOR THE ANNUAL LEVY OF A TAX FOR THE PAYMENT OF THE BONDS; (2) APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS RELATED TO THE SALE AND ISSUANCE OF THE BONDS; (3) DELEGATING AUTHORITY TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; (4) ADOPTING CONTINUING DISCLOSURE COMPLIANCE PROCEDURES IN CONNECTION WITH ISSUANCE OF OBLIGATIONS OF THE CITY; AND (5) AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE AND RATIFYING ALL ACTIONS TAKEN TO FURTHER THIS; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, at a special bond election held in and for the City of Flagstaff, Arizona (the "City"), on November 2, 2010 (the "2010 Election"), there was submitted to the qualified electors thereof, among others, Question No. 103.

WHEREAS, the returns of the 2010 Election were duly canvassed by the Mayor and Council of the City (the "Council"), and a certificate disclosing the purpose of the 2010 Election, the total number of votes cast thereat, the total number of votes for and against the issuance of such bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the foregoing question was ordered and has been filed and recorded in the office of the County Recorder of Coconino County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the 2010 Election voted "For the Bonds," in answer to such question; and

WHEREAS, at a special bond election held in and for the City on November 8, 2016 (the "2016 Election" and, together with the 2010 Election, the "Elections"), there was submitted to the qualified electors thereof, among others, Proposition No. 412.

WHEREAS, the returns of the 2016 Election were duly canvassed by the Council and a certificate disclosing the purpose of the 2016 Election, the total number of votes cast thereat, the total number of votes for and against the issuance of such bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the foregoing proposition was ordered and has been filed and recorded in the office of the County Recorder of Coconino County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the 2016 Election voted "Bond Approval, Yes," in answer to such proposition; and

WHEREAS, the Council has determined to sell and issue all or a portion of the authorized amount

of such bonds (the "Bonds") as general obligation bonds for the purposes granted at the Elections; and

WHEREAS, the Council will receive a proposal from Hilltop Securities, Inc. (the "Underwriter") and has determined that the Bonds should be sold through negotiation to the Underwriter; and

WHEREAS, pursuant to Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"), Participating Underwriters (as defined in the Rule) are required to reasonably determine that issuers have entered into written undertakings to make ongoing disclosure in connection with offerings of obligations to investors subject to the Rule; and

WHEREAS, it is determined that procedures should be adopted in order to document practices and describe various procedures for preparing and disseminating such ongoing disclosure for the benefit of the holders of the City's obligations and to assist the Participating Underwriters in complying with the Rule and such written undertakings (the "Procedures"); and

WHEREAS, it has been determined that Stifel, Nicolaus & Company, Incorporated (the "Financial Advisor") should act as financial advisor with respect to the sale of the Bonds pursuant to letter agreements dated October 2, 2019, between the City and the Financial Advisor; and

WHEREAS, all things required to be done preliminary to the authorization, sale and issuance of the Bonds have been duly done and performed in the manner required by law, and the Council is now empowered to proceed with the sale and issuance of the Bonds.

#### **ENACTMENTS:**

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

##### **SECTION 1. Authorization and Terms.**

(a)(1) The Bonds, to provide funds for the purposes set forth in the above-mentioned forms of ballot questions/proposition submitted to the qualified electors of the City at the Elections, are hereby authorized to be issued and sold as a series of bonds of the City to be designated as provided herein in accordance with this Ordinance and applicable law.

(2) The Bonds are authorized by the provisions of Title 35, Chapter 3, Article 3, Arizona Revised Statutes, and constitute the third series of bonds of a total authorized amount of not to exceed \$21,220,000 principal amount of bonds of the City approved by the qualified electors of the City at the 2010 Election, and the first series of bonds of a total authorized amount of not to exceed \$12,000,000 principal amount of bonds of the City approved by the qualified electors of the City at the 2016 Election.

(3) The proceeds from the sale of the Bonds shall be credited against the total principal amount of bonds and the specific amount of bonds so authorized by the qualified electors of the City at the Elections and for each respective purpose and project as set forth in the applicable questions/proposition on the official form of ballot and the proceeds of the Bonds shall be applied to each respective purpose and project as determined by the Management Services Director of the City (the "Management Services Director") on behalf of the City.

(b) The Management Services Director is hereby authorized and directed to determine on behalf of the City: (1) the series name and designation of the Bonds; (2) the total principal amount of the Bonds (but not to exceed \$18,362,713 aggregate principal amount) and the amounts to be allocated to each of the purposes authorized by the Elections and to the City's legally available constitutional and statutory debt limits for indebtedness; (3) the final principal and maturity schedule of the Bonds (but none of the Bonds to mature later than July 1, 2040); (4) the interest rates with respect to the Bonds and the dates for payment of such interest (the "interest payment dates"); (5) the provisions for redemption in advance of maturity of the Bonds; (6) the sales date, sales price and other sales terms of the Bonds (including provision for any discount); and (7) the provision for credit enhancement, if any, for the Bonds; provided, however, that such determinations must result in a yield for federal income tax purposes with respect to the Bonds of not to exceed ten percent (10%).

(c)(1) The Bonds shall be dated the date of their initial authentication and delivery and issued in the denomination of \$5,000 of principal amount each or integral multiples thereof and only in fully registered form.

(2) The principal of and premium, if any, on the Bonds shall be payable at maturity or prior redemption upon presentation and surrender thereof at the designated corporate trust of the Bond Registrar and Paying Agent (as defined herein).

(3) Interest on the Bonds shall be payable by check, dated as of the interest payment date, mailed to the registered owners thereof and at the addresses appearing on the registration books maintained by the Bond Registrar and Paying Agent at the close of business on the fifteenth (15th) day of the month next preceding that interest payment date (the "regular record date"). Any such interest on a Bond which is not timely paid or duly provided for shall cease to be payable to the registered owner thereof (or of one or more predecessor Bonds) as of the regular record date and shall be payable to the registered owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Bond Registrar and Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to the registered owners of Bonds not less than ten (10) days prior thereto.

(4) The principal of and premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America.

## SECTION 2. Prior Redemption of the Bonds.

(a) Notice of redemption of any Bond shall be mailed by first class mail, postage prepaid, not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption to the registered owner of the Bond or Bonds being redeemed at the address shown on the registration books for the Bonds maintained by the Bond Registrar and Paying Agent. Failure to properly give such notice of redemption shall not affect the redemption of any Bond for which notice was properly given. Such notice may provide that the redemption is conditional upon moneys for payment of the redemption price being held in separate accounts by the Bond Registrar and Paying Agent.

(b) On the date designated for redemption by notice given as herein provided, the Bonds or portions thereof to be redeemed shall become and be due and payable at the redemption price for such Bonds or such portions thereof on such date, and, if moneys for

payment of the redemption price are held in separate accounts by the Bond Registrar and Paying Agent, interest on such Bonds or such portions thereof shall cease to accrue, such Bonds or such portions thereof shall cease to be entitled to any benefit or security hereunder, the registered owners of such Bonds or such portions thereof shall have no rights in respect thereof except to receive payment of the redemption price thereof and accrued interest thereon and such Bonds or such portions thereof shall be deemed paid and no longer outstanding.

(c) The City may redeem any amount which is included in a Bond in the denomination in excess of, but divisible by, \$5,000. In that event, the registered owner shall submit the Bond for partial redemption and the Bond Registrar and Paying Agent shall make such partial payment and shall cause to be issued a new Bond in a principal amount which reflects the redemption so made, to be authenticated and delivered to the registered owner thereof.

### SECTION 3. Security; Defeasance.

(a) After the Bonds are issued, the Council shall enter on its minutes a record of the Bonds sold and their numbers and dates. For the purpose of paying the principal of, interest on and costs of administration of the registration and payment of the Bonds, there shall be levied on all the taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such principal, interest and administration costs of and on the Bonds as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes of the City are levied, assessed and collected. The tax shall be extended and collected for the City, and the officials of the City and Coconino County, Arizona, charged with the annual extension and collection of taxes, without further instructions from the Council, shall extend and collect the tax upon issuance of the Bonds. All moneys collected through such tax shall be paid into the treasury of the City, to the credit of a "Debt Service Fund" of the City for the Bonds, from which fund the Bonds shall be payable, which tax moneys shall be held in subfunds to be known as the "Interest Fund" and the "Redemption Fund," which funds shall be kept separate and apart from and not commingled with any other funds or moneys and which shall be used solely for, respectively, payment of interest on and principal of, and premium, if any, on the Bonds.

(b) Any Bond or portion thereof in authorized denominations shall be deemed paid and defeased and thereafter shall have no claim on ad valorem taxes levied on taxable property in the City (i) if there is deposited with a bank or comparable financial institution, in trust, moneys or obligations issued by or guaranteed by the United States government ("Defeasance Obligations") or both which, with the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate or report of an accountant, to pay the principal of and interest and any premium on such bond or portion thereof as the same matures, comes due or becomes payable upon prior redemption, and (ii) if such defeased bond or portion thereof is to be redeemed, notice of such redemption has been given in accordance with provisions hereof or the City has submitted to the Bond Registrar and Paying Agent instructions expressed to be irrevocable as to the date upon which such bond or portion thereof is to be redeemed and as to the giving of notice of such redemption. Bonds the payment of which has been provided for in accordance with this Section shall no longer be deemed payable or outstanding hereunder and thereafter such bonds shall be entitled to payment only from the moneys or Defeasance Obligations deposited to provide for the payment of such Bonds.

SECTION 4. Use of Proceeds. Proceeds of the sale of the Bonds shall be deposited in the treasury of the City to the credit of the "General Obligation Bonds Series 2019 Construction Fund" in three separate accounts as follows in the amounts determined as provided in Section 1(a)(3) hereof:

Name of Account

Public Safety Communications Equipment - Series 2019

Forest Health and Water Supply Protection - Series 2019

Municipal Court Facilities - Series 2019

to be used solely for the purposes specified in the aforementioned ballot questions/proposition submitted to the qualified electors of the City at the Elections; provided, however, that (a) such proceeds may be invested in the manner and under the circumstances allowed by law and (b) any moneys remaining in any subfund after such purposes shall have been accomplished shall be transferred to the applicable "Interest Fund" and "Redemption Fund" in the same fashion as taxes. If the Bonds are issued in calendar year 2020, the "Series 2019" designations provided in this Section 4 will instead be "Series 2020".

SECTION 5. Form of Bonds.

(a) The Bonds (including the form of certificate of authentication and form of assignment therefor) shall be in substantially the form set forth in the Exhibit attached hereto. There may be such necessary and appropriate omissions, insertions and variations as are permitted or required hereby and are approved by those officers executing the Bonds in such form. Execution thereof by such officers shall constitute conclusive evidence of such approval.

(b) The Bonds may have notations, legends or endorsements required by law, securities exchange rule or usage. Each Bond shall show both the date of the issue and the date of authentication and registration of each Bond.

(c) The Bonds are prohibited from being converted to coupon or bearer bonds without the consent of the Council and approval of bond counsel to the City.

SECTION 6. Execution and Delivery of Bonds.

(a) The Bonds shall be executed for and on behalf of the City by the Mayor of the City and attested by the Clerk of the City. Such signatures may be by mechanical reproduction. Such officers shall manually sign certificates adopting as and for such signatures on the Bonds the respective mechanically reproduced signatures affixed to the Bonds.

(b) If an officer whose signature is on a Bond no longer holds that office at the time such Bond is authenticated and registered, the Bond shall nevertheless be valid so long as such Bond would otherwise be valid and binding.

(c) A Bond shall not be valid or binding until authenticated by the manual signature of an authorized representative of the Bond Registrar and Paying Agent. The signature of the authorized representative of the Bond Registrar and Paying Agent shall be conclusive evidence that the Bond has been authenticated and issued under this Ordinance.

SECTOPM 7. Mutilated, Lost or Destroyed Bonds. In case any Bond becomes mutilated or destroyed or lost, the City shall cause to be executed and delivered a new Bond of like type, date,

maturity date and tenor in exchange and substitution for and upon the cancellation of such mutilated Bond or in lieu of and in substitution for such Bond destroyed or lost, upon the registered owner paying the reasonable expenses and charges of the City in connection therewith and, in the case of a Bond destroyed or lost, filing with the Bond Registrar and Paying Agent by the registered owner evidence satisfactory to the Bond Registrar and Paying Agent that such Bond was destroyed or lost, and furnishing the Bond Registrar and Paying Agent with a sufficient indemnity bond pursuant to Section 47-8405, Arizona Revised Statutes.

SECTION 8. Acceptance of Proposal.

(a) Subject to the discretion delegated by Section 1(b) hereof, the Management Services Director is hereby authorized to accept a proposal of the Underwriter for the purchase of the Bonds which satisfies the terms and conditions of this Ordinance on behalf of the Council, and the Bonds are hereby ordered to be sold to the Underwriter in accordance with the terms of the Bond Purchase Agreement presented to the Council at the meeting at which this Ordinance was adopted (the "Purchase Agreement"), which is hereby approved. The Management Services Director is hereby authorized to execute and deliver the Purchase Agreement, for and on behalf of the Council, in substantially the form submitted to the Council at the meeting at which this Ordinance was adopted and in a final form satisfactory to the Management Services Director, and such execution and delivery by the Management Services Director shall indicate the approval thereof on behalf of the Council by the Management Services Director.

(b) The Management Services Director is hereby requested to cause the Bonds to be delivered to the Underwriter upon receipt of payment therefor and satisfaction of the other conditions for delivery thereof in accordance with the terms of the sale provided in the Purchase Agreement.

SECTION 9. Official Statement and Continuing Disclosure.

(a)(1) The preparation, distribution and use of the Preliminary Official Statement relating to the Bonds in substantially the form presented to the Council at the meeting at which this Ordinance was adopted is in all respects hereby ratified, approved and confirmed, and the Management Services Director is hereby authorized to certify or otherwise represent that the Preliminary Official Statement, in original or revised form, is a "deemed final" official statement (except for permitted omissions) of the City as of particular date for purposes of the Rule.

(2) The Underwriter is authorized to prepare or cause to be prepared, and the Management Services Director is authorized and directed to approve, on behalf of the Council, and to execute and deliver, a final Official Statement in substantially the form of the Preliminary Official Statement, modified to reflect matters related to the sale of the Bonds, for distribution and use in connection with the offering and sale of the Bonds. The execution and delivery of such final Official Statement by the Management Services Director shall be conclusively deemed to evidence the approval of the status, form and contents thereof by the Council.

(b) Subject to annual appropriation to cover the costs of preparing and mailing as necessary therefor, the City shall comply with and carry out all the provisions of a Continuing Disclosure Undertaking, to be dated the date of issuance of the Bonds (the "Undertaking"), with respect to the Bonds, which the Management Services Director is hereby authorized, for and on behalf of the City, to execute and deliver, in substantially the form submitted to the Council at the meeting at which this Ordinance was adopted, with such additions, deletions and modifications as shall be approved by the Management Services Director, and such execution and delivery

shall constitute evidence of the approval of such officer of any departures from the form submitted to the Council at the time of adoption of this Ordinance. Notwithstanding any other provision of this Ordinance, failure of the City (if obligated pursuant to the Undertaking) to comply with the Undertaking shall not be considered an event of default; however, any Beneficial Owner (as defined herein) may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section. For purposes of this Section, "Beneficial Owner" means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

**SECTION 10. Bond Registrar and Paying Agent.**

(a) The Management Services Director is hereby authorized to appoint the initial authenticating agent, bond registrar, transfer agent and paying agent with respect to the Bonds (the "Bond Registrar and Paying Agent"), and a standard form contract therewith covering such services, with such additions, deletions and modifications as shall be approved by the Management Services Director, is hereby approved, and the Management Services Director is hereby authorized to execute, and the Clerk of the City is hereby authorized to attest and deliver, such contract. The Bond Registrar and Paying Agent shall maintain the books of the City for the registration of ownership of each Bond.

(b) A Bond may be transferred on the registration books upon delivery and surrender of the Bond to the Bond Registrar and Paying Agent at its designated corporate trust office, accompanied by a written instrument of transfer in form and with guaranty of signature satisfactory to the Bond Registrar and Paying Agent, duly executed by the registered owner of the Bond to be transferred or the attorney-in-fact or legal representative thereof, containing written instructions as to the details of the transfer of such Bond. No transfer of any Bond shall be effective until entered on the registration books.

(c) In all cases upon the transfer of a Bond, the Bond Registrar and Paying Agent shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same type and of the authorized denominations (except that no Bond shall be issued which relates to more than a single principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Section.

(d) All costs and expenses of initial registration and payment of the Bonds shall be borne by the City, but the City and the Bond Registrar and Paying Agent shall charge the registered owner of such Bond for every subsequent transfer of a Bond including an amount sufficient to reimburse them for any transfer fee, tax or other governmental charge required to be paid with respect to such transfer and may require that such charge including for such transfer fee, tax or other governmental charge be paid before any such new Bond shall be delivered.

(e) The City and the Bond Registrar and Paying Agent shall not be required to issue or transfer any Bonds during a period beginning with the opening of business on any regular record date and ending with the close of business on the corresponding interest payment date.

(f) The Bonds shall be subject to a Book-Entry System (as defined herein) of ownership and transfer, except as provided in subsection (3) of this subsection. The general provisions for effecting the Book-Entry System are as follows:

(1) The City hereby designates The Depository Trust Company, New York, New York, as the initial Depository (as defined herein) hereunder.

(2) Notwithstanding the provisions of this Section or of the Bonds to the contrary and so long as the Bonds are subject to a Book-Entry System, the Bonds shall initially be evidenced by one typewritten certificate for each maturity in an amount equal to the aggregate principal amount thereof. The Bonds so initially delivered shall be registered in the name of "Cede & Co." as nominee for The Depository Trust Company. The Bonds may not thereafter be transferred or exchanged on the registration books of the City maintained by the Bond Registrar and Paying Agent except:

(a) to any successor Depository designated pursuant to subsection (3) of this subsection;

(b) to any successor nominee designated by a Depository; or

(c) if the City shall elect to discontinue the Book-Entry System pursuant to subsection (3) of this subsection, the City shall cause the Bond Registrar and Paying Agent to authenticate and deliver replacement Bonds in fully registered form in authorized denominations in the names of the Beneficial Owners (as defined herein) or their nominees, as certified by the Depository, at the expense of the City; thereafter the other applicable provisions of this Ordinance regarding registration, transfer and exchange of the Bonds shall apply.

(3) The Bond Registrar and Paying Agent, pursuant to a request from the City for the removal or replacement of the Depository, and upon thirty (30) days' notice to the Depository, may remove or replace the Depository. The Bond Registrar and Paying Agent shall remove or replace the Depository at any time pursuant to the request of the City. The Depository may determine not to continue to act as Depository for the Bonds upon thirty (30) days' written notice to the City and the Bond Registrar and Paying Agent. If the use of the Book-Entry System is discontinued, then after the Bond Registrar and Paying Agent has made provision for notification of the Beneficial Owners of their book entry interests in the Bonds by appropriate notice to the then Depository, the City and the Bond Registrar and Paying Agent shall permit withdrawal of the Bonds from the Depository and authenticate and deliver the Bond certificates in fully registered form and in denominations authorized by this Section to the assignees of the Depository or its nominee. Such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing or otherwise preparing, and delivering, such replacement Bond certificates) of the City.

(4) So long as the Book-Entry System is used for the Bonds, the City and the Bond Registrar and Paying Agent shall give any notice of redemption or any other notices required to be given to registered owners of Bonds only to the Depository or its nominee registered as the owner thereof. Any failure of the Depository to advise any of its participants, or of any participant to notify the Beneficial Owner, of any such notice and its content or effect shall not affect the validity of the redemption of the Bonds to be redeemed or of any other action premised on such notice. Neither the City nor the Bond Registrar and Paying Agent shall be responsible or liable for the failure of the Depository or any participant thereof to make any payment or give any notice to a Beneficial Owner in respect of the Bonds or any error or delay relating thereto.

(5) Notwithstanding any other provision of this Section or Section 2(b) hereof or of the Bonds to the contrary, so long as the Bonds are subject to a Book-Entry System, it shall not be necessary for the registered owner to present the applicable Bond for payment of mandatory redemption installments, if any. The mandatory redemption installments may be noted on books kept by the Bond Registrar and Paying Agent and the Depository for such purpose, and the Bonds shall be tendered to the Bond Registrar and Paying Agent at their maturity.

(6) For purposes of this Section, "Beneficial Owners" shall mean actual purchasers of the Bonds whose ownership interest is evidenced only in the Book-Entry System maintained by the Depository; "Book-Entry System" shall mean a system for clearing and settlement of securities transactions among participants of a Depository (and other parties having custodial relationships with such participants) through electronic or manual book-entry changes in accounts of such participants maintained by the Depository hereunder for recording ownership of the Bonds by Beneficial Owners and transfers of ownership interests in the Bonds and "Depository" shall mean The Depository Trust Company, New York, New York or any successor depository designated pursuant to this Section.

SECTION 11. General Federal Tax Law and Arbitrage Covenants. The City shall comply with the general federal tax law and arbitrage covenants set forth in the Certificate Relating to Federal Tax Matters to be delivered by the City upon the initial delivery of the Bonds. The City has adopted post-issuance tax compliance procedures, with which the City shall comply.

SECTION 12. Adoption of Procedures. The Procedures are hereby adopted to establish policies and procedures related to the purposes set forth in the Recitals hereto. The right to use discretion as necessary and appropriate to make exceptions or request additional provisions with respect to the Procedures as may be determined is hereby reserved. The right to change the Procedures from time to time, without notice, is also reserved.

SECTION 13. Ordinance a Contract; Severability; Ratification of Actions.

(a) This Ordinance shall constitute a contract between the City and the registered owners of the Bonds and shall not be repealed or amended in any manner which would impair, impede or lessen the rights of the registered owners of the Bonds then outstanding.

(b) If any section, paragraph, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted this Ordinance and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the issuance of the Bonds, pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Ordinance may be held illegal, invalid or unenforceable.

(c) All actions of the officers, employees and agents of the City including the Council which conform to the purposes and intent of this Ordinance and which further the sale and issuance of the Bonds as contemplated by this Ordinance, including retention of consultants and counsel necessary to carry out the purposes of this Ordinance, whether taken before or after adoption of this Ordinance, are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute

and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Ordinance.

(d) All acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

(e) All formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

**SECTION 14. Repeal of Conflicting Ordinances**

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

**SECTION 15. Severability**

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 16. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 17. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November 2019.

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MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

Exhibits:  
FORM OF BOND and FORM OF ASSIGNMENT

EXHIBIT

[FORM OF BOND]

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (“DTC”) TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.\*

REGISTERED  
NO. ....

REGISTERED  
\$.....

UNITED STATES OF AMERICA  
STATE OF ARIZONA

CITY OF FLAGSTAFF, ARIZONA  
GENERAL OBLIGATION BOND, SERIES 2019

Interest Rate:  
.....%

Maturity Date:  
July 1, .....

Dated:  
....., 2019

CUSIP:  
.....

REGISTERED OWNER: CEDE & CO.\*

PRINCIPAL AMOUNT: ..... DOLLARS

THE CITY OF FLAGSTAFF, ARIZONA, a body politic and corporate, duly incorporated and existing pursuant to the laws of the State of Arizona (the “City”), for value received, hereby promises to pay to the aforesaid registered owner, or registered assigns, the aforesaid principal amount on the aforesaid maturity date unless earlier redeemed and then on the applicable redemption date, and to pay interest on the principal amount from the date this Bond is dated as of, at the aforesaid interest rate on each January 1 and July 1 (each an “interest payment date”), commencing ....., ....., to its maturity or its redemption prior to maturity. The principal of and premium, if any, on this Bond are payable upon presentation and surrender hereof at the designated corporate trust office of ....., as the “Bond Registrar and Paying Agent.” Interest on this Bond is payable by check, dated as of the interest payment date, mailed to the registered owner hereof and at the address appearing on the registration books maintained by the Bond Registrar and Paying Agent at the close of business on the 15th day of the month next

\* Insert only while The Depository Trust Company, New York, New York, is the Securities Depository.

preceding that interest payment date (the “regular record date”). Any such interest which is not timely paid or duly provided for shall cease to be payable to the registered owner hereof (or of one or more predecessor Bonds) as of the regular record date and shall be payable to the registered owner hereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Bond Registrar and Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to the registered owner of this Bond not less than 10 days prior thereto.

The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America, on the respective dates when principal and interest become due.

This Bond is one of a series of bonds (the “Bonds”) indicated above in the aggregate principal amount of \$.....,000 of like tenor except as to amount, maturity date, rate of interest and number. The Bonds represent the fifth installment of an aggregate voted amount of \$94,000,000 principal amount approved at a special bond election duly called and held in for the City, on May 18, 2004, the third installment of an aggregate voted amount of \$24,000,000 principal amount approved at a special bond election duly called and held in for the City on November 6, 2012, and the first installment of an aggregate voted amount of \$12,000,000 principal amount approved at a special bond election duly called and held in for the City on November 8, 2016, for the purposes provided in Question No. 301, Question No. 405 and Proposition No. 412, respectively, considered at such elections. The Bonds are being issued by the City pursuant to an Ordinance of the Mayor and Council of the City, duly adopted prior to the issuance hereof, all of the terms of which are hereby incorporated herein (the “Ordinance”), and pursuant to the Constitution and laws of the State of Arizona relative to the sale and issuance of general obligation bonds of municipalities and all amendments thereto, the Charter of the City and all other laws of the State of Arizona thereunto enabling.

For the purpose of paying the principal of, interest on and costs of administration of the registration and payment of this Bond, there shall be levied on all taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such principal, interest and administration costs of and on this Bond as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes of the City are levied, assessed and collected.

The Bonds maturing before and on July 1, ....., are not subject to redemption prior to maturity. The Bonds maturing on and after July 1, ....., are subject to redemption prior to maturity, in whole or in part, on July 1, ....., or any date thereafter, by the payment of a redemption price equal to the principal amount of each such Bond redeemed plus interest accrued to the date fixed for redemption plus a premium (calculated as a percentage of the principal amount of such Bonds to be redeemed) to be computed as follows:

<u>Redemption Dates</u>	<u>Premium</u>
July 1, ....., and January 1, ....	....%
July 1, ....., and January 1, ....	....
July 1, ....., and thereafter	0.0

The Bonds maturing on July 1, ....., shall be redeemed prior to maturity on July 1, in the years and amounts set forth below, by payment of the principal amount of each Bond to be redeemed plus interest accrued to the date fixed for redemption, but without a premium:

<u>Year</u>	<u>Amount</u>
	\$

A remaining principal amount of \$.....,000 of Bonds maturing on July 1, ....., shall mature on July 1, .....

Not more than seventy-five (75) nor less than sixty (60) days prior to the mandatory redemption date for the Bonds maturing on July 1, ....., the Bond Registrar and Paying Agent shall proceed to select for redemption (by lot in such manner as the Bond Registrar and Paying Agent may determine) from all the Bonds maturing on July 1, ....., outstanding a principal amount of the Bonds maturing on July 1, ....., equal to the aggregate principal amount of the Bonds maturing on July 1, ....., to be redeemed and shall redeem such Bonds maturing on July 1, ....., on the next July 1 and give notice of such redemption.

Notice of redemption of any such Bond will be mailed not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption to the registered owner of such Bond or Bonds being redeemed at the address shown on the registration books for the Bonds maintained by the Bond Registrar and Paying Agent. Failure to properly give such notice of redemption shall not affect the redemption of any such Bond for which notice was properly given.

The Bond Registrar and Paying Agent shall maintain the registration books of the City for the registration of ownership of each Bond as provided in the Ordinance. (The Bond Registrar and Paying Agent may be changed without notice or consent.)

This Bond may be transferred on the registration books upon delivery and surrender hereof to the Bond Registrar and Paying Agent at its designated corporate trust office, accompanied by a written instrument of transfer in form and with guaranty of signature satisfactory to the Bond Registrar and Paying Agent, duly executed by the registered owner of this Bond or his or her attorney-in-fact or legal representative, containing written instructions as to the details of the transfer. No transfer of this Bond shall be effective until entered on the registration books.

In all cases upon the transfer of this Bond, the Bond Registrar and Paying Agent shall transfer the ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of authorized denominations (except that no Bond shall be issued which relates to more than a single

principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of the Ordinance. The City and the Bond Registrar and Paying Agent shall charge the owner of such Bond for every transfer of a Bond, including an amount sufficient to reimburse them for any transfer fee, tax or other charge required to be paid with respect to such transfer and may require that such charge, including such transfer fee, tax or other charge be paid before any such new Bond shall be delivered.

The City and the Bond Registrar and Paying Agent shall not be required to issue or transfer any Bonds during a period beginning with the opening of business on any regular record date and ending with the close of business on the corresponding interest payment date.

This Bond shall not be entitled to any security or benefit under the Ordinance or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Bond Registrar and Paying Agent.

Pursuant to the Ordinance, payment of all or any part of the Bonds may be provided for by the irrevocable deposit, in trust, of moneys or obligations issued or guaranteed by the United States of America ("Defeasance Obligations") or both, which, with the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate of an accountant, to pay when due the principal or redemption price of and interest on such Bonds. Any Bonds so provided for will no longer be outstanding under the Ordinance or payable from ad valorem taxes on taxable property in the City, and the owners of such Bonds shall thereafter be entitled to payment only from the amounts and Defeasance Obligations deposited in trust.

It is hereby certified, recited and declared (i) that all conditions, acts and things required by the Constitution and laws of the State of Arizona to happen, to be done, to exist and to be performed precedent to and in the issuance of this Bond and of the series of which it is one, have happened, have been done, do exist and have been performed in regular and due form and time as required by law, (ii) that the obligation evidenced by the series of Bonds of which this is one, together with all other existing indebtedness of the City, does not exceed any applicable constitutional or statutory limitation, and (iii) that due provision has been made for the levy and collection of a direct, annual, ad valorem tax upon taxable property within the City, over and above all other taxes authorized or limited by law, sufficient to pay the principal hereof and the interest hereon as each becomes due.

IN WITNESS WHEREOF, THE CITY OF FLAGSTAFF, ARIZONA, has caused this Bond to be executed in the name of the City by the facsimile signature of the Mayor of the City and such signature of the Mayor of the City to be attested by the facsimile signature of the Clerk of the City.

CITY OF FLAGSTAFF, ARIZONA

By \_\_\_\_\_ (Facsimile)  
MAYOR

ATTEST:

By \_\_\_\_\_ (Facsimile)  
CITY CLERK

[FORM OF CERTIFICATE OF AUTHENTICATION]

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and is one of the City of Flagstaff, Arizona General Obligation Bonds, Series 2019.

Date of Authentication: \_\_\_\_\_

\_\_\_\_\_  
as Bond Registrar and Paying Agent

By \_\_\_\_\_  
Authorized Representative

[FORM OF ASSIGNMENT]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto ..... the within Bond and irrevocably constitutes and appoints ..... attorney to transfer this Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: .....

.....

..

Signature

Signature Guaranteed:

.....  
[Insert proper legend]

.....  
Signature

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

- TEN COM - as tenants in common
- TEN ENT - as tenants by the entireties
- JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT/TRANS MIN ACT - ..... Custodian .....  
(Cust) (Minor)

under Uniform Gifts/Transfers to Minors Act .....  
(State)

Additional abbreviations may also be used though not included in the above list

ALL FEES AND COSTS OF TRANSFER  
SHALL BE PAID BY THE TRANSFEROR

**PRELIMINARY OFFICIAL STATEMENT DATED NOVEMBER \_\_, 2019**

**NEW ISSUE – BOOK-ENTRY-ONLY**

**RATING: See “RATING” herein.**

*In the opinion of Bond Counsel, assuming continuing compliance with certain tax covenants, under existing statutes, regulations, rulings and court decisions, interest on the Bonds (i) is excludable from gross income for federal income tax purposes and (ii) is exempt from income taxation under the laws of the State of Arizona. Further, interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. See “TAX EXEMPTION” herein for a description of the certain other federal tax consequences of ownership of the Bonds.*

**\$10,725,000\***

**CITY OF FLAGSTAFF, ARIZONA  
GENERAL OBLIGATION BONDS,  
SERIES 2019**

*Dated:* Date of Initial Authentication and Delivery

*Due:* July 1, as shown on the inside front cover page

The General Obligation Bonds, Series 2019 (the “Bonds”) of the City of Flagstaff, Arizona (the “City”), will be issued in the form of fully-registered bonds, registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). Beneficial ownership interests in the Bonds may be purchased in amounts of \$5,000 of principal due on a specific maturity date or integral multiples thereof. The Bonds will mature on the dates and in the principal amounts and will bear interest from their date of delivery to their maturity or prior redemption as set forth on the inside front cover page. Interest on the Bonds will accrue from the date of initial authentication and delivery and will be payable semiannually on January 1 and July 1 of each year commencing on July 1, 2020\*, until maturity or prior redemption.

The Bonds are being issued for the purpose of financing the Projects (as defined herein) and paying costs relating to the issuance of the Bonds.

**SEE MATURITY SCHEDULE ON INSIDE FRONT COVER PAGE**

The City will initially utilize DTC’s “book-entry-only system,” although the City and DTC each reserve the right to discontinue the book-entry-only system at any time. Utilization of the book-entry-only system will affect the method and timing of payment of principal of and interest on the Bonds and the method of transfer of the Bonds. So long as the book-entry-only system is in effect, a single fully-registered Bond, for each maturity of the Bonds, will be registered in the name of Cede & Co., as nominee of DTC, on the registration books maintained by \_\_\_\_\_, the initial bond registrar and paying agent for the Bonds. DTC will be responsible for distributing the principal and interest payments to its direct and indirect participants who will, in turn, be responsible for distribution to the beneficial owners of the Bonds (the “Beneficial Owners”). So long as the book-entry-only system is in effect and Cede & Co. is the registered owner of the Bonds, all references herein (except under the heading “TAX EXEMPTION”) to owners of the Bonds will refer to Cede & Co. and not the Beneficial Owners. See APPENDIX F - “BOOK-ENTRY-ONLY SYSTEM” herein.

The Bonds will be subject to optional redemption prior to their stated maturity dates as described under the heading “THE BONDS – Redemption Provisions” herein\*.

The Bonds will be payable as to principal and interest from a continuing, direct, annual, *ad valorem* tax levied against all of the taxable property located within the boundaries of the City as more fully described herein. The Bonds will be payable from such tax without limit as to rate or amount. See “SECURITY AND SOURCES OF PAYMENT OF THE BONDS” herein.

The Bonds will be offered when, as and if issued by the City and received by the underwriter identified below (the “Underwriter”), subject to the legal opinion of Greenberg Traurig, LLP, Bond Counsel, as to validity and tax exemption. Certain legal matters will be passed on for the Underwriter by Squire Patton Boggs (US) LLP. It is expected that the Bonds will be available for delivery through the facilities of DTC on or about December 19, 2019\*.

*This cover page and inside front cover page contain certain information with respect to the Bonds for convenience of reference only. It is not a summary of the issue of which the Bonds are a part. Investors must read this entire Official Statement to obtain information essential to the making of an informed investment decision with respect to the Bonds.*

**HilltopSecurities**

\* Subject to change.

**This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.**

**\$10,725,000\***  
**CITY OF FLAGSTAFF, ARIZONA**  
**GENERAL OBLIGATION BONDS,**  
**SERIES 2019**

**MATURITY SCHEDULE\***  
**Base CUSIP®<sup>(1)</sup> No. 338423**

Maturity Date (July 1)	Principal Amount	Interest Rate	Yield	CUSIP® <sup>(1)</sup> No. 338423
2021	\$1,100,000	%	%	
2022	2,500,000			
2023	400,000			
2024	400,000			
2025	415,000			
2026	425,000			
2027	450,000			
2028	465,000			
2029	490,000			
2030	515,000			
2031	540,000			
2032	560,000			
2033	580,000			
2034	610,000			
2035	625,000			
2036	650,000			

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\* *Subject to change.*

(1) *CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (“CGS”) is managed on behalf of the American Bankers Association by S&P Global Market Intelligence. Copyright© 2019 CUSIP Global Services. All rights reserved. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. None of the City, the Financial Advisor, Bond Counsel, the Underwriter or their agents or counsel assumes responsibility for the accuracy of such numbers.*

## **CITY OF FLAGSTAFF, ARIZONA**

### **CITY COUNCIL**

Coral Evans, *Mayor*  
Adam Shimoni, *Vice Mayor*  
Charlie Odegaard, *Member*  
Jamie Whelan, *Member*  
Regina Salas, *Member*  
Jim McCarthy, *Member*  
Austin Aslan, *Member*

### **ADMINISTRATIVE OFFICIALS**

Greg Clifton, *City Manager*  
Shane Dille, *Deputy City Manager*  
Shannon Anderson, *Deputy City Manager*  
Rick Tadder, *Management Services Director, City Treasurer*  
Sterling Solomon, *City Attorney*  
Stacy Saltzburg, *City Clerk*

### **FINANCIAL ADVISOR**

Stifel, Nicolaus & Company, Incorporated  
*Phoenix, Arizona*

### **BOND COUNSEL**

Greenberg Traurig, LLP  
*Phoenix, Arizona*

### **BOND REGISTRAR AND PAYING AGENT**

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*Phoenix, Arizona*

## REGARDING THIS OFFICIAL STATEMENT

No dealer, broker, salesperson or other person has been authorized by the City of Flagstaff, Arizona (the “City”), Stifel, Nicolaus & Company, Incorporated (the “Financial Advisor”) or Hilltop Securities, Inc. (the “Underwriter”) to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor will there be any sale of the City’s General Obligation Bonds, Series 2019 (the “Bonds”) by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The information set forth in this Official Statement, which includes the cover page, inside front cover page and appendices hereto, has been obtained from the City, the Arizona Department of Revenue, the Assessor, the Finance Department and the Treasurer of Coconino County, Arizona, and other sources that are considered to be accurate and reliable and customarily relied upon in the preparation of similar official statements, but such information has not been independently confirmed or verified by the City, the Financial Advisor or the Underwriter, is not guaranteed as to accuracy or completeness, and is not to be construed as the promise or guarantee of the City, the Financial Advisor or the Underwriter.

The Underwriter has provided the following sentence for inclusion in this Official Statement: “The Underwriter has reviewed the information in this Official Statement pursuant to its responsibilities to investors under the federal securities laws, but the Underwriter does not guarantee the accuracy or completeness of such information.”

None of the City, the Financial Advisor, the Underwriter, Bond Counsel or counsel to the Underwriter are actuaries. None of them have performed any actuarial or other analysis of the City’s share of the unfunded liabilities of the Arizona State Retirement System, the Public Safety Personnel Retirement System or the Elected Officials Retirement Plan.

The presentation of information, including tables of receipts from taxes and other sources, shows recent historical information and is not intended to indicate future or continuing trends in the financial position or other affairs of the City. All information, estimates and assumptions contained herein are based on past experience and on the latest information available and are believed to be reliable, but no representations are made that such information, estimates and assumptions are correct, will continue, will be realized or will be repeated in the future. To the extent that any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated to be such, they are made as such and not as representations of fact or certainty, and no representation is made that any of these statements have been or will be realized. All forecasts, projections, opinions, assumptions or estimates are “forward looking statements” that must be read with an abundance of caution and that may not be realized or may not occur in the future. Information other than that obtained from official records of the City has been identified by source and has not been independently confirmed or verified by the City, the Financial Advisor or the Underwriter and its accuracy cannot be guaranteed. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made pursuant hereto will, under any circumstances, create any implication that there has been no change in the affairs of the City or any of the other parties or matters described herein since the date hereof.

The Bonds will not be registered under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency will have passed upon the accuracy or adequacy of this Official Statement or approved the Bonds for sale.

References to website addresses presented herein are for information purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

The City will undertake to provide continuing disclosure as described in this Official Statement under the heading “CONTINUING DISCLOSURE” and in APPENDIX D – “FORM OF CONTINUING DISCLOSURE UNDERTAKING,” all pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

A wide variety of information, including financial information, concerning the City is available from publications and websites of the City and others. Any such information that is inconsistent with the information set forth in this Official Statement should be disregarded. No such information is a part of, or incorporated into, this Official Statement, except as expressly noted herein.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY ALLOW CONCESSIONS OR DISCOUNTS FROM THE INITIAL PUBLIC OFFERING PRICES TO DEALERS AND OTHERS, AND THE UNDERWRITER MAY OVERALLOT OR ENGAGE IN TRANSACTIONS INTENDED TO STABILIZE THE PRICES OF THE BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET IN ORDER TO FACILITATE THEIR DISTRIBUTION. SUCH STABILIZATION, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTORY STATEMENT .....	1
THE BONDS .....	1
Authorization and Use of Funds .....	1
Terms of the Bonds - Generally .....	1
Bond Registrar and Paying Agent.....	2
Redemption Provisions .....	2
SECURITY AND SOURCES OF PAYMENT OF THE BONDS.....	2
General.....	2
Defeasance.....	3
SOURCES AND USES OF FUNDS.....	3
ESTIMATED DEBT SERVICE REQUIREMENTS .....	4
LITIGATION .....	5
LEGAL MATTERS .....	5
TAX EXEMPTION .....	5
General.....	5
Original Issue Discount and Original Issue Premium.....	6
Changes in Federal and State Tax Law.....	7
Information Reporting and Backup Withholding .....	7
RATINGS.....	7
UNDERWRITING .....	8
RELATIONSHIP AMONG PARTIES .....	8
CONTINUING DISCLOSURE.....	8
FINANCIAL ADVISOR.....	9
FINANCIAL STATEMENTS.....	9
CONCLUDING STATEMENT .....	9
APPENDIX A: CITY OF FLAGSTAFF, ARIZONA – GENERAL AND DEMOGRAPHIC INFORMATION	
APPENDIX B: CITY OF FLAGSTAFF, ARIZONA – FINANCIAL INFORMATION	
APPENDIX C: FORM OF APPROVING LEGAL OPINION	
APPENDIX D: FORM OF CONTINUING DISCLOSURE UNDERTAKING	
APPENDIX E: CITY OF FLAGSTAFF, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018	
APPENDIX F: BOOK-ENTRY-ONLY SYSTEM	

## OFFICIAL STATEMENT

**\$10,725,000\***  
**CITY OF FLAGSTAFF, ARIZONA**  
**GENERAL OBLIGATION BONDS,**  
**SERIES 2019**

### INTRODUCTORY STATEMENT

This Official Statement, which includes the cover page, inside front cover page and Appendices hereto, sets forth information concerning the offering by the City of Flagstaff, Arizona (the “City”) of its General Obligation Bonds, Series 2019 in the aggregate principal amount of \$10,725,000\* (the “Bonds”). See APPENDIX A - “CITY OF FLAGSTAFF, ARIZONA – GENERAL AND DEMOGRAPHIC INFORMATION”, APPENDIX B – “CITY OF FLAGSTAFF, ARIZONA – FINANCIAL INFORMATION” and APPENDIX E – “CITY OF FLAGSTAFF, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018” for certain information regarding the City.

Reference to provisions of State of Arizona (the “State” or “Arizona”) law, whether codified in the Arizona Revised Statutes or uncodified, or of the Arizona Constitution, are references to those current provisions. The provisions may be amended, repealed or supplemented.

### THE BONDS

#### Authorization and Use of Funds

The Bonds are being issued by the City pursuant to Title 35, Chapter 3, Article 3 of the Arizona Revised Statutes, and an ordinance adopted by the Mayor and Council of the City on November 5, 2019 (the “Ordinance”). The Bonds will constitute a portion of the bonds authorized by the voters at special bond elections held in the City on November 2, 2010 and November 8, 2016 and will be issued for the following purposes (collectively, the “Projects”) and to pay costs of issuance of the Bonds:

- (i) \$362,713\* Public Safety Communication System
- (ii) \$11,500,000\* Municipal Court Facilities (a)

After the sale and delivery of the Bonds, the City will have \$9,200,000\* principal amount of authorized but unissued general obligation bonds remaining. The City has general obligation bonds currently outstanding, and additional general obligation bonds may be authorized at future special bond elections. The City plans to borrow approximately \$6,000,000 of funds under a separate loan agreement with the Water Infrastructure Finance Authority of Arizona (“WIFA”) that would be payable from the same source as the Bonds. See TABLE 15A – Direct General Obligation Bonded Debt Outstanding and to be Outstanding in APPENDIX B – “CITY OF FLAGSTAFF, ARIZONA – FINANCIAL INFORMATION.”

#### Terms of the Bonds - Generally

The Bonds will be dated the date of delivery, and will be registered only in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), under the book-entry-only system described herein

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\* *Subject to change. See footnote (b) to TABLE 16 for a description of the treatment of certain proceeds of the Bonds for State voter authorization and debt limit purposes.*

(a) *A portion of this project will be funded by the City’s Certificates of Participation, Series 2019 that are being executed and delivered concurrently with the Bonds pursuant to a separate Official Statement.*

(the “Book-Entry-Only System”). See APPENDIX F – “BOOK-ENTRY-ONLY SYSTEM.” The Bonds will mature on the dates and in the principal amounts and will bear interest from their dated date at the rates set forth on the inside front cover page of this Official Statement. Beneficial ownership interests in the Bonds may be purchased in amounts of \$5,000 of principal due on a specific maturity date or integral multiples thereof. Interest on the Bonds will be payable semiannually on each January 1 and July 1, commencing July 1, 2020\* (each an “Interest Payment Date”), until maturity or prior redemption.

See “TAX EXEMPTION” herein for a discussion of the treatment of interest income on the Bonds for federal or State income tax purposes.

### **Bond Registrar and Paying Agent**

\_\_\_\_\_ will serve as the initial bond registrar, transfer agent and paying agent (the “Bond Registrar and Paying Agent”) for the Bonds. The City may change the Bond Registrar and Paying Agent without notice to or consent of the owners of the Bonds.

### **Redemption Provisions\***

*Optional Redemption.* The Bonds maturing on and prior to July 1, 20\_\_ will not be subject to redemption prior to their stated maturity dates. The Bonds maturing on and after July 1, 20\_\_ will be subject to optional redemption prior to their stated maturity dates, at the direction of the City, in whole or in part in denominations of \$5,000 or integral multiples thereof from maturities selected by the City, on July 1, 20\_\_ and on any date thereafter, at a redemption price equal to the principal amount of Bonds being redeemed plus accrued interest to the date fixed for redemption, without premium.

*Notice of Redemption.* So long as the Bonds are held under the Book-Entry-Only System, notices of redemption will be sent to DTC in the manner required by DTC. See APPENDIX F – “BOOK-ENTRY-ONLY SYSTEM.” If the Book-Entry-Only System is discontinued, notice of redemption of any Bond will be mailed to the registered owner of the Bond or Bonds being redeemed at the address shown on the bond register maintained by the Bond Registrar and Paying Agent not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption. Notice of redemption may be sent to any securities depository by mail, facsimile transmission, wire transmission or any other means of transmission of the notice generally accepted by the respective securities depository. Neither the failure of any registered owner of Bonds to receive a notice of redemption nor any defect therein will affect the validity of the proceedings for redemption of Bonds as to which proper notice of redemption was given.

Notice of any redemption will also be provided as set forth in APPENDIX D – “FORM OF CONTINUING DISCLOSURE UNDERTAKING,” but no defect in said further notice or record nor any failure to give all or a portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed above.

If monies for the payment of the redemption price and accrued interest are not held in separate accounts by the City or the Bond Registrar and Paying Agent prior to sending the notice of redemption, such redemption shall be conditional on such monies being so held on the date set for redemption and if not so held by such date, the redemption shall be cancelled and be of no force and effect.

## **SECURITY AND SOURCES OF PAYMENT OF THE BONDS**

### **General**

The Bonds will be payable as to principal and interest from *ad valorem* taxes to be levied on all taxable property within the City without limitation as to rate or amount. Such taxes are to be levied, assessed and collected as other taxes of the City, in an amount sufficient to pay the interest on all the Bonds then outstanding and installments of the principal of the Bonds becoming due and payable in the ensuing year.

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\* *Subject to change.*

The City has paid and may continue to pay the debt service requirements on certain general obligation bonds from water and sewer system revenues which remain after payment of operation and maintenance expenses of the system and revenue bond debt service as indicated in TABLE 15A – Direct General Obligation Bonded Debt Outstanding and to be Outstanding in APPENDIX B – “CITY OF FLAGSTAFF, ARIZONA – FINANCIAL INFORMATION.” In the event that these net revenues should prove insufficient, or should the City decide not to pay such debt from such net revenues, such indebtedness would then be paid from such *ad valorem* property taxes.

General obligation bonds heretofore and hereafter issued by the City have and will have an equal claim with the Bonds upon the proceeds of taxes levied for debt service on the Bonds. See TABLE 15A – Direct General Obligation Bonded Debt Outstanding and to be Outstanding in APPENDIX B – “CITY OF FLAGSTAFF, ARIZONA – FINANCIAL INFORMATION.”

**Defeasance**

Pursuant to the Ordinance, payment of all or any part of the Bonds may be provided for by the irrevocable deposit, in trust, of moneys or obligations issued or guaranteed by the United States of America (“Defeasance Obligations”) or both, which, with the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate or report of an accountant, to pay when due the principal or redemption price of and interest on such Bonds. Any Bonds so provided for will no longer be outstanding under the Ordinance or payable from *ad valorem* taxes on taxable property in the City, and the owners of such Bonds shall thereafter be entitled to payment only from the moneys and Defeasance Obligations deposited in trust.

**SOURCES AND USES OF FUNDS**

**Sources of Funds**

Principal Amount	\$10,725,000.00*
Net Original Issue Premium (a)	_____
<b>Total Sources of Funds</b>	<b>_____</b>

**Uses of Funds**

Cost of Projects	
Payment of Costs of Issuance (b)	_____
<b>Total Uses of Funds</b>	<b>_____</b>

\_\_\_\_\_

\* *Subject to change.*

(a) *Net original issue premium consists of original issue premium on the Bonds, less original issue discount on the Bonds.*

(b) *Will include compensation and costs of the Underwriter (as defined herein) with respect to the Bonds.*

## ESTIMATED DEBT SERVICE REQUIREMENTS

The following table illustrates the (i) annual debt service on the outstanding general obligation bonds of the City, (ii) estimated annual debt service on the Bonds and (iii) total estimated annual debt service on all general obligation bonds of the City outstanding after issuance of the Bonds.

**TABLE 1**

**Schedule of Estimated Annual Debt Service Requirements (a)  
City of Flagstaff**

Fiscal Year	Bonds Outstanding (b)		The Bonds*		Total Estimated Annual Debt Service Requirements*
	Principal	Interest	Principal	Interest (c)	
2019/20	\$ 5,682,592	\$ 1,337,699		\$ 228,800(d)	\$ 7,249,091
2020/21	4,385,432	1,128,783	\$1,100,000	429,000	7,043,216
2021/22	1,781,298	958,968	2,500,000	385,000	5,625,266
2022/23	1,853,822	888,444	400,000	285,000	3,427,266
2023/24	1,936,423	812,043	400,000	269,000	3,417,466
2024/25	2,009,106	738,510	415,000	253,000	3,415,616
2025/26	2,081,872	662,194	425,000	236,400	3,405,466
2026/27	2,154,724	586,968	450,000	219,400	3,411,091
2027/28	2,242,664	509,027	465,000	201,400	3,418,091
2028/29	1,340,695	427,871	490,000	182,800	2,441,366
2029/30	1,393,821	375,145	515,000	163,200	2,447,166
2030/31	1,447,043	320,323	540,000	142,600	2,449,966
2031/32	1,395,000	263,400	560,000	121,000	2,339,400
2032/33	1,455,000	207,600	580,000	98,600	2,341,200
2033/34	1,510,000	149,400	610,000	75,400	2,344,800
2034/35	1,090,000	89,000	625,000	51,000	1,855,000
2035/36	1,135,000	45,400	650,000	26,000	1,856,400
	<u>\$ 34,894,493</u>		<u>\$ 10,725,000</u>		

\* Subject to change.

(a) Prepared by Stifel, Nicolaus & Company, Incorporated (the "Financial Advisor").

(b) Represents all general obligation bonded indebtedness outstanding. Also includes funds borrowed under a separate Loan Agreement with WIFA – see footnote (a) to TABLE 15A. The table above reflects the debt service requirements on the full amount of such Loan Agreement.

(c) Interest on the Bonds is estimated.

(d) The first interest payment on the Bonds will be due on July 1, 2020\*. Thereafter, interest payments will be made semiannually on each January 1 and July 1 until maturity or prior redemption.

## LITIGATION

To the knowledge of the City, no litigation or administrative action or proceeding is pending, restraining or enjoining, or seeking to restrain or enjoin, the issuance or delivery of the Bonds or the levy, collection or receipt of *ad valorem* property taxes to pay the debt service on the Bonds, contesting or questioning the proceedings and authority under which the Bonds have been authorized and are to be issued, sold, executed or delivered, or the validity of the Bonds. An authorized City representative will deliver a certificate to the same effect at the time of the original delivery of the Bonds.

## LEGAL MATTERS

Legal matters incident to the authorization, sale and issuance by the City of the Bonds and with regard to the tax-exempt status thereof will be passed upon by Greenberg Traurig, LLP, Phoenix, Arizona, as Bond Counsel, whose services have been retained by the City. The signed legal opinion of Bond Counsel, dated and premised on the law in effect as of the date of the Bonds, will be delivered to the Underwriter at the time of original delivery of the Bonds. The form of that opinion is included as APPENDIX C - "FORM OF APPROVING LEGAL OPINION" hereto. The legal opinion to be delivered may vary from the text of APPENDIX C - "FORM OF APPROVING LEGAL OPINION" if necessary to reflect the facts and law existing on the date of delivery. The opinion will speak only as of its date, and subsequent distribution, by recirculation of this Official Statement or otherwise, should not be construed as a representation that Bond Counsel has reviewed or expressed any opinion concerning any matters relating to the Bonds subsequent to the original delivery of the Bonds.

Certain legal matters will be passed upon for the Underwriter by Squire Patton Boggs (US) LLP, counsel to the Underwriter.

From time to time, there are legislative proposals (and interpretations of such proposals by courts of law and other entities and individuals) which, if enacted, could alter or amend the property tax system of the State and numerous matters, both financial and nonfinancial, impacting the operations of municipalities which could have a material impact on the City and could adversely affect the secondary market value or marketability of the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to obligations (such as the Bonds) issued prior to enactment.

The legal opinions to be delivered concurrently with the delivery of the Bonds will express the professional judgment of the attorneys rendering the opinion as to the legal issues explicitly addressed therein dated and speaking only as of the date of delivery of the Bonds. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

## TAX EXEMPTION

### General

The Internal Revenue Code of 1986, as amended (the "Code"), includes requirements which the City must continue to meet after the issuance of the Bonds in order that the interest on the Bonds be and remain excludable from gross income for federal income tax purposes. The City's failure to meet these requirements may cause the interest on the Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Bonds. The City has covenanted in the Ordinance to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds.

In the opinion of Bond Counsel, assuming the accuracy of certain representations and certifications of the City and continuing compliance by the City with the tax covenants referred to above, under existing statutes, regulations, rulings and court decisions, the interest on the Bonds is excludable from gross income of the holders thereof for federal income tax purposes. Interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum

tax imposed on individuals. Bond Counsel is further of the opinion that the interest on the Bonds is exempt from income taxation under the laws of the State. Bond Counsel will express no opinion as to any other tax consequences regarding the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors as to the status of interest on the Bonds under the tax laws of any state other than the State.

The above opinion on federal tax matters with respect to the Bonds will be based on and will assume the accuracy of certain representations and certifications of the City, and compliance with certain covenants of the City to be contained in the transcript of proceedings and that are intended to evidence and assure the foregoing, including that the Bonds will be and will remain obligations the interest on which is excludable from gross income for federal income tax purposes. Bond Counsel will not independently verify the accuracy of those certifications and representations. Bond Counsel will express no opinion as to any other consequences regarding the Bonds.

Except as described above, Bond Counsel will express no opinion regarding the federal income tax consequences resulting from the receipt or accrual of the interest on the Bonds, or the ownership or disposition of the Bonds. Prospective purchasers of Bonds should be aware that the ownership of Bonds may result in other collateral federal tax consequences, including (i) the denial of a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds, (ii) the reduction of the loss reserve deduction for property and casualty insurance companies by the applicable statutory percentage of certain items, including the interest on the Bonds, (iii) the inclusion of the interest on the Bonds in the earnings of certain foreign corporations doing business in the United States for purposes of a branch profits tax, (iv) the inclusion of the interest on the Bonds in the passive income subject to federal income taxation of certain Subchapter S corporations with Subchapter C earnings and profits at the close of the taxable year and (v) the inclusion of interest on the Bonds in the determination of the taxability of certain Social Security and Railroad Retirement benefits to certain recipients of such benefits. The nature and extent of the other tax consequences described above will depend on the particular tax status and situation of each owner of the Bonds. Prospective purchasers of the Bonds should consult their own tax advisors as to the impact of these other tax consequences.

Bond Counsel's opinions are based on existing law, which is subject to change. Such opinions are further based on factual representations made to Bond Counsel as of the date thereof. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Bond Counsel's attention, or to reflect any changes in law that may thereafter occur or become effective. Moreover, Bond Counsel's opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or the courts; rather, such opinions represent Bond Counsel's professional judgment based on its review of existing law, and in reliance on the representations and covenants that it deems relevant to such opinion.

### **Original Issue Discount and Original Issue Premium**

Certain of the Bonds (for purposes of this section, "Discount Bonds") may be offered and sold to the public at an original issue discount ("OID"). OID is the excess of the stated redemption price at maturity (the principal amount) over the "issue price" of a Discount Bond determined under Code Section 1273 or 1274 (i.e., for obligations issued for money in a public offering, the initial offering price to the public (other than to bond houses and brokers) at which a substantial amount of the obligation of the same maturity is sold pursuant to that offering). For federal income tax purposes, OID accrues to the owner of a Discount Bond over the period to maturity based on the constant yield method, compounded semiannually (or over a shorter permitted compounding interval selected by the owner). The portion of OID that accrues during the period of ownership of a Discount Bond (i) is interest excludable from the owner's gross income for federal income tax purposes to the same extent, and subject to the same considerations discussed above, as other interest on the Bonds, and (ii) is added to the owner's tax basis for purposes of determining gain or loss on the maturity, redemption, prior sale or other disposition of that Discount Bond.

Certain of the Bonds (for purposes of this section, "Premium Bonds") may be offered and sold to the public at a price in excess of their stated redemption price (the principal amount) at maturity (or earlier for certain Premium Bonds callable prior to maturity). That excess constitutes bond premium. For federal income tax purposes, bond premium is amortized over the period to maturity of a Premium Bond, based on the yield to maturity of that Premium Bond (or, in the case of a Premium Bond callable prior to its stated maturity, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on that Premium Bond), compounded semiannually (or over a shorter permitted compounding interval selected by the owner). No portion of that bond premium is deductible by the owner of a Premium Bond. For purposes of determining the owner's gain or loss on the

sale, redemption (including redemption at maturity) or other disposition of a Premium Bond, the owner's tax basis in the Premium Bond is reduced by the amount of bond premium that accrues during the period of ownership. As a result, an owner may realize taxable gain for federal income tax purposes from the sale or other disposition of a Premium Bond for an amount equal to or less than the amount paid by the owner for that Premium Bond.

Owners of Discount and Premium Bonds should consult their own tax advisors as to the determination for federal income tax purposes of the amount of OID or bond premium properly accruable or amortizable in any period with respect to the Discount or Premium Bonds and as to other federal tax consequences, and the treatment of OID and bond premium for purposes of state and local taxes on, or based on, income.

### **Changes in Federal and State Tax Law**

From time to time, there are legislative proposals suggested, debated, introduced or pending in congress or in the State legislature that, if enacted into law, could alter or amend one or more of the federal tax matters, or state tax matters, respectively, described above including, without limitation, the excludability from gross income of interest on the Bonds, adversely affect the market price or marketability of the Bonds, or otherwise prevent the holders from realizing the full current benefit of the status of the interest thereon. It cannot be predicted whether or in what form any such proposal may be enacted, or whether, if enacted, any such proposal would affect the Bonds. Prospective purchasers of the Bonds should consult their tax advisors as to the impact of any proposed or pending legislation.

### **Information Reporting and Backup Withholding**

Interest paid on tax-exempt bonds such as the Bonds is subject to information reporting to the Internal Revenue Service in a manner similar to interest paid on taxable obligations. This reporting requirement does not affect the excludability of interest on the Bonds from gross income for federal income tax purposes. However, in conjunction with that information reporting requirement, the Code subjects certain non-corporate owners of the Bonds, under certain circumstances, to "backup withholding" at the rates set forth in the Code, with respect to payments on the Bonds and proceeds from the sale of the Bonds. Any amount so withheld would be refunded or allowed as a credit against the federal income tax of such owner of the Bonds. This withholding generally applies if the owner of the Bonds (i) fails to furnish the payor such owner's social security number or other taxpayer identification number ("TIN"), (ii) furnished the payor an incorrect TIN, (iii) fails to properly report interest, dividends, or other "reportable payments" as defined in the Code, or (iv) under certain circumstances, fails to provide the payor or such owner's securities broker with a certified statement, signed under penalty of perjury, that the TIN provided is correct and that such owner is not subject to backup withholding. Prospective purchasers of the Bonds may also wish to consult with their tax advisors with respect to the need to furnish certain taxpayer information in order to avoid backup withholding.

## **RATING**

S&P Global Ratings, a division of Standard & Poor's Financial Services LLC ("S&P") has assigned the rating of "\_\_\_" to the Bonds. Such rating reflects only the views of S&P. An explanation of the significance of a rating assigned by S&P may be obtained at One California Street, 31st Floor, San Francisco, CA 94111. Such rating may be revised or withdrawn entirely at any time by S&P, if, in its respective judgment, circumstances so warrant. Any downward revision or withdrawal of such rating may have an adverse effect on the market price or marketability of the Bonds. The City has covenanted in its continuing disclosure undertaking that it will file notice of any formal change in any ratings relating to the Bonds. See "CONTINUING DISCLOSURE" and APPENDIX D – "FORM OF CONTINUING DISCLOSURE UNDERTAKING" herein.

## UNDERWRITING

The Bonds will be purchased by Hilltop Securities Inc. (the “Underwriter”) at an aggregate purchase price of \$\_\_\_\_\_, pursuant to a bond purchase agreement (the “Purchase Contract”) entered into by and between the City and the Underwriter. If the Bonds are sold to produce the yields shown on the inside front cover page hereof, the Underwriter’s compensation will be \$\_\_\_\_\_. The Purchase Contract provides that the Underwriter will purchase all of the Bonds so offered if any are purchased. The Underwriter may offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into unit investment trusts) and others at prices higher or yields lower than the public offering prices or yields stated on the inside front cover page hereof. The initial offering prices or yields set forth on the inside front cover page may be changed, from time to time, by the Underwriter without amendment of the Official Statement.

## RELATIONSHIP AMONG PARTIES

Bond Counsel has previously represented, and is currently representing, the Underwriter and the Financial Advisor with respect to other financings and has acted or is acting as bond counsel with respect to other bonds underwritten by the Underwriter and may do so in the future. Bond Counsel also serves and has served as bond counsel for one or more of the political subdivisions that the City territorially overlaps. Counsel to the Underwriter has previously acted as bond counsel with respect to other bonds underwritten by the Underwriter and the Financial Advisor and may continue to do so in the future if requested.

## CONTINUING DISCLOSURE

The City will covenant for the benefit of certain owners of the Bonds to provide certain financial information and operating data relating to the City by not later than February 1 in each year commencing February 1, 2020 (the “Annual Reports”), and to provide notices of the occurrence of certain enumerated events (the “Notices of Listed Events”). The Annual Reports, the Notices of Listed Events and any other document or information required to be filed by the City as such will be filed with the Municipal Securities Rulemaking Board (the “MSRB”) through the MSRB’s Electronic Municipal Market Access System (“EMMA”), each as described in APPENDIX D – “FORM OF CONTINUING DISCLOSURE UNDERTAKING.” The specific nature of the information to be contained in the Annual Reports and the Notices of Listed Events is also set forth in APPENDIX D – “FORM OF CONTINUING DISCLOSURE UNDERTAKING.” These covenants will be made in order to assist the Underwriter in complying with the Securities and Exchange Commission’s Rule 15c2-12(b)(5) (the “Rule”). A failure by the City to comply with these covenants must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price. *Pursuant to Arizona Law, the ability of the City to comply with such covenants will be subject to annual appropriation of funds sufficient to provide for the costs of compliance with such covenants.* Should the City not comply with such covenants due to a failure to appropriate for such purpose, the City has covenanted to provide notice of such fact to the MSRB. Absence of continuing disclosure, due to non-appropriation or otherwise, could adversely affect the Bonds and specifically their market price and transferability.

The City previously entered into continuing disclosure undertakings (the “Prior Undertakings”) in connection with the issuance of certain bonds, which require the filing on or before February 1 of each year of audited financial statements and annual updates with respect to certain financial information and operating data related to the City (collectively, the “Prior Annual Report”). Until March 22, 2016, the Prior Annual Report with respect to the fiscal year ended June 30, 2015 was not associated with the nine-digit CUSIP numbers for the City’s Refunding Certificates of Participation, Series 12 relating to the Arizona Municipal Financing Program. For fiscal years ending June 30, 2014 and June 30, 2015, certain information required by the Prior Undertakings was filed but not presented in the same format as within the official statements. The City did not file notices of the failure to provide the Prior Annual Report. The City did not provide a separate notice of defeasance in connection with the advance refunding in part of its General Obligation Bonds, Projects of 2004, Series A (2006). The correctly formatted data was filed on EMMA on March 22, 2016 and

May 26, 2016. The City has implemented procedures to facilitate compliance with the Prior Undertakings, the continuing disclosure undertaking related to the Bonds and future similar undertakings in all material respects.

### **FINANCIAL ADVISOR**

The Financial Advisor’s fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance of the Bonds. The Financial Advisor participated in the preparation of the Official Statement but has not verified, and does not assume any responsibility for, the information, covenants and representations contained in any of the legal documents with respect to the federal income tax status of the Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

The Financial Advisor has provided the following sentence for inclusion in this Official Statement: “The Financial Advisor has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to the City, but the Financial Advisor does not guarantee the accuracy or completeness of such information.”

### **FINANCIAL STATEMENTS**

The financial statements of the City as of June 30, 2018 and for its fiscal year then ended, which are included as APPENDIX E of this Official Statement, have been audited by CliftonLarsonAllen LLP, as stated in its opinion which appears in APPENDIX E – “CITY OF FLAGSTAFF, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018.” The City neither requested nor obtained the consent of CliftonLarsonAllen LLP to include its report and CliftonLarsonAllen LLP has performed no procedures subsequent to rendering its opinion on the financial statements.

### **CONCLUDING STATEMENT**

To the extent that any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated to be such, they are made as such and not as representations of fact or certainty and no representation is made that any of these opinions or estimates have been or will be realized. Information in this Official Statement has been derived by the City from official and other sources and is believed by the City to be accurate and reliable. Information other than that obtained from official records of the City has not been independently confirmed or verified by the City and its accuracy is not guaranteed. Neither this Official Statement nor any statement that may have been or that may be made orally or in writing is to be construed as part of a contract with the original purchasers or subsequent owners of the Bonds.

CITY OF FLAGSTAFF, ARIZONA

By: \_\_\_\_\_  
Management Services Director

**CITY OF FLAGSTAFF, ARIZONA  
GENERAL AND DEMOGRAPHIC INFORMATION**

**General**

The City is northern Arizona's principal population, commerce and education center. The City is situated in a mountainous region at an elevation of 7,000 feet. At the base of the San Francisco Peaks, including Mount Humphreys (the highest point in the State with an elevation of 12,670 feet), the City is known for its proximity to such Arizona attractions as the Grand Canyon, Wupatki National Monument, Sunset Crater, Walnut Canyon, Oak Creek Canyon and Meteor Crater.

The City was originally founded in the late 1800's as a work camp for construction crews working on the transcontinental railroad. It was incorporated as a town in 1894 and as a city in 1928. It has served as the county seat for Coconino County, Arizona (the "County") since 1891.

Listed below are U.S. Census population figures for the City, the County and the State.

**TABLE 2  
POPULATION STATISTICS**

	City of Flagstaff	Coconino County	State of Arizona
2018 Estimated (a)	74,736	145,564	7,076,199
2010 Census	65,870	134,421	6,392,017
2000 Census	52,894	116,320	5,130,632
1990 Census	45,857	96,591	3,665,228
1980 Census	34,743	75,008	2,716,633
1970 Census	26,117	48,326	1,775,399

(a) *Estimates as of July 1, 2018 (data released December 2018).*

Source: Arizona Office of Economic Opportunity, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

**Municipal Government**

The City operates under a Council-Manager form of government as provided by its Charter, which was originally adopted on October 3, 1958. The City Council is comprised of a Mayor and six Council members. The Council members are elected on a non-partisan ballot for four-year staggered terms while the Mayor is elected at large for a two-year term. The Mayor and Council members have equal voting power. The Council is responsible for policy-making, as well as making appointments to advisory boards, commissions and committees. It also appoints Municipal Court Judges and the City Attorney. Additionally, the City Council hires the City Manager who has full responsibility for carrying out Council policies and administering City operations. The City Manager in turn appoints City employees and department heads under civil service procedures as specified in the Charter.

**Economy**

The economy of the City is based primarily on government, small and medium-sized manufacturing, the service industry, trade and tourism. As the home of Northern Arizona University ("NAU"), the City is a center of educational, governmental and scientific employment and is becoming a center for research and development as well as the distribution and manufacturing of high technology products. The location of the City at the junction of Interstates 40 and 17, plus the

close proximity of seven national parks and monuments, makes tourism a major source of employment and a strong contributor to the revenue base of the City. In addition, the City serves as the major trade and service center for a wide area of northern Arizona.

The table below sets forth the major employers in the City.

**TABLE 3**  
**MAJOR EMPLOYERS**  
**City of Flagstaff, Arizona**

<b>Employer</b>	<b>Product/Service</b>	<b>Approximate Employment</b>
Northern Arizona University	Education	2,570
Flagstaff Medical Center	Healthcare	2,200
W.L. Gore & Associates	Medical Equipment Manufacturing	1,950
Flagstaff Unified School District	Education	1,375
Coconino County	Government	1,200
City of Flagstaff	Government	950
Wal-Mart	Retail	630
Grand Canyon Railways	Lodging and Travel	500
North Country Healthcare	Healthcare	345
Nestle Purina	Distribution Center	240

Source: City of Flagstaff, 2018 Comprehensive Annual Financial Report.

The table below sets forth the unemployment rate averages for the City, the County, the State and the United States for the years indicated.

**TABLE 4**  
**UNEMPLOYMENT RATE AVERAGES**

<b>Year</b>	<b>United States</b>	<b>State of Arizona</b>	<b>Coconino County</b>	<b>City of Flagstaff</b>
2019 (a)	3.7%	5.0%	5.9%	4.5%
2018	3.9	4.8	5.5	3.9
2017	3.9	4.9	5.5	3.9
2016	4.2	5.3	6.0	4.2
2015	5.3	6.0	6.5	4.5
2014	6.2	6.4	7.1	5.1

(a) Data through August 2019.

Source: Arizona Office of Economic Opportunity, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

The table below shows a comparison of the changes in annual average employment levels in the various non-agriculture sectors of the County for calendar years 2014 into 2019.

**TABLE 5**  
**LABOR FORCE AND NONFARM EMPLOYMENT**  
**Coconino County, Arizona**

	2019 (a)	2018	2017	2016	2015	2014
Mining and construction	2,600	2,500	2,400	2,300	2,200	2,100
Manufacturing	4,500	4,400	4,300	4,400	4,300	4,300
Trade, transportation, and utilities	9,200	9,600	9,500	9,800	10,000	10,000
Information	400	400	500	400	400	400
Financial activities	1,400	1,400	1,400	1,400	1,300	1,200
Professional and business services	3,500	3,400	3,100	3,100	3,200	3,000
Educational and health services	9,300	9,300	9,500	9,600	9,400	9,200
Leisure and hospitality	15,800	15,400	1,500	14,000	13,200	13,100
Other Services	1,600	1,700	1,700	1,800	1,800	1,600
Government	19,500	20,100	19,800	19,600	19,700	19,700
	<u>67,800</u>	<u>68,200</u>	<u>53,700</u>	<u>66,400</u>	<u>65,500</u>	<u>64,600</u>

(a) Data through August 2019.

Source: Arizona Office of Economic Opportunity, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics.

### Commerce

The following table illustrates the past five years of sales tax collections.

**TABLE 6**  
**SALES TAX COLLECTIONS**  
**City of Flagstaff, Arizona**  
**(\$000s omitted)**

Fiscal Year	Amount
2018/19(a)	\$20,508
2017/18	21,128
2016/17	21,174
2015/16	19,090
2014/15	17,845

(a) Preliminary estimates, unaudited.

Source: The Comprehensive Annual Financial Reports for the City and the City.

## Tourism

Flagstaff is located near such tourist attractions as the Grand Canyon, the Glen Canyon Dam and Lake Powell, Sunset Crater, Walnut Canyon, and the scenic recreational attraction of Oak Creek Canyon. Located near Flagstaff are various United States Forest Service park areas for camping, stream and lake fishing, swimming, water skiing and hunting. Snow-skiing is available in the winter at the Arizona Snowbowl, a few miles north of Flagstaff. Annual summer festivities in Flagstaff include an art, music, and theater festival. The J. Lawrence Walkup Skydome at NAU, with a seating capacity of 16,000, can be adapted to a variety of events including football, basketball, ice hockey, badminton, volleyball, track, intramurals, and cultural and entertainment events.

The following table sets forth the number of visitors to selected national parks and monuments which are located near Flagstaff.

### TOURISM STATISTICS BY NUMBER OF VISITORS

<b>Calendar Year</b>	<b>Grand Canyon National Park</b>	<b>Montezuma Castle National Monument</b>	<b>Sunset Crater National Monument</b>	<b>Walnut Canyon National Monument</b>	<b>Wupatki National Monument</b>
2019 (a)	4,186,147	254,260	79,763	74,854	78,411
2018	6,380,495	390,151	104,583	167,736	205,122
2017	6,254,238	398,174	119,454	165,134	236,454
2016	5,969,811	392,170	106,809	152,444	223,172
2015	5,520,736	416,635	182,203	153,322	212,828
2014	4,756,771	407,017	176,723	135,230	195,962

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(a) Data through August 2019.

Source: Arizona Office of Tourism.

**CITY OF FLAGSTAFF, ARIZONA –  
FINANCIAL INFORMATION**

**Introduction**

The City's fiscal year is from July 1 through June 30. City budgeting for a fiscal year formally begins with the preparation of a proposed budget for submission to the City Council for tentative adoption in early June of each year. After publication of the budget and a public hearing, a final budget is adopted for the upcoming fiscal year. The budget must contain detailed information concerning the sums required to be expended for each purpose and the City's tax levy is then set based on the adopted figures.

**Expenditure Limitation**

Beginning in fiscal year 1982/83, the City became subject to the annual expenditure limitation which is set by the Arizona Economic Estimates Commission. This limitation is based on the City's annual expenditures for fiscal year 1979/80, with this base adjusted to reflect interim population, cost of living and boundary changes. Certain expenditures are specifically exempt from the limit, including expenditures made from federal funds and bond sale proceeds, as well as debt service payments. The limitations can be exceeded for certain emergency expenditures or if approved by the voters. The constitutional provisions that relate to the expenditure limitation provide four processes to exceed the spending limit: a local home rule option, a permanent base adjustment, a one-time override, and a capital project accumulation.

Since the inception of expenditure limitations, the City has not exceeded its limitation in any fiscal year.

**Budget Process**

The annual budget serves as the foundation for the City's financial planning and control. The City Council formally adopts the budget and legally allocates, or appropriates, available monies for all funds and entities related to the City. All of these funds and entities are included in the basic financial statements. The City Manager submits to the Council each spring a proposed budget for the fiscal year commencing the following July 1. The budget includes proposed expenditures and the means of financing them. Two public hearings are held prior to the budget's final adoption in order to obtain taxpayer comments. The budget is legally enacted through the passage of a resolution. The resolution sets the limit for expenditures during the fiscal year. The legal level of control for the budget is the division level. Additional expenditures may be authorized for unanticipated and/or inadequately budgeted events threatening the public health or safety as prescribed in the State Constitution, Article 9, Section 20.

The City's financial plan requires many elements working in concert with one another. Some of these financial plan elements are financial resource planning, multi-year budget planning, strategic capital improvement project planning, and financial policy impacts, all of which are further identified below.

*Financial Resource Planning* – Strategic financial planning begins with determining the City's fiscal capacity based upon long-term financial forecasts of recurring available revenues. Financial forecasts coupled with financial trend analysis help preserve the fiscal well-being of the City. Strategic financial capacity planning is a critical element to reach long-term financial stability goals and to determine special financial needs for critical objectives of the City Council.

*Multi-Year Budget Planning* – Multi-year budget planning encompasses long-range operating expenditure plans (including the operating impacts of capital projects), which are linked to the community expectations and broad goals of the City Council. The multi-year approach provides a better opportunity for staff to change its financial paradigm from what do we need this year to how do we accomplish our service objectives over-time, given our financial capacity.

While the City is required to adopt an annual budget to meet State statutory requirements, the City builds a financial plan for five years to help anticipate future impacts and ensure achievement of City objectives within limited or decreasing resources.

*Strategic Capital Improvement Project Planning* – The City’s Capital Improvement Projects are planned for five or more years and analyzed using City specific prioritization criteria. The operating cost impacts of projects are also planned and considered in developing future operating budget plans. Projects with significant operating impacts are carefully timed to avoid contingent liabilities, which future operating resources cannot meet. Pay-as-you-go funding sources are also conservatively estimated to avoid over-committing to capital construction using revenues that are not certain. To the extent debt financing is used and/or required, capital project plans are sized to conform to existing debt management policies.

*Financial Policy Planning* – The City’s financial policies dictate minimum fund balance levels for the General, Special Revenue, and Enterprise Funds. The General Fund is required to maintain a fund balance of 15% of ongoing revenues and special revenue and enterprise funds are to maintain a 10% fund balance, as calculated against ongoing revenues. The City had a 15% fund balance in FY 2013 and made a commitment to increase the fund balance to 20% over the next few years. Since FY 2015, the City has adopted General Fund budgets with an excess of 20% fund balance in the five-year plans.

### **Financial Reports and Examination of Accounts**

State law requires that the City’s financial books and records be audited by independent auditors, on an annual basis. Annually, independent certified public accountants audit the financial records as required by State law and the City’s Charter. See APPENDIX C – “THE CITY – AUDITED ANNUAL FINANCIAL STATEMENTS FOR FISCAL YEAR ENDED JUNE 30, 2018” for the financial statements from the City’s June 30, 2018, Comprehensive Annual Financial Report. The City received a Certificate of Achievement for Excellence in Financial Reporting from GFOA for its 2018 Comprehensive Annual Financial Report as well as in each of the 25 preceding years.

## PROPERTY TAXES

As described under the heading “SECURITY AND SOURCES OF PAYMENT OF THE BONDS,” the City will be required by law to cause to be levied on all the taxable property in the City a continuing, direct, annual, *ad valorem* property tax sufficient to pay all principal, interest, and costs of administration for the Bonds as the same become due. The State’s *ad valorem* property tax levy and collection procedures are summarized under this heading “PROPERTY TAXES.”

### **Taxable Property**

Real property and improvements and personal property are either valued by the Assessor of the County or the Arizona Department of Revenue (the “Department of Revenue”). Property valued by the Assessor of the County is referred to as “locally assessed” property and generally encompasses residential, agricultural and traditional commercial and industrial property. Property valued by the Department of Revenue is referred to as “centrally valued” property and generally includes large mine and utility entities.

Locally assessed property is assigned two values: Full Cash Value and Limited Property Value (both as defined herein). Centrally valued property is assigned one value: Full Cash Value.

### **Full Cash Value**

In the context of a specific property parcel, full cash value (“Full Cash Value”) is statutorily defined to mean “the value determined as prescribed by statute” or if a statutory method is not prescribed it is “synonymous with market value, which means the estimate of value that is derived annually by using standard appraisal methods and techniques,” which generally include the market approach, the cost approach and the income approach. In valuing locally assessed property, the Assessor of the County generally uses a cost approach to value commercial/industrial property and a market approach to value residential property. In valuing centrally valued property, the Department of Revenue begins generally with information provided by taxpayers and then applies procedures provided by State law. State law allows taxpayers to appeal such Full Cash Values by providing evidence of a lower value, which may be based upon another valuation approach. Full Cash Value is used as the ceiling for determining Limited Property Value. Unlike Limited Property Value, increases in Full Cash Value are not limited.

### **Limited Property Value**

In the context of a specific property parcel, limited property value (“Limited Property Value”) is a property value determined pursuant to the Arizona Constitution and the Arizona Revised Statutes. Except as described in the next sentence, for locally assessed property in existence in the prior year, Limited Property Value is limited to the lesser of Full Cash Value or an amount 5% greater than Limited Property Value determined for the prior year for such specific property parcel. In the following circumstances, Limited Property Value is established at a level or percentage of Full Cash Value that is comparable to that of other properties of the same or a similar use or classification: property that was erroneously totally or partially omitted from the property tax rolls in the preceding tax year, except as a result of the matters described in this sentence; property for which a change in use has occurred since the preceding tax year and property that has been modified by construction, destruction, or demolition since the preceding valuation year such that the total value of the modification is equal to or greater than fifteen percent of the Full Cash Value. (Limited Property Value of property that has been split, subdivided or consolidated varies depending on when the change occurred.) A separate Limited Property Value is not provided for centrally valued property.

## Full Cash Value and Limited Property Value for Taxing Jurisdictions

The Full Cash Value in the context of a taxing jurisdiction is the sum of the Full Cash Value associated with each parcel of property in the jurisdiction. Full Cash Value of the jurisdiction is the basis for determining constitutional and statutory debt limits for certain political subdivisions in Arizona, including the City.

The Limited Property Value in the context of a taxing jurisdiction is the sum of the Limited Property Value associated with each parcel of locally assessed property within the jurisdiction plus the sum of the Full Cash Value associated with each parcel of centrally valued property within the jurisdiction. Limited Property Value of the jurisdiction is used as the basis for levying both primary and secondary taxes. See “Primary Taxes” and “Secondary Taxes” below.

## Property Classification and Assessment Ratios

All property, both real and personal, is assigned a classification (defined by property use) and related assessment ratio that is multiplied by the Limited Property Value or Full Cash Value of the property, as applicable, to obtain the “Limited Assessed Property Value” and the “Full Cash Assessed Value,” respectively.

The assessment ratios for each property classification are set forth by tax year in the following table.

**TABLE 7**

### Property Tax Assessment Ratios (Tax Year)

Property Classification (a)	2015	2016	2017	2018	2019
Mining, utilities, commercial and industrial	18.5%	18%	18%	18%	18%
Agricultural and vacant land	16	15	15	15	15
Owner occupied residential	10	10	10	10	10
Leased or rented residential	10	10	10	10	10
Railroad, private car company and airline flight property (b)	15	14	15	14	15

(a) *Additional classes of property exist, but seldom amount to a significant portion of a municipal body’s total valuation.*

(b) *This percentage is determined annually pursuant to Section 42-15005, Arizona Revised Statutes.*

Source: *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue.

## Primary Taxes

Per State statute, taxes levied for the maintenance and operation of counties, cities, towns, school districts, community college districts and the State are “primary taxes.” Primary taxes are levied against Net Limited Assessed Property Value (as defined herein). “Net Limited Assessed Property Value” is determined by excluding the value of property exempt from taxation from Limited Assessed Property Value of locally assessed property and from Full Cash Assessed Value of centrally valued property and combining the resulting two amounts.

The primary taxes levied by each county, city, town and community college district are constitutionally limited to a maximum increase of 2% over the maximum allowable prior year’s levy limit plus any taxes on property not subject to taxation in the preceding year (e.g., new construction and property brought into the jurisdiction because of annexation). The 2% limitation does not apply to primary taxes levied on behalf of school districts.

The combined taxes on owner occupied residential property only, for purposes other than voter-approved bond indebtedness and overrides and certain special district assessments, are constitutionally limited to 1% of the Limited Property Value of such property. This constitutional limitation on the combined tax levies for owner occupied

residential property is implemented by reducing the school district's taxes. To offset the effects of reduced school district property taxes, the State compensates the school district by providing additional State aid.

### **Secondary Taxes**

Per State statute, taxes levied for payment of bonds like the Bonds, voter-approved budget overrides, the maintenance and operation of special purpose districts such as sanitary, fire, road improvement, water conservation and career technical education districts, and taxes levied by school districts for qualified desegregation expenditures are "secondary taxes." Like primary taxes, secondary taxes are also levied against Net Limited Assessed Property Value. There is no constitutional or statutory limitation on annual levies for voter-approved bond indebtedness and overrides and certain special district assessments.

### **Calculating Debt Limitations**

Net Full Cash Assessed Value is determined by excluding the value of property exempt from taxation from Full Cash Assessed Value of both locally assessed and centrally valued property and combining the resulting two amounts. This is the basis for determining bonded debt limitations for certain political subdivisions in Arizona, including the City.

### **Tax Procedures**

The State tax year has been defined as the calendar year, notwithstanding the fact that tax procedures begin prior to January 1 of the tax year and continue through May of the succeeding calendar year.

On or before the third Monday in August each year the Board of Supervisors of the County prepares the tax roll setting forth certain valuations by taxing district of all property in the County subject to taxation. The tax roll is then forwarded to the Treasurer of the County. (The Assessor of the County is required to have completed the assessment roll by December 15th of the year prior to the levy. This roll identifies the valuation and classification of each parcel located within the County for the tax year).

With the various budgetary procedures having been completed by the governmental entities, the appropriate tax rate for each jurisdiction is then levied upon each non-exempt parcel of property in order to determine the total tax owed by each property owner. Any subsequent decrease in the value of the tax roll due to appeals or other reasons reduces the amount of taxes received by each jurisdiction.

The property tax lien on real property attaches on January 1 of the year the tax is levied. Such lien is prior and superior to all other liens and encumbrances on the property subject to such tax except liens or encumbrances held by the State or liens for taxes accruing in any other years and liens imposed by the United States. Set forth below is a record of property taxes levied and collected in the City for a portion of the current fiscal year and all of the previous five fiscal years.

**TABLE 8**

**Property Taxes Levied and Collected (a)  
City of Flagstaff, Arizona**

Fiscal Year	City Tax Rate	Adopted City Tax Levy	Adjusted City Tax Levy as of June 30th	Collected to June 30th of Initial Fiscal Year		Adjusted City Tax Levy as of 9/18/2019	Cumulative Collections to September 18, 2019	
				Amount	% of Adj. Levy as of		Amount	% of Adj. Levy as of
2019/20	\$1.6299	\$14,160,679	(b)	(b)	(b)	\$14,160,679	\$84,035	0.59%
2018/19	1.6700	13,527,514	\$13,516,909	\$13,311,900	98.48%	13,514,187	13,369,483	98.93
2017/18	1.6599	12,459,025	12,464,772	12,297,839	98.66	12,459,608	12,441,984	99.86
2016/17	1.6487	11,708,122	11,671,599	11,500,020	98.53	11,677,522	11,662,309	99.87
2015/16	1.6600	11,344,815	11,332,211	11,147,964	98.37	11,318,801	11,307,573	99.90
2014/15	1.6784	11,199,924	11,187,494	11,002,751	98.35	11,175,664	11,164,734	99.90

(a) *Taxes are collected by the Treasurer of the County. Taxes in support of debt service are levied by the Board of Supervisors of the County as required by Arizona Revised Statutes. Delinquent taxes are subject to an interest and penalty charge of 16% per annum, which is prorated at a monthly rate of 1.33%. Interest and penalty collections for delinquent taxes are not included in the collection figures above, but are deposited in the County’s General Fund. Interest and penalties with respect to the first half tax collections (delinquent November 1) are waived if the full year’s taxes are paid by December 31.*

(b) *2019/20 taxes in course of collection:  
First installment due 10-01-19; delinquent 11-01-19  
Second installment due 03-01-20; delinquent 05-01-20*

Source: Office of the Treasurer of the County.

**Delinquent Tax Procedures**

The property taxes due the City are billed, along with State and other taxes, each September and are due and payable in two installments on October 1 and March 1 and become delinquent on November 1 and May 1, respectively. Delinquent taxes are subject to an interest penalty of 16% per annum prorated monthly as of the first day of each subsequent month. (Delinquent interest is waived if a taxpayer, delinquent as to the November 1 payment, pays the entire year’s tax bill by December 31.) After the close of the tax collection period, the Treasurer of the County prepares a delinquent property tax list and the property so listed is subject to a tax lien sale in February of the succeeding year. In the event that there is no purchaser for the tax lien at the sale, the tax lien is assigned to the State, and the property is reoffered for sale from time to time until such time as it is sold, subject to redemption, for an amount sufficient to cover all delinquent taxes.

After three years from the sale of the tax lien, the tax lien certificate holder may bring an action in a court of competent jurisdiction to foreclose the right of redemption and, if the delinquent taxes plus accrued interest are not paid by the owner of record or any entity having a right to redeem, a judgment is entered ordering the Treasurer of the County to deliver a treasurer’s deed to the certificate holder as prescribed by law.

In the event of bankruptcy of a taxpayer pursuant to the United States Bankruptcy Code (the “Bankruptcy Code”), the law is currently unsettled as to whether a lien can attach against the taxpayer’s property for property taxes levied during the pendency of bankruptcy. Such taxes might constitute an unsecured and possibly non-interest bearing administrative expense payable only to the extent that the secured creditors of a taxpayer are oversecured, and then possibly only on the prorated basis with other allowed administrative claims. It cannot be determined, therefore, what adverse impact bankruptcy might have on the ability to collect *ad valorem* taxes on property of a taxpayer within the City. Proceeds to pay such taxes come only from the taxpayer or from a sale of the tax lien on delinquent property.

When an owner of land or property within the City (a “debtor”) files or is forced into bankruptcy, any act to obtain possession of the debtor’s estate, any act to create or perfect any lien against the property of the debtor or any act to collect, assess or recover a claim against the debtor that arose before the commencement of the bankruptcy is stayed pursuant to the Bankruptcy Code. While the automatic stay of a bankruptcy court may not prevent the sale of tax liens against the real property of a bankrupt taxpayer, the judicial or administrative foreclosure of a tax lien against the real property of a debtor would be subject to the stay of bankruptcy court. It is reasonable to conclude that “tax sale investors” may be reluctant to purchase tax liens under such circumstances, and, therefore, the timeliness of the payment of post-bankruptcy petition tax collections becomes uncertain.

It cannot be determined what impact any deterioration of the financial conditions of any taxpayer, whether or not protection under the Bankruptcy Code is sought, may have on payment of or the secondary market for the Bonds. None of the City, the Financial Advisor, the Underwriter or their respective agents or consultants has undertaken any independent investigation of the operations and financial condition of any taxpayer, nor have they assumed responsibility for the same.

In the event the County is expressly enjoined or prohibited by law from collecting taxes due from any taxpayer, such as may result from the bankruptcy of a taxpayer, any resulting deficiency could be collected in subsequent tax years by adjusting the City’s tax rate charged to non-bankrupt taxpayers during such subsequent tax years.

## ASSESSED VALUATIONS AND TAX RATES

**TABLE 9**

**Direct and Overlapping Net Limited Assessed Property Values and Tax Rates (a)  
Per \$100 Net Limited Assessed Property Value**

Overlapping Jurisdiction	2019/20 Net Limited Assessed Property Value	2019/20 Total Tax Rate Per \$100 Net Limited Assessed Property Value
State of Arizona	\$66,154,632,834	\$0.0000
Coconino County	1,831,089,260	0.9979 (a)
Coconino County Community College District	1,831,089,260	0.4592
Coconino County Public Health Services	1,831,089,260	0.2500
Coconino County Library District	1,831,089,260	0.2566
Coconino County Fire District Assistance Fund	1,831,089,260	0.1000
Flagstaff Unified School District No. 1	1,303,847,931	5.1174
Coconino County Joint Vocational Education District	1,581,722,570	0.0500
City of Flagstaff	868,806,647	1.6299

(a) Includes the "State Equalization Assistance Property Tax" which is levied by the County and has been set at \$0.4566 per \$100 Net Limited Assessed Property Value for fiscal year 2019/20. Such amount is adjusted annually pursuant to Section 41-1276, Arizona Revised Statutes.

Source: *Property Tax Rates and Assessed Values*, Arizona Tax Research Association and Finance Department of the County.

**Total Tax Rates Per \$100 Net Limited Assessed Property Value**

The total overlapping property tax rate for property owners within the City is \$8.8610 per \$100 Net Limited Assessed Property Value.

Source: *Property Tax Rates and Assessed Values*, Arizona Tax Research Association, the Arizona Department of Revenue and the Finance Department and Treasurer of the County.

**TABLE 10**

**Net Limited Assessed Property Value by Property Classification (a)  
City of Flagstaff, Arizona**

Class	2019/20	2018/19	2017/18	2016/17	2015/16
Commercial, Industrial, Utilities & Mines	\$ 286,601,339	\$ 268,632,735	\$ 249,723,482	\$ 232,753,421	\$ 236,378,485
Agricultural and Vacant	38,036,195	37,438,241	37,151,879	35,679,831	37,363,661
Residential (owner occupied)	289,965,626	272,024,139	253,887,574	238,334,465	232,813,868
Residential (rental)	249,724,242	222,096,639	204,926,078	192,182,870	173,808,240
Railroad	2,430,712	2,350,886	2,277,832	2,209,379	2,394,644
Historical Property	1,568,037	1,839,858	1,209,786	1,186,764	1,185,984
Commercial Historical Property	457,160	435,262	420,108	403,644	766,132
Residential Historical Property (rental)	5,338	5,027	4,572	4,277	4,212
Certain Government Property Improvements	17,998	14,064	16,930	13,290	13,104
Totals (a)	<u>\$ 868,806,647</u>	<u>\$ 804,836,851</u>	<u>\$ 749,618,241</u>	<u>\$ 702,767,941</u>	<u>\$ 684,728,330</u>

(a) Totals may not add up due to rounding.

Source: *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue.

TABLE 11

**Net Limited Assessed Property Value of Major Taxpayers  
City of Flagstaff, Arizona**

Major Taxpayer (a)	2019/20 Net Limited Assessed Property Value	As % of 2019/20 Net Limited Assessed Property Value
Arizona Public Service	\$ 20,856,336	2.40 %
W.L. Gore & Associates, Inc.	19,321,385	2.22
CCC-Flagstaff LLC	6,871,035	0.79
Unisource Energy Corporation	5,090,549	0.59
Village at Aspen Place LLC	4,965,913	0.57
Nestle Purina Petcare Company	4,753,331	0.55
Little America Hotels & Resorts	4,663,470	0.54
Core Campus Flagstaff LLC	4,172,038	0.48
Wal-Mart Stores Inc	3,577,890	0.41
Cypress Flagstaff Mall LP	3,095,255	0.36
	\$ 77,367,202	8.90 %

(a) *Some of such taxpayers or their parent corporations are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, and in accordance therewith file reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information (collectively, the "Filings") may be inspected, copied and obtained at prescribed rates at the Commission's public reference facilities at 100 F Street, N.E., Washington, D.C. 20549-2736. In addition, the Filings may also be inspected at the offices of the New York Stock Exchange at 20 Broad Street, New York, New York 10005. The Filings may also be obtained through the Internet on the Commission's EDGAR data base at <http://www.sec.gov>. No representative of the City, the Underwriter, the Financial Advisor, Bond Counsel or counsel to the Underwriter has examined the information set forth in the Filings for accuracy or completeness, nor does any such representative assume responsibility for the same.*

Source: The Assessor of the County.

**TABLE 12**

**Comparative Net Limited Assessed Property Values (a)**

<u>Fiscal Year</u>	<u>City of Flagstaff</u>	<u>Coconino County</u>	<u>State of Arizona</u>
2019/20	\$ 868,806,647	\$1,831,089,260	\$ 66,154,632,834
2018/19	804,836,851	1,726,579,756	62,328,439,592
2017/18	749,618,241	1,648,531,053	59,406,279,473
2016/17	702,767,941	1,569,812,808	56,589,592,481
2015/16	683,396,020	1,537,418,218	54,838,548,829

Source: *Property Tax Rates and Assessed Values*, Arizona Tax Research Association, *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue.

**TABLE 13**

**Estimated Net Full Cash Value History  
City of Flagstaff, Arizona**

<u>Fiscal Year</u>	<u>Estimated Net Full Cash Value (a)</u>
2019/20	\$8,397,908,073
2018/19	7,677,104,156
2017/18	6,921,876,376
2016/17	6,225,457,752
2015/16	5,726,101,646

(a) *Estimated Net Full Cash Value is the total market value of the property within the City less the estimated Full Cash Value of property exempt from taxation within the City.*

Source: *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue.

**DIRECT AND OVERLAPPING BONDED INDEBTEDNESS**

**TABLE 14**

**Current Year Statistics (For Fiscal Year 2019/20)  
City of Flagstaff, Arizona**

Total General Obligation Bonds Outstanding and to be Outstanding	\$ 45,619,491*(a)
Total Certificates of Participation Outstanding and to be Outstanding	7,370,000*(b)
Total Water and Sewer Revenue Obligations Outstanding	33,864,696
Total Excise Tax Revenue Obligations Outstanding	21,180,000
Net Limited Assessed Property Value	868,806,647
Net Full Cash Assessed Value	1,010,133,933
Estimated Net Full Cash Value	8,397,908,073

\* Subject to change.

- (a) Includes the Bonds. See footnote (b) to TABLE 16 for a description of certain proceeds of the Bonds for State voter authorization and debt limit purposes.
- (b) See footnote (a) to TABLE 15B for a description of Certificates of Participation expected to be offered by the City.

Source: State and County Abstract of the Assessment Roll, Arizona Department of Revenue and Property Tax Rates and Assessed Values, Arizona Tax Research Association.

**TABLE 15A**

**Direct General Obligation Bonded Debt Outstanding and to be Outstanding  
City of Flagstaff, Arizona**

Issue Series	Original Amount	Purpose	Final Maturity Date (July 1)	Balance Outstanding and to be Outstanding
2011	\$ 12,845,000	Various purposes	2020	\$ 1,465,000
2011	1,633,828	Water system	2031	1,091,795 (a)
2011	3,952,287	Public safety communications	2021	882,696
2013	11,460,000	Various purposes	2028	7,460,000
2014A	6,600,000	Various purposes	2034	5,345,000
2014B	8,270,000	Refunding	2021	4,305,000
2016	16,105,000	Various purposes	2036	<u>14,345,000</u>
Total General Obligation Bonded Debt Outstanding				\$34,894,491
Plus: The Bonds				<u>10,725,000*</u>
Total General Obligation Bonded Debt Outstanding and to be Outstanding (b)				<u>\$45,619,491* (c)</u>

\* Subject to change.

- (a) Represents a Loan Agreement with WIFA. The City has paid and may continue to pay the debt service requirements on these general obligation bonds from water and sewer system revenues which remain after payment of operation and maintenance expenses of the system and revenue bond debt service. In the event that these revenues should prove insufficient, or should the City decided not to pay such general obligation

bonds from such net revenues, such general obligation bonds would then be paid from ad valorem taxes as described under “SECURITY AND SOURCES OF PAYMENT OF THE BONDS.”

- (b) Does not include the approximate amount of \$6,000,000 of a loan agreement with WIFA that the City expects to enter into in the first quarter of 2020.
- (c) See footnote (b) to TABLE 16 for a description of the treatment of certain proceeds of the Bonds for State voter authorization and debt limit purposes.

**TABLE 15B**

**Certificates of Participation Outstanding**

Issue Series	Original Amount	Purpose	Final Maturity Date (July 1)	Balance Outstanding and to be Outstanding
2018	\$3,880,000	Core maintenance facility	2043	\$ 3,795,000
Total Certificates of Participation Bonded Debt Outstanding				\$ 3,795,000
Plus: the 2019 Certificates of Participation (a)				3,575,000*
Total Certificates of Participation Debt Outstanding and to be Outstanding				\$ 7,370,000*

\* Subject to change.

- (a) The City expects to offer Certificates of Participation, Series 2019 pursuant to a separate official statement.

**TABLE 15C**

**Water and Wastewater Revenue Obligations Outstanding**

The following chart lists the water and wastewater revenue obligations of the City that are currently outstanding. The City’s financial obligations are through loan agreements with WIFA. Also see footnote (a) to TABLE 15A.

Issue Series	Original Amount	Purpose	Final Maturity Date (July 1)	Balance Outstanding
2007	\$23,100,000	Sewer treatment plant improvements	2027	\$ 2,230,604
2008	8,500,000	Water production improvements & acquisition	2028	4,608,778
2009	2,100,000	Water feasibility study	2029	1,209,666
2009	232,500	Well improvements	2029	132,782
2009	1,100,000	Local aquifer study	2029	630,785
2009	594,950	Well improvements infrastructure	2029	302,081
2017	17,129,000	Refunding	2027	15,165,000
2019	9,585,000	Water and sewer improvements	2034	9,585,000
Total Water and Wastewater Revenue Obligations Outstanding				\$33,864,696

**TABLE 15D**

The City of Flagstaff Municipal Facilities Corporation (“MFC”) is an Arizona nonprofit corporation formed in January 1979. The City and the MFC have issued debt secured by Excise Taxes and State Shared Revenues as shown below.

**Excise Tax and State Shared Revenue Supported Debt**

<u>Issue Series</u>	<u>Original Amount</u>	<u>Purpose</u>	<u>Final Maturity Date (July 1)</u>	<u>Balance Outstanding</u>
2010A	\$3,370,000	Construction of business incubator	2030	\$ 2,140,000 <i>(a)</i>
2012	12,530,000	MFC Refunding	2020	2,165,000 <i>(b)</i>
2016	8,930,000	Street improvements and preservation	2032	7,535,000
2018	9,700,000	Street improvements and preservation	2034	<u>9,340,000</u>
Total Excise Tax and State Shared Revenue Supported Debt Outstanding and to be Outstanding				<u><u>\$21,180,000</u></u>

*(a) Under a loan agreement with the Greater Arizona Development Authority (“GADA”), the City has agreed to make semi-annual payments equal to the principal and interest on the GADA loan. The City has pledged State Shared Revenues to the payment of the GADA loan.*

*(b) Under an agreement with the MFC, the City has agreed to make semi-annual rent payments equal to the principal and interest on the MFC’s bonds. The City has pledged Transportation Excise Taxes to the payment of the MFC’s bonds.*

**Direct Bonded Debt, Legal Limitation and Unused Borrowing Capacity  
City of Flagstaff, Arizona**

Under the provisions of the Arizona Constitution, outstanding general obligation bonded debt for combined water, sewer, light, parks and open space, transportation and public safety purposes may not exceed 20% of a city's Net Full Cash Assessed Value, nor may outstanding general obligation bonded debt for all other purposes exceed 6% of a city's Net Full Cash Assessed Value.

**TABLE 16**

General Municipal Purpose Bonds		Water, Light, Sewer, Open Space, Public Safety, Law Enforcement, Fire and Emergency Services, Park, Street and Transportation Facilities Bonds	
Total 6% General Obligation Bonding Capacity	\$ 60,608,035	Total 20% General Obligation Bonding Capacity	\$202,026,786
Less: 6% General Obligation Bonds Outstanding	- (a)	Less: 20% General Obligation Bonds Outstanding	(45,619,491)* (a)
Less: Original Issue Premium	- (b)	Less: Original Issue Premium	(1,137,713)* (b)
Less: Unamortized Net Original Issue Premium of Prior Bonds	- (c)	Less: Unamortized Net Original Issue Premium of Prior Bonds	(1,866,052) (c)
Net 6% General Obligation Bonding Capacity	\$ 60,608,035*	Net 20% General Obligation Bonding Capacity	\$153,403,530*
Total Capacity	\$214,011,565*		

\* *Subject to change.*

(a) *Includes the Bonds.*

(b) *This amount reduces in equal amount the borrowing capacity of the City under State statutes and the Arizona Constitution (as described under the heading "THE BONDS – Authorization and Use of Funds"). In the case of the Bonds, the principal amount authorized at the Election will be reduced by \$1,287,713\*. The City's borrowing capacity, but not authorization, will be recaptured as premium is amortized.*

(c) *This amount represents unamortized premium on the City's outstanding bonds which is treated as described in the immediately preceding footnote.*

**TABLE 17**

**Direct and Overlapping General Obligation Bonded Debt  
City of Flagstaff, Arizona**

<u>Overlapping Jurisdiction</u>	General Obligation Bonded Debt (b)	Proportion Applicable to the District (a)	
		Approximate Percent	Net Debt Amount
State of Arizona	None	1.31 %	None
Coconino County	None	47.45	None
Coconino County Community College District	None	47.45	None
Flagstaff Unified School District No. 1	48,345,000	66.63	32,212,274
City of Flagstaff (c)(d)	45,619,491*	100.00	<u>45,619,491*</u>
Net Direct and Overlapping General Obligation Bonded Debt			<u><u>\$ 77,831,765*</u></u>

(a) *Proportion applicable to the City is computed on the ratio of Net Limited Assessed Property Value for 2019/20.*

(b) *Includes total stated principal amount of general obligation bonds outstanding. Does not include outstanding principal amount of certificates of participation, revenue obligations or loan obligations outstanding for the jurisdictions listed above. Does not include outstanding principal amounts of various County improvement districts, as the bonds of these districts are presently being paid from special assessments against property within the various improvement districts.*

*Does not include presently authorized but unissued general obligation bonds of such jurisdictions which may be issued in the future as indicated in the following table. Additional bonds may also be authorized by voters within overlapping jurisdictions pursuant to future elections.*

<u>Overlapping Jurisdiction</u>	<u>General Obligation Bonds Authorized but Unissued</u>
Flagstaff Unified School District No. 1	\$50,000,000
City of Flagstaff (e)	9,200,000*

(c) *The City expects to enter into a loan agreement with the WIFA in the approximate amount of \$6,000,000 in first quarter of 2020. See language in footnote (b) in TABLE 15A.*

(d) *Includes the Bonds.*

(e) *Net of the Bonds.*

\* *Subject to change.*

**TABLE 18****Direct and Overlapping General Obligation Bonded Debt Ratios  
City of Flagstaff, Arizona**

	Per Capita Bonded Debt Population Estimated @ 74,736	As % of City's 2019/20 Net Limited Assessed Property Value	As % of City's 2019/20 Estimated Net Full Cash Value
Net Direct General Obligation Bonded Debt*(a)	\$610.41	5.25%	0.54%
Net Direct and Overlapping General Obligation Debt*(a)	1,041.42	8.96	0.93

\* *Subject to change.*

(a) *Includes the Bonds.*

Source: *State and County Abstract of the Assessment Roll, Arizona Department of Revenue, Property Tax Rates and Assessed Values, Arizona Tax Research Association, the Arizona Office of Economic Opportunity, and the City.*

**TABLE 19****Other Obligations  
City of Flagstaff, Arizona**

The City has entered into lease agreements that generally require annual payments and the lease terms vary from 5 to 21 years. The lease agreement amounts outstanding are listed as follows: capital lease agreement for renewable energy solar equipment related to governmental activities of \$699,679, heart monitors of \$42,752, copy machine of \$81,271 and parking meter assets of \$770,332. Capital lease agreements related to business-type activities consist of airport hangars of \$1,084,510, renewable energy solar equipment of \$1,335,446 and a compactor of \$560,956.

The lease agreements qualify as capital leases for accounting purposes and, therefore have been recorded at the present value of their future minimum lease payments as of the date of inception.

Year Ending June 30	Government Activities	Business-type Activities
2020	\$276,628	\$557,873
2021	232,592	559,093
2022	230,773	560,363
2023	204,122	557,555
2024	204,839	403,164
2025-2029	642,483	793,280
Total future minimum lease payments	\$1,791,437	\$3,431,328
Less: interest costs	(197,403)	(450,416)
Present value of future minimum lease payments	\$1,594,034	\$2,980,912

## CITY EMPLOYEE RETIREMENT SYSTEM

### Retirement Benefits

The City contributes to the retirement plans described below and as referenced starting on page 76 in APPENDIX E – “CITY OF FLAGSTAFF, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018.” Benefits are established by State statute and generally provide retirement, death, long-term disability, survivor and health insurance premium benefits. The City and its members contribute to the following retirement systems: the Arizona State Retirement System (“ASRS”), the Public Safety Personnel Retirement System (“PSPRS”) and the Elected Officials Retirement Plan (“EORP”).

### The Arizona State Retirement System

ASRS is a cost-sharing multiple-employer defined benefit pension plan, a cost-sharing multiple-employer defined benefit health insurance premium benefit plan, and a cost-sharing multiple-employer defined benefit long-term disability plan for approximately 600,000 Arizona public employees including qualified employees of the State, municipal governments, counties and K-12 education agencies. ASRS has reported increases in its unfunded liabilities. The most recent annual reports for the ASRS may be accessed at: <https://www.azasrs.gov>. The increase in ASRS’ unfunded liabilities is expected to result in increased future annual contributions to ASRS by the City and its employees.

The table below shows recent actuarially determined contribution rates that the active ASRS members and the City are/were required to contribute, the plan’s funded status and the pension contributions under the plan.

<u>Fiscal</u> <u>year ended</u>	<u>Retirement and Health</u> <u>Insurance Premiums</u>	<u>Long-term</u> <u>Disability</u>	<u>Total</u> <u>Contribution</u> <u>Rate</u>	<u>Funded Status</u>	<u>Pension</u> <u>Contribution</u>
June 30, 2020	11.94%	0.17%	12.11%	unavailable	unavailable
June 30, 2019	11.64	0.16	11.80	unavailable	unavailable
June 30, 2018	11.34	0.16	11.50	71.2%	\$3,478,329
June 30, 2017	11.34	0.14	11.48	70.5	3,357,591
June 30, 2016	11.35	0.12	11.47	77.6	3,168,876

### Statutory Changes and Court Decisions Regarding the PSPRS and EORP

PSPRS and EORP are all operated under the umbrella of the Public Safety Personnel Retirement System and the Public Safety Personnel Retirement System Board of Trustees. Since 2011 there have been various modifications designed to mitigate increasing unfunded liabilities in the programs. Some of these modifications were enacted by the Arizona Legislature; some changes resulted from successful court challenges to those statutory changes; and other changes were implemented by voter approved amendments to the State Constitution. Substantively, the modifications have included changes to contribution rates, retirement criteria, funding horizons, retirement benefits and post-retirement benefit increase calculations.

### The Public Safety Personnel Retirement System

PSPRS is an agent multiple-employer defined benefit pension plan and an agent multiple employer defined benefit health insurance premium benefit plan that covers public safety personnel who are regularly assigned to hazardous duties for which the Arizona State Legislature establishes active plan members’ contribution rates. PSPRS has reported increases in its unfunded liabilities. The most recent annual reports for the PSPRS may be accessed at <http://www.psprs.com>. The increase in the PSPRS’s unfunded liabilities is expected to result in increased future annual contributions to PSPRS by the City and its public safety employees, however the specific impact on the City, or on the City’s and its employees’ future annual contributions to the PSPRS, cannot be determined at this time.

As presented in the table below, PSPRS active membership is comprised of three separate “tiers” based on date of hire which are shown in the following table.

<u>Tier 1 Members</u>	<u>Tier 2 Members</u>	<u>Tier 3 Members</u>
Hired into PSPRS position before January 1, 2012	Hired into PSPRS position on or after January 1, 2012 and before July 1, 2017	Hired into PSPRS position on or after July 1, 2017

Among other differences, the tiers vary in terms of employee contribution rate, retirement eligibility, and post retirement cost of living adjustment eligibility. Additionally, in lieu of the defined benefit program, there is a defined contribution option available to Tier 3 members and a hybrid defined benefit/defined contribution program for certain Tier 2 and Tier 3 members.

The employee retirement contribution rate for Tier 1 members is 7.65% of member compensation; with the exception of Tier 1 members hired from July 20, 2011 through December 31, 2011 who are subject to the same employee contribution rate as Tier 2 members. The Tier 2 employee rate is the lower of 11.65% of member compensation or 33.3% of the sum of the prior year employee contribution rate and the computed employer contribution rate. This employee contribution rate has a floor of 7.65%. For Tier 3 members, the annual contribution rate is determined actuarially and split evenly between employer and employee. This actuarial contribution rate is determined individually for the largest employers and as a consolidated pool for the remaining employers as a group.

The following table shows the actuarially determined annual employer contribution rates, funded status and total audited contribution amounts for the plan.

**Police**

	Fiscal Year Ended				
	6/30/2020	6/30/2019	6/30/2018	6/30/2017	6/30/2016
<u>Contribution Rates</u>					
Tier 1/2 Defined Benefit Employer (a)	48.09%	59.28%	54.73%	44.83%	43.29%
Tier 1 Defined Benefit Employee	7.65%	7.65%	7.65%	7.65%	7.65%
Tier 2 Defined Benefit Employee (a)(b)	11.65%	11.65%	11.65%	N/A	N/A
Tier 3 Defined Benefit Employer (a)(c)	46.10%	57.07%	49.74%	N/A	N/A
Tier 3 Defined Benefit Employee (a)	9.94%	9.94%	9.94%	N/A	N/A
Tier 3 Defined Contribution Employer (c)	46.67%	57.64%	50.35%	N/A	N/A
Tier 3 Defined Contribution Employee	10.51%	10.51%	10.55%	N/A	N/A
Pension Funded Status	N/A	N/A	38.4%	38.1%	37.4%
Health Funded Status	N/A	N/A	110.2%	113.7%	111.9%
Total City (Employer) Pension and Contribution	N/A	N/A	\$3,675,844	\$3,648,822	\$3,483,157

- (a) Not applicable for Tier 2 for fiscal years prior to Fiscal Year 2018. Does not include additional contribution percentage of 3% associated with Tier 2 defined benefit (“DB”) members additionally participating in the defined contribution (“DC”) plan. Employer rate is 4% for Tier 2 members for a period of time depending on the individual’s membership date.
- (b) Tier 2 employees contribute a maximum of 11.65%, but statutory requirements dictate only 7.65% is applied toward employer costs.
- (c) The amortization of unfunded liabilities for Tier 1 and Tier 2 is applied to the payroll for employees in all tiers, including Tier 3, on a level percent basis.

**Fire**

	Fiscal Year Ended				
	6/30/2020	6/30/2019	6/30/2018	6/30/2017	6/30/2016
<b>Contribution Rates</b>					
Tier 1/2 Defined Benefit Employer (a)	83.03%	84.17%	75.11%	70.05%	67.71%
Tier 1 Defined Benefit Employee	7.65%	7.65%	7.65%	7.65%	7.65%
Tier 2 Defined Benefit Employee (a)(b)	11.65%	11.65%	11.65%	N/A	N/A
Tier 3 Defined Benefit Employer (a)(c)	78.99%	80.08%	68.34%	N/A	N/A
Tier 3 Defined Benefit Employee (a)	9.94%	9.94%	9.94%	N/A	N/A
Tier 3 Defined Contribution Employer (c)	79.56%	80.65%	68.95%	N/A	N/A
Tier 3 Defined Contribution Employee	10.51%	10.51%	10.55%	N/A	N/A
Pension Funded Status	N/A	N/A	35.2%	35.5%	37.1%
Health Funded Status	N/A	N/A	174.1%	171.4%	168.1%
Total City (Employer) Pension and Contribution	N/A	N/A	\$3,755,920	\$4,107,600	\$3,769,503

- (a) Not applicable for Tier 2 for fiscal years prior to Fiscal Year 2018. Does not include additional contribution percentage of 3% associated with Tier 2 defined benefit (“DB”) members additionally participating in the defined contribution (“DC”) plan. Employer rate is 4% for Tier 2 members for a period of time depending on the individual’s membership date.
- (b) Tier 2 employees contribute a maximum of 11.65%, but statutory requirements dictate only 7.65% is applied toward employer costs.
- (c) The amortization of unfunded liabilities for Tier 1 and Tier 2 is applied to the payroll for employees in all tiers, including Tier 3, on a level percent basis.

**The Elected Officials Retirement Plan (“EORP”)** is a cost-sharing multiple-employer defined benefit pension plan and a cost-sharing, multiple-employer defined benefit health insurance premium plan that covers elected officials and judges of certain state and local governments. The EORP is governed by the same Board of Trustees that manages the PSPRS plan. As of January 1, 2014 EORP is closed to new members. Pursuant to Arizona statute, the annual contribution for active members of EORP is 13% of the members’ annual covered payroll. Additionally, the amount of the members’ contribution that exceeds 7% is not used to reduce the actuarially determined employer contribution.

As of July 1, 2018, pursuant to S.B. 1478 (2018 regular session), participating EORP employers are required to annually contribute at an actuarially determined employer contribution rate. The basis for the employer rate is the covered payroll for all eligible elected officials and eligible judges employed by the employer. The actuarially determined rate for 2019/20 is 61.43%. This amount is distributed to EORP, the Elected Officials Defined Contribution Retirement System (EODCRS) and the Arizona State Retirement (defined benefit) System (ASRS), depending on the retirement program in which each eligible employee participates. As a percent of covered payroll, the employer contribution, by statute, for EODCRS participating members is 6.00%; the employer contribution for ASRS participating members is 12.11% for fiscal year 2019/20; and all remaining employer contributions, up to the actuarially determined contribution rate of the covered payroll of all elected officials and eligible judges, are remitted to EORP. EORP is additionally funded each year with designated state and City court fees and a \$5,000,000 appropriation from the State general fund.

As referenced on page 90 in APPENDIX E of this Official Statement, the projection of cash flows of the plan assuming that plan member contributions will be made at the current contribution rate, employer contributions will be made at the statutorily set rates, and State contributions will be made as currently required by statute, the pension plan’s fiduciary net position was projected to be insufficient to make all projected future benefit payments of current plan members.

## **Potential Future State Legislation Affecting ASRS, PSPRS and EORP**

There are bills frequently introduced at sessions of the State Legislature that, if enacted, could impact the administration of the ASRS, PSPRS and EORP and the eligibility, timing and payment of benefits from such plans. The City is unable to determine whether any such bills will be enacted into legislation or in what form such legislation may be enacted and what the impact of any such legislation may be.

## **Other Post-Employment Retirement Benefits**

During the year ended June 30, 2018, the City implemented the provisions of GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* (“GASB 75”). The City is required to report the actuarially accrued cost of post-employment benefits, other than pension benefits (“OPEB”), such as health and life insurance for current and future retirees. GASB 75 addresses reporting by governments that provide OPEB by measuring and recognizing net assets or liabilities, deferred outflows of resources, deferred inflows of resources, and expenses/expenditures related to OPEB provided through defined benefit OPEB plan. Please refer to APPENDIX C of the Official Statement which includes the City’s audited financial statements and specifically “Note 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES.”

The City of Flagstaff provides post-retirement healthcare insurance benefits for its retirees as a single employer defined benefit OPEB plan which is administered through Northern Arizona Public Employee Benefit Trust (NAPEBT). Eligible retirees and their beneficiaries up to the age of 65 are allowed to participate in the same healthcare plan as active employees and pay the same premium for this benefit which results in an implicit rate subsidy. Even though the City makes no direct payments on behalf of the retirees the City is required to report this implicit cost for active employees who will be able to continue to purchase health insurance once they retire. Substantially, all the City’s employees may become eligible for those benefits when they qualify for retirement. To be eligible a retiree must qualify to receive retirement benefits from the Arizona State Retirement System and elect coverage at date of retirement. At June 30, 2018, the City reported a net OPEB liability of \$9,931,825. The net OPEB liability was measured as of June 30, 2017 and the total OPEB liability were determined from the actuarial valuations as of July 1, 2017. The City has chosen not to fund this plan; therefore, the total OPEB liability is the net OPEB liability.

## **Governmental Accounting Standards (“GASB”):**

The Governmental Accounting Standards Board adopted Governmental Accounting Standards Board Statement Number 68, *Accounting and Financial Reporting for Pensions* (“GASB 68”), which, beginning with fiscal years starting after June 15, 2014, requires cost-sharing employers to report their “proportionate share” of the plan’s net pension liability in their government-wide financial statements. GASB 68 also requires that the cost-sharing employer’s pension expense component include its proportionate share of the system’s pension expense, the net effect of annual changes in the employer’s proportionate share and the annual differences between the employer’s actual contributions and its proportionate share. Both the City and each covered employee contribute to the ASRS. As of June 30, 2018, the City reported a liability of \$48,706,334 for its proportionate share of the net pension liability under ASRS. The pension liability was measured as of June 30, 2017. Both the City and each covered employee contribute to the EORP. As of June 30, 2018, the City reported a liability of \$2,653,363 for its proportionate share of the net pension liability under EORP. The pension liability was measured as of June 30, 2017. See page 81 in APPENDIX E – “CITY OF FLAGSTAFF – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018” for further discussion of the City and its pension liability including the net pension liability associated with PSPRS.

*New Reporting Requirements* - Governmental Accounting Standards Board (“GASB”) Statement No. 67, *Financial Reporting for Pension Plans, An Amendment of GASB Statement No. 25*, is designed to improve financial reporting by state and local governmental pension plans. This statement replaces the requirements of Statements No. 25, *Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans*, and No. 50, *Pension Disclosures*, as they relate to pension plans that are administered through trusts or equivalent arrangements (hereafter jointly referred to as trusts) that meet certain criteria.

## **REVENUES AND EXPENDITURES**

State law requires that the City's financial books and records be audited by the State Auditor General or independent certified public accountants on an annual basis. The audited financial statements of the City are presented in APPENDIX E – "CITY OF FLAGSTAFF, ARIZONA – AUDITED ANNUAL FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018."

The table below summarizes audited Revenues, Expenses and Changes in Fund Balance for the fiscal years 2013/14 through 2017/18, estimated actuals for 2018/19 and budgeted information for 2019/20. The information contained in the summary should be read in conjunction with the financial statements and accompanying notes in APPENDIX E of this Official Statement.

**The Bonds will be payable solely from the source described under the heading "SECURITY AND SOURCES OF PAYMENT OF THE BONDS." The information provided in the following table is for reference only.**

**TABLE 20**

**General Fund  
City of Flagstaff, Arizona**

	Estimated		Audited				
	Budget (a) 2019/20	Actuals (b) 2018/19	2017/18	2016/17	2015/16	2014/15	2013/14
FUND BALANCE AT BEGINNING OF YEAR	\$ 32,441,167	\$ 34,320,827(c)	\$ 40,464,781	\$ 38,919,713	\$ 33,621,090	\$ 31,762,789	\$ 28,748,008
REVENUES							
Taxes	32,273,857	30,794,252	29,837,919	29,377,513	27,306,792	\$ 25,908,705	\$ 25,100,084
Intergovernmental	21,129,105	20,118,373	20,074,740	19,294,534	18,214,988	17,574,331	16,516,056
Grants and entitlements	5,204,979	3,010,320	1,535,930	1,209,967	1,217,424	1,294,384	1,726,644
Charges for services	3,267,437	3,314,641	3,445,482	3,454,567	2,916,164	2,986,151	2,734,095
Licenses and permits	2,706,716	3,234,688	3,473,740	2,839,407	3,153,135	1,866,792	1,952,731
Fines and forfeitures	1,420,489	1,427,226	1,350,689	1,430,686	1,524,856	1,389,663	1,428,401
Rents	1,400,042	919,405	1,163,215	1,602,727	1,615,190	1,603,322	1,606,932
Investment earnings	371,837	370,630	(1,255,945)	(1,081,720)	1,210,140	374,174	418,374
Contributions	10,303	10,201	496,159	421,444	566,242	262,095	440,360
Miscellaneous	410,152	671,221	534,494	719,684	390,086	305,932	393,760
TOTAL REVENUES	\$68,194,917	\$63,870,957	\$60,656,423	\$59,268,809	\$58,115,017	\$53,565,549	\$52,317,437
OTHER FINANCING SOURCES (USES)							
Issuance of capital debt			\$ -	\$ 133,531	\$ 204,956	\$ -	\$ -
Sale of capital assets			35,450	-	5,325	72,051	533,980
Insurance recoveries			-	-	-	-	3,033,042
Reserve and contingency			-	-	-	-	(3,287,452)
Transfers in	4,480,855	4,233,033	3,463,231	2,753,444	3,110,079	2,848,218	-
Transfers out	(4,658,738)	(4,163,652)	(8,457,705)	(5,546,718)	(2,063,183)	(4,132,795)	-
TOTAL OTHER FINANCING SOURCES (USES)	\$ 100,458,201	\$ 98,261,165	\$ 96,162,180	\$ 95,528,779	\$ 92,993,284	\$ 84,115,812	\$ 81,345,015
EXPENDITURES							
Current							
Current governmental	\$ 14,687,838	\$ 11,423,452	\$ 11,774,767	\$ 9,899,937	\$ 9,007,957	\$ 9,809,718	\$ 8,914,237
Public safety	41,610,134	36,943,710	32,290,732	30,849,989	30,074,183	27,583,880	26,564,902
Public works	3,340,163	1,918,352	1,254,865	1,472,485	1,207,776	1,081,157	999,999
Economic and physical development	5,927,930	5,724,457	5,555,083	4,807,862	4,787,402	4,682,707	4,441,463
Culture and recreation	7,358,045	7,150,667	6,981,549	6,329,040	5,949,635	5,750,634	6,084,457
Highways and streets	-	-	36,570	35,663	500	-	-
Contingency	1,662,750	-	-	-	-	-	-
Debt service							
Principal retirement	177,792	170,460	161,727	138,775	998,203	721,549	882,114
Interest and other charges	250,303	34,187	37,420	38,381	55,632	93,304	128,976
Capital outlay	5,222,222	2,454,713	1,020,983	1,491,866	1,992,283	771,773	1,566,078
TOTAL EXPENDITURES	\$ 80,237,177	\$ 65,819,998	\$ 59,113,696	\$ 55,063,998	\$ 54,073,571	\$ 50,494,722	\$ 49,582,226
FUND BALANCE AT END OF YEAR	\$ 20,221,024	\$ 32,441,167	\$ 37,048,484(c)	\$ 40,464,781	\$ 38,919,713	\$ 33,621,090	\$ 31,762,789

- (a) Reflects the City's budgeted figures for fiscal year 2019/20 which are unaudited and subject to change upon audit. These amounts are "forward looking" statements and should be considered with an abundance of caution.
- (b) Figures for fiscal year 2018/19 are based on unaudited actual figures and as such should be considered with an abundance of caution.
- (c) Beginning fund balance varies due to budget basis adjustments related to 60 day sales tax accrual, unrealized loss on investments and inventory.

FORM OF OPINION OF BOND COUNSEL

Mayor and Council of the  
City of Flagstaff, Arizona

Re: City of Flagstaff, Arizona General Obligation Bonds, Series 2019

We have examined copies of the proceedings of the Mayor and Council of the City of Flagstaff, Arizona (the “City”), and other proofs submitted to us relative to the issuance of the captioned Bonds (the “Bonds”). In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, we have, when relevant facts were not independently established, relied upon the aforesaid proceedings and proofs.

We are of the opinion that such proceedings and proofs show lawful authority for the sale and issuance of the Bonds pursuant to the Constitution and laws of the State of Arizona now in force and that the Bonds are valid and legally binding obligations of the City, all of the taxable property within which is subject to the levy of a tax without limitation as to rate or amount to pay the principal of and interest on the Bonds.

Based on the representations and covenants of the City and subject to the assumption stated in the last sentence of this paragraph, under existing statutes, regulations, rulings and court decisions, interest on the Bonds is excludable from the gross income of the owners thereof for federal income tax purposes, and the interest on the Bonds is exempt from income taxation under the laws of the State of Arizona. Furthermore, interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. We express no opinion regarding other tax consequences resulting from the ownership, receipt or accrual of interest on, or disposition of, the Bonds. The Internal Revenue Code of 1986, as amended (the “Code”), includes requirements which the City must continue to meet after the issuance of the Bonds in order that interest on the Bonds not be included in gross income for federal income tax purposes. The failure of the City to meet these requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to their date of issuance. The Mayor and Council of the City have resolved in Ordinance No. 2019-XX, adopted by the Mayor and Council of the City on November 5, 2019, to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds. (Subject to the same limitations in the penultimate paragraph hereof with respect to such covenants, the City has full legal power and authority to comply with such covenants.) In rendering the opinion expressed above, we have assumed continuing compliance with the tax covenants referred to above that must be met after the issuance of the Bonds in order that interest on the Bonds not be included in gross income for federal tax purposes.

The rights of the holders of the Bonds and the enforceability of those rights may be subject to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights. The enforcement of such rights may also be subject to the exercise of judicial discretion in accordance with general principles of equity.

This opinion represents our legal judgment based upon our review of the law and the facts we deem relevant to render such opinion and is not a guarantee of a result. This opinion is given as of the date hereof, and we assume no obligation to review or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully submitted,

## APPENDIX D

### FORM OF CONTINUING DISCLOSURE UNDERTAKING

#### CONTINUING DISCLOSURE UNDERTAKING

\$11,575,000\*

CITY OF FLAGSTAFF, ARIZONA  
GENERAL OBLIGATION BONDS, SERIES 2019

This Continuing Disclosure Undertaking (this “Undertaking”) is executed and delivered by the City of Flagstaff, Arizona (the “City”), in connection with the sale and issuance of \$11,575,000\* principal amount of City of Flagstaff, Arizona General Obligation Bonds, Series 2019 (the “Bonds”). The Bonds are being issued pursuant to an ordinance adopted by the Mayor and Council of the City on November 5, 2019 (the “Ordinance”). The City covenants and agrees as follows:

1. **Definitions.** In addition to those defined hereinabove, the terms set forth below shall have the following meanings in this Undertaking, unless the context clearly otherwise requires:

“*Annual Financial Information*” means the financial information and operating data set forth in Exhibit I.

“*Annual Financial Information Disclosure*” means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

“*Audited Financial Statements*” means the audited financial statements of the City prepared pursuant to the standards and as described in Exhibit I.

“*Commission*” means the Securities and Exchange Commission.

“*Dissemination Agent*” means any agent designated as such in writing by the City and which has filed with the City a written acceptance of such designation, and such agent’s successors and assigns.

“*EMMA*” means the Electronic Municipal Market Access system of the MSRB. Information regarding submissions to EMMA is available at <http://emma.msrb.org>.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Final Official Statement*” means the Final Official Statement relating to the Bonds, dated \_\_\_\_\_, 2019.

“*Financial Obligation*” shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

“*GAAP*” means generally accepted accounting principles, as applied to governmental units as modified by the laws of the State.

“*Listed Event*” means the events set forth in Exhibit II.

“*Listed Events Disclosure*” means dissemination of disclosure concerning a Listed Event as set forth in Section 5.

“*MSRB*” means the Municipal Securities Rulemaking Board.

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\* Subject to change.

“*Participating Underwriter*” means each broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the Bonds.

“*Rule*” means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Exchange Act.

“*State*” means the State of Arizona.

2. Purpose of this Undertaking. This Undertaking is executed and delivered by the City as of the date set forth below for the benefit of the beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with the requirements of the Rule. The City represents that it will be the only obligated person with respect to the Bonds at the time the Bonds are delivered to the Participating Underwriter and that no other person is expected to become so committed at any time after such delivery of the Bonds.

3. CUSIP Numbers. The CUSIP Numbers of the Bonds are as follows:

<u>CUSIP No.</u> <u>(Base 338423)</u>	<u>Maturity Date</u>
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4. Annual Financial Information Disclosure. Subject to annual appropriation to cover the costs of preparation and mailing thereof and Section 8 of this Undertaking, the City shall disseminate its Annual Financial Information and its Audited Financial Statements, if any (in the form and by the dates set forth in Exhibit I), through EMMA.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, the City will disseminate a statement to such effect as part of its Annual Financial Information for the year in which such event first occurs.

If any amendment is made to this Undertaking, the Annual Information for the year in which such amendment is made shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

5. Listed Events Disclosure. Subject to annual appropriation to cover the costs of preparation and mailing thereof and Section 8 of this Undertaking, the City shall disseminate in a timely manner, but not more than

ten (10) business days after the occurrence of the event, Listed Events Disclosure through EMMA. Whether events subject to the standard “material” would be material shall be determined under applicable federal securities laws.

6. Consequences of Failure of the City to Provide Information. The City shall give notice in a timely manner through EMMA of any failure to provide Annual Financial Information Disclosure when the same is due hereunder.

In the event of a failure of the City to comply with any provision of this Undertaking, the beneficial owner of any Bond may seek mandamus or specific performance by court order, to cause the City to comply with its obligations under this Undertaking. A default under this Undertaking shall not be deemed an event of default under the Bond Ordinance, and the sole remedy available to such owners of the Bonds under this Undertaking in the event of any failure of the City to comply with this Undertaking shall be an action to compel performance.

7. Amendments; Waiver. Notwithstanding any other provision of this Undertaking, the City by certified resolution or ordinance authorizing such amendment or waiver, may amend this Undertaking, and any provision of this Undertaking may be waived only if:

(a) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted;

(b) This Undertaking, as amended or affected by such waiver, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not materially impair the interests of the beneficial owners of the Bonds, as determined by parties unaffiliated with the City or by approving vote of the owners of the Bonds at the time of the amendment.

The Annual Financial Information containing amended operating data or financial information resulting from such amendment or waiver, if any, shall explain, in narrative form, the reasons for the amendment or waiver and the impact of the change in the type of operating data or financial information being provided. If an amendment or waiver is made specifying an accounting principle to be followed in preparing financial statements and such changes are material, the Annual Financial Information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles. Such comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles in the presentation of the financial information in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, such comparison also shall be quantitative. If the accounting principles of the City change or the fiscal year of the City changes, the City shall file a notice of such change in the same manner as for a notice of Listed Event.

8. Non-Appropriation. The performance by the City of its obligations in this Undertaking shall be subject to the annual appropriation of any funds that may be necessary to permit such performance. In the event of a failure by the City to comply with its covenants under this Undertaking due to a failure to appropriate the necessary funds, the City covenants to provide prompt notice of such fact to the MSRB through EMMA, in a format prescribed by the MSRB.

9. Termination of Undertaking. This Undertaking shall be terminated hereunder if the City shall no longer have liability for any obligation on or relating to repayment of the Bonds under the Bond Ordinance.

10. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Undertaking, and may discharge any such Agent, with or without appointing a successor Dissemination Agent.

11. Additional Information. Nothing in this Undertaking shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of

occurrence of a Listed Event, in addition to that which is required by this Undertaking. If the City chooses to include any information from any document or notice of occurrence of a Listed Event in addition to that which is specifically required by this Undertaking, the City shall have no obligation under this Undertaking to update such information or include it in any future Annual Financial Information Disclosure or Listed Events Disclosure.

12. Beneficiaries. This Undertaking has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Undertaking shall inure solely to the benefit of the City, the Dissemination Agent, if any, and the beneficial owners of the Bonds, and shall create no rights in any other person or entity.

13. Recordkeeping. The City shall maintain records of all Annual Financial Information Disclosure and Listed Events Disclosure including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

14. Governing Law. This Undertaking shall be governed by the laws of the State.

DATED: [Closing Date]

CITY OF FLAGSTAFF, ARIZONA

By.....  
Mayor

ATTEST:

.....  
City Clerk

APPROVED AS TO FORM:

.....  
City Attorney

## EXHIBIT I

### ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED FINANCIAL STATEMENTS

“Annual Financial Information” means financial information and operating data of the type contained in the Final Official Statement in Table Nos. 8, 15A, and 16 (in each case, actual results for most recently completed fiscal year only).

All or a portion of the Annual Financial Information and the Audited Financial Statements as set forth below may be included by reference to other documents which have been submitted through EMMA or filed with the Commission. If the information included by reference is contained in a final official statement, the final official statement must be available from the MSRB. The City shall clearly identify each such item of information included by reference.

Annual Financial Information exclusive of Audited Financial Statements will be provided through EMMA by the first business day of February of each year, commencing February 1, 2020. Audited Financial Statements as described below should be filed at the same time as the Annual Financial Information. If Audited Financial Statements are not available when the Annual Financial Information is filed, unaudited financial statements shall be included, to be followed up by Audited Financial Statements when available.

Audited Financial Statements will be prepared according to GAAP. Audited Financial Statements will be provided through EMMA within 30 days after availability to the City.

If any change is made to the Annual Financial Information as permitted by Section 4 of the Undertaking, the City will disseminate a notice of such change as required by Section 4, including changes in fiscal year or GAAP.

## EXHIBIT II

### EVENTS FOR WHICH LISTED EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancements reflecting financial difficulties.
5. Substitution of credit or liquidity providers, or their failure to perform.
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations, in each case, with respect to the tax status of the security, or other material events affecting the tax status of the security.
7. Modifications to the rights of security holders, if material.
8. Bond calls, if material, or tender offers.
9. Defeasances.
10. Release, substitution or sale of property securing repayment of the securities, if material.
11. Rating changes.
12. Bankruptcy, insolvency, receivership or similar events of the City, being if any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under State or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.
13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material, and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

**CITY OF FLAGSTAFF, ARIZONA –  
AUDITED ANNUAL FINANCIAL STATEMENTS  
FOR THE FISCAL YEAR ENDED JUNE 30, 2018**

### BOOK-ENTRY-ONLY SYSTEM

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Securities Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants” and together with the Direct Participants, the “Participants”). DTC has Standard & Poor’s rating of: “AA+.” The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds

for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Bond Registrar and Paying Agent and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payment of principal of and interest on the Bonds and the redemption price of any Bond will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Bond Registrar and Paying Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Bond Registrar and Paying Agent or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of and interest on the Bonds and the redemption price of any Bonds will be made to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or Bond Registrar and Paying Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the City or the Bond Registrar and Paying Agent. Under such circumstances, in the event that a successor depository is not obtained, certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but the City takes no responsibility for the accuracy thereof.

\$[PAR]  
CITY OF FLAGSTAFF, ARIZONA  
GENERAL OBLIGATION BONDS  
SERIES 2019

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BOND PURCHASE AGREEMENT

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\_\_\_\_\_, 2019

CITY OF FLAGSTAFF, ARIZONA  
c/o The Honorable Mayor and Council  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

The undersigned, Hilltop Securities Inc. (the “Underwriter”), offers to enter into the following agreement with the City of Flagstaff, Arizona (the “Issuer”), which, upon the Issuer’s written acceptance of this offer, will be binding upon the Issuer and upon the Underwriter. This offer is made subject to the Issuer’s written acceptance hereof on or before 11:59 p.m., Arizona time, on the date first written above, and, if not so accepted, this offer will be subject to withdrawal by the Underwriter upon notice delivered to the Issuer at any time prior to the acceptance hereof by the Issuer. The offer of the Underwriter is made by signing the signature line provided and delivering the signed page to the Issuer. The acceptance is made by the Issuer signing the signature line provided and delivering the signed page to the Underwriter. Delivery includes sending in the form of a facsimile or telecopy or via the internet as a portable document format (PDF) file or other replicating image attached to an electronic message. Terms not otherwise defined in this Bond Purchase Agreement (this “Agreement”) shall have the same meanings set forth in the Bond Ordinance or the Official Statement (both as defined herein).

1. Purchase and Sale of the Bonds. Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell and deliver to the Underwriter, all, but not less than all, of the Issuer’s General Obligation Bonds, Series 2019 (the “Bonds”). Inasmuch as this purchase and sale represents a negotiated transaction, the Issuer acknowledges and agrees that: (i) the Underwriter is not acting as an agent or fiduciary of the Issuer, but rather is acting solely in its capacity as underwriter for itself and its own account; (ii) the transaction contemplated by this Agreement is an “arm’s length,” commercial transaction between the Issuer and the Underwriter in which the Underwriter is acting solely as a principal and is not acting as a municipal advisor, financial advisor, or fiduciary to the Issuer; (iii) the Underwriter has not assumed any advisory or fiduciary responsibility to the Issuer with respect to

the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Issuer on other matters); (iv) the only obligations the Underwriter has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement; (v) the Underwriter has financial and other interests that differ from those of the Issuer; (vi) the Underwriter has provided to the Issuer prior disclosures under Rule G-17 of the MSRB (defined below), which have been received by the Issuer; and (vii) the Issuer has consulted its own legal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

The principal amount, the maturities, the redemption provisions and the interest rates per annum and resulting yields for the Bonds are set forth in the Schedule hereto. The Bonds shall be as described in, and shall be issued under and pursuant to the provisions of an ordinance adopted by the Mayor and City Council of the Issuer (the "City Council") at a meeting duly called, noticed and held on November 5, 2019 (the "Bond Ordinance").

The Bonds will be dated as of the date of the initial authentication and delivery thereof.

The Bonds will be purchased by the Underwriter at the purchase price of \$ \_\_\_\_\_, consisting of the par amount of the Bonds, plus [net] original issue premium of \$ \_\_\_\_\_ and less the Underwriter's discount of \$ \_\_\_\_\_.

2. Public Offering. The Underwriter agrees to make a bona fide public offering of all of the Bonds at a price not to exceed the public offering price set forth on the inside front cover of the Official Statement and may subsequently change such offering price without any requirement of prior notice. The Underwriter may offer and sell Bonds to certain dealers (including dealers depositing Bonds into investment trusts) and others at prices lower or higher than the public offering price stated on the inside front cover page of the Official Statement.

3. Establishment of Issue Price.

(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Bonds and shall execute and deliver to the Issuer on the Closing Date (as defined herein) an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Issuer and Greenberg Traurig, LLP ("Bond Counsel"), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) [Except as otherwise set forth in Schedule [II] attached hereto,] the Issuer will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity. At or promptly after the execution of this Agreement, the Underwriter shall report to the Issuer the price or prices at which it has sold to the public each maturity of Bonds. [If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the Issuer the prices at which it sells the unsold Bonds of that maturity to the public. That

reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) the Underwriter has sold all Bonds of that maturity or (ii) the 10% test has been satisfied as to the Bonds of that maturity, provided that, the Underwriter's reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Issuer or Bond Counsel.] For purposes of this Section, if Bonds mature on the same date but have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Bonds.

(c) [The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Agreement at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in Schedule [II] attached hereto, except as otherwise set forth therein. Schedule [II] also sets forth, as of the date of this Agreement, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the Issuer and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the "hold-the-offering-price rule"). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) The close of the fifth (5th) business day after the sale date; or

(2) The date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the Issuer promptly after the close of the fifth (5th) business day after the sale date whether it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.]

(d) [The Underwriter confirms that:

(1) any selling group agreement and any third-party distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(i) (a) to report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter, and (b) to comply with the

hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter,

(ii) to promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below), and

(iii) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(2) any selling group agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.]

(e) [The Issuer acknowledges that, in making the representations set forth in this section, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds.]

(f) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public),

(3) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Agreement by all parties.

#### 4. The Official Statement.

(a) The Preliminary Official Statement, dated \_\_\_\_\_, 2019 (including the cover page, the inside front cover page and Appendices thereto, the “Preliminary Official Statement”), of the Issuer relating to the Bonds, as to be subsequently revised to reflect the changes resulting from the sale of the Bonds and including amendments or supplements thereto, is hereinafter called the “Official Statement.”

(b) The Preliminary Official Statement has been prepared by the Issuer for use by the Underwriter in connection with the public offering, sale and distribution of the Bonds by the Underwriter. The Issuer hereby deems the Preliminary Official Statement “final” as of its date, except for the omission of such information which is dependent upon the final pricing of the Bonds for completion, all as permitted to be excluded by Section (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934 (the “Rule”).

(c) The Issuer represents that the City Council (or appropriate officials of the Issuer) has reviewed and approved the information in the Official Statement and hereby

authorizes the Official Statement and the information therein contained to be used by the Underwriter in connection with the public offering and the sale of the Bonds. The Issuer ratifies the use by the Underwriter prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds. The Issuer shall provide, or cause to be provided, to the Underwriter as soon as practicable after the date of the Issuer's acceptance of this Agreement (but, in any event, not later than within seven business days after the Issuer's acceptance of this Agreement and in sufficient time to accompany any confirmation that requests payment from any customer) copies of the Official Statement which is complete as of the date of its delivery to the Underwriter in such quantity as the Underwriter shall request in order for the Underwriter to comply with Section (b)(4) of the Rule and the rules of the Municipal Securities Rulemaking Board (the "MSRB").

(d) If, after the date of this Agreement to and including the date the Underwriter is no longer required to provide an Official Statement to potential customers who request the same pursuant to the Rule (the earlier of (i) 90 days from the "end of the underwriting period" (as defined in the Rule) and (ii) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days after the "end of the underwriting period" for the Bonds), the Issuer becomes aware of any fact or event which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or if it is necessary to amend or supplement the Official Statement to comply with law, the Issuer will notify the Underwriter (and for the purposes of this clause provide the Underwriter with such information as it may from time to time request), and if, in the opinion of the Issuer or the Underwriter, such fact or event requires preparation and publication of a supplement or amendment to the Official Statement, the Issuer will forthwith prepare and furnish, at the Issuer's own expense (in a form and manner approved by the Underwriter), a reasonable number of copies of either amendments or supplements to the Official Statement so that the statements in the Official Statement as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or so that the Official Statement will comply with law. If such notification shall be subsequent to the Closing, the Issuer shall furnish such legal opinions, certificates, instruments and other documents as the Underwriter may deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement.

(e) The Underwriter hereby agrees to file the Official Statement with the MSRB. Unless otherwise notified in writing by the Underwriter, the Issuer can assume that the "end of the underwriting period" for purposes of the Rule is the Closing Date (as defined herein).

5. Representations, Warranties, and Covenants of the Issuer. The undersigned, on behalf of the Issuer, but not individually, hereby represents and warrants to and covenants with the Underwriter that:

(a) The Issuer is duly organized and validly existing as a municipal corporation under the laws of the State of Arizona (the “State”) with powers specifically required for the purposes of this Agreement, specifically Title 35, Chapter 3, Article 3, Arizona Revised Statutes, as amended (the “Act”), and has now, and at the Closing Date will have, full legal right, power and authority under the Act to adopt the Bond Ordinance and under the Act and the Bond Ordinance (i) to enter into, execute and deliver this Agreement, the Bond Registrar and Paying Agent Agreement described in the Bond Ordinance and an Undertaking which satisfies the requirements of Section (b)(5)(i) of the Rule (the “Undertaking”) and all documents required hereunder and thereunder to be executed and delivered by the Issuer (this Agreement, such Bond Registrar and Paying Agent Agreement and the Undertaking hereinafter referred to as the “Issuer Documents”), (ii) to sell, issue and deliver the Bonds to the Underwriter as provided herein and (iii) to carry out and consummate the transactions contemplated by the Bond Ordinance, the Issuer Documents and the Official Statement, and the Issuer has complied, and will at the Closing be in compliance in all respects, with the terms of the Act, the Bond Ordinance and the Issuer Documents as they pertain to such transactions;

(b) By all necessary official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized all necessary action to be taken by it for (i) the adoption of the Bond Ordinance and the issuance and sale of the Bonds, (ii) the approval, execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Bonds and the Issuer Documents and (iii) the consummation by it of all other transactions contemplated by the Official Statement and the Issuer Documents and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the Issuer in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(c) The Issuer Documents constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors’ rights and, in the case of the Undertaking, annual appropriation of amounts to pay for compliance therewith, and the Bonds, when issued, delivered and paid for, in accordance with the Bond Ordinance and this Agreement, will constitute legal, valid and binding general obligations of the Issuer, entitled to the benefits of the Bond Ordinance and enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors’ rights and all actions necessary to create a legal, valid and binding levy on all of the taxable property in the Issuer of a direct, annual, ad valorem tax, unlimited as to rate, sufficient to pay all the principal of and interest on the Bonds as the same become due, shall have been or shall be taken to the extent such action may be taken at or prior to the Closing;

(d) The Issuer is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer is or any of its property or assets are otherwise subject, no event has

occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Issuer under any of the foregoing, and the execution and delivery of the Bonds and the Issuer Documents and the adoption of the Bond Ordinance, and compliance with the provisions on the Issuer's part contained therein, will not conflict with or constitute a breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer is or to which any of its property or assets are otherwise subject;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the Issuer of its obligations under the Bond Ordinance, the Issuer Documents and the Bonds have been duly obtained, except for such approvals, consents and orders as may be required under the "blue sky" or securities laws of any jurisdiction in connection with the offering and sale of the Bonds;

(f) The Bonds conform to the descriptions thereof contained in the Official Statement under the caption "THE BONDS"; the proceeds of the sale of the Bonds will be applied generally as described in the Official Statement under the caption "THE BONDS – Authorization and Use of Funds" and the Undertaking conforms to the description thereof contained in the Official Statement under the caption "CONTINUING DISCLOSURE";

(g) Except as disclosed in the Preliminary Official Statement and the Official Statement, there is no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the Issuer after due inquiry, threatened against the Issuer, affecting the existence of the Issuer or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the levying, assessment or collection of the property taxes for the payment of the Bonds pursuant to the Bond Ordinance or in any way contesting or affecting the adoption of the Bond Ordinance or the validity or enforceability of the Bonds or the Issuer Documents, or contesting the exclusion from gross income of interest on the Bonds for federal income tax purposes or State income tax purposes, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Issuer or any authority for the issuance of the Bonds, the adoption of the Bond Ordinance or the execution and delivery of the Issuer Documents, nor, to the best knowledge of the Issuer, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Bonds or the Issuer Documents;

(h) As of the date thereof, the Preliminary Official Statement did not contain any untrue statement of a material fact or omit to state a material fact required to be

stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) At the time of the Issuer's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (d) of Section 4 of this Agreement) at all times subsequent thereto during the period up to and including the Closing Date, the Official Statement does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(j) If the Official Statement is supplemented or amended pursuant to paragraph (d) of Section 4 of this Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the Closing Date, the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(k) The Issuer will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Bond Ordinance and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes or State income tax purposes of the interest on the Bonds;

(l) The Issuer will furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriter may reasonably request (A) to (y) qualify the Bonds for offer and sale under the "blue sky" or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriter may designate and (z) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and (B) to continue such qualifications in effect so long as required for the distribution of the Bonds (provided, however, that the Issuer will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Underwriter immediately of receipt by the Issuer of any notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(m) The financial statements of, and other financial information regarding, the Issuer in the Official Statement fairly present the financial position and results of the Issuer as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles as applicable to governmental units and have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods concerned (except as otherwise disclosed in the Official Statement or financial statements); since June 30, 2018, except as disclosed in the Official Statement, the Issuer has not incurred any material liabilities, direct or

contingent, nor has there been any material adverse change in the financial position, results of operations or condition, financial or otherwise, of the Issuer that are not described in the Official Statement, whether or not arising from transactions in the ordinary course of business; prior to the Closing, there will be no adverse change of a material nature in such financial position, results of operations or condition, financial or otherwise, of the Issuer and the Issuer is not a party to any litigation or other proceeding pending or, to its knowledge, threatened which, if decided adversely to the Issuer, would have a materially adverse effect on the financial condition of the Issuer;

(n) The Issuer has fully submitted to the Arizona Department of Revenue, the Arizona State Treasurer's Office or the Arizona Department of Administration, as applicable, the information required with respect to previous issuances of bonds, securities and lease-purchase agreements of the Issuer pursuant to Section 35-501(B), Arizona Revised Statutes, as amended, and will file the information relating to the Bonds required to be submitted to the Arizona Department of Administration pursuant thereto within 60 days of the Closing Date;

(o) The Issuer has executed and delivered or shall execute and deliver prior to the Closing, and in time for the Closing to occur at its specified time, the documents required to cause the Bonds to be eligible for deposit with DTC (as defined herein) or other securities depositories;

(p) Except as otherwise indicated in the Official Statement, the Issuer has been and is in material compliance during the previous five years with the terms of all continuing disclosure undertakings previously executed by the Issuer pursuant to the Rule;

(q) Prior to the Closing, the Issuer will not offer or issue any bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, in each case payable from the same source as the Bonds, without the prior approval of the Underwriter; and

(r) Any certificate, signed by any official of the Issuer authorized to do so in connection with the transactions contemplated by this Agreement shall be deemed a representation and warranty by the Issuer to the Underwriter as to the statements made therein.

## 6. Closing.

(a) Before 10:00 a.m., Arizona time, on \_\_\_\_\_, 2019 (the "Closing Date"), or at such other time and date as shall have been mutually agreed upon by the Issuer and the Underwriter, the Issuer will, subject to the terms and conditions hereof, deliver the Bonds to the Underwriter duly executed and authenticated, together with the other documents hereinafter mentioned, and the Underwriter will, subject to the terms and conditions hereof, accept such delivery and pay the purchase price of the Bonds as set forth in Section 1 of this Agreement by wire transfer payable in immediately available funds to the order of the Issuer (the "Closing"). Payment for the Bonds as aforesaid shall

be made at the offices of Bond Counsel or such other place as shall have been mutually agreed upon by the Issuer and the Underwriter.

(b) Delivery of the Bonds shall be made through the facilities of The Depository Trust Company, New York, New York (“DTC”), or, in the case of a “Fast Automated Securities Transfer” with the bond registrar and paying agent for purposes of the Bond Registrar and Paying Agent Agreement or by such other means as shall have been mutually agreed upon by the Issuer and the Underwriter. The Bonds shall be prepared in definitive fully registered form, bearing CUSIP numbers without coupons, with one Bond for each maturity of the Bonds, registered in the name of Cede & Co., all as provided in the Bond Ordinance, and shall be made available to the Underwriter at least one business day before the Closing for purposes of inspection.

7. Closing Conditions. The Underwriter has entered into this Agreement in reliance upon the representations, warranties and agreements of the Issuer contained herein, and in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer of its obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter’s obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds shall be conditioned upon the performance by the Issuer of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and shall also be subject to the following additional conditions, including the delivery by the Issuer of such documents as are enumerated herein, in form and substance reasonably satisfactory to the Underwriter:

(a) The representations and warranties of the Issuer contained herein shall be true, complete and correct on the date hereof and on and as of the Closing Date, as if made on the Closing Date;

(b) The Issuer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing;

(c) At the time of the Closing, (i) the Bond Ordinance, the Issuer Documents and the Bonds shall be in full force and effect in the form heretofore approved by the Underwriter and shall not have been amended, modified or supplemented, and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Underwriter and (ii) all actions of the Issuer required to be taken by the Issuer shall be performed in order for Bond Counsel and counsel to the Underwriter to deliver their respective opinions referred to hereafter;

(d) At the time of the Closing, all official action of the Issuer relating to the Bonds, the Bond Ordinance and the Issuer Documents shall be in full force and effect and shall not have been amended, modified or supplemented;

(e) At or prior to the Closing, the Bond Ordinance shall have been duly executed and delivered by the Issuer and the Issuer shall have duly executed and delivered and the registrar for the Bonds shall have duly authenticated the Bonds;

(f) At the time of the Closing, there shall not have occurred any change or any development involving a prospective change in the condition, financial or otherwise, or operations of the Issuer, from that set forth in the Official Statement that, in the judgment of the Underwriter, is material and adverse and that makes it, in the judgment of the Underwriter, impracticable to market the Bonds on the terms and in the manner contemplated in the Official Statement;

(g) The Issuer shall not have failed to pay principal or interest when due on any of its outstanding obligations for borrowed money;

(h) All steps to be taken and all instruments and other documents to be executed, and all other legal matters in connection with the transactions contemplated by this Agreement shall be reasonably satisfactory in legal form and effect to the Underwriter;

(i) At or prior to the Closing, the Underwriter shall have received copies of each of the following documents:

(1) The Official Statement, executed on behalf of the Issuer by the Management Services Director or such other official as may have been agreed to by the Underwriter, and the reports and audits referred to or appearing in the Official Statement;

(2) The Bond Ordinance with such supplements or amendments as may have been agreed to by the Underwriter;

(3) The Issuer Documents;

(4) the approving opinion of Bond Counsel, dated the Closing Date, with respect to the Bonds, in substantially the form attached to the Official Statement along with a reliance letter with respect thereto, dated the Closing Date and addressed to the Underwriter;

(5) a supplemental opinion of Bond Counsel, dated the Closing Date, addressed to the Underwriter, substantially to the effect that:

(i) The information contained (but not incorporated by reference) in the Official Statement under the headings entitled "THE BONDS," "TAX MATTERS," and "CONTINUING DISCLOSURE" (except for matters relating to the compliance by the Issuer with its prior undertakings as to which we express no opinion) therein, in Appendices "B" and "C" thereto and in the tax caption paragraph at the top of the cover page thereof is an accurate summary of the information which it purports to summarize; provided, however, that such information does not

purport to summarize all the provisions of, and is qualified in its entirety by, the complete laws and documents that are summarized, and, based solely on our participation in the transaction as Bond Counsel, nothing has come to their attention that would lead them to believe that the information and statements in the Preliminary Official Statement, as of its date and as of the date hereof, and the Official Statement, as of the date hereof and as of the date of Closing, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that they express no view as to the financial statements of the City, any other financial forecast, technical or statistical data, and any information in the Preliminary Official Statement or the Official Statement regarding DTC. They have not undertaken to review or determine independently, and assume no responsibility for, the accuracy or completeness of the information in the Preliminary Official Statement or the Official Statement except to the extent indicated hereinabove;

(ii) The offer and sale of the Bonds shall be exempt from registration under the Securities Act of 1933, as amended, and the Bond Ordinance does not need to be qualified pursuant to the Trust Indenture Act of 1939, as amended; and

(iii) The Issuer Documents and the Bond Ordinance have been duly authorized and validly executed and delivered by the Issuer and, assuming due authorization, execution and delivery by, and enforceability against, the other parties thereto, and, in the case of the Undertaking, subject to annual appropriation to provide for the costs of compliance therewith, constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws, and equitable principles affecting the enforceability of creditors' rights generally.

(6) An opinion of the counsel to the Issuer that, based on an investigation of the records of the Superior Court of Coconino County and the United States District Court, District of Arizona, Phoenix Division, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to his or her knowledge (upon due inquiry), threatened (i) the issuance and delivery of the Bonds, (ii) the carrying out of the purposes to which the proceeds of the Bonds are to be applied or (iii) the levy and collection of taxes to pay the debt service on the Bonds or contesting or questioning the proceedings and authority under which the Bonds have been sold, authorized, issued, executed or delivered or the validity or enforceability of the Bonds.

(7) An opinion of counsel to the Underwriter, dated the Closing Date, addressed to the Underwriter, substantially to the effect that, based upon their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriter and their participation at conferences at which the Preliminary Official Statement and the Official Statement were discussed, but without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement, such counsel has no reason to believe that the Preliminary Official Statement, as of its date and as of the date hereof, and the Official Statement, as of the date hereof and as of the date of Closing, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except for any financial, forecast, technical and statistical statements and data included in the Preliminary Official Statement and the Official Statement and the information regarding DTC and its book-entry system, in each case as to which no view need be expressed);

(8) A certificate, dated the Closing Date, of appropriate representatives of the Issuer substantially to the effect that:

(i) the representations and warranties of the Issuer contained herein are true and correct in all material respects on and as of the Closing Date as if made on the Closing Date;

(ii) no litigation or proceeding against it is pending or, to the best of such representatives' knowledge, threatened in any court or administrative body which would (a) contest the right of the members or officials of the Issuer to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Issuer, (c) contest the validity, due authorization and execution of the Bonds or the Issuer Documents or (d) attempt to limit, enjoin or otherwise restrict or prevent the Issuer from functioning and levying, assessing and collecting the property taxes from which the Bonds are payable pursuant to the Bond Ordinance, nor, to the best of such representatives' knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially, adversely affect the validity or enforceability of the Bonds or the Issuer Documents or have a material, adverse effect on the financial condition of the Issuer;

(iii) the Bond Ordinance has been duly adopted by the Issuer, is in full force and effect and has not been modified, amended or repealed;

(iv) the financial statements of the Issuer included in the Official Statement were true, correct and complete as of June 30, 2018, and are true, correct and complete as of the date of such certificate, and

any other financial statements and statistical data included in the Official Statement are true and correct as of the date of such certificate;

(v) subsequent to June 30, 2018, the Issuer has not incurred any material liabilities, direct or contingent, nor has there been any material adverse change in the financial position, results of operations or condition, financial or otherwise, of the Issuer that are not described in the Official Statement, whether or not arising from transactions in the ordinary course of business; and

(vi) to the best of their knowledge and belief, no event affecting the Issuer has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein, in light of the circumstances under which made, not misleading in any respect as of the Closing, and the information contained in the Official Statement is correct in all material respects and, as of the date of the Official Statement did not, and as of the Closing does not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading in any material respect.

(9) A certificate, dated the Closing Date, of appropriate representatives of the Issuer in form and substance satisfactory to Bond Counsel (i) setting forth the facts, estimates and circumstances in existence on the date of the Closing, which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and any applicable regulations (whether final, temporary or proposed), issued pursuant to the Code, and (ii) certifying that to the best of their knowledge and belief, there are no other facts, estimates or circumstances that would materially change the conclusions, representations and expectations contained in such certificate;

(10) Any other certificates and opinions required by the Bond Ordinance for the issuance thereunder of the Bonds;

(11) Evidence satisfactory to the Underwriter that the Bonds have been rated “\_\_” by S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC , and that such rating is in effect as of the Closing Date;

(12) The filing copy of the Information Return Form 8038-G (IRS) for the Bonds;

(13) The filing copy of the Report of Bond and Security Issuance pursuant to Section 35-501(B), Arizona Revised Statutes, as amended, and

(14) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing, of the Issuer's representations and warranties contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the Issuer on or prior to the Closing Date of all the respective agreements then to be performed and conditions then to be satisfied by the Issuer.

All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter.

If the Issuer shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Bonds contained in this Agreement, or if the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Underwriter nor the Issuer shall be under any further obligation hereunder, except that the respective obligations of the Issuer and the Underwriter set forth in Section 9(c) hereof shall continue in full force and effect.

8. Termination. The Underwriter shall have the right to cancel its obligation to purchase the Bonds if, between the date of this Agreement and the Closing, the market price or marketability of the Bonds shall be materially adversely affected, in the sole judgment of the Underwriter, by the occurrence of any of the following:

(a) legislation shall be enacted by or introduced in the Congress of the United States or recommended to the Congress for passage by the President of the United States, or the Treasury Department of the United States or the Internal Revenue Service or any member of the Congress or the State legislature or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States or of the State or the United States Tax Court shall be rendered, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed, the effect of any or all of which would be to impose, directly or indirectly, federal income taxation or State income taxation upon income of the general character to be derived by the Issuer pursuant to the Bond Ordinance, or upon interest received on obligations of the general character of the Bonds or, with respect to State taxation, of the interest on the Bonds as described in the Official Statement, or other action or events shall have transpired which may have the purpose or effect, directly or indirectly, of changing the federal income tax consequences or State income tax consequences of any of the transactions contemplated herein;

(b) legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree, or injunction issued by any court of competent jurisdiction, or an

order, ruling, regulation (final, temporary, or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the 1933 Act, or that the Bond Ordinance is not exempt from qualification under or other requirements of the Trust Indenture Act, or that the issuance, offering, or sale of obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise, is or would be in violation of the federal securities law as amended and then in effect;

(c) any state “blue sky” or securities commission or other governmental agency or body shall have withheld registration, exemption or clearance of the offering of the Bonds as described herein, or issued a stop order or similar ruling relating thereto;

(d) a general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, the establishment of minimum prices on either such exchange, the establishment of material restrictions (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, a general banking moratorium declared by federal, State of New York, or State officials authorized to do so;

(e) the New York Stock Exchange or other national securities exchange or any governmental authority, shall impose, as to the Bonds or as to obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

(f) any amendment to the federal or State Constitution or action by any federal or state court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the Issuer, its property or income securities (or interest thereon);

(g) any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) there shall have occurred since the date of this Agreement any materially adverse change in the affairs or financial condition of the Issuer;

(i) the United States shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency or there shall have occurred any other outbreak or escalation of hostilities or a national or international calamity or crisis, financial or otherwise;

(j) any fact or event shall exist or have existed that, in the Underwriter's judgment, requires or has required an amendment of or supplement to the Preliminary Official Statement or the Official Statement;

(k) there shall have occurred or any notice shall have been given of any intended review, downgrading, suspension, withdrawal, or negative change in credit watch status by any national rating service to any of the Issuer's obligations; and

(l) the purchase of and payment for the Bonds by the Underwriter, or the resale of the Bonds by the Underwriter, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission.

9. Expenses.

(a) The Underwriter shall be under no obligation to pay, and the Issuer shall pay, any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to (i) the cost of the preparation and printing of the Bond Ordinance, the Issuer Documents, the Preliminary Official Statement and the Final Official Statement (including any amendments or supplements thereto); (ii) the cost of preparation and printing of the Bonds, (iii) the fees and disbursements of Bond Counsel and counsel to the Underwriter; (iv) the fees and disbursements of \_\_\_\_\_, as bond registrar and paying agent and Stifel, Nicolaus & Company, Incorporated, as financial advisor to the City; (v) the fees and disbursements of any other engineers, accountants, and other experts, consultants or advisers retained by the Issuer and (vi) the fees for bond ratings and credit enhancement fees or premiums, if any. The Issuer shall also pay for any expenses (included in the expense component of the Underwriter's discount) incurred by the Underwriter which are incidental to implementing this Agreement, including, but not limited to, meals, transportation and lodging, if any, and any other miscellaneous closing costs.

(b) The Underwriter shall pay (i) all advertising expenses in connection with the public offering of the Bonds and (ii) all other expenses incurred by them in connection with the public offering of the Bonds.

(c) If this Agreement shall be terminated by the Underwriter because of any failure or refusal on the part of the Issuer to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Issuer shall be unable to perform its obligations under this Agreement, the Issuer will reimburse the Underwriter for all "out-of-pocket" expenses (including the fees and disbursements of counsel to the Underwriter) reasonably incurred by the Underwriter in connection with this Agreement or the offering contemplated hereunder.

(d) The Issuer acknowledges that it has had an opportunity to evaluate and consider the fees and expenses being incurred as part of the issuance of the Bonds.

10. Notices. Any notice or other communication to be given to the Issuer under this Agreement may be given by delivering the same in writing to the address set forth on the first

page of this Agreement, and any notice or other communication to be given to the Underwriter under this Agreement may be given by delivering the same in writing to Hilltop Securities Inc., 2398 East Camelback Road, Suite 340, Phoenix, AZ 85016, Attention: Janelle Gold.

11. Parties in Interest. This Agreement as heretofore specified shall constitute the entire agreement between us and is made solely for the benefit of the Issuer and the Underwriter (including successors or assigns of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. This Agreement may not be assigned by the Issuer. All of the Issuer's representations, warranties and agreements contained in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigations made by or on behalf of any of the Underwriter; (ii) delivery of and payment for the Bonds pursuant to this Agreement and (iii) any termination of this Agreement.

12. Effectiveness. This Agreement shall become effective upon the acceptance hereof by the Issuer and shall be valid and enforceable at the time of such acceptance.

13. Choice of Law. This Agreement shall be governed by and construed in accordance with the law of the State.

14. Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

15. Business Day. For purposes of this Agreement, "business day" means any day on which the New York Stock Exchange is open for trading.

16. Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

17. Counterparts. This Agreement may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document.

18. Notice Concerning Cancellation of Contracts. To the extent applicable by provision of law, this Agreement is subject to cancellation pursuant to Section 38 511, Arizona Revised Statutes, the provisions of which are incorporated herein.

[Remainder of page left blank intentionally]

If you agree with the foregoing, please sign the enclosed counterpart of this Agreement and return it to the Underwriter. This Agreement shall become a binding agreement between you and the Underwriter when at least the counterpart of this letter shall have been signed by or on behalf of each of the parties hereto.

Very truly yours,

HILLTOP SECURITIES INC.

By \_\_\_\_\_  
Managing Director

ACCEPTED AND AGREED AT  
\_\_:\_\_\_.M., M.S.T., THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2019:

CITY OF FLAGSTAFF, ARIZONA

By \_\_\_\_\_  
Management Services Director

ATTEST:

\_\_\_\_\_  
Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Bond Counsel

[Signature page of Bond Purchase Agreement for the City of Flagstaff, Arizona General  
Obligation Bonds, Series 2019]

**SCHEDULE I**

\$ \_\_\_\_\_  
CITY OF FLAGSTAFF ARIZONA  
GENERAL OBLIGATION BONDS  
SERIES 2019

DATED DATE: CLOSING DATE

<u>Maturity Date</u> (July 1)	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>
	\$	%	%

\* Yield calculated to first optional redemption date.

Redemption

*Optional Redemption.* The Bonds maturing on and prior to July 1, 20\_\_ will not be subject to redemption prior to their stated maturity dates. The Bonds maturing on and after July 1, 20\_\_ will be subject to optional redemption prior to maturity, at the direction of the Issuer, in whole or in part in denominations of \$5,000 or integral multiples thereof from maturities selected by the Issuer, on July 1, 20\_\_ and on any date thereafter, at a redemption price equal to the principal amount of Bonds being redeemed plus accrued interest to the date fixed for redemption, without premium.

**SCHEDULE II**

\$ \_\_\_\_\_  
CITY OF FLAGSTAFF ARIZONA  
GENERAL OBLIGATION BONDS  
SERIES 2019

**Maturities for Which the 10% Test Has Been Met**

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>
	\$	%	%	%

**Maturities for Which the 10% Test Has Not Been Met**

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>
	\$	%	%	%

## EXHIBIT A

### FORM OF ISSUE PRICE CERTIFICATE

Piper Jaffray & Co. (“Piper”), as Underwriter for the General Obligation Bonds, Series 2019 (the “Bonds”) issued by the City of Flagstaff, Arizona (the “City”), based on its knowledge regarding the sale of the Bonds, certifies as of this date as follows:

**[If the issue price is determined using only the general rule (actual sales of at least 10%) in Regulations § 1.148-1(f)(2)(i):**

(A) As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A (the “Sale Price” as applicable to respective Maturities). The aggregate of the Sale Prices of each Maturity is \$[\_\_\_\_\_] (the “Issue Price”).]

**[If the issue price is determined using a combination of actual sales (Regulations § 1.148-1(f)(2)(i)) and hold-the-offering-price (Regulations § 1.148-1(f)(2)(ii):**

(A) As of the date of this certificate, for each Maturity listed on Schedule A as the “General Rule Maturities,” the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A (the “Sale Price” as applicable to each Maturity of the General Rule Maturities).

(B) On or before the Sale Date, Piper offered the Maturities listed on Schedule A as the “Hold-the-Offering-Price Maturities” to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices” as applicable to each Maturity of the Hold-the-Offering-Price Maturities). A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(C) As set forth in the Bond Purchase Agreement, dated \_\_\_\_\_, 2019, between the City and Piper, Piper has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any portion of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, Piper has not offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

(D) The aggregate of the Sale Prices of the General Rule Maturities and the Initial Offering Prices of the Hold-the-Offering-Price Maturities is \$[\_\_\_\_\_] (the “Issue Price”).]

**[If the issue price is determined using only the hold-the-offering-price rule in Regulations § 1.148-1(f)(2)(ii):**

(A) Piper offered, on or before the Sale Date, each Maturity of the Bonds to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”). A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B. The aggregate of the Initial Offering Prices of each Maturity is \$[\_\_\_\_\_] (the “Issue Price”).

(B) As set forth in the Bond Purchase Agreement, dated \_\_\_\_\_, 2019, between Piper and the City, Piper has agreed in writing that, (i) for each Maturity of the Bond, it would neither offer nor sell any portion of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, Piper has not offered or sold any Maturity of the Bond at a price that is higher than the respective Initial Offering Price for that Maturity of the Bond during the Holding Period.]

[(B),(E), or (C)] Definitions. [NOTE: If issue price is determined using only the general rule (actual sales of 10%), delete the definitions of “Holding Period” and “Sale Date.”]

[“Holding Period” means, for each Hold-the-Offering-Price Maturity of the Bonds, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date ([DATE]), or (ii) the date on which Piper has sold at least 10% of such Maturity of the Bonds to the Public at a price that is no higher than the Initial Offering Price for such Maturity.]

“Maturity” means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

“Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

[“Sale Date” means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Issue is [DATE].]

“Underwriter” means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

All capitalized terms not defined in this Bond have the meaning set forth in City’s Certificate Regarding Federal Tax Matters.

The signer is an officer of Piper and duly authorized to execute and deliver this Certificate of Piper. The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Piper's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the City with respect to certain of the representations set forth in the Certificate Regarding Federal Tax Matters and with respect to compliance with the federal income tax rules affecting the Bonds, and by Greenberg Traurig, LLP, as bond counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the City from time to time relating to the Bonds.

Dated: \_\_\_\_\_, 2019

HILLTOP SECURITIES INC.

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

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

SCHEDULE A

**General Rule Maturities**

<u>Maturity Date</u> <u>(July 15)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>Issue Price</u>
	\$	%	%	%	\$

**Hold-the-Offering-Price Maturities**

<u>Maturity Date</u> <u>(July 15)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>Issue Price</u>
	\$	%	%	%	\$

SCHEDULE B

[Actual Sales for Undersold Maturities as of the Closing Date

<u>Maturity/CUSIP</u>	<u>Date Sold</u>	<u>Time Sold</u>	<u>Par Amount</u>	<u>Sale Price</u>
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\*\*]

[PRICING WIRE OR EQUIVALENT COMMUNICATION]

(Attached)

## **CITY OF FLAGSTAFF, ARIZONA**

### **PROCEDURES FOR COMPLIANCE WITH CONTINUING DISCLOSURE UNDERTAKINGS**

**IMPLEMENTED NOVEMBER 5, 2019**

These Procedures for Compliance with Continuing Disclosure Undertakings (these “Procedures”) set forth procedures of the City of Flagstaff, Arizona (the “Issuer”) to assist in compliance with the continuing disclosure undertakings (“Continuing Disclosure Undertakings”) entered into by the Issuer in connection with the offering of obligations of the Issuer subject to the continuing disclosure requirements of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

These Procedures document practices and describe various procedures for preparing and disseminating annual financial information and reporting “listed events” for the benefit of the holders of the Issuer’s obligations and to assist Participating Underwriters (within the meaning of the Rule) in complying with the Rule.

Compliance with pertinent law is an ongoing process; necessary during the entire term of any obligations issued by the Issuer, and is an integral component of the Issuer’s debt management. Implementation of these Procedures will require ongoing monitoring and consultation with bond/disclosure counsel and the Issuer’s accountants and advisors.

#### **General Policies and Procedures**

1. The Management Services Director of the Issuer (the “Compliance Officer”) will be responsible for monitoring post-issuance compliance.
2. The Compliance Officer will coordinate procedures for record retention and review of such records.
3. All documents and other records relating to obligations issued by the Issuer shall be maintained by or at the direction of the Compliance Officer.
4. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.
5. The Compliance Officer will review the annual information required to be filed pursuant to each Continuing Disclosure Undertaking.
6. The Compliance Officer will train at least one other employee of the Issuer with respect to the matters contained in these Procedures to facilitate compliance with the Continuing Disclosure Undertakings in the event the Compliance Officer is no longer employed by the Issuer.

#### **Continuing Disclosure**

In order to monitor compliance by the Issuer with its Continuing Disclosure Undertakings, the Compliance Officer will take the actions listed below, if and as required by such Continuing Disclosure Undertakings. The Compliance Officer may coordinate with staff, and may engage a dissemination agent, counsel, and/or

other professionals to assist in discharging the Compliance Officer's duties under these Procedures as the Compliance Officer deems necessary.

**A. Compilation of Currently Effective Continuing Disclosure Undertakings**

The Compliance Officer shall compile and maintain a set of all currently effective Continuing Disclosure Undertakings of the Issuer. Such agreements are included in the transcript of proceedings for the Issuer's respective obligation issue. Continuing Disclosure Undertakings are "Currently Effective" for purposes of these Procedures (and hence shall be included in the set of Currently Effective Continuing Disclosure Undertakings) for so long as the obligations to which they relate are outstanding. As obligations are completely repaid or redeemed, the Compliance Officer shall remove the related Continuing Disclosure Undertakings from the set of Currently Effective Continuing Disclosure Undertakings.

**B. Compilation of Currently Effective Financial Obligations**

The Compliance Officer shall compile and maintain a list of all currently effective Financial Obligations of the Issuer. "Financial Obligations" means, for purposes of the Rule, a (i) debt obligation, (ii) derivative instrument entered into in connection with or pledged as security or a source of payment for, and existing or planned debt obligation, or (iii) a guarantee of (i) or (ii). For purposes of the Rule, Financial Obligation shall not include municipal securities of the Issuer as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule and as to which a continuing disclosure undertaking has been executed and delivered by the Issuer consistent with the Rule.

Such list shall include key terms of each Financial Obligation, such as date of incurrence, principal amount, maturity, amortization, interest rate, default rates, security and source of payment and key covenants.

**C. Annual Review and Annual Reporting Requirements**

The Compliance Officer shall ensure that all necessary financial statements, financial information and operating data is filed in the manner and by the filing dates set forth in the Currently Effective Continuing Disclosure Undertakings. The Compliance Officer shall review the set of Currently Effective Continuing Disclosure Undertakings annually, prior to each annual filing, keeping in mind:

- The financial information and operating data required to be reported under a particular Continuing Disclosure Undertaking may differ from the financial information and operating data required to be reported under another Continuing Disclosure Undertaking; and
- The timing requirements for reporting under a particular Continuing Disclosure Undertaking may differ from the timing requirements for filing under another Continuing Disclosure Undertaking.

**D. Calendar; EMMA Notification System**

The Compliance Officer shall keep a calendar of all pertinent filing dates required under the Issuer's Currently Effective Continuing Disclosure Undertakings. The Compliance Officer shall also subscribe to notification services made available through the Electronic Municipal Market Access system of the Municipal Securities Rulemaking Board.

## **E. Annual Review of Prior Filings**

As part of the annual review process, the Compliance Officer shall also review prior filings made within the past five years subsequent to the last such review of prior filings. If the Compliance Officer discovers any late or missing filings, the Compliance Officer (after discussing the circumstances with the Issuer's dissemination agent, counsel or other agents as necessary) shall file the missing information.

## **F. Monitoring of Listed Events**

The Compliance Officer shall monitor the occurrence of any of the following events and/or other events set forth in the Currently Effective Continuing Disclosure Undertakings and shall provide notice of the same in the required manner and by the relevant reporting deadline (generally within 10 days of the occurrence):

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Issuer's obligations, or other material events affecting the tax status of the Issuer's obligations;
7. Modification to rights of holders of the Issuer's obligations, if material;
8. Calls of the Issuer's obligations, if material, and tender offers;
9. Defeasances of the Issuer's obligations;
10. Release, substitution or sale of property securing repayment of the Issuer's obligations, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the Issuer;
13. The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

The list of Currently Effective Financial Obligations compiled pursuant to B. above will assist in making determinations with respect to Listed Events 15 and 16.

**G. Review of Official Statements**

The Compliance Officer shall review drafts of any offering document for a new offering of obligations, with assistance from its dissemination agent, counsel or other agents of the Issuer as necessary, and shall determine that the offering document accurately and completely describes the Issuer's continuing disclosure compliance history within the five years prior to the date of the respective Official Statement. This compliance review is not meant to limit the Issuer's other reviews of or diligence procedures relating to its offering documents.

**H. Record Retention**

The Compliance Officer shall retain documentation evidencing the Issuer's annual reviews and its reviews of offering documents in connection with new offerings as set forth above. This Issuer shall retain this documentation, for each Continuing Disclosure Undertaking, for the period that the related obligations are outstanding.

**I. Annual Review Checklist**

The Compliance Officer may use and retain the attached Annual Review Checklist to assist in implementing these Procedures.

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Rick Tadder, Management Services Director  
**Co-Submitter:** Brandi Suda, Finance Director  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Adoption of Ordinance No. 2019-33:** An ordinance of the City Council of the City of Flagstaff, approving the form and authorizing the execution and delivery of a loan agreement with the Water Infrastructure Financing Authority of Arizona from its Clean Water Revolving Fund program; delegating the determination of certain matters relating thereto to the Management Services Director of the City; providing the transfer of certain moneys and making certain covenants and agreements with respect thereto and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by such loan agreement; providing for severability, authority for clerical corrections, and establishing an effective date **(Water Infrastructure Loan Authorization - Flagstaff Watershed Protection Project)**

**STAFF RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-33 by title only for the final time
- 2) City Clerk reads Ordinance no. 2019-33 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-33

**Executive Summary:**

This ordinance allows for the City of Flagstaff to enter into a loan agreement with the Water Infrastructure Finance Authority (WIFA) for the purpose of financing the Flagstaff Watershed Protection Project as approved by voters on November 6, 2012. An ordinance for this action is required by City Charter ARTICLE VI - FINANCE AND TAXATION, Section 5 - WHEN ACTIONS ARE TO BE TAKEN BY ORDINANCE.

**Financial Impact:**

The WIFA loan will be issued in the first quarter of 2020. In 2012 the voter authorized \$10,000,000 for Forest Health and Watershed Protection Project. The city has already issued and spent \$4,000,000 and we are anticipating issuing the remaining \$6,000,000 authorized.

This loan will be repaid through secondary property tax collections within the current rate of \$0.8366 per \$100 of assessed valuation.

**Policy Impact:**

None

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:****COUNCIL GOALS:**

Environmental and Natural Resources: Aggressively support efforts for forest health.

**REGIONAL PLAN:**

Goal WR.6. Protect, preserve, and improve the quality of surface water, groundwater, and reclaimed water in the region.

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

Yes. Council authorized the 2012 election which voters approved the issuance of debt for the specific projects. Issuing debt was anticipated when the voters approved the questions on the ballots. Council authorized the issuance of \$2,000,000 of the authorization in 2013 and another \$2,000,000 in 2018. On April 3, 2018 Council adopted Reimbursement Resolution 2018-18 for the remaining \$6,000,000 authorized.

**Options and Alternatives:**

- Approve the Ordinance as written allowing the City to move forward with the loan agreement. Pros-Allows for cash flow necessary to complete voter-approved projects while maintaining the current secondary property tax rate. Cons-Increases City debt.
- Recommend changes to the Ordinance modifying the loan agreement. Pros and Cons are dependent on changes.
- Do not approve the authority to enter into a loan agreement. Pros-Delays level of debt for the City. Cons-Projects may need to stop and the City will need to find the cash flow for work completed to date.

**Background/History:**

On November 6, 2012, the City voters approved \$24,000,000 in General Obligation bonds to be issued. \$14,000,000 for a Core Services Facility and \$10,000,000 for the Forest Health project. The City has issued \$4,000,000 to advance the forest health project and has spent these funds as of May 2019. This issue will be for the remaining \$6,000,000 authorization. This funding is anticipated to be spent or encumbered by December 2020.

Staff worked with our Financial Advisor, Stifel, Nicolas and Company (Stifel) to determine the best financing approach. The City and Stifel, contacted WIFA to discuss the project and financing needs of the City. WIFA is authorized to finance the construction, rehabilitation and/or improvement of drinking water, wastewater, wastewater reclamation, and other water quality facilities/projects. The term of the loan is estimated to be 20 years with an estimated \$1 million of forgivable principal (grant funds). WIFA will also provide low-interest rate loans (subsidized by the federal government) and which is currently estimated at 1.5% (subject to change based on the natural AAA General Obligation Bond Index at closing and the appropriate subsidy to be negotiated. Normally, Davis Bacon would be a consideration in issuing debt through WIFA, but working with City and WIFA staff, it was determined that Davis Bacon does not apply. Stifel is assisting the City with providing WIFA the required Project Finance Application and related

documentation for this project and is anticipated to be discussed and approved at the Arizona Finance Authority Board of Directors meeting in December of 2019. The combination of the staff recommended \$1,000,000 Grant (estimated and subject to approval by the WIFA Board of Directors) along with the subsidized interest rate summarized above (approximately 1.5% currently) results in the most efficient financing for the City compared to other options, especially since Davis-Bacon Wages will not be required on this project.

The proposed ordinance includes the maximums contemplated to be issued to provide the greatest flexibility in both amount and timing. While the purpose of this agenda item is to approve an ordinance to allow the City to issue debt, we have included a draft WIFA loan agreement as an informational document you may review. This document has been reviewed by our Financial Advisors and Bond Counsel. Once we have WIFA support to move forward with the loan, these documents will be updated to the final form. Final documents will be available upon request to the Management Services Director.

**Expanded Financial Considerations:**

The new loan will be paid through the assessment of secondary property taxes. To meet the promise made to the public to hold the secondary property rate flat, the City will use strategies including using the secondary property tax reserves and issuing debt that is layered in so that the City can maintain the existing secondary property tax rate of \$0.8366 per \$100 of assessed valuation.

**Community Involvement:**

The process to select the projects that were voted on by the public involved: Consult, Involve, Collaborate and Empower.

The process to authorize the issuance of debt is to INFORM the public.

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**Attachments:**    [Ord. 2019-33](#)  
                          [Example Loan Document](#)

**ORDINANCE NO. 2019-33**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA FROM ITS CLEAN WATER REVOLVING FUND PROGRAM; DELEGATING THE DETERMINATION OF CERTAIN MATTERS RELATING THERETO TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY SUCH LOAN AGREEMENT; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, at a special bond election held in and for the City of Flagstaff, Arizona (the "City"), on November 6, 2012 (the "Election"), there was submitted to the qualified electors thereof, among others, the following question:

**QUESTION NO. 405**

Purpose: **Forest Health and Water Supply Protection Project**

Amount: **\$10,000,000**

To prevent flood damage to the City of Flagstaff ("City"), and to protect the City water supply from damages which occur from large-scale and/or severe wildfire(s) in two watersheds serving the City, shall the City be authorized to sell and issue general obligation bonds in a principal amount up to \$10,000,000:

- to expedite and conduct forest treatments in the Dry Lake Hills watershed north of town to reduce wildfire threat, thereby mitigating subsequent flooding to Sunnyside, downtown, the NAU campus, and neighborhoods bordering the Rio de Flag;
- to plan and conduct forest treatments in the Lake Mary watershed south of the City to reduce wildfire threat, thereby protecting the storage capacity and water quality of Lake Mary; and
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds may be issued in one or more series, will not mature more than 25 years from the date or dates of their issue, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council. The following sentence has been included on this ballot as required by Arizona Revised

Statutes 35-454(C): The issuance of these bonds will result in a property tax increase sufficient to pay the annual debt service on the bonds; and

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$10,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects.

**For the Bonds**

A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$10,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects.

**Against the Bonds**

WHEREAS, the returns of the Election were duly canvassed by the Mayor and Council of the City and a certificate disclosing the purpose of the Election, the total number of votes cast thereat, the total number of votes for and against the issuance of such bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the question was ordered and has been filed and recorded in the office of the County Recorder of Coconino County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the Election voted "For the Bonds", in answer to the foregoing question; and

WHEREAS, the City has heretofore applied to the Water Infrastructure Finance of Arizona (the "Authority"), for a loan (the "Loan") from the Authority's Clean Water Revolving Fund Program for not to exceed \$6,000,000 to fund the Flagstaff Watershed Protection Project as well as the payment of the City's proportionate share of expenses of administering the Authority's Clean Water Revolving Fund Program and any bonds issued by the Authority with respect thereto (collectively, the "Project"); and

WHEREAS, to repay the Loan, the City may enter into a financial assistance loan repayment agreement with the Authority which is payable from any revenues otherwise authorized by law to be used to repay long-term obligations; and

WHEREAS, the terms and conditions under which the Loan will be made and the obligations of the City with respect to the Loan will be set forth in a loan agreement to be executed and delivered by the City and the Authority (the "Loan Agreement"); and

WHEREAS, the Mayor and Council of the City has determined that it will be beneficial to the citizens of the City to enter into and to perform the Loan Agreement; and

WHEREAS, the Loan is to be made by the Authority to the City pursuant to the provisions of the Loan Agreement and the loan repayments payable by the City pursuant to the Loan Agreement (the "Loan Repayments") will be secured by the "Source of Repayment" (as described in the Loan Agreement); and

WHEREAS, the Loan shall be repaid on or before July 1, 2041, twenty-one (21) years from the date of the execution and delivery of the Loan Agreement and the Loan shall bear interest at a

rate not to exceed ten percent (10%) per annum; and

WHEREAS, there has been placed on file with the Clerk of the City and presented at the meeting at which this Ordinance was adopted the proposed form of the Loan Agreement;

**ENACTMENTS:**

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

SECTION 1. The form, terms and provisions of the Loan Agreement, in the form of such document (including the exhibits thereto) presented at the meeting at which this Ordinance was adopted are hereby approved, with such insertions, omissions and changes, not inconsistent with the City's application to the Authority or the requirements of the federal government or the Authority, as shall be approved by the Management Services Director of the City, the execution of such document being conclusive evidence of such approval, and the Management Services Director of the City and the Clerk of the City are hereby authorized and directed, for and on behalf of the City, to execute and attest and deliver, respectively, the Loan Agreement.

SECTION 2. For the payment of the principal of and interest on the Loan, the City shall pay the Loan Repayments provided for in the Loan Agreement. The City shall also pay all other amounts required to be paid by the City pursuant to the provisions of the Loan Agreement and, if the Credit Instrument is required by the Authority, the Reserve Fund Agreement.

SECTION 3. (A) For the purpose of the obligation of the City to pay the Loan Repayments provided for in the Loan Agreement as well as to make the other payments provided for in the Loan Agreement, there shall be levied on all the taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such amounts as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes of the City are levied, assessed and collected. The tax shall be extended and collected for the City, and the officials of the City and Coconino County, Arizona, charged with the annual extension and collection of taxes, without further instructions from the Council, shall extend and collect the tax upon issuance of the Loan. All moneys collected through such tax shall be paid into the treasury of the City, to the credit of a "Debt Service Fund" of the City for the Loan, from which fund the Loan shall be payable, which tax moneys shall be held in subfunds to be known as the "Interest Fund" and the "Redemption Fund," which funds shall be kept separate and apart from and not commingled with any other funds or moneys and which shall be used solely for, respectively, payment of interest on and principal on the Loan.

(B) The Loan or portion thereof in authorized amount shall be deemed paid and defeased and thereafter shall have no claim on ad valorem taxes levied on taxable property in the City (i) if there is deposited with a bank or comparable financial institution, in trust, moneys or obligations issued by or guaranteed by the United States government ("Defeasance Obligations") or both which, with the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate or report of an accountant, to pay the principal thereof and interest thereon or portion thereof as the same matures, comes due or becomes payable upon prior redemption and (ii) if such defeased amount thereof is to be redeemed, notice of such redemption has been given in accordance with provisions of the Loan Agreement. Amounts the payment of which has been provided for in accordance with this Section shall no longer be deemed payable or outstanding and thereafter such amounts shall be payable only

from the moneys or Defeasance Obligations deposited to provide for the payment thereof.

SECTION 4. The appropriate officials and officers of the City are hereby authorized and directed to take all action necessary or reasonably required by the parties to the Loan Agreement, to carry out, give effect to and to consummate the transactions contemplated by the Loan Agreement and by this Ordinance, including, without limitation, the execution and delivery of any closing and other documents reasonably required to be delivered in connection therewith.

SECTION 5. If any section, paragraph, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Ordinance. The Mayor and Council of the City hereby declare that it would have adopted this Ordinance and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the execution and delivery of the Loan Agreement pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Ordinance may be held illegal, invalid or unenforceable. All ordinances and resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any ordinance or resolution or any part thereof.

SECTION 6. All actions of the officers and agents of the City including the Mayor and Council of the City which conform to the purposes and intent of this Ordinance and which further the execution and delivery of the Loan Agreement as contemplated by this Ordinance, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Ordinance.

SECTION 7. All acts and conditions necessary to be performed by the City or to have been met precedent to and in the execution and delivery of the Loan Agreement in order to make it a legal, valid and binding obligation of the City will at the time of delivery of the Loan Agreement have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the execution and delivery of the Loan Agreement.

SECTION 8. All formal actions of the Mayor and Council of the City concerning and relating to the passage of this Ordinance were taken in an open meeting of the Mayor and Council of the City, and all deliberations of the Mayor and Council of the City and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION 9. After the execution and delivery of the Loan Agreement and upon receipt of the Loan from the Authority, this Ordinance shall be and remain irrevocable until the Loan and the Loan Agreement and the interest thereon shall have been fully paid, cancelled and discharged.

SECTION 10. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

**SECTION 11. Severability**

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 12. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 13. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2019.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Exhibits:

[Borrower] and

Water Infrastructure Finance Authority of Arizona

**Borrower – Table of Contents**

<u>Document</u>	<u>Tab</u>
[Borrower]’s Borrowing Resolution.....	1.
WIFA Board Resolution .....	2.
Loan Agreement.....	3.
Loan Agreement Addendum-Wage Rate and Forgivable Principal Requirements for Compliance with P.L. 111-88 .....	4.
Loan Agreement Addendum-American Iron and Steel Requirements for Compliance with Federal Law .....	5.
Exhibit A of Loan Agreement: Financial Terms and Conditions .....	6.
Exhibit B of Loan Agreement: Technical Terms and Conditions .....	7.
Exhibit C of Loan Agreement: Reporting Requirements .....	8.
Exhibit D of Loan Agreement: Source of Repayment and Rate Covenant Provisions .....	9.
Exhibit E of Loan Agreement: Debt Service Reserve Provisions .....	10.
Exhibit F of Loan Agreement: Replacement Reserve Provisions .....	11.
Exhibit G of Loan Agreement: Form of Opinion of Local Borrower.....	12.
Exhibit H of Loan Agreement: Tax Compliance Certificate of Local Borrower .....	13.
IRS Form 8038-G .....	14.
Standard Terms and Conditions.....	15.
WIFA Disbursement Requisition Procedures and Payment Requisitions (on CD)	

**Loan Agreement**

**Water Infrastructure Finance Authority of Arizona**  
(the “Authority”)

and

**[Borrower]**  
(the “Local Borrower”)

Evidencing a Loan from the  
Authority to the Local Borrower

Dated as of **[To be Determined]**

Table of Contents

**Article 1 Description of the Loan**

Section 1.1 Name and Address of Local Borrower .....1  
Section 1.2 Authorized Officer(s) of Local Borrower .....1  
Section 1.3 Notices .....1  
Section 1.4 Loan Information .....2

**Article 2 Description of the Project**

Section 2.1 Description of Project .....2  
Section 2.2 Description of System.....2

**Article 3 Loan to Local Borrower; Amounts Payable**

Section 3.1 The Loan .....2  
Section 3.2 Disbursement of Loan Proceeds .....3  
Section 3.3 Amounts Payable .....3  
Section 3.4 Tax Covenants .....3

**Exhibit A** Financial Assistance Terms and Conditions; Borrower Payment Instructions; and Loan Repayment Schedule

**Exhibit B** Technical Assistance Terms and Conditions

**Exhibit C** Reporting Requirements

**Exhibit D** Source of Repayment

**Exhibit E** Debt Service Reserve Requirements

**Exhibit F** Replacement Reserve Requirements

**Exhibit G** Form of Opinion of Counsel to Borrower

**Exhibit H** Tax Compliance Certificate of Local Borrower

## Loan Agreement

This Loan Agreement (this “*Loan Agreement*”) is made and entered into as of **[To be Determined]** by and between the Water Infrastructure Finance Authority of Arizona (the “*Authority*”), and **[Borrower]** (the “*Local Borrower*”), a political subdivision of the State of Arizona.

This Loan Agreement includes the attached Exhibits and the attached Standard Terms and Conditions. Any capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Exhibits and the Standard Terms and Conditions.

The Authority and the Local Borrower agree as follows:

### Article 1 Description of the Loan

#### **Section 1.1 Name and Address of Local Borrower.**

**[Borrower]**  
Attention: **[Designated Contact]**  
**[Address]**  
**[City, State Zip]**  
Telephone: **[Phone number]**  
Fax: **[Fax number]**

#### **Section 1.2 Authorized Officer(s) of Local Borrower.**

**[Borrower]**  
Attention: **[Authorized Representative]**  
**[Address]**  
**[City, State Zip]**  
Telephone: **[Phone number]**  
Fax: **[Fax number]**

**Section 1.3 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Local Borrower at the address specified in Section 1.1 and to the Authority at the following address:

Executive Director  
Water Infrastructure Finance Authority of Arizona  
100 North 7<sup>th</sup> Avenue, Suite 100  
Phoenix, Arizona 85007  
Telephone: (602) 364-1310  
Fax: (602) 364-1327

Any of the parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

**Section 1.4 Loan Information.** The terms of the Loan include the terms set forth in the Exhibits, which are part of this Loan Agreement:

- Exhibit A** Financial Assistance Terms and Conditions; Borrower Payment Instructions; and Loan Repayment Schedule
- Exhibit B** Technical Assistance Terms and Conditions
- Exhibit C** Reporting Requirements
- Exhibit D** Source of Repayment
- Exhibit E** Debt Service Reserve Requirements
- Exhibit F** Replacement Reserve Requirements
- Exhibit G** Form of Opinion of Counsel to Borrower
- Exhibit H** Tax Compliance Certificate of Local Borrower

Prior to Loan Closing, the Local Borrower must deliver to the Authority the Opinion of Local Borrower Counsel in the form of Exhibit G and the Tax Compliance Certificate of Local Borrower in the form of Exhibit H, signed and dated the date of Loan Closing.

## **Article 2 Description Of The Project**

**Section 2.1 Description of Project.** The Project is described in Project Summary attached to the Loan Resolution of the Authority, and in Exhibit B of this Loan Agreement.

**Section 2.2 Description of System.** [Description of “System” - To be Determined].

## **Article 3 Loan to Local Borrower; Amounts Payable**

**Section 3.1 The Loan.** The Authority shall loan and disburse to the Local Borrower in accordance with this Article 3 an amount listed in Exhibit A (the “Loan”), and the Local Borrower shall borrow and accept from the Authority, the Loan in the principal amount determined pursuant to this Article 3; provided, however, that (i) the Authority shall be under no obligation to disburse any amount of the Loan if an Event of Default has occurred and is continuing under this Loan Agreement, and (ii) the amount to be disbursed shall be lawfully available for disbursement. The Local Borrower shall use the proceeds of the Loan strictly in accordance with the requirements of this Loan Agreement.

**Section 3.2 Disbursements of Loan Proceeds.** The Authority may disburse funds by check, by electronic means or by means of magnetic tape or other transfer medium. Except as hereinafter provided, disbursements shall be made only when (i) the request for disbursements is in substantially the form provided by the Authority and is accompanied by the necessary certifications and documentation and (ii) an Authorized Officer of the Authority has determined

that such disbursement is proper. An Authorized Officer of the Authority shall approve disbursements directly to the persons or entities entitled to payment or to the Local Borrower in the case of reimbursement for costs of services already paid, and shall provide the Local Borrower with a copy of the approval and the date approved. Disbursements may be made only for Eligible Project Costs.

**Section 3.3 Amounts Payable.** The Local Borrower shall pay to the Authority the amounts shown in Exhibit A on or before the dates shown in Exhibit A, as the same may be adjusted as provided in the Standard Terms and Conditions, to reflect any revisions to the principal repayment schedule of the Loan. Such payments shall be made by electronic funds transfer or by direct debit to the Authority.

**Section 3.4 Tax Covenants.**

(a) General. The Local Borrower acknowledges that, in connection with its state revolving fund programs, the Authority issues its bonds (“Authority Bonds”) from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority’s interest for the Loan to qualify and be an obligation that bears interest that is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. Therefore, the Local Borrower represents and covenants as follows with respect to the Loan and the Authority Bonds. The Local Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Loan or the Authority Bonds under Section 103(a) of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code, and in the event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon a bond counsel opinion as may rescind or otherwise negate such action or omission. The Local Borrower will not directly or indirectly use or permit the use of any proceeds of the Loan or any other funds of the Local Borrower or take or omit to take any action that would cause the Loan or the Authority Bonds to be or become “arbitrage bonds” within the meaning of Section 148(a) of the Internal Revenue Code or to fail to meet any other applicable requirement of Sections 103, 141, 148, 149 and 150 of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. To that end, the Local Borrower will comply with all applicable requirements of Sections 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Loan.

(b) Modification Based on Bond Counsel Opinion. Notwithstanding any provision of this Section, if the Local Borrower provides to the Authority a bond counsel opinion to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Loan or the Authority Bonds pursuant to Section 103(a) of the Internal Revenue Code, the provisions of this Section and the covenants in this Section shall be deemed to be modified to that extent.

(c) Bond Counsel Opinion. For purposes of this Section, “bond counsel opinion” means an opinion letter of a firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, and who is acceptable to the Authority.

IN WITNESS WHEREOF, the Authority and the Local Borrower have caused this Loan Agreement to be executed and delivered as of the date of execution hereof.

**Water Infrastructure Finance Authority of Arizona**

By: \_\_\_\_\_  
Dan Dialessi, Executive Director

**City of Peoria**

By: \_\_\_\_\_  
[Authorized Representative Name and Title]

**Attest:**

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

## LOAN AGREEMENT ADDENDUM

### Wage Rate and Forgivable Principal Requirements for Compliance with P.L. 111-88

Water Infrastructure Finance Authority of Arizona

This document (this “Wage Rate and Forgivable Principal Addendum”) sets forth additional requirements applicable to state revolving fund Loans made by the Water Infrastructure Finance Authority of Arizona (“WIFA”) that are subject to the requirements of Public Law 111-88, “Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes,” enacted October 30, 2009 (“P.L. 111-88”). The provisions in this Wage Rate and Forgivable Principal Addendum are a part of the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

The parties acknowledge and agree that funds disbursed by WIFA to the Local Borrower will include funds made available to WIFA by the federal government under P.L. 111-88, and that the requirements of P.L. 111-88 include those set forth in this Wage Rate and Forgivable Principal Addendum. The Local Borrower agrees to comply with all of those requirements and agrees that failure to do so is a breach of the provisions of the Loan Agreement which may result in a default under the Loan Agreement, termination of WIFA’s obligation to make disbursements on the Loan and the Local Borrower being required to repay all amounts that have been disbursed by WIFA on the Loan, together with interest and fees as provided in the Loan Agreement (including interest and fees at rates adjusted from those originally in effect as described herein).

#### **Additional Requirement for Subrecipients that are not Governmental Entities:**

Obtaining Wage Determinations - Under this Wage Rate and Forgivable Principal Addendum, the non-governmental borrower must submit its proposed Davis Bacon wage determinations to WIFA for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors. **THIS PARAGRAPH DOES NOT APPLY TO GOVERNMENTAL ENTITIES.**

#### **Section 1. P.L. 111-88 Compliance - Forgivable Principal Portion.**

(a) Section 1 of Exhibit A to the Loan Agreement specifies the Total Financial Assistance Amount, the amount, if any, designated as the Forgivable Principal Portion, the Intended Repayment Amount, and the required amount of reserves to be established based upon the Intended Repayment Amount. Section 2 of Exhibit A to the Loan Agreement specifies a schedule of interest and principal payments based on the Intended Repayment Amount. If the Local Borrower fails to comply with the requirements of P.L. 111-88, including those set forth in this Wage Rate and Forgivable Principal Addendum:

(i) WIFA will provide a revised Exhibit A for the Loan Agreement to amortize the entire Total Financial Assistance Amount with the Forgivable Principal Portion set to **[Forgivable Principal Amount]**, adjusted, as necessary, to incorporate, previous principal payments.

- (ii) The Local Borrower will repay the Total Financial Assistance Amount.

**Section 2. P.L. 111-88 Compliance - Wage Rate Requirements.**

This language must be included in all Davis Bacon covered construction contracts and subcontracts. (29 CFR Part 5.5)

(a) The Local Borrower shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, or the FFY 2010 appropriation, the following clauses:

(1) **Minimum wages.** (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Local Borrowers may obtain wage determinations from the U. S. Department of Labor's web site, [www.wdol.gov](http://www.wdol.gov).

(ii)(A) The Local Borrower, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Local Borrower agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Local Borrower to the WIFA award official. The WIFA award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA Davis Bacon Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFA award official or will notify the WIFA award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Local Borrower do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the WIFA award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The Local Borrower shall upon its own action or upon written request of WIFA, EPA award official or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any

apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records.** (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Local Borrower. Such documentation shall be available on request of WIFA or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5 (a)(1) based on the most recent payroll copies for the specified week. **The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).** The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Local Borrower for transmission to WIFA or EPA, if requested by EPA, WIFA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Local Borrower.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of WIFA, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or WIFA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and trainees - (i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in

percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**(5) Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**(6) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower

tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Local Borrower, WIFA, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.** (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) **Contract Work Hours and Safety Standards Act.** The Local Borrower shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum

of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The Local Borrower, upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Sec. 5.1, the Local Borrower shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Local Borrower shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of WIFA, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### **Section 3. General Provisions.**

(a) **Binding Effect.** This Wage Rate and Forgivable Principal Addendum shall inure to the benefit of and shall be binding upon WIFA and the Local Borrower and their respective successors and assigns.

(b) **Severability.** In the event any provision of this Wage Rate and Forgivable Principal Addendum shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

(c) **Amendments, Supplements and Modifications.** This Wage Rate and Forgivable Principal Addendum may not be amended, supplemented or modified without the prior written consent of WIFA and the Local Borrower.

(d) Execution in Counterparts. This Wage Rate and Forgivable Principal Addendum may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(e) Applicable Law. This Wage Rate and Forgivable Principal Addendum shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) Captions. The captions or headings in this Wage Rate and Forgivable Principal Addendum are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions of this Wage Rate and Forgivable Principal Addendum.

(g) Further Assurances. The Local Borrower shall, at the request of WIFA , authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Wage Rate and Forgivable Principal Addendum.

(h) Arbitration. The parties hereto agree to use arbitration to the extent required by Section 12-1518 of the Arizona Revised Statutes.

(i) Notice Regarding A.R.S. § 38 511. To the extent applicable by provision of law, the parties acknowledge that this Wage Rate and Forgivable Principal Addendum is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are hereby incorporated herein.

[SIGNATURE PAGE FOLLOWS]

WIFA and the Local Borrower are signing this Wage Rate and Forgivable Principal Addendum to be effective as part of the Loan Agreement.

**Water Infrastructure Finance Authority of Arizona**

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

Dan Dialessi, Executive Director

**[Borrower]**

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

**[Authorized Representative Name and Title]**

[Signature page to Wage Rate and Forgivable Principal Addendum to Loan Agreement]

## LOAN AGREEMENT ADDENDUM

### American Iron and Steel Requirements for Compliance with Federal Law

#### Water Infrastructure Finance Authority of Arizona

This document (this "American Iron and Steel Addendum") sets forth additional requirements made applicable to state revolving fund Loans made by the Water Infrastructure Finance Authority of Arizona ("WIFA") by federal law. The provisions in this American Iron and Steel Addendum are a part of the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

The parties acknowledge and agree that funds disbursed by WIFA to the Local Borrower will include funds made available to WIFA by the federal government under federal law, and that the requirements of federal law include those set forth in this American Iron and Steel Addendum. The Local Borrower agrees to comply with all of those requirements and agrees that failure to do so is a breach of the provisions of the Loan Agreement which may result in a default under the Loan Agreement, termination of WIFA's obligation to make disbursements on the Loan and the Local Borrower being required to repay all amounts that have been disbursed by WIFA on the Loan, together with interest and fees as provided in the Loan Agreement.

Federal law requires that WIFA include in all assistance agreements, including the Loan Agreement, for the construction, alteration, maintenance, or repair of treatment works under the Clean Water State Revolving Fund and for the construction, alteration, maintenance, or repair of a public water system under the Drinking Water State Revolving Fund, a provision requiring the application of American Iron and Steel requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences. Whether or not the project has multiple sources of funding, the American Iron and Steel requirements apply to the entire project and not just to the activities funded by the money made available to WIFA by the federal government.

#### **Section 1. American Iron and Steel Requirements.** In accordance with federal law:

(a)(1) None of the funds made available to WIFA as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that—

- (1) applying subsection (a) would be inconsistent with the public interest;
  - (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
- (c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

## **Section 2. General Provisions.**

- (a) Binding Effect. This American Iron and Steel Addendum shall inure to the benefit of and shall be binding upon WIFA and the Local Borrower and their respective successors and assigns.
- (b) Severability. In the event any provision of this American Iron and Steel Addendum shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.
- (c) Amendments, Supplements and Modifications. This American Iron and Steel Addendum may not be amended, supplemented or modified without the prior written consent of WIFA and the Local Borrower.
- (d) Execution in Counterparts. This American Iron and Steel Addendum may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- (e) Applicable Law. This American Iron and Steel Addendum shall be governed by and construed in accordance with the laws of the State of Arizona and applicable federal law.
- (f) Captions. The captions or headings in this American Iron and Steel Addendum are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions of this American Iron and Steel Addendum.
- (g) Further Assurances. The Local Borrower shall, at the request of WIFA , authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this American Iron and Steel Addendum.
- (h) Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order 2009-9, entitled "Prohibition of

Discrimination in State Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors," which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Local Borrower shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(i) Arbitration. In the event of a dispute, the parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by Arizona Revised Statutes Section 12-1518, and the prevailing party shall be entitled to attorney's fees and costs with respect thereto.

(j) Notice of Arizona Revised Statutes Section 38-511 - Cancellation. Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to this American Iron and Steel Addendum under the law of the State of Arizona.

[SIGNATURE PAGE FOLLOWS]

WIFA and the Local Borrower are signing this American Iron and Steel Addendum to be effective as part of the Loan Agreement.

**Water Infrastructure Finance Authority of Arizona**

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

Dan Dialessi, Executive Director

**[Borrower]**

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

**[Authorized Representative Name and Title]**

[Signature page to American Iron and Steel Addendum to Loan Agreement]

Exhibit A - will be  
prepared when  
financial terms and  
conditions are  
determined

**Exhibit B**

**Technical Terms and Conditions**

**Section 1  
Budget**

<b>Uses by Budget Item</b>	<b>Amount Budgeted</b>
Planning.....	[\$0.00]
Design & Engineering.....	[\$0.00]
Legal/Debt Authorization.....	[\$0.00]
Financial Advisor.....	[\$0.00]
Land/System Acquisition.....	[\$0.00]
Equipment/Materials.....	[\$0.00]
Construction/Installation/Improvement.....	[\$0.00]
Inspection & Construction Management.....	[\$0.00]
Project Officer.....	[\$0.00]
Administration.....	[\$0.00]
Staff Training.....	[\$0.00]
Capitalized Interest.....	[\$0.00]
Refinance Loan.....	[\$0.00]
Other.....	[\$0.00]
<b>Total Budget.....</b>	<b>[\$0.00]</b>

**Section 2  
Project Description**

This loan will fund [description of project to be funded].

**Section 3  
Estimated Observation and Disbursement Schedule**

**Observation Schedule [Schedule A, B, or C]:**

**[Observation schedule determined by which schedule level identified, A, B, or C]**

**Additional Observations: [Additional Observation determined by which schedule level identified, A, B, or C]**

**Final Observation: [Final Observation determined by which schedule level identified, A, B, or C]**

**Additional Observations** – A WIFA representative may perform additional observations based on information provided in the projects status reports included in each Local Borrower disbursement requisition form.

**Withholding Percentage:** 10% (released after deliverables received)

## **Section 4 Requirements Prior To Construction**

Section 4.1 **Construction Bids.** The Local Borrower shall submit to the Authority for review and approval prior to execution:

- (a) engineering contracts related to the Project,
- (b) bid documents related to the Project,
- (c) construction contracts related to the Project, and
- (d) certification of positive effort for disadvantaged business enterprise participation.

Section 4.2 **User Charges.** The Local Borrower has established (or, if the System is not yet in operation, the Local Borrower will, at or before the time the System commences operation, establish) a system of user charges which, with other funds lawfully available, will at all times be sufficient to pay the costs of operation and maintenance of the System, including renewals and replacements of the System. The Local Borrower also agrees that such system of user charges will be established and maintained in compliance with any applicable requirements of state and federal law as long as the Local Borrower owes amounts under this Loan Agreement. The Local Borrower at its sole option may pay the costs of operation, maintenance, repair, replacement, extensions and additions to the System from any funds lawfully available to it for such purpose.

Section 4.3 **Interest in Project Site.** As a condition of the Loan, the Local Borrower will demonstrate to the satisfaction of the Authority that the Local Borrower has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

Section 4.4 **Federal Clean Water Act.** The Local Borrower covenants that, to the extent legally applicable, the Project will meet the requirements of the Federal Clean Water Act in effect on the date of Loan Closing and any amendments thereto that may retroactively apply to the Loan, and the Local Borrower agrees that the Project will comply with applicable provisions of those federal laws and authorities listed in Article 9 of the Standard Terms and Conditions.

Section 4.5 **Federal Safe Drinking Water Act**. The Local Borrower covenants that, to the extent legally applicable, the Project will meet the requirements of the Federal Safe Drinking Water Act in effect on the date of Loan Closing and any amendments thereto that may retroactively apply to the Loan, and the Local Borrower agrees that the Project will comply with applicable provisions of those federal laws and authorities listed in Article 9 of the Standard Terms and Conditions.

Section 4.6 **Signs**. The Local Borrower shall erect a construction sign displaying information on the Project and the funding sources. The Authority shall provide specifications for such construction signs.

**[Additional requirements may be necessary depending on the project]**

## **Section 5 Requirements During Construction**

Section 5.1 **Changes in Project Scope**. The Local Borrower shall submit to the Authority, for review and approval prior to execution, any change to the plans and specifications, construction contracts, Eligible Project Costs, or any other change which will effect the performance standards or purpose of the Project.

Section 5.2 **Completion of Project and Provision of Moneys Therefor**. The Local Borrower covenants and agrees (a) to exercise its best efforts in accordance with prudent utility construction practice to complete the Project and (b) to the extent permitted by law, to provide from its own fiscal resources all moneys, in excess of the total amount of loan proceeds it receives hereunder and under any subsequent loan from the Authority, required to complete the Project.

Section 5.3 **Inspections; Information**. The Local Borrower shall permit the Authority and any party designated by the Authority to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith.

Section 5.4 **Adjustments for Ineligible Costs**. The Local Borrower shall promptly reimburse the Authority for any portion of the Loan which is determined to have been used for costs that are not eligible for funding under the Authority Act, the Federal Clean Water Act, as amended, or the Federal Safe Drinking Water Act, as amended, unless such matter is curable in some other manner by the Local Borrower to the satisfaction of the Authority. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority. Any such reimbursed principal amount will be applied to reduce the outstanding principal amount of the Loan.

Section 5.5 **Archaeological Artifacts**. In the event that archaeological artifacts or historical resources are discovered during construction excavation of the Project, the Local Borrower shall

stop or cause to be stopped construction activities and will notify the State Historic Preservation Office and the Authority of such discovery.

**[Additional requirements may be necessary depending on the project]**

## **Section 6 Requirements Prior To Final Disbursements**

Section 6.1 **Plan of Operation**. No Requirement.

Section 6.2 **Final Approval**. Prior to the release of the withholding, the Local Borrower will submit to the Authority (a) as-built drawings by a professional engineer that document all changes from the original plans and specifications (b) copies of all testing results performed by or under the supervision of a professional engineer as required by the specifications, and (c) Arizona Department of Environmental Quality (ADEQ) approval of construction or an engineer's Certificate of Completion certifying that all construction was completed in accordance with the plans and specifications or that any changes made are in conformance with the Arizona Revised Statutes, ADEQ and Environmental Protection Agency rules, permits and guidelines and are documented in the as-built drawings. Based on a review of the information submitted, the Authority reserves the right, prior to the release of the withholding, to request modifications to the Project, the system, or the materials submitted pursuant to this section.

**[Additional requirements may be necessary depending on the project]**

## Exhibit C

### Reporting Requirements

Section 1. **Annual Loan Review.** The Authority's Annual Loan Review Form and annual financial statements in a format approved by the Authority, including the report of any annual audit(s) and all audit reports required by governmental auditing standards and any applicable Arizona rules, shall be provided by the Local Borrower to the Authority within one-hundred and eighty (180) days after the end of each fiscal year of the Local Borrower. The Local Borrower shall complete all audits and submit all reports required by the federal Single Audit Act within the time limits under that federal law, currently within the earlier of 30 days after receipt of the auditor's reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the federal agency that provided the funding or a different period is specified in a program-specific audit guide.

Section 2. **Records and Accounts.** The Local Borrower shall keep accurate records and accounts for the System, including records and accounts for the Project (the "*System Records*"), separate and distinct from its other records and accounts (the "*General Records*"). The Local Borrower must maintain the System Records in accordance with generally accepted accounting principles (GAAP), including standards relating to the reporting of infrastructure assets, as issued by the Governmental Accounting Standards Board (GASB) or by the Financial Accounting Standards Board (FASB), as applicable to the Local Borrower. If required by law, the Local Borrower must have the System Records audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Local Borrower. The Local Borrower must make all System Records and General Records available for inspection by the Authority at any reasonable time.

Section 3. **Notice of Change In Key Personnel.** Promptly after becoming aware thereof, the Local Borrower shall provide notice in writing to the Authority of any change to the information in Section 1 of the Loan Agreement and any other change in key personnel connected to the Project and Loan.

Section 4. **Notice of Material Adverse Change.** The Local Borrower shall promptly notify the Authority of any material adverse change in the activities, prospects or condition (financial or otherwise), of the Local Borrower relating to the System, or in the ability of the Local Borrower to make all Loan Repayments from the Source of Repayment described in this Loan Agreement and otherwise to observe and perform its duties, covenants, obligations and agreements hereunder.

Section 5. **Disadvantaged Business Enterprise (DBE) Program.** The Local Borrower must report DBE participation to the Authority based on guidance from the Authority.

Section 6. **Notice of Default.** Promptly after becoming aware thereof, Local Borrower shall give notice to the Authority of (i) the occurrence of any Event of Default under the Loan Agreement or (ii) the occurrence of any breach, default, Event of Default, or event which with the giving of notice or lapse of time, or both, could become a material breach, default, or Event of Default (a "Future Breach") under any agreement, indenture, mortgage, or other instrument (other than the Loan Agreement) to which the Local Borrower is a party or by which it or any of its property is

bound or affected. Local Borrower shall provide written notice to the Authority if the effect of such breach, default, Event of Default or Future Breach is to accelerate, or to permit the acceleration of, the maturity of any indebtedness under such agreement, indenture, mortgage, or other instrument; provided, however, that the failure of the Local Borrower to give such notice shall not affect the right and power of the Authority to exercise any and all of the remedies specified herein.

Section 7. **Notice of Construction Commencement.** The Local Borrower shall promptly notify the Authority immediately upon commencement of construction activities.

Section 8. **Notice of Non-Environmental Litigation.** Promptly after the commencement or overt threat thereof, Local Borrower shall provide the Authority with written notice of the commencement of all actions, suits, or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting Local Borrower which, if adversely determined, could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or on the ability of Local Borrower to perform its obligations under the Loan Agreement.

Section 9. **Notice of Environmental Litigation.** Without limiting the provisions of Section 8 above, promptly after receipt thereof, Local Borrower shall provide the Authority with written notice of the receipt of all pleadings, orders, complaints, indictments, or other communication alleging a condition that may require Local Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations of such laws, or which claim personal injury to any person or property damage as a result of environmental factors or conditions or which, if adversely determined, could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or on the ability of Local Borrower to perform its obligations under the Loan Agreement.

Section 10. **Regulatory and Other Notices.** Promptly after receipt or submission thereof, Local Borrower shall provide the Authority with copies of any notices or other communications received from or directed to any governmental authority with respect to any matter or proceeding which could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or the ability of Local Borrower to perform its obligations under the Loan Agreement, or which reveals a substantial non compliance with any applicable law, regulation or rule.

Section 11. **Other Information.** The Local Borrower shall submit to the Authority other information regarding the condition (financial or otherwise), or operation of the Local Borrower as the Authority may, from time to time, reasonably request.

Section 12. **Additional Reporting Requirements.** The Local Borrower shall refer to the Loan Agreement Addendum for wage rate reporting requirements.

## **Exhibit D Source of Repayment: General Obligations**

### **Source of Repayment and Rate Covenant Provisions**

It is understood and agreed that all payments with respect to the Loan are a general obligation of the Local Borrower secured by ad valorem taxes annually levied on all taxable property within the boundaries of the Local Borrower. The Local Borrower is not obligated to make the payments on the Loan from any sources other than the Source of Repayment but the Local Borrower may, at its sole option, make payment on the Loan from other funds as permitted by law.

## **Exhibit E Debt Service Reserve Requirement**

### **No Debt Service Reserve Required**

The Local Borrower shall not be required to either (i) provide a Reserve Fund Surety or (ii) fund a Reserve Fund in cash in connection with this Agreement.

## **Exhibit F Replacement Reserve Requirements**

### **No Replacement Reserve Required**

The Local Borrower shall not be required to maintain a Replacement Reserve in connection with the Loan.

## Exhibit G Form of Opinion of Local Borrower Counsel

Enter Date of Opinion

Water Infrastructure Finance Authority of Arizona  
Phoenix, Arizona

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of Arizona and I have acted as counsel to the City of Peoria (the “*Local Borrower*”), which has entered into a Loan Agreement (as hereinafter defined) with the Water Infrastructure Finance Authority of Arizona (the “*Authority*”), and have acted as such in connection with the authorization, execution and delivery by the Local Borrower of the Loan Agreement (as hereinafter defined). Terms used and not otherwise defined herein have the meanings given to them in the Loan Agreement.

In so acting I have examined the Constitution and laws of the State of Arizona. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(a) the Loan Agreement, dated as of [To be determined], (the “*Loan Agreement*”) by and between the Authority and the Local Borrower; and

(b) proceedings of the governing board of the Local Borrower relating to the approval of the Loan Agreement and the Local Borrower Bond and the execution, issuance and delivery thereof on behalf of the Local Borrower, and the authorization of the undertaking and completion of the Project, including the proceedings relating to the election held on Enter Election Date on the question of authorizing the Local Borrower to enter into loan agreements with the Authority and/or issue the Local Borrower Bond, of which there is authorized but unissued capacity at least equal to the principal amount of the Loan.

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to render the opinions expressed below.

Based upon the foregoing, I am of the opinion that:

1. The Local Borrower is a political subdivision of the State of Arizona with the legal right to carry on the business of the System as currently being conducted and as proposed to be conducted.
2. The Local Borrower has full legal right and authority to pledge the Source of Repayment for the Loan Repayments and to execute and deliver the Loan Agreement, and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project; subject, however, to the effect of restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws

affecting creditors rights generally (“*Creditor’s Rights Limitations*”) heretofore or hereafter enacted.

3. The Local Borrower has duly and validly pledged the Source of Repayment for the punctual payment of the principal of and interest on the Loan and all other amounts due under the Loan Agreement and the Local Borrower Bond according to their respective terms.

4. All additional debt tests and reserve and other requirements applicable to the Local Borrower with respect to the pledge of the Source of Repayment have been satisfied.

5. The authorizing proceedings of the Local Borrower’s governing body approving the Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Local Borrower, and authorizing the Local Borrower to undertake and complete the Project (hereinafter collectively called the “*Authorizing Resolutions*”) have been duly and lawfully adopted and authorized in accordance with applicable Arizona law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Arizona law, and at which quorums were present and acting throughout.

6. The Loan Agreement has been duly authorized, executed and delivered by the authorized officers of the Local Borrower; and, assuming that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered the Loan Agreement, the Loan Agreement constitutes the legal, valid and binding obligation of the Local Borrower enforceable in accordance with its terms; subject, however, to the effect of and to restrictions and limitations imposed by or resulting from Creditor’s Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual obligations generally.

7. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Loan Agreement by the Local Borrower, the observance and performance by the Local Borrower of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Local Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Local Borrower is a party or by which it, the System or its property or assets is bound.

8. To the best of my knowledge, after such investigation as I have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Local Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement, and the undertaking and completion of the Project have been obtained or made.

9. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any Court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Local Borrower or the validity, legality or enforceability of the Loan Agreement, or the undertaking or completion of the Project.

This opinion is rendered on the basis of Federal law and the laws of the State of Arizona as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Very truly yours,

## Exhibit H Form of Tax Compliance Certificate of Local Borrower

Water Infrastructure Finance Authority of Arizona

### **[\$Loan Amount] Loan to [Borrower]**

The Water Infrastructure Finance Authority of Arizona (the “Authority”) and **[Borrower]** (the “Local Borrower”) are entering into a Loan Agreement (the “Loan Agreement”) in the maximum principal amount stated above pursuant to which the Authority will make a loan (the “Loan”) to the Local Borrower. In connection with its state revolving fund programs, the Authority issues its bonds (“Authority Bonds”) from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority’s interest for the Loan to qualify and be a Tax-Exempt Obligation that is not an AMT Obligation. Therefore, in order to establish certain facts necessary for the Loan to qualify and be treated as a Tax-Exempt Obligation that is not an AMT Obligation, and as required by the provisions of the Loan Agreement, the Local Borrower by its officer signing this Certificate, certifies, represents, and covenants as follows with respect to the Loan. All statements in this Certificate are of facts or, as to events to occur in the future, reasonable expectations.

### I. DEFINITIONS

1.10. Attachment A. The definitions and cross-references set forth in Attachment A apply to this Certificate and its Attachments. All terms relating to a particular issue, such as Sale Proceeds, relate to the Loan, unless indicated otherwise. (For example, “Sale Proceeds” refers to Sale Proceeds of the Loan, unless indicated otherwise.)

1.20. Special Definitions. Terms used herein, to the extent not defined in Attachment A or below, have the same meaning as defined in the Loan Agreement. In addition, the following definitions apply to this Certificate and its Attachments:

“Instructions” means the Rebate Instructions attached hereto as Attachment A-1.

“Issue” means the Loan.

“Issuer” means the Local Borrower.

“Project” means the financing of a portion of the costs of acquisition, construction and improvement of facilities to be financed by the Loan and includes Issuance Costs and interest on the Loan for up to three years from the Issuance Date or, if later, one year after the date the Project is placed in service, all of which are governmental purposes for purposes of the Code.

“Reserve Fund” is defined in 3.40(a).

1.30. References. Reference to a Section means a section of the Code. Reference by number only (for example, “2.10”) means that numbered paragraph of this Certificate. Reference to an Attachment means an attachment to this Certificate.

## II. ISSUE DATA

2.10. Issuer. The Issuer is a Governmental Unit.

2.20. Purpose of Issue. The Issue is being issued to provide funds to pay costs of the Project.

2.30. Dates. The Sale Date of the Issue is the date on which the Loan Agreement is executed and delivered by the Authority and the Local Borrower, and the Issuance Date of the Issue is the first date on which the aggregate draws under the Loan exceed the lesser of \$50,000 or 5% of the principal amount of the Loan.

2.40. Issue Price. The Issue Price of the Issue is the principal amount actually advanced by the Authority to the Issuer as the Loan.

2.50. Sale Proceeds, Net Proceeds, and Net Sale Proceeds. The amount of Sale Proceeds equals the Issue Price. The amount of Net Proceeds equals the Issue Price minus the amount of Proceeds (if any) deposited in the Reserve Fund (if any). The amount of Net Sale Proceeds equals the amount of Net Proceeds minus the Minor Portion.

2.60. Disposition of Sale Proceeds. There will be no Pre-Issuance Accrued Interest with respect to the Issue. The Sale Proceeds will be used to pay costs of the Project and, if applicable, to fund the Reserve Fund (if any).

2.70. Higher Yielding Investments. Gross Proceeds will not be invested in Higher Yielding Investments except for (A) the Minor Portion to the extent provided in 3.80, (B) those Gross Proceeds identified in 3.10, 3.20, and 3.30, but only during the applicable Temporary Periods there described for those Gross Proceeds, and (C) Gross Proceeds held in the Reserve Fund (if any) to the extent set forth in 3.40(a).

2.80. Single Issue. No other obligations have been or will be sold less than 15 days before or after the Sale Date pursuant to the same plan of financing with the Issue that are expected to be paid from substantially the same source of funds as the Issue, determined without regard to guarantees from a person who is not a Related Party to the Issuer. Accordingly, no obligations other than those of the Issue are a part of a single issue with the Issue.

## III. ARBITRAGE (NONREBATE) MATTERS

3.10. Use of Net Sale Proceeds and Pre-Issuance Accrued Interest; Temporary Periods.

(A) Pre-Issuance Accrued Interest. There will be no Pre-Issuance Accrued Interest with respect to the Issue.

(B) Payment of Costs of the Project.

(1) All of the Net Sale Proceeds will be used to pay costs of the Project. Such Sale Proceeds may be used to acquire or hold Higher Yielding Investments for a period ending on the third anniversary of the Issuance Date (such period being the Temporary Period for such amount) because the following three tests are reasonably expected to be satisfied:

(i) At least 85% of the Net Sale Proceeds will be allocated to expenditures on the Project by the end of the Temporary Period;

(ii) Within 6 months of the Issuance Date, the Issuer will incur substantial binding obligations to third parties to expend at least 5% of the Net Sale Proceeds on the Project; and

(iii) Completion of the Project and allocation of the Net Sale Proceeds to expenditures will proceed with due diligence.

Any Sale Proceeds that remain unspent on the third anniversary of the Issuance Date, which is the expiration date of the Temporary Period for such Proceeds, shall not be invested in Higher Yielding Investments with respect to the Issue after that date except as part of the Minor Portion. In complying with the foregoing sentence, the Issuer may take into account “yield reduction payments” (within the meaning of Regulations §1.148-5(c)) paid to the United States.

(2) Any Reimbursement Allocation will qualify as a Reimbursement of Prior Capital Expenditures and will be made by an entry in the financial records of the Issuer kept with respect to the Issue showing that Sale Proceeds of the Issue have been returned to the fund or account of the Issuer from which such amount was originally and temporarily advanced to finance Capital Expenditures paid before this date by not more than (A) 18 months after the later of the date such Capital Expenditures were paid or the date on which the property resulting from such Capital Expenditures and comprising part of the Project was placed in service or (B) three years after the original expenditures were paid.

3.20. Investment Proceeds. Any Investment Proceeds will be used to pay costs of the Project and may be invested in Higher Yielding Investments during the Temporary Period identified in 3.10(B)(1) or, if longer, one year from the date of receipt, such period being the Temporary Period for such Proceeds.

3.30. Payment Fund. Amounts deposited from time to time in the fund of the Issuer from which payments will be made on the Issue, which is a Bona Fide Debt Service Fund, will be used to pay Debt Service on the Issue within 13 months after the amounts are so deposited, such period being the Temporary Period for such amounts.

3.40. Reserve Funds.

(A) Debt Service Reserve Fund. If (and only if) the Loan Agreement requires the funding of a debt service reserve fund (“Reserve Fund”) in cash: The amount of Proceeds of the Loan deposited in the Reserve Fund shall not exceed

10% of the stated principal amount of the Loan. Amounts in the portion of the Reserve Fund allocable to the Issue may be invested in Higher Yielding Investments with respect to the Issue to the extent that such amounts do not exceed the least of (i) 10% of the principal amount of the Issue; (ii) maximum annual Debt Service; and (iii) 125% of average annual Debt Service. Any amounts in the portion of the Reserve Fund allocable to the Issue in excess of the least of these amounts will not be invested in Higher Yielding Investments with respect to the Issue. In complying with the yield restriction set forth in this Section, the Issuer may take into account “yield reduction payments” (within the meaning of Regulations § 1.148-5(c)) timely paid or to be timely paid to the United States because amounts in the Reserve Fund (other than investment earnings) are not reasonably expected to be used to pay Debt Service other than in connection with reductions in the amount required to be in the Reserve Account. The establishing and funding of the Reserve Fund was reasonably required by the Authority as a condition of making the Loan.

(B) Replacement Reserve Fund. If (and only if) the Loan Agreement requires the funding of a replacement reserve fund (“Replacement Reserve Fund”) in cash: The Replacement Reserve Fund may be used for one or more of the following purposes: (i) the acquisition of new, or the replacement of obsolete or worn out, machinery, equipment, furniture, fixtures or other personal property for the Issuer’s utility system, provided that the property is depreciable; (ii) the performance of repairs with respect to the Issuer’s utility system that are of an extraordinary and non-recurring nature, provided that the property is depreciable; (iii) the acquisition or construction of additions to or improvements, extensions or enlargements to, or remodeling of, the Issuer’s utility system, provided that the property is depreciable; and/or (iv) to make Debt Service payments to the Authority on the Issue (collectively, the “Permitted Uses”). The Issuer reasonably expects to use amounts in the Replacement Reserve Fund for Permitted Uses other than to make Debt Service payments to the Authority on the Issue, and therefore there is no reasonable assurance of the availability of those amounts to make Debt Service payments to the Authority on the Issue if the Issuer encounters financial difficulties

3.50. No Other Replacement Fund or Assured Available Funds. Except as described in 3.30 and, if and to the extent applicable, 3.40(A), , the Issuer has not established and does not expect to establish or use any sinking fund, debt service fund, redemption fund, reserve or replacement fund, or similar fund, or any other fund to pay Debt Service on the Issue. Except for money referred to in 3.30 and Proceeds of a Refunding Issue, if any, no other money or Investment Property is or will be pledged as collateral or used for the payment of Debt Service on the Issue (or for the reimbursement of any others who may provide money to pay that Debt Service), or is or will be restricted, dedicated, encumbered, or set aside in any way as to afford the holders of the Issue reasonable assurance of the availability of such money or Investment Property to pay Debt Service on the Issue.

3.60. No Overissuance. The Proceeds of the Issue are not reasonably expected to exceed the amount needed for the governmental purposes of the Issue as set forth in 2.20.

3.70. Other Uses of Proceeds Negated. Except as stated otherwise in this Certificate, none of the Proceeds of the Issue will be used:

(A) to pay principal of or interest on, refund, renew, roll over, retire, or replace any other obligations issued by or on behalf of the Issuer or any other Governmental Unit,

(B) to replace any Proceeds of another issue that were not expended on the project for which such other issue was issued,

(C) to replace any money that was or will be used directly or indirectly to acquire Higher Yielding Investments,

(D) to make a loan to any person or other Governmental Unit,

(E) to pay any Working Capital Expenditure other than expenditures identified in Regulations §1.148-6(d)(3)(ii)(A) and (B) (i.e., Issuance Costs of the Issue, Qualified Administrative Costs, reasonable charges for a Qualified Guarantee or for a Qualified Hedge, interest on the Issue for a period commencing on the Issuance Date of the Issue and ending on the date that is the later of three years from such Issuance Date or one year after the date on which the project financed or refinanced by the Issue was or will be placed in service, payments of the Rebate Amount, and costs, other than those already described, that do not exceed 5% of the Sale Proceeds and that are directly related to Capital Expenditures financed or deemed financed by the Issue, principal or interest on an issue paid from unexpected excess Sale Proceeds or Investment Proceeds, and principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a Bona Fide Debt Service Fund), or

(F) to reimburse any expenditures made prior to the Issuance Date except those that qualify as a Reimbursement of Prior Capital Expenditures.

No portion of the Issue is being issued solely for the purpose of investing Proceeds in Higher Yielding Investments.

3.80. Minor Portion. The Minor Portion is equal to the lesser of 5% of the Sale Proceeds of the Issue and \$100,000. Such Minor Portion may be invested in Higher Yielding Investments with respect to the Issue.

3.90. No Other Replacement Proceeds. That portion of the Issue that is to be used to finance Capital Expenditures has a weighted average maturity that does not exceed 120% of the weighted average reasonably expected economic life of the property resulting from such Capital Expenditures.

#### IV. REBATE MATTERS

4.10. Issuer Obligation Regarding Rebate. Consistently with its covenants contained in the Loan Agreement, the Issuer will calculate and make, or cause to be calculated and made,

payments of the Rebate Amount in the amounts and at the times and in the manner provided in Section 148(f) with respect to Gross Proceeds to the extent not exempted under Section 148(f)(4) and the Instructions.

4.20. No Avoidance of Rebate Amount. No amounts that are required to be paid to the United States will be used to make any payment to a party other than the United States through a transaction or a series of transactions that reduces the amount earned on any Investment Property or that results in a smaller profit or a larger loss on any Investment Property than would have resulted in an arm's length transaction in which the Yield on the Issue was not relevant to either party to the transaction.

4.30. Exceptions.

(A) Small Issuer Exception. The Issue is exempt under Section 148(f)(4)(D) from the rebate requirement **if all** of the following requirements are satisfied:

(1) The Issuer is a Governmental Unit with general taxing powers within the meaning of Section 148(f)(4)(D), and

(2) No part of the Issue is a Private Activity Bond, and

(3) All of the Net Proceeds will be used for "local governmental activities" of the Issuer within the meaning of Section 148(f)(4)(D) and none of the Net Proceeds will be used for any Private Business Use, and

(4) The aggregate principal amount of all Tax-Exempt Obligations, including the Issue, issued or to be issued by the Issuer, its subordinate entities and entities that issue any such obligations on behalf of the Issuer, or on behalf of which the Issuer issues any such obligations, during the current calendar year does not, and is not reasonably expected to, exceed \$5,000,000. The Tax-Exempt Obligations taken into account for this purpose exclude any Private Activity Bonds and any Current Refunding Portion and Current Refunding Issue to the extent that the amount of such Current Refunding Portion or Current Refunding Issue does not exceed the outstanding amount of the obligations refunded by such Current Refunding Portion or Current Refunding Issue. No entity has been or will be formed or availed of to avoid the purposes of Section 148(f)(4)(D)(i)(IV).

**If, but only if, all of the above requirements are satisfied, check here: [  ]**

**and sign here:** \_\_\_\_\_

(B) General Exception. Notwithstanding the foregoing, the computations and payments of amounts to the United States referred to in IV need not be made to the extent that the Issuer will not thereby fail to comply with any requirements of Section 148(f) and the Instructions based on an opinion of bond counsel.

4.40. Election. The Issue is a Construction Issue. The Issuer hereby elects to apply the 2-year spending exception to the rebate requirements on the basis of actual facts instead of the Issuer's reasonable expectations.

## V. OTHER TAX MATTERS

5.10. Not Private Activity Bonds or Pool Bonds. No obligation of the Issue will be a Private Activity Bond or a pooled financing bond (within the meaning of Section 149(f)), based on the following:

(A) Not more than 5% of the Proceeds, if any, directly or indirectly, will be used for a Private Business Use and not more than 5%, if any, of the Debt Service on the Issue, directly or indirectly, will be secured by any interest in property used or to be used for a Private Business Use or payments in respect of such property, or will be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a Private Business Use.

(B) Less than 5% of the Proceeds, if any, will be used to make or finance loans to any Private Person or Governmental Unit other than the Issuer.

(C) The lesser of the Proceeds that are being or will be used for any Private Business Use or the Proceeds with respect to which there are payments or (borrowed money) that are being or will be used for any Private Business Use does not exceed \$15,000,000 and none of the Proceeds will be used with respect to an "output facility" (other than a facility for the furnishing of water) within the meaning of Section 141(b)(4).

(D) The Issuer does not expect to sell or otherwise dispose of the Project or any portion thereof during the term of the Issue except for dispositions of property in the normal course at the end of such property's useful life to the Issuer. With respect to tangible personal property, if any, that is part of the Project, the Issuer reasonably expects that:

(1) Dispositions of such tangible personal property, if any, will be in the ordinary course of an established governmental program;

(2) The weighted average maturity of the obligations of the Issue financing such property (treating the obligations of the Issue properly allocable to such personal property as a separate issue for this purpose) will not be greater than 120% of the reasonably expected actual use of such property for governmental purposes;

(3) The fair market value of such property on the date of disposition will not be greater than 25% of its cost;

(4) The property will no longer be suitable for its governmental purposes on the date of disposition; and

(5) The amounts received from any disposition of such property are required to be, and will be, commingled with substantial tax or other governmental revenues and will be spent on governmental programs within 6 months from the date of such deposit and commingling.

5.20. Issue Not Federally Guaranteed. The Issue is not Federally Guaranteed.

5.30. Not Hedge Bonds. At least 85% of the Spendable Proceeds will be used to carry out the governmental purposes of the Issue within three years from the Issuance Date. Not more than 50%, if any, of the Proceeds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more (including but not limited to any investment contract or fixed yield investment having a maturity of four years or more). The reasonable expectations stated above are not based on and do not take into account (A) any expectations or assumptions as to the occurrence of changes in market interest rates or changes of federal tax law or regulations or rulings thereunder or (B) any prepayments of items other than items that are customarily prepaid.

5.40. Hedge Contracts. The Issuer has not entered into, and does not reasonably expect to enter into, any Hedge with respect to the Issue, or any portion thereof. The Issuer acknowledges that entering into a Hedge with respect to the Issue, or any portion thereof, may change the Yield and that Bond Counsel should be contacted prior to entering into any Hedge with respect to the Issue in order to determine whether payments/receipts pursuant to the Hedge will be taken into account in computing the Yield.

5.50. Internal Revenue Service Information Return. Within the time and on the form prescribed by the Internal Revenue Service under Section 149(e), the Issuer will file with the Internal Revenue Service an Information Return setting forth the required information relating to the Issue. The information reported on that Information Return will be true, correct, and complete to the best of the knowledge and belief of the undersigned.

5.60. Responsibility of Officer.

(A) The officer signing this Certificate is one of the officers of the Issuer responsible for issuing the Issue.

(B) To the best of the knowledge, information, and belief of the undersigned, all expectations stated in this Certificate are the expectations of the Issuer and are reasonable, all facts stated are true, and there are no other existing facts, estimates, or circumstances that would or could materially change the statements made in this Certificate. The certifications and representations made in this Certificate are intended to be relied upon as certifications described in Regulations § 1.148-2(b). The Issuer acknowledges that any change in the facts or expectations from those set forth in this Certificate may result in different requirements or a change in status of the Issue or interest thereon under the Code, and that bond counsel should be contacted if such changes are to occur or have occurred.

**[Borrower]**

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

Name: \_\_\_\_\_

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

## List of Attachments

Attachment A -- Definitions for Tax Compliance Certificate

Attachment A-1 -- Rebate Instructions

## Attachment A

### Definitions for Tax Compliance Certificate of Local Borrower

The following terms, as used in Attachment A and in the Tax Compliance Certificate to which it is attached and in the other Attachments to the Tax Compliance Certificate, have the following meanings unless therein otherwise defined or unless a different meaning is indicated by the context in which the term is used. Capitalized terms used within these definitions that are not defined in Attachment A have the meanings ascribed to them in the Tax Compliance Certificate to which this Attachment A is attached. The word “Issue,” in lower case, refers either to the Issue or to another issue of obligations or portion thereof treated as a separate issue for the applicable purposes of Section 148, as the context requires. The word “obligation” or “obligations,” in lower case, includes any obligation, whether in the form of bonds, notes, certificates, or any other obligation that is a “bond” within the meaning of Section 150(a)(1). All capitalized terms used in this Certificate include either the singular or the plural. All terms used in this Attachment A or in the Tax Compliance Certificate to which this Attachment A is attached, including terms specifically defined, shall be interpreted in a manner consistent with Sections 103 and 141-150 and the applicable Regulations thereunder except as otherwise specified. All references to Section, unless otherwise noted, refer to the Code.

“Advance Refunding Issue” means any Refunding Issue that is not a Current Refunding Issue.

“Advance Refunding Portion” means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as an Advance Refunding Issue if it had been issued as a separate issue.

“AMT Obligation” means a Tax-Exempt Obligation the interest on which is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code.

“Available Construction Proceeds” means an amount equal to (a) the sum of (i) the Issue Price of an issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocable to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocable to the underwriter’s discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocable to the issue. “Available Construction Proceeds” does not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocable to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the project financed by the issue is substantially completed, provided, however, that such Investment Proceeds or earnings shall be excluded from “Available Construction Proceeds” if the Issuer has timely elected such exclusion. If an issue is a Multipurpose Issue that includes a New Money Portion that is a Construction Issue, this definition shall be applied by substituting “New Money Portion” for “issue” each place the latter term appears. If an issue or the New Money Portion of a Multipurpose Issue, as applicable, is not a Construction Issue, and the Issuer makes the bifurcation election under Regulations §1.148-7(j)(1)

and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting “Construction Portion” for “issue” each place the latter term appears.

“Bona Fide Debt Service Fund” means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more issues, the portion of that fund properly allocable to an issue), or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding Bond Year or one-twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

“Bond Year” means the annual period relevant to the application of Section 148(f) to an issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of an issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

“Capital Expenditures” means costs of a type that are properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of Placed in Service) under general federal income tax principles.

“Code” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Commingled Fund” means any fund or account of the Issuer that contains both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of the issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

“Commingled Investment Proceeds” means Investment Proceeds of an issue (other than Investment Proceeds held in a Refunding Escrow) that are deposited in a Commingled Fund with substantial tax or other revenues from governmental operations of the Issuer and that are reasonably expected to be spent for governmental purposes within 6 months from the date of deposit in the Commingled Fund, using any reasonable accounting assumptions.

“Conduit Borrower” means the obligor on a purpose investment.

“Conduit Financing Issue” means an issue the Proceeds of which are reasonably expected to be used to finance one or more Conduit Loans.

“Conduit Loan” means a purpose investment acquired by the Issuer with Proceeds of a Conduit Financing Issue, thereby effecting a loan to the Conduit Borrower.

“Construction Expenditures” means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

“Construction Issue” means an issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization. If an issue is a Multipurpose Issue that includes a New Money Portion, this definition shall be applied by substituting “New Money Portion” for “Construction Issue” each place the latter term appears. If an election under Section 148(f)(4)(C)(v) and Regulations §1.148-7(j) is made to bifurcate an issue or the New Money Portion of a Multipurpose Issue, this definition shall be applied by substituting “Construction Portion” for “Construction Issue” each place the latter term appears.

“Construction Portion” means that portion of an issue or the New Money Portion of a Multipurpose Issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization and that finances 100% of the Construction Expenditures.

“Controlled Group” means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of Regulations §1.150-1(e).

“Current Refunding Issue” means a Refunding Issue that is issued not more than 90 days before the last expenditure of any Proceeds of the Refunding Issue for the payment of Debt Service on the Refunded Bonds.

“Current Refunding Portion” means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as a Current Refunding Issue if it had been issued as a separate issue.

“Debt Service” means principal of and interest and any redemption premium on an issue.

“Excess Gross Proceeds” means all Gross Proceeds of an Advance Refunding Issue that exceed an amount equal to 1% of the Sale Proceeds of such Advance Refunding Issue, other than Gross Proceeds allocable to: (a) payment of Debt Service on the Refunded Bonds; (b) payment of Pre-Issuance Accrued Interest on the Advance Refunding Issue and interest on the Advance Refunding Issue that accrues for a period up to the completion date of any capital project financed by the Prior Issue, plus one year; (c) a reasonably required reserve or replacement fund for the Advance Refunding Issue or Investment Proceeds of such fund; (d) payment of Issuance Costs of the Advance Refunding Issue; (e) payment of administrative costs allocable to repaying the Refunded Bonds, carrying and repaying the Advance Refunding Issue, or investments of the Advance Refunding Issue;

(f) Transferred Proceeds allocable to expenditures for the governmental purpose of the Prior Issue (treating for this purpose all unspent Proceeds of the Prior Issue properly allocable to the Refunded Bonds as of the Issuance Date of the Advance Refunding Issue as Transferred Proceeds); (g) interest on purpose investments; (h) Replacement Proceeds in a sinking fund for the Advance Refunding Issue; and (i) fees for a Qualified Guarantee for the Advance Refunding Issue or the Prior Issue. If an Issue is a Multipurpose Issue that includes an Advance Refunding Portion, this definition shall be applied by substituting “Advance Refunding Portion” for “Advance Refunding Issue” each place the latter term appears.

“Federally Guaranteed” means that (a) the payment of Debt Service on an issue, or the payment of principal or interest with respect to any loans made from the Proceeds of the issue, is directly or indirectly guaranteed in whole or in part by the United States or by an agency or instrumentality of the United States, within the meaning of Section 149(b) of the Code, or (b) more than 5% of the Proceeds of an issue will be invested directly or indirectly in federally insured deposits or accounts. The preceding sentence does not apply to (a) Proceeds invested during an initial Temporary Period until such Proceeds are needed to pay costs of the project, (b) investments of a Bona Fide Debt Service Fund, (c) direct purchases from the United States of obligations issued by the United States Treasury, or (d) other investments permitted by Section 149(b) or Regulations §1.149(b)-1(b).

“501(c)(3) Organization” means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

“Fixed Yield Issue” means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

“Governmental Unit” means a state, territory or possession of the United States, the District of Columbia, or any political subdivision thereof referred to as a “State or local governmental unit” in Regulations §1.103-1(a). “Governmental Unit” does not include the United States or any agency or instrumentality of the United States.

“Gross Proceeds” means Proceeds and Replacement Proceeds of an issue.

“Hedge” means a contract entered into by the Issuer or the Conduit Borrower primarily to modify the Issuer’s or the Conduit Borrower’s risk of interest rate changes with respect to an obligation (e.g., an interest rate swap, an interest rate cap, a futures contract, a forward contract or an option).

“Higher Yielding Investments” means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.00001) higher than the Yield on the applicable issue, and (b) for all other purposes is more than one-eighth of one percentage point (.00125) higher than the Yield on the issue.

“Investment Proceeds” means any amounts actually or constructively received from investing Proceeds of an issue in Investment Property.

“Investment Property” means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment-type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax-Exempt Obligation that is a “specified private activity bond” as defined in Section 57(a)(5)(C), but does not include other Tax-Exempt Obligations.

“Issuance Costs” means costs to the extent incurred in connection with, and allocable to, the issuance of an issue, and includes underwriter’s compensation withheld from the Issue Price, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, guarantee fees other than for a Qualified Guarantee and similar costs, but does not include fees charged by the Issuer.

“Issuance Date” means the date of physical delivery of an issue by the Issuer in exchange for the purchase price of the issue.

“Issue Price” means in the circumstances applicable to an issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount), which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity was sold to the public.

(2) Private Placement. In the case of obligations sold by private placement, the aggregate of the prices (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount) paid to the Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries).

“Minor Portion” means an amount equal to the lesser of \$100,000 or 5% of the Sale Proceeds of an issue.

“Multipurpose Issue” means an issue the bonds of which are allocable to two or more separate governmental purposes within the meaning of Regulations §1.148-9(h).

“Net Proceeds” means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue.

“Net Sale Proceeds” means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue and the portion invested as a part of a Minor Portion for the issue.

“New Money Issue” means an issue that is not a Refunding Issue.

“New Money Portion” means that portion of a Multipurpose Issue other than the Refunding Portion.

“Nonpurpose Investments” means any Investment Property that is acquired with Gross Proceeds as an investment and not in carrying out any governmental purpose of an issue. “Nonpurpose Investments” does not include any investment that is not regarded as “investment property” or a “nonpurpose investment” for the particular purposes of Section 148 (such as certain investments in U.S. Treasury obligations in the State and Local Government Series and certain temporary investments), but does include any other investment that is a “nonpurpose investment” within the applicable meaning of Section 148.

“Placed in Service” means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

“Pre-Issuance Accrued Interest” means interest on an obligation that accrued for a period not greater than one year before its Issuance Date and that will be paid within one year after such Issuance Date.

“Preliminary Expenditures” means any Capital Expenditures that are “preliminary expenditures” within the meaning of Regulations §1.150-2(f)(2), *i.e.*, architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project other than land acquisition, site preparation, and similar costs incident to commencement of construction. The aggregate amount of Preliminary Expenditures may not exceed 20% of the aggregate Issue Price of the issue or issues that financed or are reasonably expected to finance the project for which such Preliminary Expenditures are or were incurred.

“Prior Issue” means an issue of obligations all or a portion of the Debt Service on which is paid or provided for with Proceeds of a Refunding Issue. The Prior Issue may be a Refunding Issue.

“Private Activity Bond” means (a) obligations of an issue more than 10% of the Proceeds of which, directly or indirectly, are or are to be used for a Private Business Use and more

than 10% of the Debt Service on which, directly or indirectly, is or is to be paid from or secured by payments with respect to property, or secured by property, used for a Private Business Use, or (b) obligations of an issue, the Proceeds of which are or are to be used to make or finance loans to any Private Person that, in the aggregate, exceed the lesser of 5% of such Proceeds or \$5,000,000. In the event of Unrelated or Disproportionate Use, the tests in (a) shall be applied by substituting 5% for 10% each place the latter term is used.

“Private Business Use” means use (directly or indirectly) in a trade or business carried on by any Private Person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a Private Person (other than a natural person) shall be treated as a trade or business. In the case of a Qualified 501(c)(3) Bond, Private Business Use excludes use by a 501(c)(3) Organization that is not an unrelated trade or business activity by such 501(c)(3) Organization within the meaning of Section 513(a).

“Private Person” means any natural person or any artificial person, including a corporation, partnership, trust or other entity, other than a Governmental Unit. “Private Person” includes the United States and any agency or instrumentality of the United States.

“Proceeds” means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue. “Proceeds” does not include Replacement Proceeds.

“Qualified Administrative Costs” means reasonable direct administrative costs (other than carrying costs) such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody and similar costs. General overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount are not Qualified Administrative Costs.

“Qualified 501(c)(3) Bonds” means an issue of obligations that satisfies the requirements of Section 145(a).

“Qualified Guarantee” means any guarantee of an obligation that constitutes a “qualified guarantee” within the meaning of Regulations §1.148-4(f).

“Qualified Hedge” means a Hedge that is a “qualified hedge” within the meaning of Regulations §1.148-4(h)(2).

“Rebate Amount” means the excess of the future value, as of any date, of all receipts on Nonpurpose Investments acquired with Gross Proceeds of an issue over the future value, as of that date, of all payments on those Nonpurpose Investments, computed in accordance with Section 148(f) and Regulations §1.148-3.

“Refunded Bonds” means obligations of a Prior Issue the Debt Service on which is or is to be paid from Proceeds of a Refunding Issue.

“Refunding Bonds” means obligations of a Refunding Issue.

“Refunding Issue” means an issue the Proceeds of which are or are to be used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs of the Refunding Issue.

“Refunding Escrow” means one or more funds established as part of a single transaction, or a series of related transactions, containing Proceeds of a Refunding Issue and any other amounts to be used to pay Debt Service on Refunded Bonds of one or more issues.

“Refunding Portion” means that portion of a Multipurpose Issue the Proceeds of which are, or are to be, used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs properly allocable to the Refunding Portion.

“Regulations” or “Reg.” means Treasury Regulations.

“Reimbursement Allocation” means an allocation of the Proceeds of an issue for the Reimbursement of Prior Capital Expenditures, other than Preliminary Expenditures, that meets each of the following requirements: (a) is evidenced on the books or records of the Issuer maintained with respect to the issue, (b) the allocation entry identifies either actual prior Capital Expenditures, or the fund or account from which the prior Capital Expenditures were paid, and (c) evidences the Issuer’s use of Proceeds of the issue to reimburse a Capital Expenditure for a governmental purpose that was originally paid from a source other than the Proceeds of the issue.

“Reimbursement of Prior Capital Expenditures” means a Reimbursement Allocation of Proceeds of the Issue to a Capital Expenditure paid prior to the Issuance Date of such Issue, that satisfies the following requirements: (a) the Capital Expenditure was paid after March 1, 1992; (b) prior to, or within 60 days after, payment of the Capital Expenditure (except Preliminary Expenditures), the Issuer adopted an official intent for the Capital Expenditure that satisfies Regulations §1.150-2(e); and (c) except for Preliminary Expenditures, the Reimbursement Allocation occurs or will occur within 18 months after the later of the date the Capital Expenditure was paid or the date the project resulting from such Capital Expenditure was Placed in Service or abandoned, but in no event more than 3 years after the Capital Expenditure was paid.

“Related Party” means, in reference to a Governmental Unit or 501(c)(3) Organization, any member of the same Controlled Group and, in reference to any person that is not a Governmental Unit or 501(c)(3) Organization, a “related person” as defined in Section 144(a)(3) of the Code.

“Replacement Proceeds” means, with respect to an issue, amounts (including any investment income, but excluding any Proceeds of any issue) replaced by Proceeds of that issue within the meaning of Section 148(a)(2). “Replacement Proceeds” includes amounts, other than Proceeds, held in a sinking fund, pledged fund or reserve or replacement fund for an issue.

“Sale Date” means, with respect to an issue, the first date on which there is a binding contract in writing with the Issuer for the sale and purchase of an issue (or of respective obligations

of the issue if sold by the Issuer on different dates) on specific terms that are not later modified or adjusted in any material respect.

“Sale Proceeds” means that portion of the Issue Price actually or constructively received by the Issuer upon the sale or other disposition of an issue, including any underwriter’s compensation withheld from the Issue Price, but excluding Pre-Issuance Accrued Interest.

“Spendable Proceeds” means the Net Sale Proceeds of an issue.

“Tax-Exempt Obligation” means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidences of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150, and includes any obligation or any investment treated as a “tax-exempt bond” for the applicable purpose of Section 148.

“Tax-Exempt Organization” means a Governmental Unit or a 501(c)(3) Organization.

“Temporary Period” means the period of time, as set forth in the Tax Compliance Certificate, applicable to particular categories of Proceeds of an issue during which such category of Proceeds may be invested in Higher Yielding Investments without the issue being treated as arbitrage bonds under Section 148.

“Transferred Proceeds” means that portion of the Proceeds of an issue (including any Transferred Proceeds of that issue) that remains unexpended at the time that any portion of the principal of the Refunded Bonds of that issue is discharged with the Proceeds of a Refunding Issue and that thereupon becomes Proceeds of the Refunding Issue as provided in Regulations §1.148-9(b). “Transferred Proceeds” does not include any Replacement Proceeds.

“Unrelated or Disproportionate Use” means Private Business Use that is not related to or is disproportionate to use by a Governmental Unit within the meaning of Section 141(b)(3) and Regulations §1.141-9.

“Variable Yield Issue” means any Issue that is not a Fixed Yield Issue.

“Working Capital Expenditures” means any costs of a type that do not constitute Capital Expenditures, including current operating expenses.

“Yield” has the meaning assigned to it for purposes of Section 148 of the Code, and means that discount rate (stated as an annual percentage) that, when used in computing the present worth of all applicable unconditionally payable payments of Debt Service, all payments for a Qualified Guarantee, if any, and all payments and receipts with respect to a Qualified Hedge, if any, paid and to be paid with respect to an obligation (paid and to be paid during and attributable to the Yield Period in the case of a Variable Yield Issue), produces an amount equal to (a) the Issue Price in the case of a Fixed Yield Issue or the present value of the Issue Price at the commencement of the applicable Yield Period in the case of a Variable Yield Issue, or (b) the purchase price for yield purposes in the case of Investment Property, all subject to the applicable methods of computation

provided for under Section 148, including variations from the foregoing. The Yield on Investment Property in which Proceeds or Replacement Proceeds of an issue are invested is computed on a basis consistent with the computation of Yield on that issue, including the same compounding interval of not more than one year selected by the Issuer.

“Yield Period” means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

The terms “bond”, “obligation”, “reasonably required reserve or replacement fund”, “reserve or replacement fund”, “loan”, “sinking fund”, “purpose investment”, “same plan of financing”, “other replacement proceeds”, and other terms relating to Code provisions used but not defined in this Certificate shall have the meanings given to them for purposes of Sections 103 and 141 to 150 unless the context indicates another meaning.

(End of Attachment A)

ATTACHMENT A-1  
to  
Tax Compliance Certificate of Local Borrower

INSTRUCTIONS FOR COMPLIANCE WITH REBATE  
REQUIREMENTS OF SECTION 148(f) OF THE CODE.

The Issuer covenanted in the Loan Agreement and Tax Compliance Certificate to comply with the arbitrage rebate requirement of Section 148(f) of the Code. These Instructions provide guidance for that compliance, including the spending exceptions that free the Issue from all or part of the rebate requirements.

PART I: GENERAL

SECTION 1.01. REBATE GENERALLY.

The Rebate Amount<sup>1</sup> with respect to the Issue must be paid (rebated) to the United States to prevent the bonds of the Issue from being arbitrage bonds, the interest on which is subject to federal income tax. In general, the Rebate Amount is the amount by which the actual earnings on Nonpurpose Investments purchased (or deemed to have been purchased) with Gross Proceeds of the Issue exceed the amount of earnings that would have been received if those Nonpurpose Investments had a Yield equal to the Yield on the Issue.<sup>2</sup>

Stated differently, the Rebate Amount for the Issue as of any date is the excess of the Future Value, as of that date, of all Receipts on Nonpurpose Investments over the Future Value, as of that date, of all Payments on Nonpurpose Investments, computed using the Yield on the Issue as the Future Value rate.<sup>3</sup>

If the Issue is a Fixed Yield Issue, the Yield on the Issue generally is the Yield to maturity, taking into account mandatory redemptions prior to maturity. If the Issue is a Variable Yield Issue, the Yield on the Issue is computed separately for each Yield Period selected by the Issuer.

SECTION 1.02. SPECIAL DEFINITIONS.

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1. Capitalized terms that are not defined in these Instructions are defined in Attachment A to the Tax Compliance Certificate of the Issuer.
  2. Amounts earned on the Bona Fide Debt Service Fund for the Issue are not taken into account in determining the Rebate Amount since none of the obligations of the Issue are Private Activity Bonds, the rates of interest on the Issue do not vary and the average maturity of the Issue is at least 5 years.
  3. The scope of these Instructions does not permit a detailed description of the computation of the Rebate Amount with respect to the Issue. If you need assistance in computing the Rebate Amount on the Issue, please contact your bond counsel.

For purposes of these Instructions, the following terms shall have the following meanings.

“Available Construction Proceeds” means an amount equal to (a) the sum of (i) the Issue Price of the issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocated to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocated to the Underwriter’s discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocated to the issue. Available Construction Proceeds do not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocated to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the Projects financed by the issue is substantially completed. If the issue consists of a New Money Portion and a Refunding Portion and the New Money Portion is a Construction Issue, this definition shall be applied by substituting “New Money Portion” for “issue” each place the latter term appears. If the issue or the New Money Portion, as applicable, is not a Construction Issue, and the Issuer makes the election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting “Construction Portion” for “issue” each place the latter term appears.

“Bifurcated Issue” means a New Money Issue or the New Money Portion of a Multipurpose Issue that the Issuer, pursuant to Section 148(f)(4)(C)(v) and Regulations §1.148-7(j), has elected in its Tax Compliance Certificate to bifurcate into a Construction Portion and a Nonconstruction Portion.

“Bond Counsel’s Opinion” means an opinion or opinions of a nationally recognized bond counsel firm whose opinion is given with respect to the Issue when issued, or its successors or other nationally recognized bond counsel appointed by the Issuer.

“Bond Year” means the annual period relevant to the application of Section 148(f) to the issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of the issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

“Computation Date” means each date on which the Rebate Amount for an issue is required to be computed under Regulations §1.148-3(e). In the case of a Fixed Yield Issue, the first Computation Date shall not be later than 5 years after the Issuance Date of the issue. Subsequent Computation Dates shall be not later than 5 years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. In the case of a Variable Yield Issue, the first Computation Date shall be the last day of any Bond Year irrevocably selected by the Issuer ending on or before the fifth anniversary of the Issuance Date of such issue and subsequent Computation Dates shall be the last day of each Bond Year thereafter or each fifth Bond Year

thereafter, whichever is irrevocably selected by the Issuer after the first date on which any portion of the Rebate Amount is required to be paid to the United States. The final Computation Date is the date an issue is retired.

“Construction Expenditures” means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

“Construction Issue” means an issue at least 75 percent of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property which is or is to be owned by a Governmental Unit or a 501(c)(3) Organization. If an election has been made in the Issuer’s Tax Compliance Certificate to bifurcate an issue or the New Money Portion, the Construction Portion (i.e., that portion of the issue or the New Money Portion which satisfies the 75 percent test stated in the preceding sentence and which finances 100% of the Construction Expenditures) is treated as the Construction Issue and the balance of the issue or the New Money Portion is treated as the Nonconstruction Portion.

“Fixed Yield Issue” means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

“Future Value” means the value of a Payment or Receipt at the end of a period determined using the economic accrual method as the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the Issue, using the same compounding interval and financial conventions that were used to compute that Yield.

“Guaranteed Investment Contract” means any Nonpurpose Investment that has specifically negotiated withdrawal or retirement provisions and a specifically negotiated interest rate and any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

“Multipurpose Issue” means an issue that consists of a Refunding Portion and a New Money Portion.

“Payment” means payments actually or constructively made to acquire Nonpurpose Investments, as specified in Regulations §1.148-3(d)(1)i) through (v).

“Qualified Administrative Costs” means the reasonable, direct administrative costs, other than carrying costs, of purchasing or selling Nonpurpose Investments such as separately stated brokerage or selling commissions. Qualified Administrative Costs do not include legal and accounting fees, recordkeeping, custody, and similar costs, general overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount. In general, Qualified Administrative Costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

“Reasonable Retainage” means an amount, not to exceed 5% of the Net Sale Proceeds of the Issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the Issue. For example, Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

“Rebate Analyst” means an independent individual, firm or entity experienced in the computation of the Rebate Amount pursuant to Section 148(f) of the Code.

“Receipt” means amounts actually or constructively received from Nonpurpose Investments as specified in Regulations §1.148-3(d)(2)(i) through (iii).

“Variable Yield Issue” means any issue that is not a Fixed Yield Issue.

“Yield Period” means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

## PART II: EXCEPTIONS TO REBATE

### SECTION 2.01. SPENDING EXCEPTIONS.

The rebate requirements with respect to the Issue are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the “Spending Exceptions”) is satisfied. The Spending Exceptions are each independent exceptions. The Issue need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Issue.

The following rules apply for purposes of all of the Spending Exceptions except as otherwise noted.

Refunding Issues. The only spending exception available for a Refunding Issue<sup>4</sup> is the 6-Month Spending Exception.

Special Transferred Proceeds Rules. In applying the Spending Exceptions to a Refunding Issue, unspent Proceeds of the Prior Issue that become Transferred Proceeds of the Refunding Issue are ignored. If the Prior Issue satisfies one of the rebate Spending Exceptions, the

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<sup>4</sup> For purposes of these Instructions, references to “Refunding Issue” include the Refunding Portion of a Multipurpose Issue.

Proceeds of the Prior Issue that are excepted from rebate under that exception are not subject to rebate either as Proceeds of the Prior Issue or as Transferred Proceeds of the Refunding Issue.

However, if the Prior Issue does not satisfy any of the Spending Exceptions and is not otherwise exempt from rebate, the Transferred Proceeds from the Prior Issue will be subject to rebate, even if the Refunding Issue satisfies the 6-Month Spending Exception. The Rebate Amount will be calculated on the Transferred Proceeds on the basis of the Yield of the Prior Issue up to each transfer date and on the basis of the Yield of the Refunding Issue after each transfer date.

Application of Spending Exceptions to a Multipurpose Issue. If the Issue is a Multipurpose Issue, the Refunding Portion and the New Money Portion are treated for purposes of the rebate Spending Exceptions as separate issues. Thus, the Refunding Portion is eligible to use only the 6-Month Spending Exception. The New Money Portion is eligible to use any of the three Spending Exceptions.

Expenditures for Governmental Purposes of the Issue. Each of the spending exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Issue. These purposes include payment of interest (but not principal) on the Issue.

#### SECTION 2.02. 6-MONTH SPENDING EXCEPTION.

The Issue will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue within the 6-month period beginning on the Issuance Date and the Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If no bond of the Issue is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the 6-month period is extended for an additional 6 months if the unexpended Gross Proceeds of the Issue at the end of the 6-month period do not exceed the lesser of 5% of the Proceeds of the Issue or \$100,000.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within 6 months do not include amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue.

#### SECTION 2.03. 18-MONTH SPENDING EXCEPTION.

The Issue (or the New Money Portion if the Issue is a Multipurpose Issue) is treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

(A) All of the Gross Proceeds of the Issue (excluding amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue) are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 15% within 6 months;
- (2) at least 60% within 12 months; and
- (3) 100% within 18 months, subject to the Reasonable Retainage exception described below.

(B) The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund for the Issue, to the extent such Fund is subject to rebate (see footnote 3), is timely paid to the United States. And,

(C) The Gross Proceeds of the Issue qualify for the initial 3-year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Issue within 30 months of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Issue during the 18-month period are included in Gross Proceeds of the Issue. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Issue (or the New Money Portion, as applicable) if any portion of the Issue (or New Money Portion) is treated as meeting the rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

#### SECTION 2.04. 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.

(A) In general. A Construction Issue no bond of which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 10% within 6 months;
- (2) at least 45% within 1 year;
- (3) at least 75% within 18 months; and

- (4) 100% within 2 years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund for the Issue are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Compliance Certificate, earnings on amounts in a reasonably required reserve or replacement fund for the Issue are treated as Available Construction Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Issue.

If the Issuer elected in the Tax Compliance Certificate to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Issue during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or 2 years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Issue does not fail to satisfy the spending requirement for the fourth spend-down period (i.e., 100% within 2 years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within 3 years of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first 3 spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the Issuance Date to earn during the 2-year period. For purposes of satisfying the final spend-down requirement, Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the 2-year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Issue, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

(B) 1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Compliance Certificate for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semi-annual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earned during such spend-down period is not

relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (e.g., amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

### PART III: COMPUTATION AND PAYMENT.

#### SECTION 3.01. COMPUTATION AND PAYMENT OF REBATE AMOUNT.

If none of the Spending Exceptions described above is satisfied (and if the 1-1/2% penalty election for a Construction Issue or the Construction Portion of a Bifurcated Issue has not been made), then within 45 days after each Computation Date, the Issuer shall compute, or cause to be computed, the Rebate Amount as of such Computation Date. The first Computation Date is a date selected by the Issuer, but shall be not later than 5 years after the Issuance Date. Each subsequent Computation Date shall end 5 years after the previous Computation Date except that, in a Variable Yield Issue, the Issuer may select annual Yield Periods. The final Computation Date shall be the date the last obligation of the Issue matures or is finally discharged.

Within 60 days after each Computation Date (except the final Computation Date), the Issuer shall pay to the United States not less than 90% of the Rebate Amount, if any, computed as of such Computation Date. Within 60 days after the final Computation Date, the Issuer shall pay to the United States 100% of the Rebate Amount, if any, computed as of the final Computation Date. In computing the Rebate Amount, a computation credit of \$1,000 may be taken into account on the last day of each Bond Year to the Computation Date during which there are unspent Gross Proceeds that are subject to the rebate requirement, and on the final maturity date.

If the operative documents pertaining to the Issue establish a Rebate Fund and require the computation of the Rebate Amount at the end of each Bond Year, the Issuer shall calculate, or cause to be calculated, within 45 days after the end of each Bond Year the Rebate Amount, taking into account the computation credit of \$1,000 for each Bond Year. Within 50 days after the end of each Bond Year, if the Rebate Amount is positive, the Issuer shall deposit in the Rebate Fund such amount as will cause the amount on deposit therein to equal the Rebate Amount, and may withdraw any amount on deposit in the Rebate Fund in excess of the Rebate Amount. Payments of the Rebate Amount to the Internal Revenue Service on a Computation Date shall be made first from amounts on deposit in the Rebate Fund and second from other amounts specified in the operative documents.

Each payment of the Rebate Amount or portion thereof shall be payable to the Internal Revenue Service and shall be made to the Internal Revenue Service Center, Ogden, UT 84201 by certified mail. Each payment shall be accompanied by Internal Revenue Service Form 8038-T and any other form or forms required to be submitted with such remittance.

### SECTION 3.02. BOOKS AND RECORDS.

(A) The Issuer or Trustee, as applicable, shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Issue. Such records shall specify the account or fund to which each Nonpurpose Investment (or portion thereof) held by the Issuer or Trustee is to be allocated and shall set forth as to each Nonpurpose Investment (1) its purchase price, (2) identifying information, including par amount, interest rate, and payments dates, (3) the amount received at maturity or its sales price, as the case may be, including accrued interest, (4) the amounts and dates of any payments made with respect thereto, and (5) the dates of acquisition and disposition or maturity.

The Issuer, Trustee, or Rebate Analyst, as applicable, shall retain the records of all calculations and payments of the Rebate Amount until six years after the retirement of the last obligation that is a part of the Issue.

### SECTION 3.03. FAIR MARKET VALUE.

No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

The fair market value of any Nonpurpose Investment shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in an arms-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this Section, a Nonpurpose Investment that is not of a type traded on an established securities market (within the meaning of Section 1273 of the Code) is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(A) Obligations purchased directly from the Treasury. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(B) Safe harbor for Guaranteed Investment Contracts. The purchase price of a Guaranteed Investment Contract shall be treated as its fair market value on the purchase date if all the following conditions are met:

(1) The Issuer or broker makes a bona fide solicitation for a specified Guaranteed Investment Contract and receives at least three bona fide bids from reasonably competitive providers (of Guaranteed Investment Contracts) that have no material financial interest in the Issue.

(2) The Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees);

(3) The Yield on the Guaranteed Investment Contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable Guaranteed Investment Contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of Tax-Exempt Obligations;

(4) The determination of the terms of the Guaranteed Investment Contract takes into account as a significant factor the Issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in a Bona Fide Debt Service Fund and a reasonably required reserve or replacement fund;

(5) The terms of the Guaranteed Investment Contract, including collateral security requirements, are reasonable; and

(6) The obligor on the Guaranteed Investment Contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the Guaranteed Investment Contract.

(C) Safe harbor for certificates of deposit. The purchase price of a certificate of deposit shall be treated as its fair market value on the purchase date if all of the following requirements are met:

(1) The certificate of deposit has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal; and

(2) The Yield on the certificate of deposit is not less than (a) the Yield on reasonably comparable direct obligations of the United States, or (b) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Certificates evidencing the foregoing requirements should be obtained before purchasing any Guaranteed Investment Contract or certificate of deposit.

#### SECTION 3.04. CONSTRUCTIVE SALE/PURCHASE.

(A) Nonpurpose Investments that are held by the Issuer or Trustee as of any Computation Date (or Bond Year if the computations are required to be done annually) shall be treated for purposes of computing the Rebate Amount as of such date as having been sold for their fair market value as of such date. Investment Property which becomes allocated to Gross Proceeds of the Issue on a date after such Investment Property has actually been purchased shall be treated for purposes of the rebate requirements as having been purchased by the Issuer on such date of allocation at its fair market value on such date.

- (B) For purposes of constructive or deemed sales or purchases of Investment Property (other than Investment Property in the Escrow Fund or that is otherwise not invested for a Temporary Period or is not part of a reasonably required reserve or replacement fund for the Issue) must be valued at its fair market value on the date of constructive or deemed sale or purchase
- (C) Except as set forth in (B), fixed rate Investment Property that is (1) issued with not more than 2% of original issue discount or original issue premium, (2) issued with original issue premium that is attributable exclusively to reasonable underwriters' compensation or (3) acquired with not more than 2% of market discount or market premium, may be treated as having a fair market value equal to its outstanding stated principal amount, plus accrued interest. Fixed rate Investment Property also may be treated as having a fair market value equal to its present value.

SECTION 3.05. ADMINISTRATIVE COSTS.

- (A) Administrative costs shall not be taken into account in determining the payments for or receipts from a Nonpurpose Investment unless such administrative costs are Qualified Administrative Costs. Thus, administrative costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire Nonpurpose Investments generally do not increase the Payments for, or reduce the Receipts from, Nonpurpose Investments.
- (B) Qualified Administrative Costs are taken into account in determining the Payments and Receipts on Nonpurpose Investments and thus increase the Payments for, or decrease the Receipts from, Nonpurpose Investments. In the case of a Guaranteed Investment Contract, a broker's commission or similar fee paid on behalf of either the Issuer or the provider is an administrative cost that is not a Qualified Administrative Cost to the extent that the present value (computed using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate) of the commission, as of the date the contract is purchased, exceeds the present value of annual payments equal to 0.05 percent of the weighted average amount reasonably expected to be invested each year during the term of such contract.

## PART IV: COMPLIANCE AND AMENDMENT

### SECTION 4.01. COMPLIANCE.

The Issuer, Trustee or Rebate Analyst, as applicable, shall take all necessary steps to comply with the requirements of these Instructions in order to ensure that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Code. However, compliance shall not be required in the event and to the extent stated therein the Issuer and the Trustee receive a Bond Counsel's Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Issue, or (B) compliance with some other requirement in lieu of such requirement will comply with Section 148(f) of the Code, in which case compliance with the other requirement specified in the Bond Counsel's Opinion shall constitute compliance with such requirement.

### SECTION 4.02. LIABILITY.

If for any reason any requirement of these Instructions is not complied with, the Issuer and the Trustee, if applicable, shall take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence. The Trustee shall have no duty or responsibility to independently verify any of the Issuer's, or the Rebate Analyst's, calculations with respect to the payments of the Rebate Amount due and owing to the United States. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any bondholder or any other person for any inclusion of the interest on the Issue in gross income for federal income tax purposes, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with these Instructions and the operative documents pertaining to the Issue.

(End of Attachment A-1)

The 8038G will be prepared when \$50,000 of loan funds have been disbursed

LOAN AGREEMENT STANDARD TERMS AND CONDITIONS

Water Infrastructure Finance Authority of Arizona

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1 COVENANTS OF THE LOCAL BORROWER RELATING TO THE SYSTEM AND THE PROJECT .....	1
Section 1.1 Operation and Maintenance of System.....	1
Section 1.2 Additions and Modifications .....	1
Section 1.3 Disposition of Project and System.....	1
Section 1.4 Cost of Project.....	1
ARTICLE 2 ADDITIONAL COVENANTS OF THE LOCAL BORROWER .....	2
Section 2.1 Unconditional Obligations.....	2
Section 2.2 Performance Under Loan Agreement.....	2
Section 2.3 Disclaimer of Warranties.....	2
Section 2.4 Loan Repayments; Prepayments; Adjustments; Late Charges .....	2
Section 2.5 Source of Repayment of Local Borrower’s Obligations and Pledge.....	3
Section 2.6 Insurance .....	3
Section 2.7 No Liens .....	3
Section 2.8 Disadvantaged Business Enterprises .....	3
ARTICLE 3 REPRESENTATIONS OF LOCAL BORROWER.....	5
Section 3.1 Organization and Authority .....	5
Section 3.2 Full Disclosure .....	5
Section 3.3 Pending Litigation .....	5
Section 3.4 Compliance with Existing Laws and Agreements.....	6
Section 3.5 No Defaults.....	6
Section 3.6 Governmental Consent .....	6
Section 3.7 Compliance with Law.....	6
ARTICLE 4 ASSIGNMENT.....	7
Section 4.1 Assignment and Transfer by Authority .....	7
Section 4.2 Assignment by Local Borrower.....	7
ARTICLE 5 DEFAULTS AND REMEDIES.....	7
Section 5.1 Events of Default.....	7
Section 5.2 Notice of Default.....	8
Section 5.3 Remedies on Default .....	8
Section 5.4 Attorney’s Fees and Other Expenses.....	8
Section 5.5 Application of Moneys.....	8
Section 5.6 No Remedy Exclusive; Waiver; Notice.....	8
Section 5.7 Retention of Authority’s Rights .....	9
Section 5.8 Default by the Authority.....	9

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE 6 PROVISIONS APPLICABLE TO LOANS FINANCED BY OR PLEDGED TO SECURE AUTHORITY BONDS .....	9
Section 6.1 General .....	9
Section 6.2 Tax Covenants.....	9
Section 6.3 Third Party Beneficiaries.....	10
Section 6.4 Additional Documents Relating to Authority Bonds.....	10
Section 6.5 Disclosure Regarding Authority Bonds.....	10
Section 6.6 Assignment and Transfer by Authority to Trustee .....	11
Section 6.7 Conditions to Assignment by Local Borrower .....	11
Section 6.8 Sale or Other Disposition of Project or System.....	12
Section 6.9 Deficiencies Under Bond Documents Caused by Failure to Make Loan Repayment .....	12
Section 6.10 Indemnification .....	12
Section 6.11 Compliance with Master Trust Indenture .....	12
Section 6.12 Provisions Relating to Default.....	12
Section 6.13 Tax Compliance Certificate.....	13
ARTICLE 7 MISCELLANEOUS .....	13
Section 7.1 Binding Effect .....	13
Section 7.2 Severability.....	13
Section 7.3 Amendments, Supplements and Modifications .....	13
Section 7.4 Execution in Counterparts .....	13
Section 7.5 Captions.....	13
Section 7.6 Further Assurances .....	13
Section 7.7 State of Arizona Contract Provisions .....	13
ARTICLE 8 DEFINITIONS.....	15
Section 8.1 Definitions.....	15
Section 8.2 Rules of Interpretation.....	18
ARTICLE 9 LIST OF FEDERAL LAWS AND AUTHORITIES .....	18

This document sets forth Standard Terms and Conditions applicable to the Loan made by the WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (the “*Authority*”) to the Local Borrower. These Standard Terms and Conditions are a part of the Loan Agreement to which this document is attached. Certain terms used herein are defined in Article 8.

## **Article 1 Covenants of the Local Borrower Relating to the System and the Project.**

Section 1.1 **Operation and Maintenance of System.** The Local Borrower covenants and agrees that it shall, in accordance with prudent utility practice, (a) at all times operate the properties of the System and any business in connection therewith in an efficient manner, (b) maintain the System in good repair, working order and operating condition, and (c) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the System so that at all times the operations carried on in connection therewith shall be properly and advantageously conducted from revenues of the System or, if the Local Borrower so elects, from any other source of funds lawfully available.

Section 1.2 **Additions and Modifications.** The Local Borrower may make any additions, renewals, replacements, modifications or improvements to the System which it deems desirable and which do not materially reduce the operational integrity of any part of the System. All such renewals, replacements, additions, modifications and improvements shall become a part of the System.

Section 1.3 **Disposition of Project and System.**

(a) The Local Borrower shall not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System except upon compliance with the provisions of this Section; provided, however that the requirements of this Section shall not apply to transactions which are capital leases within the meaning of generally accepted accounting principles to finance expansion or improvement of the System and under which the Local Borrower maintains a purchaser’s interest or other beneficial ownership, use, possession and control of the System so long as no default exists.

(b) The Local Borrower may sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System if the Local Borrower shall give at least ninety (90) days’ prior written notice to the Authority of the proposed transaction, and the Authority gives its written consent which shall not be unreasonably withheld. The Local Borrower understands that the Authority, in determining whether or not to give its consent, must determine that the proposed transaction will not adversely affect the Authority’s ability to meet its duties, covenants, obligations and agreements or conditions of any grant received by the Authority or the State from the United States of America, which is related to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act, as amended, and the Federal Safe Drinking Water Act, as amended.

(c) Notwithstanding the provisions of subsection (b) above, the Local Borrower may sell, lease or otherwise dispose of, any of the property comprising part of the System without prior notice to or the consent of the Authority, other than the Project, in either of the following circumstances:

(i) If the Local Borrower determines that such property is not necessary, useful or profitable to the operation of the System; or

(ii) If the value of such property sold, leased or otherwise disposed of in any one year is equal to not more than 5% of the value of the fixed assets of the System.

Section 1.4 **Cost of Project.** The Local Borrower certifies that the estimated Eligible Project Costs as listed in Section 1 of Exhibit B is a reasonable and accurate estimation of the Eligible Project Costs and, upon the direction of the Authority the Local Borrower will supply the Authority with a certificate from its engineer stating that such estimated Eligible Project Costs is a reasonable and accurate estimation.

## Article 2 Additional Covenants of the Local Borrower

Section 2.1 **Unconditional Obligations.** The obligation of the Local Borrower to make the Loan Repayments and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part described herein are payable solely from the Source of Repayment described in this Loan Agreement and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments hereunder remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or the System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement, or any rights of set-off, recoupment, abatement or counterclaim that the Local Borrower might otherwise have against the Authority or any other party or parties; provided, however, that payments under this Loan Agreement shall not constitute a waiver of any such rights. The Local Borrower shall not be obligated to make any payments required to be made by any other local borrowers under separate loan agreements or local borrower bonds. Notwithstanding any other provision of this Section 2.1, or this Loan Agreement, neither the Authority, nor any assignee of the Authority shall have the right or ability to compel the repayment of this Loan Agreement from any source other than the Source of Repayment.

Section 2.2 **Performance Under Loan Agreement.** The Local Borrower covenants and agrees (a) to maintain the System in good repair and operating condition; (b) to cooperate with the Authority to the extent it may lawfully do so, in the observance and performance of the respective duties, covenants, obligations and agreements of such Local Borrower and the Authority under this Loan Agreement; and (c) to comply with the covenants set forth in this Loan Agreement.

Section 2.3 **Disclaimer of Warranties.** The Local Borrower acknowledges and agrees that (i) the Authority makes no warranty or representation, either express or implied as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the System or the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or its respective agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the System or the Project; and (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the laws of the United States or of the State.

Section 2.4 **Loan Repayments; Prepayments; Providing for Payment of the Loan.**

(a) Loan Repayments.

(i) The Local Borrower shall pay to the Authority the amounts set forth in the Loan Repayment Schedule contained in Exhibit A on or before the due dates shown in Exhibit A.

(ii) Each payment made as a Loan Repayment as described in subsection (i) shall be applied first to the combined interest and fee payment then due and payable on the Loan and then to the principal amount of the Loan.

(iii) In addition to the other payments required by this Section, the Local Borrower shall pay a late charge for any payment that is received by the Authority later than the tenth day following its due date, in an amount equal to six percent per annum of the amount of the late payment from its due date to the date it is actually paid; provided, however, that the combined interest and fee rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law or any proceedings or resolution authorizing the execution of this Loan Agreement.

(iv) Upon the final disbursement, if the Loan amount is less than the estimated Eligible Project Costs, the amount of each Principal Installment due as set forth in the Loan Repayment Schedule contained in Exhibit A shall be

adjusted to achieve substantially level debt service, and the Authority shall compute the adjusted combined interest and fee amounts to reflect the adjusted principal amounts and shall enter the results in a revised Loan Repayment Schedule delivered to the Local Borrower.

(b) **Prepayments.** The Loan is not subject to prepayment prior to the tenth anniversary of the final loan draw. The Local Borrower may prepay the Principal Repayment Amount of the Loan in whole or in part in advance of the due dates on or after the tenth anniversary of the final loan draw without penalty upon written notice delivered to the Authority at least 60 days prior to the prepayment date. If the Local Borrower prepays the Repayment Principal Amount in part, the amount of each Principal Installment due as set forth in the Loan Repayment Schedule contained in Exhibit A shall be adjusted to achieve substantially level debt service. Upon such adjustment, the Authority shall compute the adjusted combined interest and fees amounts to reflect the adjusted principal amounts and shall enter the results in the Loan Repayment Schedule with notice to the Local Borrower.

(c) **Providing for Payment of the Loan.** The Local Borrower may at any time provide for the payment and discharge of the Loan, as provided in this subsection. The Loan shall be deemed to have been paid and discharged if:

(i) the Local Borrower has delivered to the Authority proof satisfactory to the Authority that the Local Borrower has deposited with a financial institution acceptable to the Authority, in trust for and irrevocably committed to payments on the Loan, cash or non-callable direct obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) and obligations of any agency or instrumentality of the United States of America the timely payment of the principal of and interest on which are unconditionally guaranteed by the United States of America, which are of such maturities and interest payment dates, and bear such interest, as will be sufficient together with any moneys also deposited, without further investment or reinvestment of either the principal amount or the interest earnings (which earnings are to be held likewise in trust and so committed), to pay all the amounts due under the Loan, as set forth in the Loan Repayment Schedule contained in Exhibit A, as evidenced in a report of an independent firm of nationally recognized certified public accountants addressed to and delivered to the Authority; and

(ii) the Authority has received a bond counsel opinion (as described in Section 6.2(b) and (c) below) to the effect that the deposit of funds and the investment of such deposit, as described in the preceding paragraph, will not, by itself, adversely affect the exclusion from gross income of interest on the Loan or any Authority Bonds for federal income tax purposes.

Section 2.5 **Source of Repayment of Local Borrower's Obligations and Pledge.** The Local Borrower irrevocably pledges the Source of Repayment described in this Loan Agreement for the punctual payment of all amounts due under the Loan Agreement. The Authority and the Local Borrower agree that the amounts payable by the Local Borrower under this Loan Agreement are payable solely from the Source of Repayment described in this Loan Agreement and are not payable from any other source whatsoever, unless the Local Borrower chooses to pay, and pays, any amount due hereunder from any other source lawfully available to it.

Section 2.6 **Insurance.** The Local Borrower shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self-insurance programs or through membership in a risk retention pool, including, but not limited to, the Arizona Municipal Risk Retention Pool (in accordance with the Local Borrower's customary practices) providing against risk of direct physical loss, damage or destruction of the Project and the System, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining system facilities of the nature of the System, including liability coverage, all to the extent available at reasonable cost.

Section 2.7 **No Liens.** Except for:

(a) the debt service on any future bonds, notes or other evidence of indebtedness of the Local Borrower issued or contractual obligations incurred in accordance with this Loan Agreement payable from the funds pledged to the payment of this Loan Agreement which are on parity with the lien and charge on the funds so pledged to pay this Loan Agreement and

(b) as provided in Exhibit D of this Loan Agreement, the debt service on currently outstanding bonds, notes or evidences of indebtedness or contractual obligations of the Local Borrower, if any, payable from the Source of Repayment described in Exhibit D of this Loan Agreement which the Local Borrower has disclosed to the Authority in writing,

the funds so pledged as described in this Loan Agreement after the payment of all costs of operating and maintaining the System, are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto which are prior to, or of equal rank with, the obligation of the Local Borrower to pay this Loan Agreement, and all corporate or other action on the part of the Local Borrower to that end has been and will be duly and validly taken.

Section 2.8 **Disadvantaged Business Enterprises**. As applicable, the Local Borrower shall comply with 40 C.F.R. Part 33<sup>1</sup> including but not limited to:

Local Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Disadvantage Business Enterprises (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach.

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in sections (a) through (e) above.

These conditions must be included in all procurement contracts entered into by the Local Borrower for all DWRP and CWRP projects:

(a) The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.

(b) The prime contractor must notify the owner in writing prior to the termination of any Disadvantage Business Enterprise subcontractor for convenience by the prime contractor.

(c) If a Disadvantage Business Enterprise contractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts if soliciting a replacement contractor.

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<sup>1</sup> See Article 9 for a full list of applicable federal laws and authorities relating to Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements.

(d) The prime contractor must continue to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

(e) The prime contractor must provide EPA Form 6100-2 DBE Program Subcontractor Participation Form to all of its Disadvantaged Business Enterprise subcontractors. Disadvantaged Business Enterprise subcontractors may send completed Form 6100-2 directly to the Region 9 DBE Coordinator listed below.

**Joe Ochab, EPA Region 9, 75 Hawthorne St. (P-22), San Francisco, CA 94105**

(f) The prime contractor must have its Disadvantaged Business Enterprise subcontractors complete EPA Form 6100-3 – DBE Program Subcontractor Performance Form. The prime contractor must include all completed forms as part of the prime contractor’s bid or proposal package to the Local Borrower.

(g) The prime contractor must complete and submit EPA 6100-4 DBE Program Subcontractor Utilization Form as part of the prime contractor’s bid or proposal package to the Local Borrower.

(h) A Local Borrower must ensure that each procurement contract it awards contains the following terms and conditions:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

**Article 3 Representations of Local Borrower**

The Local Borrower represents for the benefit of the Authority that the representations contained in this Loan Agreement are true at the time of execution and delivery of this Loan Agreement and, other than with respect to events outside of Local Borrower’s control, will be true in all material respects at all times during the term of this Loan Agreement.

Section 3.1 **Organization and Authority.**

(a) The Local Borrower is a Political Subdivision or Indian Tribe as defined in the Authority Act.

(b) The Local Borrower has full legal right and authority and has, or will obtain as and when required, all necessary licenses and permits required to acquire, own, operate and maintain the Project and the System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, to pledge the Source of Repayment, and to carry out and consummate all transactions contemplated by this Loan Agreement. The Project is a project which the Local Borrower may undertake pursuant to State law and for which the Local Borrower is authorized by law to borrow money.

(c) The proceedings of the Local Borrower’s governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Local Borrower, and authorizing the Local Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of the State.

(d) This Loan Agreement has been duly authorized, executed and delivered by an Authorized Officer of the Local Borrower; and, assuming that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered this Loan Agreement, this Loan Agreement constitutes a legal and valid obligation of the Local Borrower enforceable in accordance with its terms, and the information contained under “Description of the Loan” in this Loan Agreement is true and accurate in all material respects.

Section 3.2 **Full Disclosure.**

(a) To the best of the Local Borrower's knowledge, there is no fact that the Local Borrower has not disclosed to the Authority in writing that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the System, or the ability of the Local Borrower to make all Loan Repayments due hereunder and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(b) The information relating to the Local Borrower (including without limitation the financial and statistical data contained therein) submitted to the Authority by the Local Borrower in connection with the Authority's approval of the Loan was at the time of the Authority's approval of the Loan and at all times subsequent thereto up to and including the Loan Closing, will be (if necessary by amendment provided by the Local Borrower) true and correct and will not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading in any adverse respect. To the extent permitted by law, and notwithstanding any other provision of this Loan Agreement, the Local Borrower will indemnify, save and hold harmless the Authority, and each of the Authority's agents, for, from and against any and all claims, damages, liability and court awards including costs, expenses and reasonable attorneys' fees incurred as a result of any omission or misstatement of material fact in the information submitted to the Authority by the Local Borrower in connection with the Authority's approval of the Loan, as it may have been supplemented and amended by the Local Borrower.

Section 3.3 **Pending Litigation.** There are no proceedings pending, or to the knowledge of the Local Borrower, threatened, against or affecting the Local Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the System, or the ability of the Local Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement that have not been disclosed in writing to the Authority in the Local Borrower's application for the Loan or otherwise.

Section 3.4 **Compliance with Existing Laws and Agreements.** The authorization, execution and delivery of this Loan Agreement by the Local Borrower, the observance and performance by the Local Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, the compliance by the Local Borrower with the provisions of this Loan Agreement and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Local Borrower pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than the lien and charge of this Loan Agreement and any ordinance or resolution or indenture which authorized outstanding obligations of the Local Borrower which are on a parity with this Loan Agreement as to a lien on, or a source and security for, payment thereon from the source of payment that is pledged to the Loan Repayments) to which the Local Borrower is a party or by which the Local Borrower, the System or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Local Borrower was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Local Borrower, the System or its properties or operations are subject.

Section 3.5 **No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Local Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the ability of the Local Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.6 **Governmental Consent.** The Local Borrower has or will have obtained prior to the date of the Loan Closing all permits and approvals required to date by any governmental body or officer (and reasonably expects to receive all permits required in the future by any governmental agency) for the making, observance and performance

by the Local Borrower of its duties, obligations and agreements under this Loan Agreement or for the undertaking or completion of the Project and the financing thereof, and the Local Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Local Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing thereof; and the Local Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Local Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer, other than those already obtained or reasonably expected to be obtained, is required on the part of the Local Borrower as a condition to the authorization, execution and delivery of this Loan Agreement, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

Section 3.7 **Compliance with Law**. The Local Borrower:

- (a) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject and the failure to comply with which would materially adversely affect the ability of the Local Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Local Borrower or the System; and
- (b) has obtained, or will obtain as and when required, all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Local Borrower to undertake or complete the Project or the condition (financial or otherwise) of the Local Borrower or the System.

## **Article 4 Assignment**

Section 4.1 **Assignment and Transfer by Authority**. The Local Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the Authority deems to be necessary in connection with the Clean Water Revolving Fund and Drinking Water Revolving Fund programs of the Authority.

Section 4.2 **Assignment by Local Borrower**. This Loan Agreement may not be assigned by the Local Borrower for any reason, unless the following conditions shall be satisfied: (i) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code or another entity acceptable to the Authority and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Local Borrower's duties, covenants, agreements and obligations hereunder; (ii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Local Borrower hereunder; and (iii) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority with, or condition of any grant received by the Authority from the United States of America relating to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act.

No assignment shall relieve the Local Borrower from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Local Borrower shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

## **Article 5 Defaults and Remedies**

Section 5.1 **Events of Default**. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "*Event of Default*":

- (a) failure by the Local Borrower to pay, or cause to be paid, when due any Loan Repayment;
- (b) failure by the Local Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Local Borrower for borrowed money

(other than the Loan), after giving effect to the applicable grace period, the payments of which are secured by the Source of Repayment described in this Loan Agreement;

(c) failure by the Local Borrower to perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraphs (a) and (b) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Local Borrower by the Authority, unless the Authority agrees in writing to an extension of such time prior to its expiration, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Authority may not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Local Borrower and diligently pursued until the Event of Default is corrected;

(d) the institution of any proceeding, with the acquiescence of the Local Borrower, for the purpose of effecting a composition between the Local Borrower and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from the Source of Repayment described in this Loan Agreement;

(e) a determination by the Authority that any material representation made by or on behalf of the Local Borrower contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement, is false or misleading in any material respect; and

(f) the filing of a petition by or against the Local Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Local Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Local Borrower becoming insolvent or bankrupt or making an assignment for the benefit of its creditors; or the appointment of a custodian (including, without limitation, a receiver, liquidator or trustee of the Local Borrower or any of its property including the System) by court order, or possession of the Local Borrower or its property or assets is taken if such order remains in effect or such possession continues for more than thirty (30) days.

Section 5.2 **Notice of Default.** The Local Borrower shall give the Authority prompt telephone notice of the occurrence of any Event of Default referred to in Section 5.1 paragraph (c) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default, at such time as any senior administrative or financial officer of the Local Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section shall be confirmed in writing by the end of the next Business Day.

### Section 5.3 **Remedies on Default.**

(a) Whenever an Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the Authority shall have the right to take any action permitted or required pursuant to this Loan Agreement and to take whatever other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due on their scheduled payment dates or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Local Borrower hereunder, including, without limitation, appointment of a receiver of the System.

(b) Nothing in this Loan Agreement shall be construed to affect the Attorney General taking action to enforce this Loan Agreement in accordance with the Authority Act.

Section 5.4 **Attorney's Fees and Other Expenses.** In the event of a default hereunder by the Local Borrower, the Local Borrower shall on demand and to the extent not prohibited by applicable law pay to the Authority the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observance of any other duties, covenants, obligations or agreements of the Local Borrower to the extent permitted by law.

Section 5.5 **Application of Moneys.** The parties acknowledge that: (a) all amounts coming due hereunder as Loan Repayments shall be treated as principal and combined interest and fees with respect to the Loan which amounts are secured by a pledge of the Source of Repayment in accordance with Exhibit D of this Loan Agreement; and (b) amounts coming due under Section 5.4 hereof shall be secured by the Source of Repayment on a basis subordinate to the Loan Repayments, but on a parity with comparable expenses relating to such Outstanding Parity Obligations and Additional Parity Obligations.

However, any moneys collected by the Authority pursuant to Section 5.3 in the exercise of remedies with respect to amounts due or to become due hereunder shall be applied: (a) first, to pay any attorney's fees or other fees and expenses owed by the Local Borrower pursuant to Section 5.4 hereof, (b) second, to pay delinquent combined interest fees and late charges on the Loan; (c) third, to pay combined interest and fees then due and payable on the Loan; (d) fourth, to pay delinquent principal on the Loan in order of scheduled maturity; (e) fifth, to pay principal then due and payable on the Loan; and (f) sixth, to pay any other amounts due and payable pursuant to this Loan Agreement.

Section 5.6 **No Remedy Exclusive; Waiver; Notice.** No remedy conferred upon or reserved to the Authority hereunder is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it as described in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

Section 5.7 **Retention of Authority's Rights.** Notwithstanding any assignment or transfer of this Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Local Borrower at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Local Borrower to the Authority.

Section 5.8 **Default by the Authority.** In the event of any default by the Authority in any duty, covenant, agreement or obligation described in this Agreement, the Local Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority described herein as may be necessary or appropriate. The Authority shall on demand pay to the Local Borrower the reasonable fees and expenses of attorneys and other reasonable expenses in the enforcement of such performance or observance.

## **Article 6 Provisions Applicable to Loans Financed by or Pledged to Secure Authority Bonds**

Section 6.1 **General.** The Local Borrower acknowledges that the Authority is entering into this Loan Agreement and agreeing to make the Loan at this time for the benefit of the Local Borrower, and that the Authority may finance the Loan, along with other loans to other local borrowers, through the issuance of Authority Bonds and may pledge the Loan to secure Authority Bonds. If and for so long as the Authority's source of funds to make disbursements on, or to carry, the Loan represented by this Loan Agreement is, or becomes, the proceeds of Authority Bonds, or this Loan Agreement is assigned by the Authority as security for payment of amounts due or to become due on Authority Bonds, the Local Borrower agrees to cooperate with the Authority with respect to the issuance of Authority Bonds by furnishing and certifying information concerning the Local Borrower, the Project, the System and the Source of Repayment, and by agreeing to reasonable modifications and additions to this Loan Agreement necessary or convenient for the Authority Bond transaction. Without limiting the generality of the foregoing, the Local Borrower agrees that if the Authority at any time determines, in its discretion, that it is necessary in connection with the issuance of Authority Bonds or the maintenance of the Authority's bond program, then the provisions set forth in this Article shall be in effect.

Section 6.2 **Tax Covenants.**

(a) General. The Local Borrower acknowledges that, in connection with its state revolving fund programs, the Authority issues its Authority Bonds from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority's interest for the Loan to qualify and be a Tax-Exempt Obligation that is not an AMT Obligation. Therefore, the Local Borrower represents and covenants as follows with respect to the Loan and the Authority Bonds. The Local Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Loan or the Authority Bonds under Section 103(a) of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an AMT Obligation, and in the event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon a bond counsel opinion as may rescind or otherwise negate such action or omission. The Local Borrower will not directly or indirectly use or permit the use of any proceeds of the Loan or any other funds of the Local Borrower or take or omit to take any action that would cause the Loan or the Authority Bonds to be or become "arbitrage bonds" within the meaning of Section 148(a) of the Internal Revenue Code or to fail to meet any other applicable requirement of Sections 103, 141, 148, 149 and 150 of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. To that end, the Local Borrower will comply with all applicable requirements of Sections 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Loan.

(b) Modification Based on Bond Counsel Opinion. Notwithstanding any provision of this Section, if the Local Borrower provides to the Authority a bond counsel opinion to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Loan or the Authority Bonds pursuant to Section 103(a) of the Internal Revenue Code, the provisions of this Section and the covenants in this Section shall be deemed to be modified to that extent.

(c) Bond Counsel Opinion. For purposes of this Article, "bond counsel opinion" means an opinion letter of a firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, and who is acceptable to the Authority.

Section 6.3 Third Party Beneficiaries. The Trustee, the owners from time to time of the Authority Bonds, any Credit Enhancer from time to time of the Authority Bonds and any underwriter of the Authority Bonds are each expressly acknowledged to be third party beneficiaries of this Loan Agreement and each representation, agreement, duty, obligation and provision of this Loan Agreement.

Section 6.4 Additional Documents Relating to Authority Bonds. The Local Borrower will furnish to the Authority and certify to such information and execute and deliver and cause to be executed and delivered such documents as the Authority, the underwriter or other parties to any Authority Bond transaction may reasonably require, including, without limitation:

(a) a certificate of an Authorized Officer of the Local Borrower to the effect that the information contained in the Final Official Statement (defined in Section 6.5, paragraph (a)) for the Authority Bonds concerning the Local Borrower is correct in all material respects and is an accurate summary of the information which it purports to summarize, and that nothing has come to the Authorized Officer's attention that would lead the Authorized Officer to believe that the information in the Final Official Statement relating to the Local Borrower contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(b) subject to the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 (the "*Disclosure Rule*"), a continuing disclosure undertaking of the Local Borrower meeting the requirements of the Disclosure Rule, and a statement of the Local Borrower as to whether it has failed to provide any information and notices required by the provisions of previous continuing disclosure undertakings, if any, of the Local Borrower under the Disclosure Rule, and if it has not, describing the circumstances and status of such failure; and

(c) an appropriate certificate executed by Authorized Officer of the Local Borrower concerning the reasonable expectations of the Local Borrower as to the use of the proceeds of the Loan and such other matters as may be required on the part of the Local Borrower in order to ensure that the Authority Bonds are and will remain Tax-Exempt

Obligations that are not AMT Obligations, and the Local Borrower covenants to comply with the provisions of such certificate; and

(d) such other certificates, documents and information, and supplemental opinions of Local Borrower's counsel, as the Authority, the underwriters of the Authority Bonds or other parties to the Authority Bonds transaction may reasonably require and as are necessary to confirm the continued truth and accuracy of information supplied by or on behalf of the Local Borrower.

#### Section 6.5 **Disclosure Regarding Authority Bonds.**

(a) The information, if any, relating to the Local Borrower (including without limitation the financial and statistical data contained therein) which has been furnished by the Local Borrower to be included in, and which is included in, a Preliminary Official Statement of the Authority (the "*Preliminary Official Statement*"), or a final Official Statement (the "*Final Official Statement*") of the Authority concerning any Authority Bonds, as of the respective dates of each such document and at all times subsequent thereto up to and including the Bond Closing, will be (if necessary by amendment provided by the Local Borrower) true and correct and will not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. To the extent permitted by law, and notwithstanding any other provision of this Loan Agreement, the Local Borrower will indemnify, save and hold harmless the Authority and each other local borrower, if any, included in the Final Official Statement, and each of such parties' respective agents, for, from and against any and all claims, damages, liability and court awards including costs, expenses and attorneys fees incurred as a result of any omission or misstatement of a material fact in the Local Borrower's information in the Final Official Statement, as it may have been supplemented or amended by the Local Borrower.

(b) The Local Borrower agrees that from the date of the Final Official Statement and for a period until not later than 25 days after the date of the Bond Closing if and so long as the offering of the Authority Bonds continues (i) the Local Borrower will furnish such information with respect to itself as the Authority (for itself or at the request of the underwriters of the Authority Bonds) may from time to time reasonably request and (ii) if any event shall occur as a result of which it is necessary, in the opinion of Bond Counsel to the Authority, or counsel for the underwriters of the Authority Bonds, to amend or supplement the information in the Final Official Statement relating to the Local Borrower in order to make such information not misleading in light of the circumstances then existing, the Local Borrower will forthwith prepare, and furnish to the Authority and the underwriters such information relating to the Local Borrower as may be necessary to permit the preparation of an amendment of or supplement to the Final Official Statement (in form and substance satisfactory to the Bond Counsel to the Authority and counsel for the underwriters) which will amend or supplement the Final Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances then existing, not misleading.

(c) The Local Borrower agrees that if prior to the 25th day following the end of the underwriting period of the Authority Bonds, as defined for purposes of the Disclosure Rule, any event shall occur which causes the representations contained in Section 6.4, paragraph (a) to be false in any material respect, the Local Borrower shall promptly notify the Authority of such development, and if in the opinion of the Authority and the underwriters of the Authority Bonds such development requires the preparation of a supplement or an amendment to the Preliminary Official Statement or the Final Official Statement, the Local Borrower agrees to cooperate with the Authority and the underwriters for the Authority Bonds in preparing any such supplement or amendment in a form acceptable to such parties and to pay all reasonable expenses incurred by such parties in connection with the preparation thereof.

#### Section 6.6 **Assignment and Transfer by Authority to Trustee.**

(a) The Local Borrower expressly acknowledges that, other than the right of the Authority to be indemnified by the Local Borrower, all right, title and interest of the Authority in, to and under this Loan Agreement will be assigned to the Trustee as security for the Authority Bonds, as applicable, as provided in the Authority's Master Trust Indenture, and that if any Event of Default shall occur the Trustee, pursuant to the Authority's Master Trust Indenture, shall be entitled to act hereunder in the place and stead of the Authority. The Local Borrower hereby acknowledges the requirements of the Authority's Master Trust Indenture applicable to the Authority Bonds and consents to such assignment and appointment. The Authority shall retain the right to compel or otherwise enforce observance and

performance by the Local Borrower of its duties, covenants, obligations and to be indemnified by the Local Borrower; provided, however, that in no event shall the Authority or the Trustee have the right to accelerate the payments under this Loan Agreement.

(b) The Local Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the Authority deems to be necessary in connection with any refunding of the Authority Bonds or otherwise in connection with the Clean Water Revolving Fund and Drinking Water Revolving Fund programs of the Authority.

Section 6.7 **Conditions to Assignment by Local Borrower.** Notwithstanding Section 4.2, this Loan Agreement may not be assigned by the Local Borrower for any reason, unless the following conditions shall be satisfied: (i) the Authority, the Trustee and the Credit Enhancer, if any, of the Authority Bonds shall have approved said assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Internal Revenue Code or another entity acceptable to the Authority and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Local Borrower's duties, covenants, agreements and obligations hereunder; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Local Borrower hereunder; (iv) the Authority and the Trustee shall have received an opinion of bond counsel to the effect that such assignment will not adversely affect the exclusion of interest on the Authority Bonds from gross income for purposes of Federal income taxation under Section 103(a) of the Code or make the Authority Bonds or the Loan AMT Obligations; and (v) the Authority and the Trustee shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of the Master Trust Indenture or any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act.

No assignment shall relieve the Local Borrower from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Local Borrower shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

Section 6.8 **Sale or Other Disposition of Project or System.** The Local Borrower agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System unless (i) the transferee assumes the Local Borrower's obligations under this Loan Agreement in accordance with Section 6.6, (ii) the Authority shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations and agreements under the Bond Documents, and will not adversely affect the eligibility of interest on Authority Bonds then outstanding or which could be issued in the future for exclusion from gross income for purposes of federal income taxation or cause such Authority Bonds to be AMT Obligations, and (iii) the Credit Enhancer, if any, of the Authority Bonds shall have given its prior written consent to such disposition.

Section 6.9 **Deficiencies Under Bond Documents Caused by Failure to Make Loan Repayment.** The Local Borrower acknowledges that payment of the Authority Bonds by the Authority, including payment from moneys drawn by the Trustee from the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Accounts established under the Bond Documents, does not constitute payment of the amounts due under this Loan Agreement. If at any time the amounts on deposit in the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Accounts shall be less than the amounts required by the Bond Documents as the result of any transfer of moneys from the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Accounts which in turn is the result of a failure by the Local Borrower to make any Loan Repayments required hereunder, the Local Borrower agrees to (i) replenish such moneys so transferred, and (ii) replenish any deficiency arising from losses incurred in making such transfer as the result of the liquidation by the Authority of investment securities acquired as an investment of moneys in the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Accounts, by making payments to the Authority in equal monthly installments for the lesser of six (6) months or the remaining term of the Loan at a combined interest and fee rate to be determined by the Authority necessary to make up any loss caused by such deficiency, provided that the combined interest and fee rate payable on the Loan including such make-up combined interest and fees shall not exceed the maximum rate permitted by the Authorizing Proceedings which authorized this Loan Agreement.

Section 6.10 **Indemnification**. To the extent permitted by law, the Local Borrower shall indemnify, save and hold harmless the Authority against any and all claims, damages, liability and court awards including costs, expenses and attorney fees to the extent incurred as a result of any gross negligence or willful misconduct by the Local Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement.

Section 6.11 **Compliance with Master Trust Indenture**. The Local Borrower covenants and agrees to take such action as it may lawfully take and as the Authority shall reasonably request so as to enable the Authority to observe and comply with, all duties, covenants, obligations and agreements contained in the Master Trust Indenture insofar as such duties, covenants, obligations and agreements relate to the obligations of the Local Borrower under this Loan Agreement.

Section 6.12 **Provisions Relating to Default**.

(a) Any notice or information which the Local Borrower is to give to the Authority pursuant to the provisions of Article 5 shall also be given by the Local Borrower to the Trustee and to any Credit Enhancer at the same time.

(b) Notwithstanding the provisions of Section 5.3, paragraph (a) and Section 5.7, so long as a Credit Enhancer is not in default of its obligations with respect to its payment guarantee of the Authority Bonds and such guarantee is in effect, the Credit Enhancer shall have the right to direct the exercise of remedies provided for herein and the Trustee and the Authority shall not pursue any remedy except with the prior written consent of the Credit Enhancer.

(c) In the event of a default hereunder by the Local Borrower, the Local Borrower shall also pay the expenses of the Trustee and of any Credit Enhancer in the same manner as provided in Section 5.4 with respect to the expenses of the Authority.

Section 6.13 **Tax Compliance Certificate**. If the Authority Bonds are issued and sold on the basis that they are Tax-Exempt Obligations, an Authorized Officer of the Local Borrower shall deliver an appropriate certificate concerning the reasonable expectations of the Local Borrower as to the use of the proceeds of the Loan and such other matters as may be required on the part of the Local Borrower in order to ensure that the Authority Bonds are and will remain Tax-Exempt Obligations that are not AMT Obligations, and the Local Borrower covenants to comply with the provisions of such certificate.

## **Article 7 Miscellaneous**

Section 7.1 **Binding Effect**. This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority and the Local Borrower and their respective successors and assigns.

Section 7.2 **Severability**. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any Court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 7.3 **Amendments, Supplements and Modifications**. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority and the Local Borrower.

Section 7.4 **Execution in Counterparts**. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.5 **Captions**. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

Section 7.6 **Further Assurances**. The Local Borrower shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Loan Agreement.

Section 7.7 **State of Arizona Contract Provisions.**

(a) **Books and Records.** As required by the provisions of Arizona Revised Statutes Section 35-214, the Local Borrower agrees that all books, accounts, reports, files and other records relating to this Loan Agreement shall be retained and shall be subject at all reasonable times to inspection and audits by the Authority for five years after completion of this Loan Agreement, and that upon request by the Authority such records shall be produced at any of the Authority offices designated herein as the place at which notices to the Authority are to be given.

(b) **Prohibition Against Discrimination.** In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order 2009-9, entitled "Prohibition of Discrimination in State Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors," which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Local Borrower shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(c) **Governing Law and Forum.** This Loan Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of Arizona, except as such laws may be preempted by any federal rules or regulations. The parties hereto expressly acknowledge and agree and all Local Borrowers by their acceptance thereof shall be deemed to have acknowledged and agreed that any judicial action to interpret or enforce the terms of this Loan Agreement against the Authority shall be brought and maintained in the Superior Court of the State of Arizona in and for Maricopa County or in the United States District Court in and for the District of Arizona.

(d) **Arbitration.** In the event of a dispute, the parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by Arizona Revised Statutes Section 12-1518, and the prevailing party shall be entitled to attorney's fees and costs with respect thereto.

(e) **Notice of Arizona Revised Statutes Section 38-511 – Cancellation.** Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to this Loan Agreement under the law of the State of Arizona.

(f) **Additional Warranties and Certifications from the Local Borrower.** In compliance with Section 23-214(B) of the Arizona Revised Statutes, the Local Borrower warrants to the Authority that either (i) it is not an "employer" (within the meaning of Arizona Revised Statutes Section 23-214(B)) or (ii) it is registered with and is participating in the employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or any of its successor programs (the "E-Verify Program") and that the proof submitted to the Authority of that registration and participation is true and correct. The Local Borrower agrees that, until the Loan is fully paid, at all times during which it is an "employer" (within the meaning of Arizona Revised Statutes Section 23-214(B)) it will be registered with and will participate in the E-Verify Program. The breach by the Local Borrower of the foregoing shall be deemed a material breach by the Local Borrower of this Loan Agreement and may result in penalties up to and including the termination of this Loan Agreement. If the Authority determines that the Local Borrower is not so registered and participating when required, the Authority will notify the Local Borrower by certified mail of the determination of noncompliance and the Local Borrower's right to appeal the determination. On a final determination of noncompliance, the Local Borrower shall repay all monies received as an economic development incentive (within the meaning of Arizona Revised Statutes Section 23-214(B)) to the Authority within thirty days of the final determination.

## **Article 8 Definitions**

Section 8.1 **Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meaning:

"*AMT Obligation*" means a Tax-Exempt Obligation the interest on which is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code.

“*Annual Loan Review Form*” means the loan compliance questionnaire circulated by the Authority to all borrowers as part of the Authority’s annual loan portfolio review.

“*Authority*” means the Water Infrastructure Finance Authority of Arizona, a body corporate and politic of the State of Arizona duly created and validly existing under and by virtue of the Authority Act.

“*Authority Act*” means Title 49, Chapter 8 (Section 49-1201 et seq.) of the Arizona Revised Statutes (“A.R.S.”).

“*Authority Bonds*” means any bonds of the Authority issued to finance the State’s revolving fund established pursuant to the Water Pollution Control Act, as amended, and the Safe Drinking Water Act, as amended.

“*Authorized Officer*” means, (i) with respect to the Local Borrower, the person whose name is set forth in this Loan Agreement or such other person or persons authorized by the Local Borrower to act as an authorized officer of the Local Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement whose name is furnished in writing to the Authority and the Trustee; and (ii) with respect to the Authority, the Chairman, Vice Chairman, Executive Director, or any other person or persons designated by the Board to act on behalf of the Authority with respect to this Loan Agreement; the designation of such person or persons shall be evidenced by a written certificate containing a specimen signature of such person or persons and signed on behalf of the Authority by its Chairman or Vice Chairman.

“*Bond Closing*” means the date of initial delivery of and payment for the Authority Bonds.

“*Bond Documents*” means and includes the Master Trust Indenture, any supplemental indenture and any comparable or related document pursuant to which the Authority Bonds are issued, and all further amendments and supplements thereto adopted in accordance with the provisions thereof.

“*Bond Reserves*” means reserves established by the Bond Documents for the Authority Bonds to secure timely payment of amounts due on the Authority Bonds even if one or more local borrowers do not make timely payments on their loans.

“*Business Day*” means any day other than a Saturday, Sunday or legal holiday or a day on which banking institutions, in the city in which the designated office of the Authority (being Phoenix, Arizona) is located, are closed.

“*Capital Grant Facility*” means the contractual arrangement established with the Authority by the United States of America Environmental Protection Agency to make capitalization grant payments pursuant to Title VI of the Federal Water Pollution Control Act, as amended (33 U.S.C. § 125 et seq.) and the Federal Safe Drinking Water Act, as amended (particularly 42 U.S.C. § 300j-12 et seq.).

“*Clean Water Act*” means the Federal Water Pollution Control Act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the Water Quality Act of 1987 (P.L. 100-4; 101 Stat. 7) and the Water Resources Reform and Development Act of 2014 (P.L. 113-21, 128 Stat. 1193).

“*Clean Water Revolving Fund*” means the fund established by A.R.S. § 49-1221.

“*Code*” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“*Combined Interest and Fee Rate*” means periodic interest and fee payments made by the Borrower, see Exhibit A to this Loan Agreement.

“*Construction Period*” means the period from the date of the Loan Closing until the date of the final disbursement of proceeds of the Loan pursuant to this Loan Agreement, but in no event later than the third anniversary of the Loan Closing.

“*Cost*” means those costs that are eligible to be funded from draws under the Capital Grant Facility and are reasonable, necessary and allocable to the Project and are permitted by generally accepted government auditing standards to be costs of the Project.

“*Credit Enhancer*” means the entity so designated in the Bond Documents, if any, or any successor thereto, that from time to time has issued and outstanding a municipal bond insurance policy or similar payment guarantee relating to the Authority Bonds.

“*CWRF Financial Assistance Account*” means the account so designated in the Master Trust Indenture to which loans funded by the Clean Water Revolving Fund shall be credited.

“*Debt Management Fee*” means the fee component of the combined interest and fee payments made by the Borrower, see Exhibit A to this Loan Agreement.

“*Department*” means the Department of Environmental Quality of the State of Arizona.

“*Drinking Water Facility*” has the meaning given that term in the Authority Act, currently: a community water system or a non-profit noncommunity water system as defined in the Federal Safe Drinking Water Act (P.L. 93-523; 88 Stat. 1660I; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in the State. The term does not include water systems owned by federal agencies.

“*Drinking Water Revolving Fund*” means the fund established by A.R.S. § 49-1241.

“*DWRF Financial Assistance Account*” means the account so designated in the Master Trust Indenture to which loans funded by the Drinking Water Revolving Fund shall be credited.

“*Eligible Project Costs*” means, whether incurred before or after the date of this Loan Agreement, such portion of the Costs as is disbursed by the Authority for the benefit of the Local Borrower. The Local Borrower and the Authority acknowledge that the actual Eligible Project Costs for the Project have not been determined as of the effective date of this Loan Agreement. The final Eligible Project Costs shall be established after all disbursements have been made.

“*Event of Default*” means any occurrence or event specified in Section 5.1 hereof.

“*Indian Tribe*” has the meaning given that term by the Authority Act, currently: any Indian tribe, band, group or community that is recognized by the United States Secretary of the Interior and that exercises governmental authority within the limits of any Indian reservation under the Jurisdiction of the United States government notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

“*Loan*” means (a) during the Construction Period, the commitment to lend to the Local Borrower the Estimated Eligible Project Costs set forth in this Loan Agreement (as it may be amended or revised from time to time), and (b) thereafter, the amount of money equal to the Eligible Project Costs which is actually loaned to the Local Borrower pursuant to this Loan Agreement.

“*Loan Agreement*” or “*Agreement*” means this Loan Agreement, including the Exhibits and these Standard Terms and Conditions attached to this Loan Agreement, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“*Loan Closing*” means the date of execution and delivery of this Loan Agreement.

“*Loan Repayment Date*” means the payment dates commencing and ending on the dates set forth in this Loan Agreement.

“*Loan Repayments*” means the payments payable by the Local Borrower pursuant to this Loan Agreement.

“*Local Borrower*” means the Political Subdivision or Indian Tribe that is a party to and is described in the first paragraph of this Loan Agreement.

“*Master Trust Indenture*” means and includes the Master Trust Indenture dated as of August 1, 1999, as supplemented, and any comparable or related document, pursuant to which the Authority issues Authority Bonds.

“*Political Subdivision*” has the meaning given that term by the Authority Act, currently: a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities.

“*Project*” is the project described in Section 2.1 of the Loan Agreement, all or a portion of the Cost of which is financed from the proceeds of the Loan.

“*Repayment Period*” means the period over which the principal amount of the Loan will be repaid which period begins and ends on the dates set forth in this Loan Agreement.

“*Repayment Principal Amount*” means the amount the Authority agrees to loan to the Local Borrower pursuant to this Loan Agreement or such lesser amount of actual Eligible Project Costs as represents the aggregate amount of the Loan actually made pursuant to this Loan Agreement.

“*Reserve Fund Surety*” means a surety bond, insurance policy, letter of credit or similar arrangement representing the irrevocable obligation of the issuer thereof to pay to or at the direction of the Local Borrower an amount up to the Reserve Requirement as set forth in Exhibit A.

“*Safe Drinking Water Act*” means the Federal Safe Drinking Water Act (P.L. 93-523; 88 Stat. 1660; P.L. 96-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

“*Source of Repayment*” means the “source of repayment” set forth in this Loan Agreement as defined in Exhibit D.

“*State*” means the State of Arizona.

“*System*” means the “System” as defined in Section 2.2 of the Loan Agreement.

“*Tax-Exempt Obligation*” means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidences of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150 of the Code, and includes any obligation or any investment treated as a “tax-exempt bond” for the applicable purpose of Section 148 of the Code

“*Trustee*” means the Trustee appointed by the Authority pursuant to the Bond Documents and its successor or successors and any other corporation which may at any time be substituted in its place as Trustee pursuant to the Bond Documents.

Terms not otherwise defined herein shall have the meanings ascribed to them in Exhibit D to the Loan Agreement.

Section 8.2 **Rules of Interpretation**. For all purposes of this Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of one gender include the corresponding words of other genders; words of neuter include both genders; and words in the singular include words in the plural and vice versa.

(b) Words indicating persons, parties, or entities (and the like) include firms, associations, partnerships (including limited partnerships), limited liability companies (and the like), corporations, trusts and other legal entities, including public and governmental bodies, as well as natural persons.

- (c) References to a statute refer to the statute, as amended, and any successor statute, and to all regulations promulgated under or implementing the statute or successor statute, as in effect at the relevant time.
- (d) References to a governmental or quasi-governmental entity or representatives thereof also refer to an entity that succeeds to the functions of the governmental or quasi-governmental entity and representatives thereof.
- (e) Headings preceding sections of text and any table of contents are solely for convenience of reference and are not part of this Loan Agreement and are not to affect its meaning, interpretation or effect.
- (f) Actions permitted under this Loan Agreement may be taken at any time and from time to time in the actor's sole discretion.
- (g) The word "including" means "including, but not limited to" and the word "include" means "include, among others."
- (h) The terms "hereby," "hereof," "herein," and "hereunder" (and the like) refer to this Loan Agreement.
- (i) Indications of time of day mean local time in Phoenix, Arizona.
- (j) This Loan Agreement shall be governed by and construed in accordance with the applicable law of the State of Arizona, except for its conflict of law rules and except as preempted by federal.

### **Article 9 List of Federal Laws and Authorities**

By Section 5.4 and Section 5.5 of Exhibit B to the Loan Agreement, the Local Borrower agrees that the Project will comply with applicable provisions of the following federal laws and authorities:

Environmental:

1. Archaeological and Historical Preservation Act of 1974, Pub. L. 93-291; 16 U.S.C. § 469a-1.
2. Clean Air Act, Pub. L. 95-95, as amended; 42 U.S.C. § 7401 et. seq.
3. Clean Water Act, Titles II, IV, and V, Pub. L. 92-500, as amended.
4. Coastal Barrier Resources Act, Pub. L. 97-348; 16 U.S.C. § 3501 et. seq.
5. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 U.S.C. § 1451 et. seq.
6. Endangered Species Act, Pub. L. 93-205, as amended; 16 U.S.C. § 1531 et seq.
7. Environmental Justice, Executive Order 12898.
8. Farmland Protection Policy Act, Pub. L. 97-98; 7 U.S.C. § 4201 et seq.
9. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.
10. Floodplain Management, Executive Order 11988, as amended by Executive Order 12148.
11. Magnuson-Stevens Fishery Conservation and Management Act, Pub L. 94-265, as amended; 16 U.S.C. § 1801 et. seq.
12. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended; 16 U.S.C. § 470 et. seq.
13. Protection and Enhancement of the Cultural Environment, Executive Order 11593.

14. Protection of Wetlands, Executive Order 11990, as amended by Executive Order 12608; Pub. L. 99-645, as codified at 16 U.S.C. § 3901 et. seq.
15. Safe Drinking Water Act, Section 1424(e), Pub. L. 92-523, as amended; 42 U.S.C. § 300f et. seq.
16. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended; 16 U.S.C. § 1271 et. seq.
17. Migratory Bird Treaty Act of 1918, 16 U.S.C. § 703 et. seq.

Social Legislation:

1. Age Discrimination Act, Pub. L. 94-135; 42 U.S.C. § 6102.
2. Civil Rights Act of 1964, Pub. L. 88-352, Title VI; 42 U.S.C. § 2000d.
3. Equal Employment Opportunity, Executive Order 11246, as amended.
4. Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements.
  - a. Promoting the use of Small, Minority, and Women-owned Businesses, Executive Orders 11625, 12138 and 12432.
  - b. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.
  - c. Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Pub. L. 102-389; 42 U.S.C. § 4370d.
  - d. Title X Clean Air Act, Pub. L. 101-549; 42 U.S.C. § 7601 note.
5. Rehabilitation Act of 1973, Pub. L. 93-112; 29 U.S.C. § 794 (including Executive Order 11914 and 11250).
6. Section 13 of the Federal Water Pollution Control Act, Pub. L. 92-500; 33 U.S.C. § 1251.
7. The Drug Free Workplace Act Of 1988, Pub. L. 100-690.

Economic and Miscellaneous Authority:

1. Anti-Lobbying Provision (40 CFR Part 34) and New Restrictions on Lobbying, Section 319 of Pub. L. 101-121.
2. Debarment and Suspension, Executive Order 12549.
3. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended; 42 U.S.C. § 3331 et. seq.
4. Preservation of Open Competition and Government Neutrality, Executive Order 13502.
5. Prohibitions relating to violators of the Clean Air Act, Section 306 of the Clean Air Act, 42 U.S.C. § 7505; Section 508 of the Clean Water Act, 33 U.S.C. § 1368; Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans.
6. Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended; 42 U.S.C. §§ 4601-4655.

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**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Charity Lee, Real Estate Manager  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Adoption of Ordinance No. 2019-30:** An ordinance of the City Council of the City of Flagstaff, dedicating certain City property as public right-of-way within the area of John Wesley Powell Boulevard and Shamrell Boulevard; delegating authority to complete the transactions and establishing an effective date.

**STAFF RECOMMENDED ACTION:**

- 1) Read Ordinance No. 2019-30 by title only for the final time
- 2) City Clerk reads Ordinance No. 2019-30 by title only (if approved above)
- 3) Adopt Ordinance No. 2019-30

**Executive Summary:**

City parcels 116-61-006, 116-61-008A and 116-61-005A are being evaluated by City Staff for potential sale or lease. Prior to marketing these properties for sale or lease, City Staff would like to reserve the necessary right-of-way for the future widening of west John Wesley Powell Boulevard. This will be accomplished by splitting off portions of the City property and designating the land as right-of-way. This will protect our future transportation needs in that area.

**Financial Impact:**

The City paid \$5,000 to have the legal descriptions prepared for the dedication of the right-of-way. The reservation of right-of-way will reduce the parcel size which may have an impact on its sale or lease value.

**Policy Impact:**

None

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

**TRANSPORTATION AND OTHER PUBLIC INFRASTRUCTURE**

Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

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

No

**Options and Alternatives:**

1. Authorize the ordinance and dedicate a portion of City property for the future widening of John Wesley Powell Boulevard.
2. Do not authorize the ordinance and redirect staff.

**Background/History:**

Proposition 419 was approved by the Flagstaff voters in 2018 to support road, bicycle and pedestrian projects, and general projects such as traffic signals, street lighting, and sign. The proposition identified John Wesley Powell Boulevard as a future project that would be funded through the transportation tax. This section of John Wesley Powell Boulevard is planned to be a five-lane road with sidewalks, FUTS, and parkway as well as a roundabout at Shamrell Boulevard and John Wesley Powell Boulevard.

City Staff is taking a proactive approach to set aside the anticipated right-of-way for the future widening of John Wesley Powell Boulevard prior to advertising the City property for sale or lease to ensure our future transportation needs are protected.

The City entered into a purchase contract for parcel 116-61-006 in 2017. In the terms of that contract the Greentree Hospitality Group, Inc purchased the parcel and was then required to dedicate back to the City (8) eight feet of right-of-way along the length of the parcel boundary with John Wesley Powell Boulevard. This arrangement took into account future plans for the road expansion and the incorporation of the FUTS trail. After the Purchase Contract was canceled by the purchaser, City staff determined that additional right-of-way would allow for further improved expansion. The parcel itself is currently being master-planned in preparation for a possible procurement process and this proposed dedication of right-of-way will ensure the expansion of John Wesley Powell Boulevard will have sufficient right-of-way and the parcel being offered for sale or lease will be accurate.

**Key Considerations:**

Reserving the right-of-way prior to the sale or lease of City property protects our future transportation needs.

**Expanded Financial Considerations:**

The road expansion project is not planned at this time but will be paid through the transportation tax that was approved by voters in 2018 through Proposition 419. Costs for construction are not determined at this time.

**Community Benefits and Considerations:**

Setting aside right-of-way for the future widening of John Wesley Powell Boulevard which is anticipated to be a major arterial road.

**Community Involvement:**

Inform

---

**Attachments:** [Ord. 2019-30](#)  
[Legal Description and Map for Dedication](#)  
[Map of Prop 419](#)  
[JW Powell Roadway Plan](#)  
[Shamrell Roundabout and JW Powell Expansion](#)  
[Presentation](#)

**ORDINANCE NO. 2019-30**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF,  
DEDICATING CERTAIN CITY PROPERTY AS PUBLIC RIGHT-OF-WAY  
WITHIN THE AREA OF JOHN WESLEY POWELL BOULEVARD AND  
SHAMRELL BOULEVARD; DELEGATING AUTHORITY TO COMPLETE THE  
TRANSACTIONS AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City desires to dedicate as public right-of-way a portion of real property owned by the City (affecting Coconino County Assessor Parcel Numbers 116-61-006 and 116-61-005A, 116-61-008A as public right-of-way for the future widening of John Wesley Powell Boulevard.

**ENACTMENTS:**

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

**SECTION 1. In General**

The City hereby dedicates as public right-of-way that certain real property legally described and depicted in the attached Exhibits A and B, attached hereto and incorporated by reference.

**SECTION 2. Delegation of Authority**

The Mayor is hereby authorized to execute all documents necessary to accomplish the purposes of this ordinance as provided for herein. All documents shall be in a form approved by the City Attorney and Real Estate Manager.

The City Clerk is hereby authorized to take such other and further measures and actions as are necessary and appropriate to carry out the terms, provisions, and intent of this resolution, including, but not limited to the recording of the documents in the Office of the Coconino County Recorder.

**SECTION 3. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 15th day of October, 2019.

---

MAYOR

ATTEST:

---

CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

Exhibits:  
Legal Descriptions

LEGAL DESCRIPTION

EXHIBIT 'A'

APN: 116-61-006

Ref No. #18245

2-7-2019

A portion of 'Tract 4' according to the Final Plat of Pulliam Airpark Tracts 4 & 6 Unit 3 Amended, Case 8, Map 19, Official Records of Coconino County (herein referred to as R1), lying within the southwest quarter of Section 5, Township 20 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

**Parcel 1:**

Commencing at the southeasterly corner of said 'Tract 4', said point being in common with the northwesterly Right-of-Way line of John Wesley Powell Boulevard as shown on R1, and the **TRUE POINT OF BEGINNING;**

Thence along the southeasterly property line of said 'Tract 4' and said Right-of-Way line, South 41°12'04" West, 1141.75 feet (Basis of Bearing, South 41°00'14" West, 1141.60 feet per R1) to the beginning of a tangent curve concave to the northwest having a radius of 605.00 feet;

Thence continuing along said property line and said Right-of-Way line, and southwesterly along said curve, 283.72 feet through a central angle of 26°52'11";

Thence continuing along said property line and said Right-of-Way line, North 21°55'45" West, 5.00 feet to the beginning of a non-tangent curve concave to the north having a radius of 600.00 feet and being subtended by a chord which bears South 73°11'11" West 107.00 feet;

Thence continuing along said property line and said Right-of-Way line, and westerly along said curve, 107.14 feet through a central angle of 10°13'53" to the southwest corner of said 'Tract 4';

Thence along the westerly property line of said 'Tract 4', North 44°06'49" West, 9.79 feet to the beginning of a non-tangent curve concave to the north, having a radius of 597.91 feet and being subtended by a chord which bears North 74°36'31" East 88.30 feet;

Thence easterly along said curve, 88.38 feet through a central angle of 8°28'10" to the beginning of a tangent curve concave to the northwest, having a radius of 70.80 feet;

Thence northeasterly along said curve, 107.50 feet through a central angle of 86°59'55";

Thence North 16°37'29" West, 37.77 feet;

Thence North 73°22'31" East, 95.02 feet to beginning of a non-tangent curve concave to the north having a radius of 49.89 feet and being subtended by a chord which bears South 74°44'57" East 85.08 feet;

ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV.

R.M.      3/12/19  
INT              DATE

Thence southeasterly along said curve, 101.87 feet through a central angle of 116°59'40" to the beginning of a non-tangent curve concave to the northwest having a radius of 591.00 feet and being subtended by a chord which bears North 43°52'54" East, 55.27 feet;

Thence northeasterly along said curve, 55.29 feet through a central angle of 5°21'38";

Thence North 41°12'04" East, 1155.66 feet to a point on the easterly property line of said 'Tract 4';

Thence along said easterly property line, South 03°59'46" East, 19.73 feet to the **TRUE POINT OF BEGINNING**;

Containing 0.725 Acres, more or less.

**Parcel 2:**

Commencing at the northwest corner of said 'Tract 4' and the **TRUE POINT OF BEGINNING**;

Thence along the north line of said 'Tract 4', North 89°43'16" East, 775.85 feet (Basis of Bearing, North 89°32'07" East, 776.00 feet per R1) to a point on the westerly Right-of-Way line of Pulliam Drive as shown on R1, and the beginning of a non-tangent curve concave to the northeast having a radius of 1277.14 feet and being subtended by a chord which bears South 33°34'25" East 671.08 feet;

Thence along said Right-of-Way line, and southeasterly along said curve, 679.05 feet through a central angle of 30°27'49";

Thence continuing along said Right-of-Way line, South 48°59'46" East, 35.00 feet;

Thence continuing along said Right-of-Way line, South 03°59'46" East, 8.45 feet;

Thence South 41°12'04" West, 1155.66 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 591.00 feet and being subtended by a chord which bears South 43°52'54" West 55.27 feet;

Thence southwesterly along said curve, 55.29 feet through a central angle of 5°21'38" to the beginning of a non-tangent curve concave to the north having a radius of 49.89 feet and being subtended by a chord which bears North 74°44'57" West 85.08 feet;

Thence northwesterly along said curve, 101.87 feet through a central angle of 116°59'40";

Thence South 73°22'31" West, 95.02 feet;

Thence South 16°37'29" East, 37.77 feet to the beginning of a tangent curve concave to the northwest having a radius of 70.80 feet;

Thence southwesterly along said curve, 107.50 feet through a central angle of 86°59'55" to the beginning of a tangent curve concave to the north, having a radius of 597.91 feet;

Thence westerly along said curve, 88.38 feet through a central angle of 8°28'10" to a point on the westerly property line of said 'Tract 4';

Thence along said property line, North 44°06'49" West, 39.92 feet;

Thence continuing along said property line, North 03°16'48" West, 201.43 feet;

Thence continuing along said property line, North 16°30'37" West, 391.18 feet;

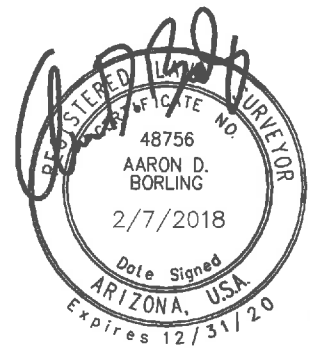
Thence continuing along said property line, North 06°53'45" West, 564.89 feet to the beginning of a non-tangent curve concave to the east having a radius of 5756.59 feet and being subtended by a chord which bears North 15°16'07" East 389.92 feet;

Thence continuing along said property line, and northerly along said curve, 390.00 feet through a central angle of 3°52'54";

Thence continuing along said property line, North 17°12'28" East, 110.64 feet to the **TRUE POINT OF BEGINNING**;

Containing 31.468 Acres, more or less.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, AZ.

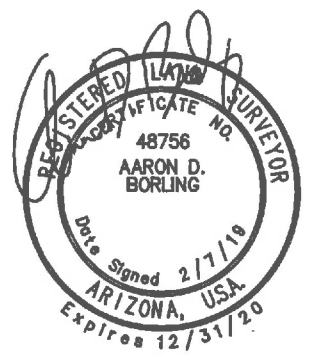
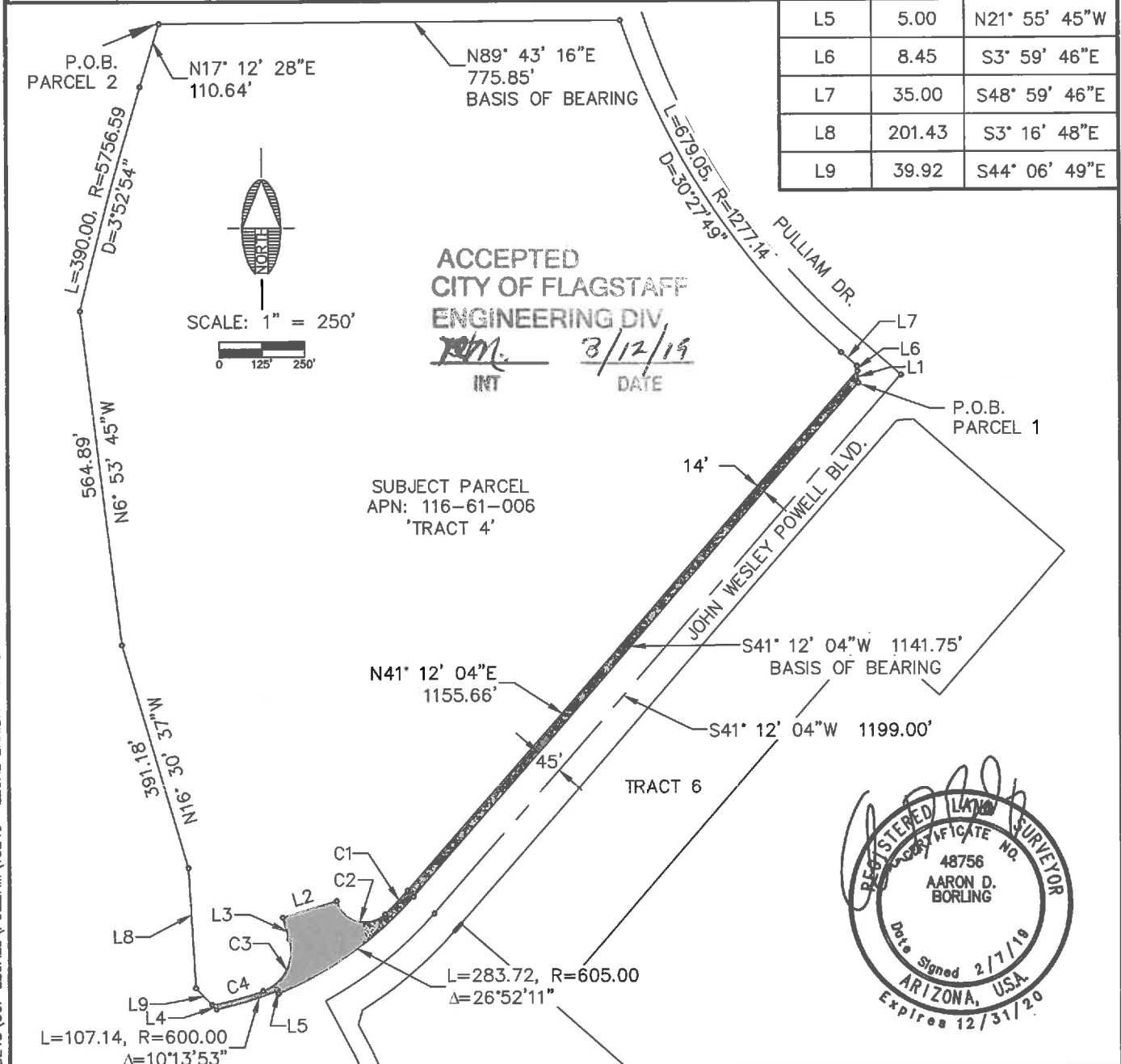


# EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 5,  
TOWNSHIP 20 NORTH, RANGE 7 EAST  
GILA AND SALT RIVER MERIDIAN  
COCONINO COUNTY, ARIZONA

PLOTTED: Feb 07, 2019--5:05pm

Curve Table						Parcel Line Table		
Curve #	Length	Radius	Delta	Chord Direction	Chord Length	Line #	Length	Direction
C1	55.29	591.00	5°21'38"	N43° 52' 54"E	55.27	L1	19.73	S3° 59' 46"E
C2	101.87	49.89	116°59'40"	S74° 44' 57"E	85.08	L2	95.02	S73° 22' 31"W
C3	107.50	70.80	86°59'55"	N26° 52' 29"E	97.47	L3	37.77	S16° 37' 29"E
C4	88.38	597.91	8°28'10"	N74° 36' 31"E	88.30	L4	9.79	N44° 06' 49"W



FILE: P:\2018\18245\COF LEGALS\PULLIAM\18245-- LEGAL EXHIBIT-- TRACT 4.DWG ABORLING

**SWI**  
**Shephard & Wesnitzer, Inc.**

110 W. Dale Avenue  
Flagstaff, AZ 86001  
928.773.0354  
928.774.8934 fax  
www.swiaz.com

JOB NO.	18245
DATE	FEB. '19
SCALE	AS SHOWN
DRAWN	TNO
DESIGN	
CHECKED	ADB

LEGAL EXHIBIT

FLAGSTAFF  
ARIZONA

LEGAL DESCRIPTION

EXHIBIT 'A'

APN: 116-61-005A

Ref No. #18245

2-11-2019

A portion of 'Tract 3' according to the Final Plat of Pulliam Airpark, Unit 2 Amended, Case 7, Map 96, Official Records of Coconino County (herein referred to as R1), lying within the southwest quarter of Section 5, and the northwest quarter of Section 8, Township 20 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

**Parcel 1:**

Commencing at the southeast corner of said 'Tract 3', said point being in common with the northeasterly Right-of-Way line of Shamrell Boulevard as shown on R1, and the **TRUE POINT OF BEGINNING**;

Thence along said Right-of-Way line, North 57°13'21" West, 945.94 feet (Basis of Bearing, North 57°25'29" West, 885.00 feet per R1) to the beginning of a non-tangent curve concave to the northeast having a radius of 420.00 feet and being subtended by a chord which bears North 35°15'29" West, 314.29 feet;

Thence continuing along said Right-of-Way line, and northwesterly along said curve, 322.13 feet through a central angle of 43°56'40";

Thence continuing along said Right-of-Way line, North 13°14'07" West, 197.95 feet to the beginning of a non-tangent curve concave to the west having a radius of 379.98 feet and being subtended by a chord which bears North 20°37'52" West 97.45 feet;

Thence continuing along said Right-of-Way line, and northerly along said curve, 97.72 feet through a central angle of 14°44'03";

Thence continuing along said Right-of-Way line, North 27°59'25" West, 38.25 feet;

Thence continuing along said Right-of-Way line, North 15°03'01" East, 25.00 feet to a point on the southerly Right-of-Way line of John Wesley Powell Boulevard as shown on R1, and the beginning of a non-tangent curve concave to the northwest having a radius of 695.00 feet and being subtended by a chord which bears North 49°39'31" East 204.43 feet;

Thence along said Right-of-Way line, and northeasterly along said curve, 205.18 feet through a central angle of 16°54'53";

Thence continuing along said Right-of-Way line, North 41°12'04" East, 16.68 feet;

Thence leaving said Right-of-Way line, South 48°49'02" East, 5.00 feet;

Thence South 41°12'04" West, 16.68 feet;

ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV.  
R-M 3/12/19  
INT DATE

Thence South 42°56'36" West, 44.30 feet;

Thence South 37°39'56" West, 42.35 feet;

Thence South 36°41'22" West, 45.31 feet to the beginning of a tangent curve concave to the east having a radius of 95.76 feet;

Thence southerly along said curve, 119.48 feet through a central angle of 71°29'15" to the beginning of a non-tangent curve concave to the west having a radius of 393.98 feet and being subtended by a chord which bears South 20°38'50" East, 101.03 feet;

Thence southerly along said curve, 101.31 feet through a central angle of 14°44'00";

Thence South 13°16'50" East, 197.93 feet to the beginning of a tangent curve concave to the northeast, having a radius of 406.00 feet;

Thence southerly along said curve, 286.42 feet through a central angle of 40°25'12";

Thence South 57°13'21" East, 912.26 feet;

Thence South 41°10'58" West, 14.15 feet to the **TRUE POINT OF BEGINNING**;

Containing 1.08 Acres, more or less.

**Parcel 2:**

Commencing at the northeast corner of said 'Tract 3' and the **TRUE POINT OF BEGINNING**;

Thence along the northeasterly property line of said 'Tract 3',

North 48°49'02" West, 1500.18 feet (Basis of Bearing, North 48°59'46" West, 1505.18 feet per R1)

Thence South 41°12'04" West, 16.68 feet;

Thence South 42°56'36" West, 44.30 feet;

Thence South 37°39'56" West, 42.35 feet;

Thence South 36°41'22" West, 45.31 feet to the beginning of a tangent curve concave to the east, having a radius of 95.76 feet;

Thence southerly along said curve, 119.48 feet through a central angle of 71°29'15" to the beginning of a non-tangent curve concave to the west having a radius of 393.98 feet and being subtended by a chord which bears South 20°38'50" East 101.03 feet;

Thence southerly along said curve, 101.31 feet through a central angle of 14°44'00";

Thence South 13°16'50" East, 197.93 feet to the beginning of a tangent curve concave to the northeast, having a radius of 406.00 feet;

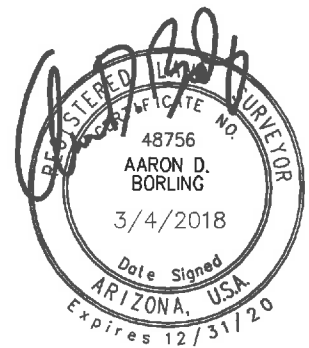
Thence southeasterly along said curve, 286.42 feet through a central angle of 40°25'12";

Thence South 57°13'21" East, 912.26 feet to a point on the southeasterly property line of said 'Tract 3';

Thence along said property line, North 41°10'58" East, 337.34 feet to the **TRUE POINT OF BEGINNING**;

Containing 13.31 Acres, more or less.

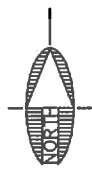
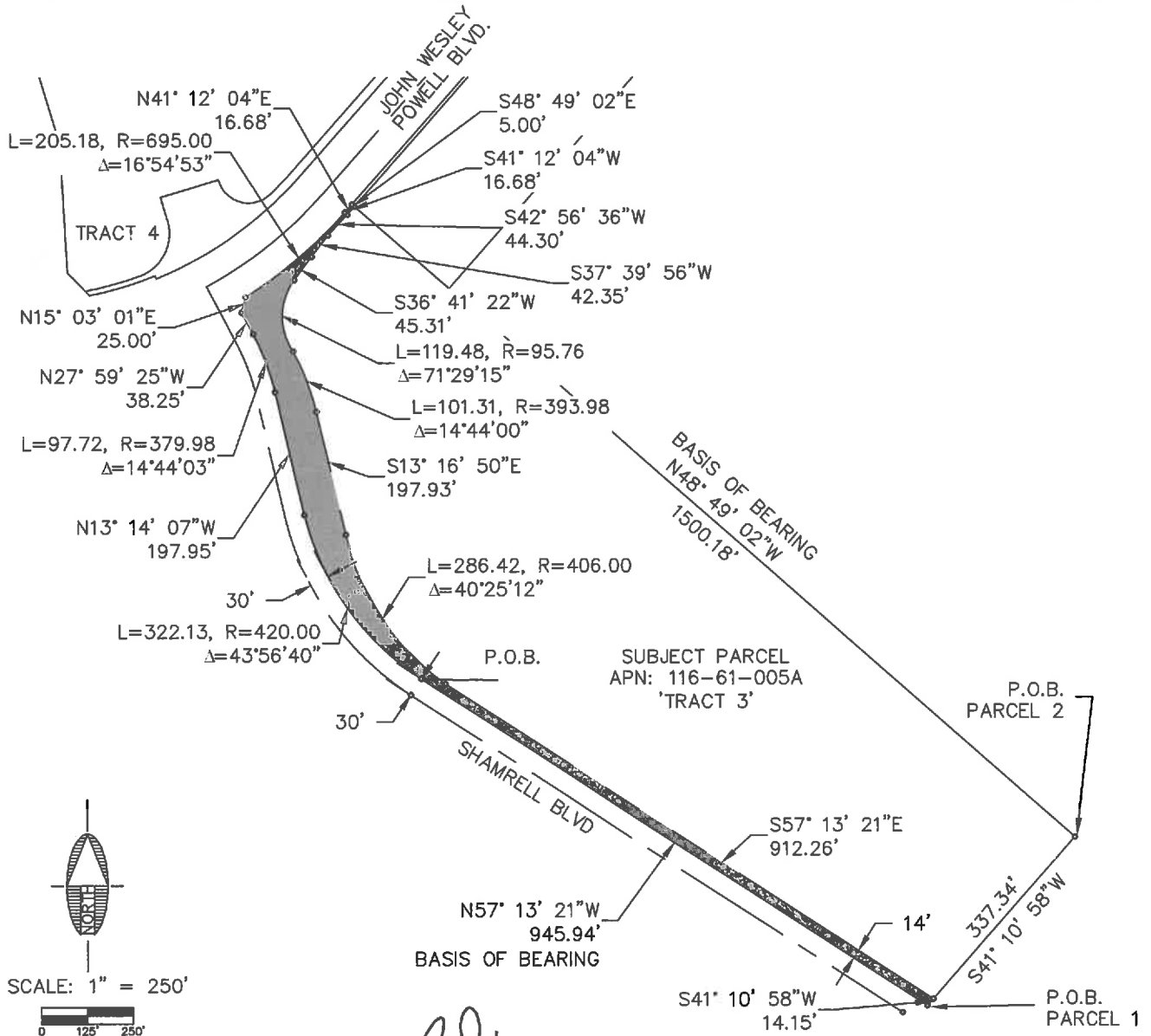
This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, AZ.



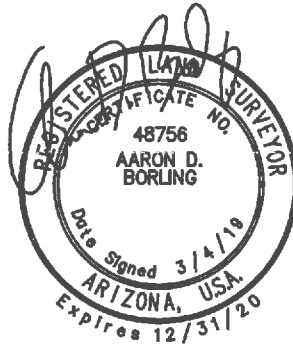
PLOTTED: Mar 04, 2019-4:42pm

# EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 5,  
TOWNSHIP 20 NORTH, RANGE 7 EAST  
GILA AND SALT RIVER MERIDIAN  
COCONINO COUNTY, ARIZONA



SCALE: 1" = 250'



ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV.

*R-M.* *3/12/19*  
INT DATE

FILE: P:\2018\18245\COF LEGALS\PULLIAM\18245- LEGAL EXHIBIT- TRACT 3.DWG ABORLING



Shephard & Associates, Inc.

110 W. Dale Avenue  
Flagstaff, AZ 86001  
928.773.0354  
928.774.8934 fax  
www.swiaz.com

JOB NO.	18245
DATE	MAR. '19
SCALE	AS SHOWN
DRAWN	TNO
DESIGN	
CHECKED	ADB

FLAGSTAFF  
ARIZONA

LEGAL EXHIBIT

SHEET

4

OF 4

LEGAL DESCRIPTION  
EXHIBIT 'A'  
APN: 116-61-008A  
Ref No. #18245  
3-4-2019

A portion of 'Tract 6' according to the Final Plat of Pulliam Airpark Tracts 4 & 6 Unit 3 Amended, Case 8, Map 19, Official Records of Coconino County (herein referred to as R1), lying within the southwest quarter of Section 5, Township 20 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

**Parcel 1:**

Commencing at the southwesterly corner of said 'Tract 6', said point being in common with the southeasterly Right-of-Way line of John Wesley Powell Boulevard as shown on R1, and the **TRUE POINT OF BEGINNING;**

Thence along the northwesterly property line of said 'Tract 6' and said Right-of-Way line, North 41°12'04" East, 1119.65 feet (Basis of Bearing, North 41°00'14" East, 1119.55 feet per R1);

Thence along the northerly property line of said 'Tract 6' and said Right-of-Way line, North 86°00'14" East, 7.10 feet;

Thence leaving said property line and said Right-of-Way line, South 41°12'04" West, 1124.68 feet to a point on the southwesterly property line of said 'Tract 6';

Thence along said property line, North 48°49'02" West, 5.00 feet to the **TRUE POINT OF BEGINNING;**

Containing 5,611 square feet, or 0.129 Acres, more or less.

**Parcel 2:**

Commencing at the northeast corner of said 'Tract 6' and the **TRUE POINT OF BEGINNING;**

Thence along the southeasterly property line of said 'Tract 6', South 41°10'58" West, 320.86 feet (Basis of Bearing, South 41°00'14" West, 320.84 feet per R1);

Thence continuing along said property line, North 48°49'02" West, 157.45 feet;

Thence continuing along said property line, South 41°10'58" West, 818.99 feet to the southwest corner of said 'Tract 6';

Thence along the southwesterly property line of said 'Tract 6', North 48°49'02" West, 195.35 feet;

ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV.

RM.      3/12/19  
INT              DATE

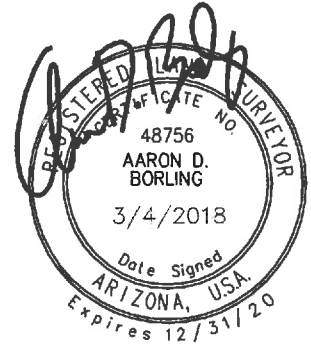
Thence North 41°12'04" East, 1124.68 feet to a point on the northerly property line of said 'Tract 6';

Thence along said north line, North 86°00'14" East, 21.53 feet;

Thence along the northeasterly property line of said 'Tract 6', South 48°47'56" East, 337.26 feet to the **TRUE POINT OF BEGINNING**;

Containing 6.265 Acres, more or less.

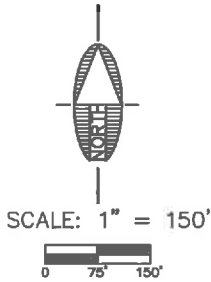
This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, AZ.



PLOTTED: Mar 04, 2019-10:50am

# EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 5,  
TOWNSHIP 20 NORTH, RANGE 7 EAST  
GILA AND SALT RIVER MERIDIAN  
COCONINO COUNTY, ARIZONA



APN: 116-61-006  
TRACT 4

JOHN WESLEY POWELL BLVD  
N41° 12' 04"E 1119.65' BASIS OF BEARING  
S41° 12' 04"W 1124.68'

SUBJECT PARCEL  
APN: 116-61-008A  
TRACT 6

APN: 116-61-003A

P.O.B.  
PARCEL 1

N48° 49' 02"W  
5.00'

N48° 49' 02"W  
195.35'

N86° 00' 14"E  
7.10'

N86° 00' 14"E  
21.53'

S48° 47' 56"E  
337.26'

P.O.B.  
PARCEL 2

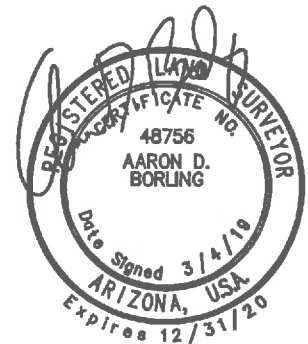
S41° 10' 58"W  
320.86'  
BASIS OF BEARING

N48° 49' 02"W  
157.45'

S41° 10' 58"W 818.99'

ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV.

*RM* 3/12/19  
INT DATE



FILE: P:\2018\18245\COF LEGALS\PULLIAM\18245- LEGAL EXHIBIT-TRACT 6.DWG ABORLING



Shephard & Associates, Inc.

110 W. Dale Avenue  
Flagstaff, AZ 86001  
928.773.0354  
928.774.8834 fax

www.swiaz.com

JOB NO.	18245
DATE	FEB. '19
SCALE	AS SHOWN
DRAWN	TND
DESIGN	
CHECKED	ADB

FLAGSTAFF  
ARIZONA

LEGAL EXHIBIT

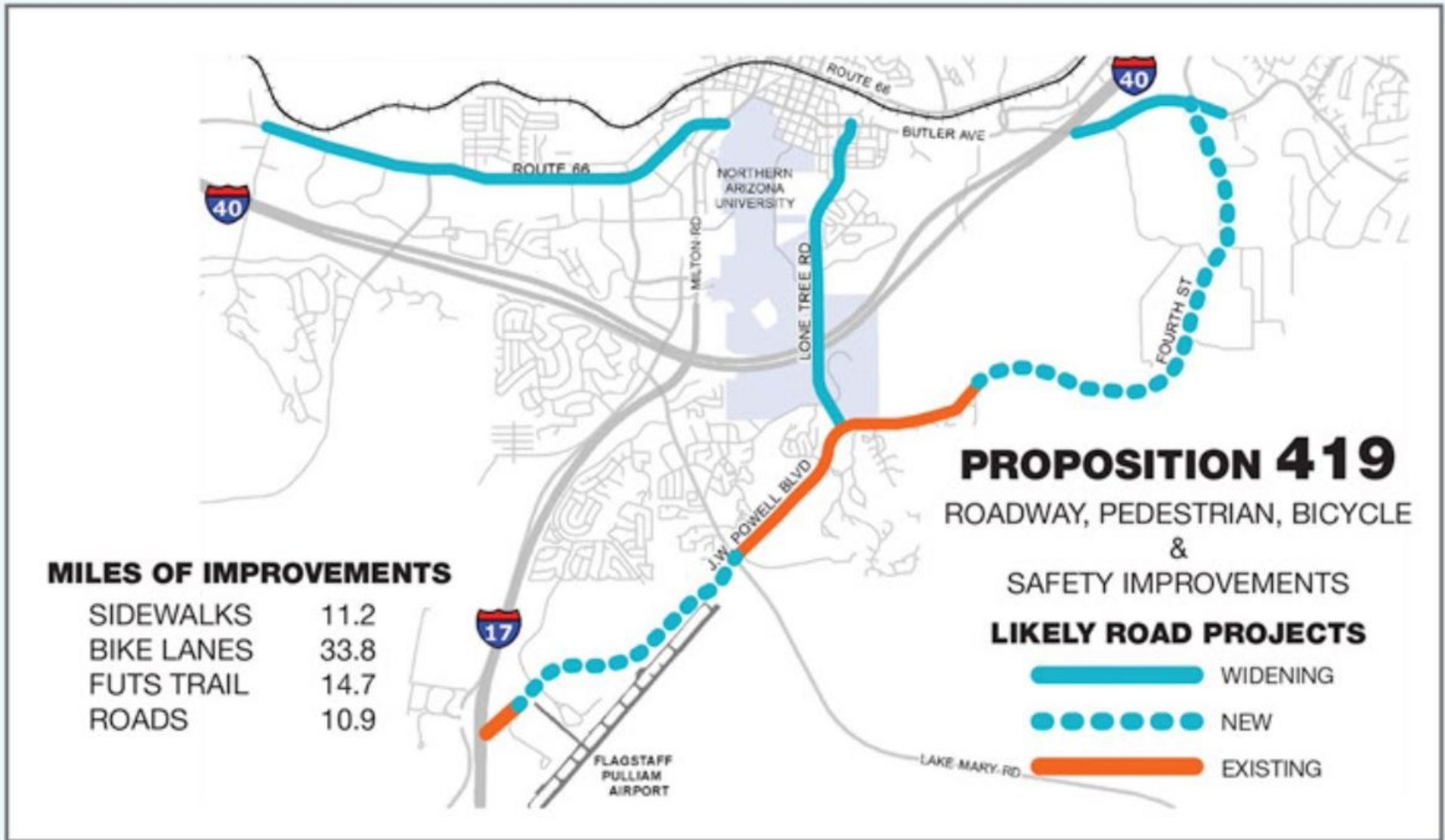
SHEET

3

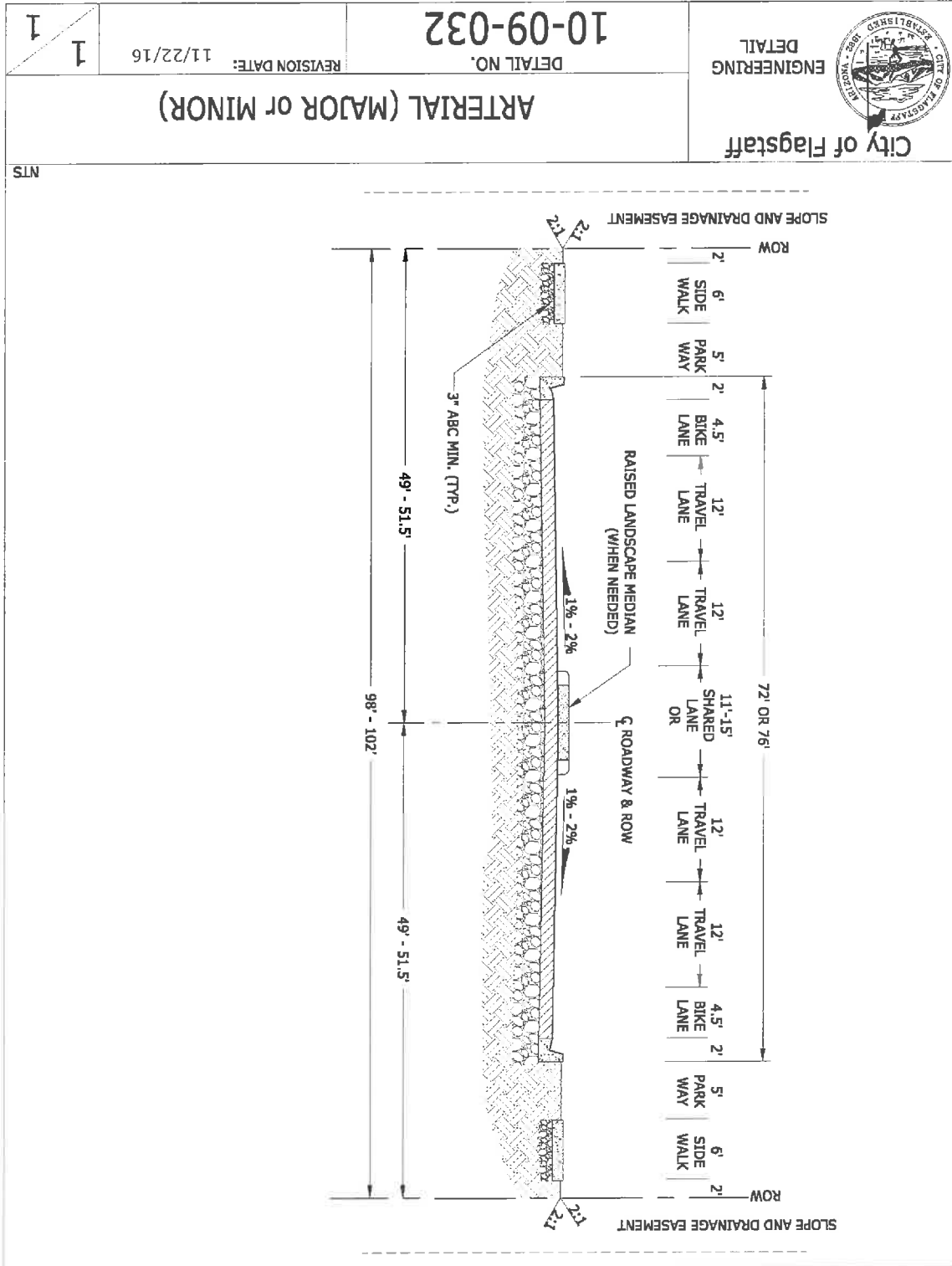
OF 3



# Flagstaff Transportation Tax: The Future



(Ord. 2017-22, Rep&Ren, 07/05/2017)



10-09-032 Arterial (Major or Minor)

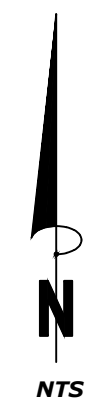
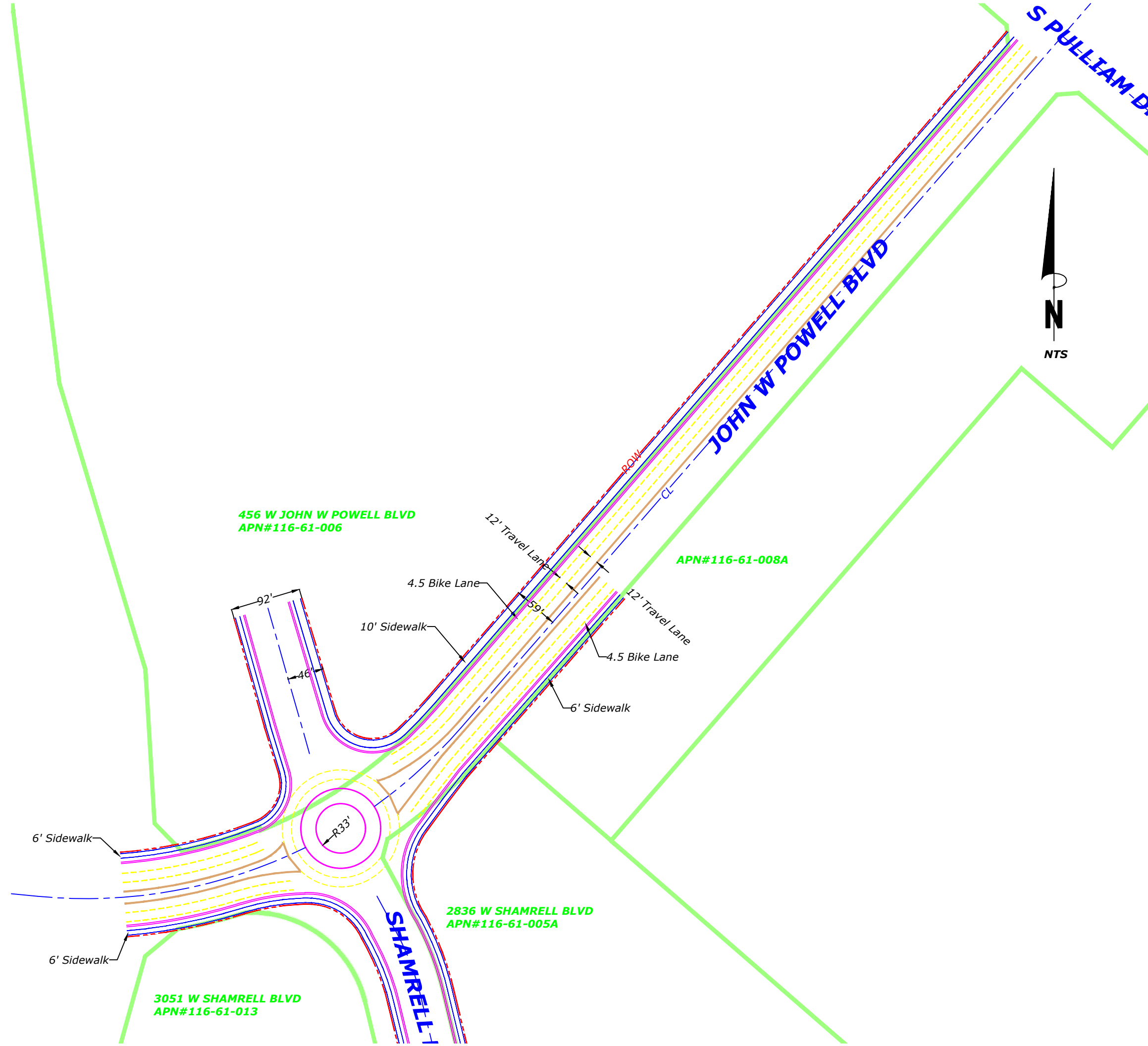


DETAIL NO. 10-09-032

REVISION DATE: 11/22/16

ARTERIAL (MAJOR OR MINOR)

NTS



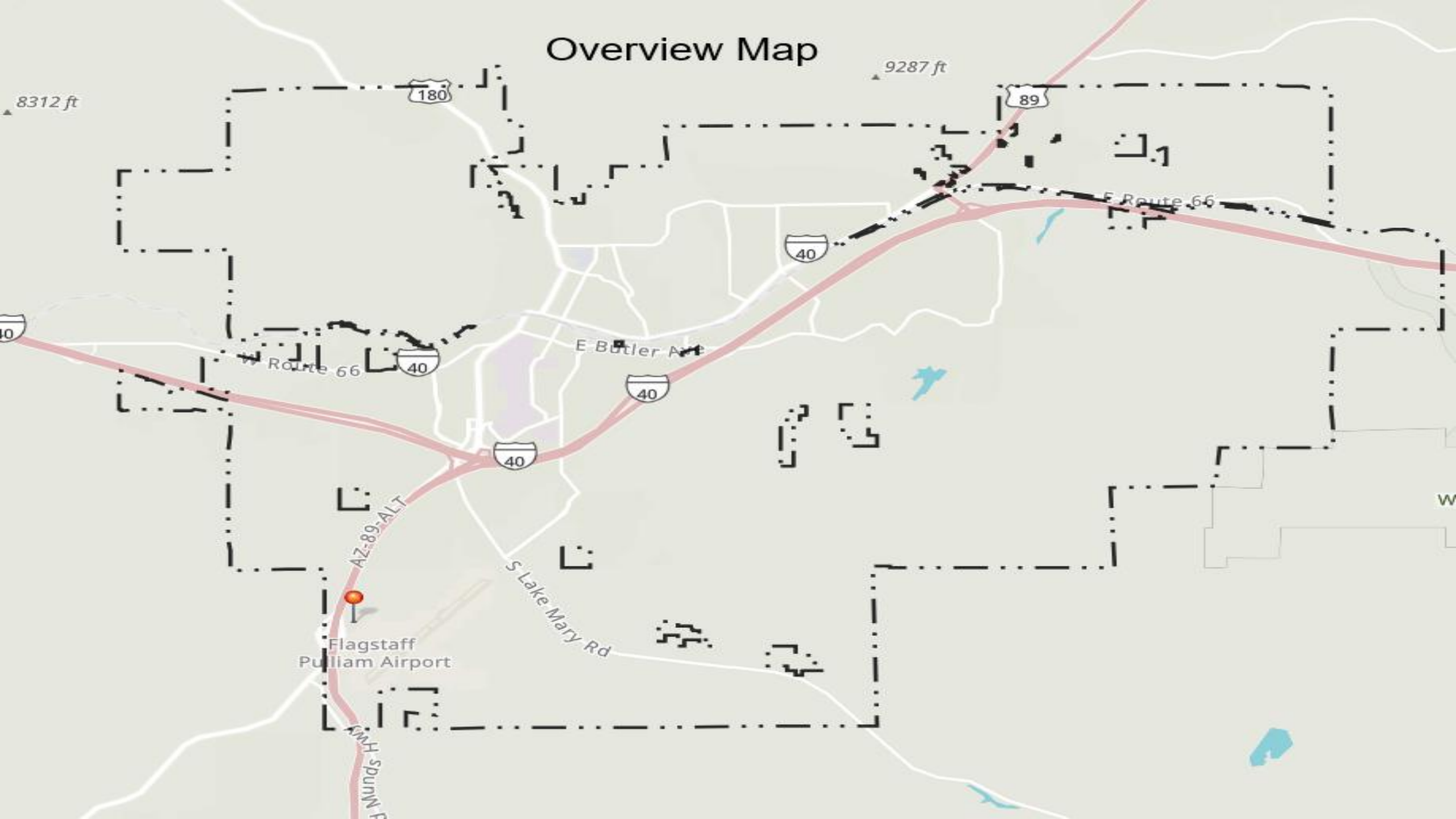
Dedicating a portion of  
City property for future  
widening of John Wesley  
Powell Boulevard

**October 1st, 2019**

**Charity Lee-Real Estate Manager**



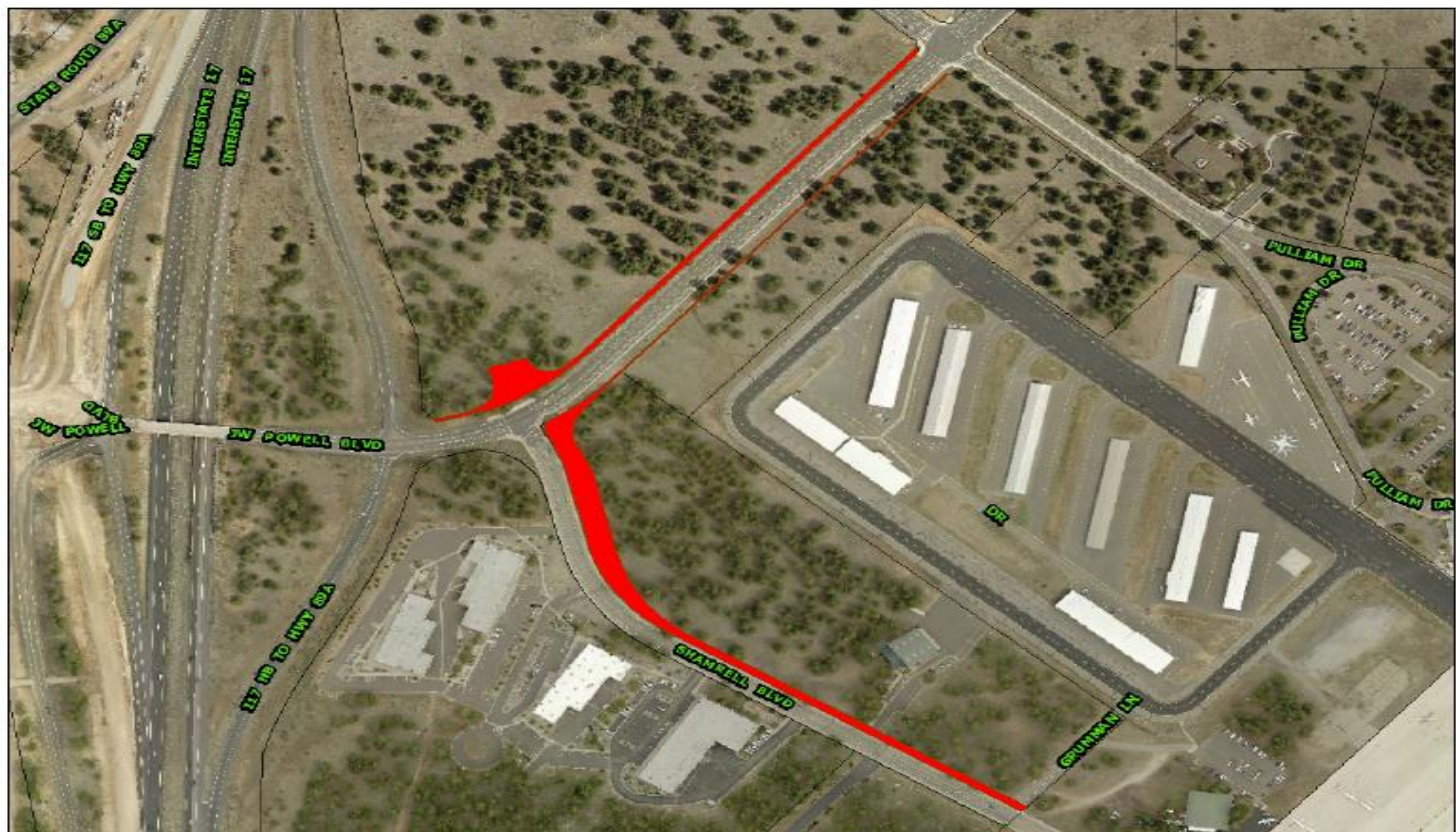
# Overview Map





# Purpose

- City Staff is considering the sale or lease of City parcels 116-61-006, 116-61-008A and 116-61-005A.
- City Staff is taking a proactive approach to protect our future transportation needs prior to selling or leasing the City land.
- This ordinance will set aside the necessary right-of-way for the future widening of John Wesley Powell Boulevard.



STATE ROUTE 89A

I17 SB TO HWY 89A

INTERSTATE 17

INTERSTATE 17

GATE  
SW POWELL

SW POWELL BLVD

I17 NB TO HWY 89A

SHANELL BLVD

GUNMAN LN

PULLIAM DR

PULLIAM DR

PULLIAM DR

DR



# Questions



?

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Dan Symer, Zoning Code Manager  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Adoption of Resolution No. 2019-49 and Ordinance No. 2019-32:** A Resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "Case No. PZ-19-00094 Updates to Zoning Code 2019 –Miscellaneous Part 1"; and, an Ordinance of the City Council of the City of Flagstaff, Coconino County, Arizona, amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code (Ordinance No. 2011-20), for the purpose of modifying chapters, divisions, and sections of Title 10, Flagstaff Zoning Code, including the sections of Division 10-20.30: Common Procedures, Division 10-20.40: Permits and Approvals, Division 10-30.60: Site Planning Design Standards, Division 10-40.30: Non-Transect Zones, Division 10-40.40: Transect Zones, Division 10-40.60: Specific to Uses, Division 10-50.30: Building Height, Division 10-50.40: Encroachments, Division 10-50.50: Fences and Screening, Division 10-50.60: Landscaping Standards, Division 10-50.100: Sign Standards, Division 10-50.90: Resource Protection Standards, and Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, to resolve conflicts, incorporate technical corrections and clarity, and to add new, and modify existing, requirements, provisions, and definitions.

**STAFF RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2019-49
- 2) Read Ordinance No. 2019-32 by title only for the final time
- 3) City Clerk reads Ordinance No. 2019-32 by title only (if approved above)
- 4) Adopt Ordinance No. 2019-32

**Executive Summary:**

The proposed amendment (Case No. PZ-19-00094) includes changes to the Zoning Code to resolve conflicts, incorporate technical corrections and clarity, and add new, and modify existing, requirements, provisions, and definitions.

On June 25, 2019, the Planning and Zoning Commission recommended approval of the proposed amendment to the City Council with a vote of 4-0.

**Financial Impact:**

There are no anticipated financial impacts affiliated with the proposed Zoning Code Text Amendment.

**Policy Impact:**

There are no anticipated policy impacts affiliated with the proposed Zoning Code Text Amendment.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Council Goals:

Revise the zoning code to remove ambiguities, and ensure it is consistent with the community values and the Regional Plan.

Team Flagstaff Strategic Plan:

Work in partnership with to enhance a safe and livable community.

Regional Plan:

Please refer to the attached Planning and Zoning Commission staff report.

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

The Zoning Code was adopted by the City Council on November 1, 2011, to replace the former Land Development Code. Since its adoption, the Code has been amended several times to address procedures, add clarity, resolve conflicts, address planning initiatives (accessory dwelling units), incorporate applicant requests (West University Drive Entrance Sign District and Seasonal Amusement, Entertainment and Sales, Indoor), and to address changes in state law and U.S. Supreme Court decisions (i.e., Reed vs. the Town of Gilbert).

**Options and Alternatives:**

The City Council may adopt, modify, or deny the amendment.

**Background/History:**

**Background**

The Zoning Code was adopted by the City Council on November 1, 2011, to replace the former Land Development Code. Since its adoption, the Code has been amended several times to address procedures, add clarity, resolve conflicts, address planning initiatives (accessory dwelling units), incorporate applicant requests (West University Drive Entrance Sign District), and to address changes in state law and U.S. Supreme Court decisions (i.e., Reed vs. the Town of Gilbert). In addition, on June 12, 2019, the Planning and Zoning Commission recommended approval to the City Council of an amendment to the Zoning Code to address a series of technical, conflict resolution, and clarity modifications, including the addition of the Seasonal Amusement/Entertainment and Sales, Indoor and related provision to the Light Industrial (LI) zone.

**Proposed Amendment**

The proposed amendment includes multiple changes to the Zoning Code to resolve conflicts, incorporate technical corrections, add clarity, and simplify the existing requirements. New provisions are being added, and several sections of the reference divisions are being modified, relocated, or deleted.

The most significant of the modifications include:

- Limiting land use of Animal Keeping to be an accessory use in most residential districts, and as a primary allowed use in the Rural Residential (RR) zone and Estate Rural (ER) on lots or parcels with five acres or greater;
- Adding provisions to allow existing residential subdivisions, and homes within these subdivisions, to be developed or modified in accordance with the setback and lot size provisions shown on record for the subdivision plat approved by the City Council;
- Add outdoor storage as a primary allowed use in the Heavy Industrial (HI) zone and Heavy Industrial – Open (HI-O) zone;
- Incorporate standards for daycare home and daycare center in compliance with the State of Arizona requirements; and
- Limit the size of a vehicle that may be stored in the Industrial, Light – General land use to FHA class 6 vehicle and smaller.

*Summary of the Staff Revisions to Zoning Code:*

The proposed amendment includes:

1. **Notice of Public Hearings (Section 10-20.30.080):** Changes to the public hearing notice for preliminary plats and uses within a public facility zone.
2. **Minor Improvement Permits (Section 10-20.40.080):** Changes to clarify the requirements.
3. **Temporary Use Permits (Section 10-20.40.150):** Incorporate changes to relocate and modify the requirements pertaining to temporary storage structures, off-site temporary construction trailer(s), and exemptions.
4. **Residential Zones (Section 10-40.30.030):** Incorporate modifications to the land use, building form, and miscellaneous requirements. A summary of the modifications includes changes to: animal keeping as primary land use; relocation of requirements to other sections; setback modifications; allowances for lot sizes; and setbacks for previously platted subdivisions. In addition, the modifications include changes to various, miscellaneous, technical, term and cross-references, and relocation of provisions.
5. **Commercial Zones (Section 10-40.30.040):** Incorporate modifications to the allowed uses, building form, and miscellaneous requirements. A summary of the modifications includes changes to: renaming the allowed use of Lodging to Travel Accommodations; and relocation and addition of open space requirements for residential developments. In addition, the modifications include changes to various, miscellaneous, technical, term and cross-references, and relocation of provisions.
6. **Industrial Zones (Section 10-40.30.050):** Add outdoor storage as an allowed use in the Heavy Industrial and Heavy Industrial – Open zones; and modifications to various, miscellaneous, technical, and cross-references provisions.
7. **Public and Open Space Zones (Section 10-40.30.060):** Correct the adoption, scrivener's errors, and table errors of the allowed uses. In addition, the modifications include changes to various, miscellaneous, technical, cross-references, and relocation of provisions.
8. **Accessory Buildings and Structures (Section 10-40.60.020):** Incorporate modifications to relocate the accessory use to a new section (Section 10-40.60.025), simplify and clarify provisions, and relocate temporary storage containers to section 10-20.40.150.
9. **Accessory Uses (Section 10-40.60.025):** Add a new section specific to accessory uses.
10. **Day Care Home and Center (Section 10-40.60.150):** Incorporate technical modifications to conform with the State of Arizona requirements, and clarify provisions.
11. **Outdoor storage (Section 10-40.60.275):** Add a new section specific to outdoor storage.
12. **Warehousing (Section 10-40.60.320):** Delete section and incorporate provisions into outdoor storage.
13. **Forest (Section 10-50.90.060):** Incorporate changes to clarify and modify the requirements of Forest Resource Protection Thresholds as a Percentage of Site Area for the non-transect and transect zones.

14. **Definition of Specialized Terms, Phrases, and Building Functions (Division 10-80.20):** Modify and add various definitions of the Zoning Code, including: Accessory Buildings and Structures; Bed and Breakfast; Day Care, Center; Development Site; Development, Multiple-Family; Development – Attached Single-Family; Development – Detached, Single-Family; Development, Duplex; Development – Cluster, Dwelling, Multiple-Family, Single-Family; Factory Built Building; Industrial, Light – General; Older Individual; Parcel; Parking Structure, Above-Ground; Parking Structure, Underground; Passive Recreation; Residential Community Building Area; Sanitation Facilities; Sign; Travel Accommodation; Use, Secondary; Warehousing; Yard; Yard, Exterior; and Yard, Interior.
15. **Additional Enforcement, Technical, Figure and Term Modifications (Sections 10-30.60.040, 10-40.40.100, 10-40.60.240, 10-40.60.250, 10-40.60.280, 10-50.30.030, 10-50.40.020, 10-50.60.050, and 10-50.90.060):** Incorporate, correct, clarify, and modify various technical, enforcement, cross references, and modifications.

### **Key Considerations:**

A Zoning Code Text Amendment shall be evaluated based on the following findings:

#### **A. Finding #1:**

- **The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan.**

The proposed amendments are primarily to resolve conflicts, incorporate technical corrections, and add clarity to the Zoning Code. Clerical in nature, the amendments do not substantively modify the existing provisions of the Zoning Code and maintain consistency and conformance with the objectives and policies of the Regional Plan (General Plan) and applicable specific plans.

Incorporated in the proposed amendment are clarifications to the requirements for forest resource protection. Currently, the Code does not address transect zones, and existing standards are based on uses instead of the zones. The modified requirements treat all property in a particular zone consistently, regardless of use, and incorporate requirements for a property that utilize the transect zones ((E&C 3.3, E&C 4.1, E&C 6.3, E&C 10.1, E&C 10.2, and CC 1.1) of the Regional Plan).

#### **B. Finding #2**

- **The proposed amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the City.**

The proposed amendments are not anticipated to be detrimental to the public interest, health, safety, convenience, or welfare of the City. These amendments are primarily to resolving conflicts, incorporate technical corrections, and add clarity to the Zoning Code.

#### **C. Finding #3**

- **The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.**

The proposed amendments enhance the Zoning Code's internal consistency by resolving conflicts, incorporating technical corrections, and adding clarity. Furthermore, the proposed amendments are intended to maintain the Zoning Code's purpose as a comprehensive contemporary set of land uses and requirements that are straightforward, usable, and easily understood.

**Community Benefits and Considerations:**

Please refer to the key considerations included in this report.

**Community Involvement:**

In accordance with State Statute and the Zoning Code, the Planning and Zoning Commission work session and public hearing for these amendments were advertised in the Arizona Daily Sun on May 25, 2019. Also, persons of interest that were on file with the Planning and Development Services Division were notified of the work sessions and hearings via first class mail. The Planning and Zoning Commission's work session was held on June 12, 2019, and the Commission's public hearing was held on June 26, 2019. In addition, the City Council held a work session on these amendments on September 17, 2019. The City Council's public hearings were advertised in the Arizona Daily Sun on September 28, 2019.

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**Attachments:**    [Res. 2019-49](#)  
                          [Exhibit A to Resolution 2019-49](#)  
                          [Ord. 2019-32](#)  
                          [PowerPoint Presentation](#)  
                          [Planning and Zoning Commission Report](#)

**RESOLUTION NO. 2019-49**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED “CASE NO. PZ-19-00094 UPDATES TO ZONING CODE 2019 – MISCELLANEOUS PART 1”**

**RECITALS:**

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full;

**ENACTMENTS:**

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

SECTION 1. That certain document known as “*Case No. PZ-19-00094 Updates to Zoning Code 2019 – Miscellaneous Part 1*” attached hereto as Exhibit A is hereby declared to be a public record, and one (1) paper copy and one (1) electronic copy shall remain on file with the City Clerk in compliance with A.R.S. § 44-7041, and said copies shall remain on file with the City Clerk.

SECTION 2. Effective Date.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

Exhibits:

Case No. PZ-19-00095 Updates to Zoning Code 2019 – Miscellaneous Part 1

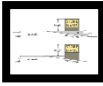
Case No. PZ-19-00094 Updates to Zoning Code 2019 – Miscellaneous Part 1  
Amendment for Adoption in Flagstaff Zoning Code

**HOW TO READ THIS DOCUMENT**


Unless otherwise stated, provisions that are being deleted are shown in bold red strikethrough text, like this: ~~Provisions that are being deleted are shown with a bold red strikethroughs text.~~

Provisions that are being added are shown in bold blue text, like this: **Provisions that are being added are shown in bold blue text.**

Graphics/Figures that are being deleted are indicated with an “X” over the graphic/figure.

Graphics/Figures that are being added are indicated with a border  around the graphic/figure.

Tables that are being deleted are indicated with an “X” over the Tables.

Tables that are being added are indicated with a thick border  around the Tables.

Section 1. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.30.080 Notice of Public Hearings, as follows:

**10-20.30.080 Notice of Public Hearings**

**A. Notice of Application.** Prior to consideration of any action for a General Plan amendment, specific plan amendment, Zoning Code text amendment, Zoning Map amendment, conditional use permit, ~~preliminary subdivision plat~~, variance, or appeal heard by the Board of Adjustment, ~~or change of use within the PF (Public Facility) zone~~, notice shall be given in compliance with the requirements of this section. In those cases where a public hearing is required as part of the approval process, no hearing shall be scheduled until the applicant has paid the required fee(s). Fees are listed in Appendix 2, Planning Fee Schedule. All of the following applicable provisions shall be met:

~~A. B.~~ **Notice Requirements.** Any changes to State law notice requirements shall control over this provision in the manner of providing notice.

1. **Contents.** Every published, posted and mailed notice of public hearing shall include:
  - a. The date, time, location and purpose of the hearing;
  - b. The name of the body conducting the hearing, and a telephone number to receive additional information;
  - c. The location and times at which the complete application and development file may be viewed by the public;

- d. The address or location of the subject property;
  - e. A general description of the proposed development or action and the property included in the application;
  - f. A statement that any interested person or authorized agent may appear and be heard;
  - g. A statement describing how and when to submit written comments;
  - h. The existing zone classification; and
  - i. The word "Zoning," if applicable.
2. **Manner of Posting.**
- a. Notices of public hearings for requests to amend the Zoning Map shall be posted on the subject property and printed so that the following are visible from a distance of 100 feet: the word "zoning"; the existing zone; the proposed zone; and the date, time and place of the hearing.
  - b. Notices of public hearings for all other applications such as General Plan amendments, conditional use permits, or Board of Adjustment hearings shall be posted on the subject property and printed so that the date, time and place of the hearing is visible from a distance of 100 feet.
3. **Manner of Notification.** Notices of required public hearings shall be sent by first class mail to the following persons:
- a. Each real property owner (if different from the applicant) as shown on the last assessment of the property, of any land within the areas subject to the application for which the public hearing is required.
  - b. Each real property owner (if different from the applicant) as shown on the last assessment of the property of any land which is located within 300 feet of the property subject to the application for which the public hearing is required. The Director may expand the notification area based on the location and context of the subject property if it is determined that the potential impact of the development extends beyond the required notification boundary.
  - c. The situs or actual address of all tenants and residents living on the subject property.
  - d. All local government agencies which have reviewed and commented on the proposed development or Zoning Map amendment or which abut the subject property.
4. **Failure to Receive Notice.** Notwithstanding the notice requirements set forth in subsections (A)(2) and (3) of this section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the amendments for which the notice was given.
5. **Responsibility for Providing Notice.**

- a. The Director shall be responsible for placing the public hearing notices required by this section in a newspaper of general circulation within the City.
  - b. The applicant shall post the notice(s) as required by this section on the subject property. The applicant is required to maintain the posting and remove the sign within seven days after the public hearing and final action. Failure to remove the sign may result in the City removing the sign and charging the applicant for costs incurred. The applicant shall submit a notarized affidavit of posting and photographs of the signs posted on the subject property to the Director no less than 15 days prior to the public hearing date.
  - c. If notice is required to be provided by mail, the applicant is responsible for establishing a list of names and addresses of property owners in compliance with the requirements of Section 10-20.30.060(D)(3) and (5), as well as the names and situs addresses of all tenants and residents living on the subject property, in compliance with this section. The applicant shall mail a public hearing notice to each of the property owners on the list referenced above no later than 15 days prior to the public hearing date. A notarized copy of the mailing list shall be submitted to the Director prior to or on the fifteenth day prior to the public hearing date.
  - d. Failure to provide the documentation described in subsections (A)(5)(b) and (c) of this section will result in continuance of the case to the next available public hearing date.
6. **Time of Notice.** All required notices shall be posted or published within a time frame prior to the public hearing determined in compliance with State law as well as the review schedule on file with the Planning Section.

**B. C. Registry of Interested Persons or Groups.** Any interested persons or groups may contact the Planning Section to register their names, addresses and other contact information so that they can be notified of all public meetings and public hearings of the Board of Adjustment, Planning Commission and/or Council.

**C. D. Additional Noticing Requirements.**

1. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided as described in subsections (C)(2) and (3) of this section:
  - a. A 10 percent or more increase or decrease in the number of square feet or units that may be developed.
  - b. A 10 percent or more increase or reduction in the allowable height of buildings.
  - c. An increase or reduction in the allowable number of stories of buildings.
  - d. A 10 percent or more increase or decrease in setback or open space requirements.
  - e. An increase or reduction in permitted uses.

2. Notice shall be sent to all persons or groups whose names are on the registry of persons and groups described in subsection (B) of this section who are interested in receiving such notice.
3. Notice shall be provided to real property owners in compliance with at least one of the following notification procedures:
  - a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property would be directly governed by the changes.
  - b. Notice shall be included with water bills or other City mass mailings.
  - c. Notice shall be published in a newspaper of general circulation published or circulated in the City in the form of a "display ad" covering not less than one-eighth of a full page.
4. In proceedings where additional requirements for citizen outreach are required as provided in Section 10-20.30.070, Additional Requirements for Citizen Outreach, full compliance with the notification requirements of that section is required.

Section 2. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.080 Minor Improvement Permits, as follows:

**10-20.40.080 Minor Improvement Permits**

- A. **Purpose.** ~~This section establishes the requirements for a minor improvement permit to~~ To ensure ~~that~~ compliance with the applicable provisions of ~~this the~~ Zoning Code ~~is achieved~~ , ~~this section establishes the requirements for a Minor Improvement Permit. A minor improvement permit shall be reviewed, approved and issued by the Director prior to the placement, installation, construction or development of the following structures that do not otherwise require a building permit as required by applicable City building codes:~~
  - ~~1.—Decks;~~
  - ~~2.—Garden wall;~~
  - ~~3.—Accessory structures, such as sheds or storage containers; and~~
  - ~~4.—Fences (see Division 10-50.50, Fences and Screening).~~
- B. **Application.** The property owner shall obtain approval of an application for a Minor Improvement Permit prior to the placement, installation, construction or development of structure that does not require a building permit in accordance with the Building Code. Structures that require the approval of an application for a Minor Improvement Permit include:
  1. Accessory structures, such as sheds, storage containers, decks, fences, garden walls, pergolas, wall, etc;

2. **Modification to the exterior of a structure, including materials and colors, determined to be minor by the Director for properties that are required to comply with Division 10-50.20 pursuant to Section 10-50.20.020;**
3. **Landscape modifications determined to be minor by the Director for properties that are required to comply with Division 10-50.60 pursuant to Section 10-50.60.020;**
4. **Other minor improvements determined by the Director.**

**B. C.** Review and Final Decision.

1. The Director shall review the minor improvement permit application and supporting documentation required by Section 10-20.30.020, Application Process, for compliance with the requirements of the Zoning Code.
2. The Director, in compliance with the review schedule on file with the Planning Section, shall determine whether the minor improvement permit can be issued or if additional information is required from the applicant to complete the application. If the application is denied, the reason shall be stated in writing.

**D. Exemptions. Children’s play houses and tree houses less than 200 square feet in floor area do not require the approval of an application for a Minor Improvement Permit.**

Section 3.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.150 Temporary Use Permits, subsection D. Allowed Temporary Uses., paragraph 2., as follows:

**Section 10-20.40.150 Temporary Use Permits**

- D. Allowed Temporary Uses.** A temporary use permit shall be required for the following temporary activities. Other temporary or short-term activities that do not fall within the categories defined below shall comply with the planning permit requirements and development standards that otherwise apply to the property.
2. **Construction Yards Construction Yard(s)** – Off-Site. Off-site contractors’ construction yards, for an approved construction project require a temporary use permit. Written authorization from the property owner(s) or property management company(ies) representing the property owner(s) shall be provided prior to the establishment of the off-site construction yard. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the building permit authorizing the construction project, whichever occurs first. **Immediately upon removal of the construction yard(s), the property shall be restored to the condition pre-existing the construction yard(s), or a condition approved by the Director.**

Section 4.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.150 Temporary Use Permits, subsection D. Allowed Temporary Uses., paragraph 14., and add paragraphs 15 and 16, in numerical order, as follows:

## Section 10-20.40.150 Temporary Use Permits

D. **Allowed Temporary Uses.** A temporary use permit shall be required for the following temporary activities. Other temporary or short-term activities that do not fall within the categories defined below shall comply with the planning permit requirements and development standards that otherwise apply to the property.

~~14. Similar Temporary Activities. The Director may authorize other temporary activities that are similar to the activities listed in this subsection and that are compatible with the applicable zone and surrounding land uses.~~

### 14. Temporary Storage Structures.

- a. Emergency situations and construction activities that do not require a building permit. The property owner shall obtain the approval of a Temporary Use Permit within five (5) business days of the emergency, or prior to the placement of the structure for construction purposes. The maximum duration that the storage structure may remain on a property:
  - (1) Residential and Transect Zones. Ninety (90) consecutive days, with the option of a one-time extension of additional 90 consecutive days, for a maximum total of 180 consecutive days within one year from the date that the initial temporary use permit was issued.
  - (2) Commercial, Industrial and Public and Open Space Zones. One hundred twenty (120) consecutive days, with the option for a one-time extension of the Temporary Use Permit additional 90 consecutive days, for a maximum total of 210 consecutive days within one year from the date that the initial temporary use permit was issued.
- d. Seasonal sales storage structure.
  - (1) Zones allowed in: Commercial and Industrial zones.
  - (2) The maximum duration that the storage structure may remain on a property for any one seasonal sale event: forty-nine (49) consecutive days, with the option for a one-time extension of the Temporary Use Permit additional 14 consecutive days, for a maximum total of 63 consecutive days from the date that the initial temporary use permit was issued.
  - (3) Maximum occurrences in a calendar year that a storage structure may be placed on a property for seasonal sales: two (2).
- e. Placement in all zones.
  - (1) Seasonal sales storage structure. In the commercial and industrial zones, storage structure shall be placed on the property of the seasonal sales event in a loading/dock area, or in an area where it is not visible from the public right-of-way.
  - (2) All other temporary storage structures. Storage structures may be placed within the rear, side, street side or front yard setback. A

storage structure may be placed in the right-of-way upon obtaining a right-of-way encroachment permit from the City's Engineering section.

f. **Prohibited types of storage structures in all zones. Storage structures mounted on chassis or wheels shall not be allowed.**

15. **Temporary Construction Trailer(s) – Off-site. Construction trailer(s) for an approved construction project that is not located on the lot or parcel of the associated development activity is required to obtain a temporary use permit. Written authorization from the property owner(s) or property management company(ies) representing the property owner(s) shall be provided with the application for a temporary use permit. The construction trailer(s) shall be removed immediately upon completion of the development project, or the expiration of the building permit authorizing the development project, whichever occurs first. Immediately upon removal of the construction trailer(s), the property shall be restored to the condition pre-existing the construction trailer(s), or a condition approved by the Director.**

16. **Similar Temporary Activities. The Director may authorize other temporary activities that are similar to the activities listed in this subsection and that are compatible with the applicable zone and surrounding land uses.**

Section 5.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.150 Temporary Use Permits, subsection E. Exempt Temporary Activities., to add paragraphs 7, 8 and 9 in numerical order, as follows:

**Section 10-20.40.150 Temporary Use Permits**

E. **Exempt Temporary Activities.** The following temporary activities are allowed without a temporary use permit.

7. **Temporary storage structures associated with a building permit. Storage structure(s) used for the purpose of construction activities may be placed on a property after a building permit for the construction activities on the property has been obtained. The owner shall cause the storage structure(s) to be removed from property within seven days after the issuance of a Certificate-of-Occupancy, Certificate-of-Completion, final inspection or expiration of the permit pertaining to the construction activities. Storage structures mounted on chassis shall not be allowed.**

8. **Storage structures used for moving in all zones. For the purpose of loading or unloading contents while in the process of moving, storage structures may be placed on a property for duration not to exceed 14 consecutive days. Storage structures mounted on trailers or wheels shall not be allowed.**

9. **Temporary Outdoor Retail Activities, Excluding Seasonal Sales. Retail uses are allowed temporary outdoor activities, such as a garden sale, sidewalk sale (excluding the use of sidewalks in the right-of-way), sales promotion, or a similar activity as determined by the Zoning Administrator.**

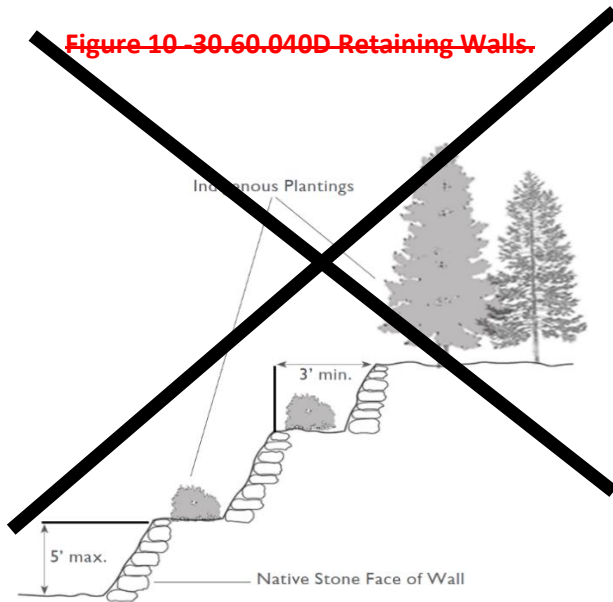
- a. The maximum occurrences that a temporary outdoor retail activity may occur on a property: One (1) occurrence per month.
- b. Maximum duration of any one occurrence of a temporary outdoor retail activity: fourteen (14) consecutive days.
- c. A temporary outdoor retail activity shall occur on the same property as the primary retail use that is directly associated with the activity. The temporary retail activity shall not create a nuisance (noise, smoke, odor, dust, vibration or illumination) that is greater than the primary retail use directly associated with the activity.

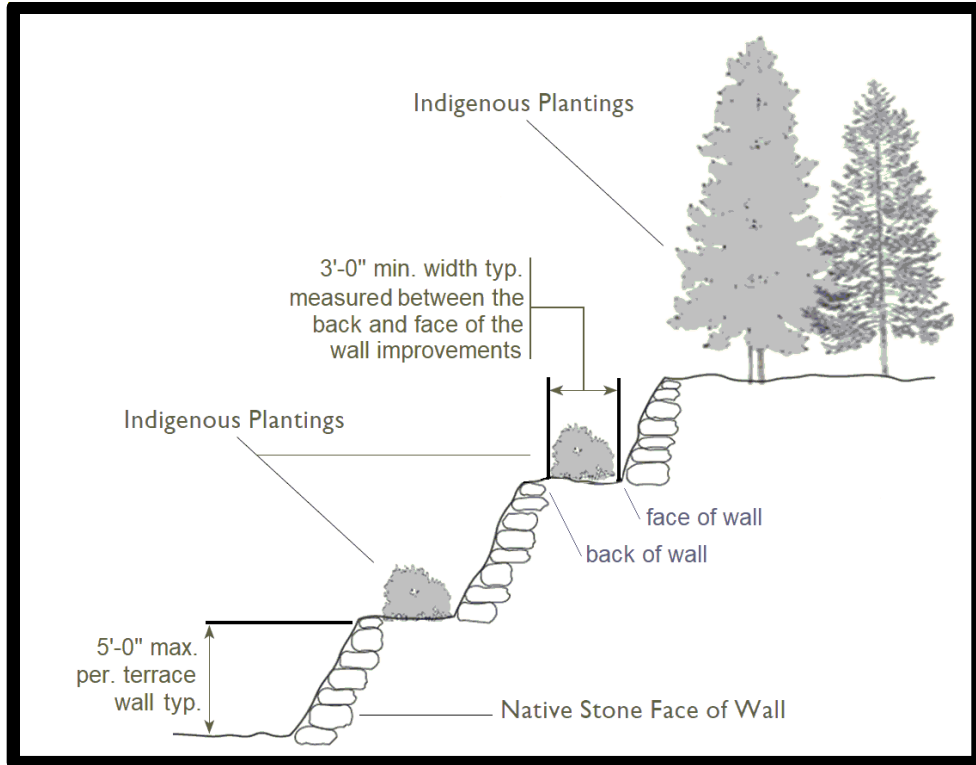
Section 6. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-30.60.040 Natural Features and Site Drainage, Subsection A. Applicable to All Zones., paragraph 1. Topography., Figure 10 -30.60.040D Retaining Walls., as follows:

**10-30.60.040 Natural Features and Site Drainage**

**A. Applicable to All Zones.**

**1. Topography.**





**Figure 10 -30.60.040D Retaining Walls.**

Section 7. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection B. Residential Zones – Allowed Uses, and the associated table, as follows – including adding grid lines and shading to the table:

**Section 10-40.30.030 Residential Zones**

~~B. Residential Zones – Allowed Uses.~~

**B. Residential Zones – Allowed Uses.** The allowed land uses of each of the Residential Zones are shown in Table 10-40.30.050.B.

Table 10-40.30.030.B. Residential Zones – Allowed Uses.								
Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<b>Ranching, Forestry and Animal Keeping</b>								
<del>Animal Keeping</del>		<del>See Section 10-40.60.070</del>						
<b>Animal Keeping</b>	<b>10-40.60.070</b>	<b>P<sup>6</sup></b>	<b>P<sup>6</sup></b>	--	--	--	--	--
<del>Ranching</del>		--	--	--	--	--	--	--

**Table 10-40.30.030.B.  
Residential Zones – Allowed Uses.**

Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<b>Recreation, Education and Assembly</b>								
Commercial Campgrounds	10-40.60.130	UP	--	--	--	--	--	--
Golf Courses and Facilities		UP	UP	UP	--	--	--	--
Equestrian Recreational Facilities		UP	UP	UP	--	--	--	--
Libraries, Museums		UP	UP	UP	UP	UP	UP	UP
Meeting Facilities, Public and Private	10-40.60.230							
Regional		--	--	--	--	--	--	--
Neighborhood		P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>
Outdoor Public Uses, General		P	P	P	--	P	P	P
Places of Worship		<del>P/UP<sup>6</sup></del> P/UP <sup>5</sup>	<del>P/UP<sup>6</sup></del> P/UP <sup>5</sup>	<del>P/UP<sup>6</sup></del> P/UP <sup>5</sup>	<del>P/UP<sup>6</sup></del> P/UP <sup>5</sup>	<del>P/UP<sup>6</sup></del> P/UP <sup>5</sup>	<del>P/UP<sup>6</sup></del> P/UP <sup>5</sup>	<del>P/UP<sup>6</sup></del> P/UP <sup>5</sup>
Schools – Public and Charter		P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P	P	P <sup>3</sup>
Schools – Private		P	P	P	P	P	P	P
Trade Schools		--	--	--	--	--	--	--
<b>Residential</b>								
<del>Accessory Building and Structures</del>	<del>10-40.60.020</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>
<del>Accessory Dwelling Units</del>	<del>10-40.60.030</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>
Co-housing	10-40.60.120	P	P	<del>P</del> PRD	--	P	P	--
Congregate Care Facilities		UP	UP	UP	UP	P	P	UP
Day Care, Centers	10-40.60.150.B	UP	UP	UP	UP	UP	UP	UP
Day Care, Home	10-40.60.150.A	P	P	P	P	P	P	P
Dormitories		--	--	--	--	UP	UP	--
Development, Duplex		<del>P<sup>4</sup></del> PRD	<del>P<sup>4</sup></del> PRD	<del>P<sup>4</sup></del> PRD	P	P	P	--
Dwelling: Development - Cluster, Single-Family	10-40.60.170	P	P	<del>—</del> PRD	--	--	--	--
Dwelling: Multiple-Family Development, Multiple-Family		<del>P<sup>4</sup></del> PRD	<del>P<sup>4</sup></del> PRD	<del>P<sup>4</sup></del> PRD	--	P	P	--

**Table 10-40.30.030.B.  
Residential Zones – Allowed Uses.**

Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<del>Dwelling: Single-Family Development, Single-Family</del>		P	P	P	P	<del>P<sup>4,5</sup></del> PRD <sup>4</sup>	<del>P<sup>4,5</sup></del> PRD <sup>4</sup>	P
Group Home		P	P	P	P	P	P	P
Home Occupation	10-40.60.180	P	P	P	P	P	P	P
Institutional Residential								
Custodial Care Facilities		UP	UP	UP	UP	UP	UP	UP
Homeless Shelters	10-40.60.190							
Emergency Shelters		UP	UP	UP	UP	UP	UP	UP
Short Term Housing		UP	UP	UP	UP	UP	UP	UP
Transitional Housing		UP	UP	UP	UP	UP	UP	UP
Sheltered Care Homes		UP	UP	UP	UP	UP	UP	UP
Nursing Homes		--	UP	UP	UP	UP	UP	UP
Live/Work	10-40.60.200	--	--	--	--	<del>UP<sup>4</sup></del> UP/PRD	<del>UP<sup>4</sup></del> UP/PRD	--
Manufactured Home	10-40.60.210	--	--	--	--	--	--	P
Manufactured Home Park	10-40.60.210.D	--	--	--	--	--	--	P
Manufactured Home Subdivision	10-40.60.210.C	--	--	--	--	--	--	P
Mobile Home		--	--	--	--	--	--	P
Planned Residential Development	10-40.60.280	P	P	P	P	P	P	--
Rooming and Boarding Facilities		--	UP	--	--	UP	UP	UP
Single Room Occupancy, Fraternities and Sororities		--	--	--	--	UP	UP	--
<b>Retail Trade</b>								
Neighborhood Market								
≤ 1,500 sf		--	--	UP	--	--	--	UP
≤ 2,500 sf		--	--	--	--	UP	--	--
≤ 5,000 sf		--	--	--	--	--	UP	--
Offices		--	--	--	--	--	UP	--
<b>Services</b>								

**Table 10-40.30.030.B.  
Residential Zones – Allowed Uses.**

Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
Bed and Breakfast Establishments	10-40.60.110	P	P	P	P	P	P	P
Cemeteries		UP	UP	UP	--	UP	UP	UP
Hospitals		UP	UP	UP	UP	UP	UP	UP
<b>Public Services</b>								
Public Services Minor		P	P	P	P	P	P	P
Public Services Major		--	--	--	--	--	--	--
Emergency Services		UP	UP	UP	UP	UP	UP	UP
<b>Transportation and Infrastructure</b>								
Accessory Wind Energy Systems	10-40.60.040	P	P	P	--	P	P	P
Telecommunications Facilities								
AM Broadcasting Facilities	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Antenna-supporting Structure	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Attached Telecommunication Facilities	10-40.60.310	P	P	P	P	P	P	P
Colocation Facility	10-40.60.310	P	P	P	UP	P	P	P
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Stealth Telecommunication Facilities	10-40.60.310	P	P	P	P	P	P	P
<b>Urban Agriculture</b>								
Community Garden	10-40.60.140	P	P	P	P	P	P	P
Nurseries		UP	--	--	--	--	--	--
<b>End Notes</b>								
<sup>1</sup> 1. A definition of each listed use type is in Chapter 10-80, Definitions.								
<sup>2</sup> 2. A conditional use permit is required if liquor is sold or if facilities exceed 250 seats.								
<sup>3</sup> 3. Charter schools proposed in existing single-family residences shall be located on residential lots one acre or greater. Charter schools shall be subject to the review processes established in A.R.S. §15-189.01., <b>as amended.</b>								
<del><sup>4</sup> 4. Permitted as Planned Residential Development (see Section 10-40.60.270, Planned Residential Development).</del>								

<b>Table 10-40.30.030.B. Residential Zones – Allowed Uses.</b>								
Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<sup>5</sup> <b>4.</b> Existing single-family uses and lots recorded in MR and HR, prior to the effective date of this Zoning Code, are considered legal, conforming uses.								
<sup>6</sup> <b>5.</b> A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.								
<b>6. Use is allowed only on a lot or parcel with a net lot area of five acres, or greater.</b>								
<b>Key</b>								
P = Permitted Use								
UP = Conditional Use – Requires the Approval of a Conditional Use Permit								
<b>PRD = Allowed Use only when part of a Planned Residential Development (see Section 10-40.60.280)</b>								
<b>UP/PRD = Conditional Use – Requires the Approval of a Conditional Use Permit, and the use shall be part of a Planned Residential Development (see Section 10-40.60.280)</b>								
-- = Use Not Allowed								

Section 8. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection C. Residential Zones – Building Form Standards., as follows – including adding grid lines and shading to the table:

**10-40.30.030 Residential Zones**

- C. **Residential Zones – Building Form Standards and Property Development Standards. The building form and property development standards shown in Table 10-40.30.030.C. shall apply to all property within the corresponding residential zone.**

**Table 10-40.30.030.C.  
Residential Zones – Building Form and Property Development Standards.**

	Residential Zones						
	RR	ER	R1	R1N	MR	HR	MH
<b>Residential development subdivided by a plat that was recorded before December 5, 2011</b>							
<b>Lot sizes</b>	<b>(1) Lot sizes and setbacks shall be provided in accordance with the requirements delineated on the recorded plat. When a recorded plat does not have setbacks delineated, the Building Placement Requirements of this table shall govern.</b>						
<b>Setbacks</b>	<b>(2) Any lot(s) created or reconfigured in accordance with the subdivision code on, or after December 5, 2011, from a lot(s) platted before December 5, 2011, shall conform with the current requirements of the property's zone.</b>						
<b>Building Placement Requirements</b>							
<b>Setback Setbacks</b>							
Front (min.)							
2nd Floor and Below	75'	50'	15'	15'	10'	10'	15'
Above 2nd Floor	75'	50'	15'	15'	15'	15'	15'
For Parking	--	--	25' <sup>1</sup>	--	--	--	--
Side (min.)							
Interior Lots Side Yard	10'	20'min./45'total	8'	6'	5'	5'	8'
<del>Corner Lots (interior)</del>	<del>10'</del>	<del>20'min./45'total</del>	<del>8'</del>	<del>6'</del>	<del>5'</del>	<del>5'</del>	<del>12'</del>
<del>Corner Lots (exterior)</del> Street Side Yard	25'	20'	20' <sup>2</sup> 15'	6'	5'	5'	12'
Rear (min.)	10'	60'	<del>25'<sup>3</sup></del> 25' <sup>2</sup>	15'	<del>15'<sup>4</sup> 15'<sup>3</sup></del>	<del>15'<sup>4</sup> 15'<sup>3</sup></del>	10'
<b>Building Form Requirements</b>							
Building Height (max.)	35'	35'	35'	35'	35'	<del>60'<sup>5</sup></del> 60' <sup>4</sup>	30'
Coverage (max.)	20%	17%	35%	35%	40%	50%	43%
<b>Density Requirements See Division 10-30.20, Affordable Housing Incentives</b>							
Density: Gross (units/acre)							
Min.	--	--	2	2	6	10	--
Max. Outside the RPO	1	1	6	14	14	<del>29<sup>6</sup> 29<sup>5</sup></del>	11

**Table 10-40.30.030.C.  
Residential Zones – Building Form and Property Development Standards.**

	Residential Zones						
	RR	ER	R1	R1N	MR	HR	MH
Max. Within the RPO	1	1	5	--	9	22	4
<b>Lot Requirements</b>							
Area							
Gross (min.)	1 <del>ac</del> <sup>7</sup> ac <sup>6</sup>	1 ac	6,000 sf	6,000 sf	6,000 sf	6,000 sf	5 ac
Per Unit (min.)	1 <del>ac</del> <sup>7</sup> ac <sup>6</sup>	1 ac	6,000 sf	3,000 sf	<del>Endnote</del> <sup>6</sup> Endnote <sup>5</sup>	<del>Endnote</del> <sup>6</sup> Endnote <sup>5</sup>	4,000 sf
Width							
Interior Lots (min.)	<del>100</del> <sup>18</sup> 100 <sup>17</sup>	<del>140</del> <sup>19</sup> 149 <sup>18</sup>	<del>60</del> <sup>19,10</sup> 60 <sup>18,9</sup>	50'	<del>50</del> <sup>19,10</sup> 50 <sup>18,9</sup>	<del>50</del> <sup>19,11</sup> 50 <sup>18,10</sup>	--
Corner Lots (min.)	<del>100</del> <sup>18</sup> 100 <sup>17</sup>	<del>140</del> <sup>19</sup> 149 <sup>18</sup>	<del>65</del> <sup>19,10</sup> 60 <sup>18,9</sup>	50'	<del>50</del> <sup>19,10</sup> 50 <sup>18,9</sup>	<del>50</del> <sup>19,11</sup> 50 <sup>18,10</sup>	--
Depth (min.)	<del>200</del> <sup>18</sup> 200 <sup>17</sup>	--	<del>100</del> <sup>19</sup> 100 <sup>18</sup>	100'	<del>100</del> <sup>19</sup> 100 <sup>18</sup>	<del>75</del> <sup>19,11</sup> 75 <sup>18,10</sup>	--
<b>Other Requirements</b>							
Open Space <del>(% of Gross Lot Area)</del> (% of Gross Lot Area) <sup>11</sup>	--	--	--	--	See Table 10-40.30.030.A		
Fences and Screening	See Division 10-50.50						
Landscaping	See Division 10-50.60						
Lighting	See Division 10-50.70						
Parking	See Division 10-50.80						
Signs	See Division 10-50.100						
<b>End Notes</b>							
<sup>1</sup> 1. 15' for side entrance garages, where the garage is designed as an integral element of the primary dwelling (i.e., doors and windows are consistent with the overall architectural character).							
<del><sup>2</sup> 2. 15' on existing lots with less than 8,000 sf or less than 65' in width.</del>							
<sup>3</sup> 2. One or two story residential buildings and decks attached to those buildings may be built to 15' from the rear property line; provided, that any portion of the structure located closer than 25' to the rear property line does not exceed 50% of the lot width.							
<sup>4</sup> 3. May be reduced for zones not subject to the Resource Protection Overlay when a minimum of 350 sf of open yard area per unit is provided, see Section 10-40.30.030(H).							
<sup>5</sup> 4. Building height can be exceeded with approval of a Conditional Use Permit.							

<b>Table 10-40.30.030.C. Residential Zones – Building Form and Property Development Standards.</b>							
	<b>Residential Zones</b>						
	<b>RR</b>	<b>ER</b>	<b>R1</b>	<b>R1N</b>	<b>MR</b>	<b>HR</b>	<b>MH</b>
<sup>6</sup> 5.	The maximum number of units for each lot is based on the following:						
<sup>7</sup> 6.	Five-acre minimum where public water supply and public streets are not available to serve the property.						
<sup>8</sup> 7.	Where public water supply and public streets are not available to serve the property a minimum lot width of 200' and lot depth of 250' are required.						
<sup>9</sup> 8.	Within a Planned Residential Development the minimum width and depth of a lot may vary based on the minimum lot standards applicable to the building types selected for application within a Planned Residential Development (See Section 10-40.60.280, Planned Residential Development).						
<sup>10</sup> 9.	Lot width measured at the setback line.						
<sup>11</sup> 10.	On lots greater than 9,000 sf: 70' minimum width on interior lots, 75' minimum width on corner lots and 100' minimum depth on all lots.						
<sup>12</sup> 11.	Any required common open space as required in Division 10-50.110, Specific to Building Types, and areas set aside for resource preservation such as floodplains, slopes and forests (Division 10-50.90, Resource Protection Standards) may be used to satisfy this standard. In this context, "open space" includes active and passive recreation uses, landscape areas, and community gardens.						
<b>Key</b>							
--	Not Applicable						

Section 9. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, D. Miscellaneous Requirements – All Residential Zones., as follows:

**D. Miscellaneous Requirements – All Residential Zones.**

- ~~1. Building form standards may be modified (reduced or exceeded) by the Director with the application of the clustered, affordable, or planned residential development; provided, that such application is consistent with the General Plan.~~
- ~~2. Land subdivided or developed within each residential zone shall be served by public water and sewer facilities, except for five-acre lots in the RR zone unless required by the Subdivision Regulations, City Code Title 11.~~
- 1. In accordance with Title 11 Subdivision and Land Split Regulations, of the City Code, except as specified in the RR zone (Section 10-40.30.030.E):
  - a. all land subdivided or split into lots or parcels shall abut a public right-of-way or private street tract; and

- b. Water and sewer infrastructure shall be provided to each lot or parcel if required.
- ~~3-~~ 2. Temporary uses are permitted in compliance with Section 10-20.40.150, Temporary Use Permits.
- 3. Accessory Uses:
  - a. An Accessory Dwelling Unit (ADU) use is allowed in all residential zones.
  - b. All other accessory uses are allowed in accordance with section 10-40.60.025.
- ~~4. The cultivation of vegetable gardens for home use is permitted in all residential zones.~~
- 4. Accessory structures:
  - a. An Accessory Dwelling Unit (ADU) structure shall comply with section 10-40.60.030.
  - b. All other accessory structures are allowed in accordance with section 10-40.60.020.

Section 10. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, to amend Subsection E. Miscellaneous Requirements – RR Zone., as follows:

E. Miscellaneous Requirements – RR Zone.

- ~~1. Five-acre parcels shall have frontage on either a public right-of-way or an access easement approved by the City Engineer.~~
- ~~2. One-acre parcels shall have frontage on either a public or private street improved with a paved roadway satisfactory to the City Engineer.~~
- 1. In accordance with Title 11 Subdivision and Land Split Regulations, of the City Code:
  - a. all land subdivided or split into lots or parcels less than five acres shall abut a public right-of-way or private street tract;
  - b. all land subdivided into lots or parcels five acres or greater shall abut a public right-of-way or private street tract, or unless otherwise allowed by Title 11 of the City Code, an access easement approved by the City Engineer; and
  - b. Water and sewer infrastructure shall be provided to each lot or parcel if required.

Section 11. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection F. Miscellaneous Requirements – R1 Zone., as follows:

F. Miscellaneous Requirements – RR, ER, and R1 Zone.

1. ~~No more than one single family dwelling shall be permitted on each lot, plus such accessory uses, as are related, incidental, and not detrimental to the residential environment. (Refer to subsection (F)(2) of this section for exceptions.)~~

Unless otherwise allowed as part of a Planned Residential Development (PRD), only one single-family dwelling unit, or a single-family dwelling unit with an Accessory Dwelling Unit (ADU), is allowed per lot or parcel.

- ~~2. Clustered development shall be allowed in planned residential and co-housing developments~~
- ~~3. Each lot shall have frontage on a dedicated public street.~~

Section 12.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection G. Miscellaneous Requirements – MR and HR Zone., as follows:

G. Miscellaneous Requirements – MR and HR Zone.

- ~~1. Each lot shall have frontage on a dedicated public street.~~

- ~~2.~~ 1. Common open space for other building types not specifically listed in Division 10-50.110, Specific to Building Types, such as an apartment complex, shall be provided based on the following standards:

Table <del>10-40.30.030.A</del> 10-40.30.030.G: Common Open Space Requirements	
Area Area <sup>1</sup>	15% of gross lot area; at least one open space area shall be no less than 400 sq. ft.
Width	15' min.
Depth	15' min.
No private open space is required	
<b>End Notes</b>	
<sup>±</sup> 1. Roof decks and courtyards <del>may be</del> are included in the open space area calculation, but not driveways or vehicle parking areas.	

- ~~3.~~ 2. In addition to the 15 percent open space requirement established in ~~subsection (C) of this section Table 10-40.30.030.C., Building Form Standards,~~ residential projects over 50 units or more ~~are also required to shall~~ provide a minimum of five percent civic space. (See Section ~~10-30.60.090 (B)(1)~~ 10-30.60.090, Civic or Public Space Requirement.)

Section 13.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.040 Commercial Zones, Subsection B. Commercial Zones – Allowed Uses., as follows – including adding grid lines and shading:

**10-40.30.040 Commercial Zones**

B. Commercial Zones – Allowed Uses. **The allowed land uses of each of the Commercial zones are shown in Table 10-40.30.040.B.**

<b>Table 10-40.30.040.B.</b>						
<b>Commercial Zones – Allowed Uses</b>						
Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
<b>Industrial, Manufacturing, Processing and Wholesaling</b>						
Carpenter or Cabinet Shops		--	--	--	P	-
Flammable Liquid, Gas, and Bulk Fuel – Storage and Sale		--	--	UP	--	
Manufacturing and Processing – Incidental		--	P	P	P	P
Machine or Metal Working Shops		--	--	--	P	--
Micro-brewery or Micro-distillery	10-40.60.240	--	P	P	P	P
Mini-storage Warehousing	10-40.60.250	--	--	UP <sup>2</sup>	P	--
Research and Development Uses	10-40.60.300	--	--	UP	--	--
Transportation or Trucking Yards		--	--	--	P	--
Vehicle Towing/Impound Yard		--	--	P <sup>4</sup>	--	--
Warehousing	10-40.60.330	--	P <sup>3</sup>	P <sup>3</sup>	--	P <sup>3</sup>
Wholesaling and Distribution		--	--	--	P	P <sup>3</sup>
<b>Recreation, Education and Assembly</b>						
Automobile, Go-kart, Miniature Automobile Racing	10-40.60.080	--	UP	UP	--	--
Commercial Campgrounds	10-40.60.130	--	--	P	--	--
Commercial Recreation Facilities, Indoor		P	P	P	--	P

**Table 10-40.30.040.B.**  
**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Commercial Recreation Facilities, Outdoor	10-40.60.270	--	UP	UP	--	--
Libraries, Museums		P	P	P	P	P
Meeting Facilities, Public or Private	10-40.60.230					
Regional		--	P/UP <sup>5</sup>	P/UP <sup>5</sup>	P/UP <sup>5</sup>	P/UP <sup>5</sup>
Neighborhood		P <sup>5</sup>	P/UP <sup>5</sup>	--	--	--
Outdoor Public Uses, General		P	P	P	--	--
Places of Worship		P/UP <sup>10</sup>	P/UP <sup>10</sup>	P/UP <sup>10</sup>	P/UP <sup>10</sup>	P/UP <sup>10</sup>
Schools – Public and Charter		P	P	P	P	P
Schools – Private		P	P	P	P	P
Theaters		P	P	P	--	P
Trade Schools		--	UP	UP	UP	UP
<b>Residential<sup>7</sup></b>						
<del>Accessory Building and Structures</del>	<del>10-40.60.020</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>
<del>Accessory Dwelling Units</del>	<del>10-40.60.030</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>
Co-housing	10-40.60.120	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
Congregate Care Facilities		UP	P	P	P	UP
Day Care, Centers	10-40.60.150.B	P	P	P	UP	UP
Day Care, Home	10-40.60.150.A	P	P	P	P	P
Dormitories		UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>
Development, Duplex		p <sup>6</sup>	p <sup>6,9</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
<del>Dwelling: Multiple-Family Development, Multiple-Family</del>		p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
<del>Dwelling: Single-Family Development, Single-Family</del>		--	p <sup>9</sup>	--	--	--
Fraternities and Sororities		UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>
Group Homes		p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
Home Occupation	10-40.60.180	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>

**Table 10-40.30.040.B.**  
**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
<b>Institutional Residential</b>						
Custodial Care Facilities		p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>
Homeless Shelters	10-40.60.190					
Emergency Shelters		p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>
Short Term Housing		p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>
Transitional Housing		P	P	P	P	P
Nursing Homes		UP	UP	UP	UP	UP
Sheltered Care Homes		P	P	P	P	P
Live/Work	10-40.60.200	P	P	P	P	P
Planned Residential Development	10-40.60.280	P/UP	P/UP <sup>9</sup>	UP	UP	UP
Residence for Owner, Caretaker or Manager		p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
Rooming and Boarding Facilities		UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>
Single Room Occupancy		UP	--	P	--	P
<b>Retail Trade</b>						
Bars/Taverns		P	P	P	P	P
Crematorium		P	P	P	P	--
Drive-through Retail	10-40.60.160	P	P	P	--	--
Drive-through Service		P	P	P	--	--
Farmers Markets and Flea Markets		--	P	P	P	P
General Retail Business		P	P	P	P	P
Mixed Use	10-40.60.260	P	P	P	P	P
Restaurant or Cafe		P	P	P	P	P
<b>Services</b>						
Bed and Breakfast Establishments	10-40.60.110	P	P	P	P	P
Cemeteries		UP	UP	UP	UP	--
Dry-cleaning, Processing		P	P	P	--	--

**Table 10-40.30.040.B.**  
**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Equipment Rental Yard		--	UP	P	P	--
Funeral Homes, Chapels and Mortuaries		--	P	P	--	UP
General Services		P	P	P	P	P
Hospital		UP	UP	UP	UP	UP
<b>Lodging</b>		<b>UP</b>	<b>--</b>	<b>P</b>	<b>--</b>	<b>P</b>
Medical Marijuana Dispensary	10-40.60.220	--	--	P	--	--
Office		P	P	P	P	P
Public Services						
Public Services Major		--	--	--	--	--
Public Services Minor		P	P	P	P	P
<b>Travel Accommodations</b>		<b>UP</b>	<b>--</b>	<b>P</b>	<b>--</b>	<b>P</b>
Emergency Services		UP	UP	UP	UP	UP
Veterinary Clinics		P	P	P	P	--
Veterinary Hospitals		--	--	UP	UP	--
<b>Telecommunication Facilities</b>						
AM Broadcasting Facilities	10-40.60.320	UP	UP	UP	UP	UP
Antenna-Supporting Structure	10-40.60.320	UP	UP	UP	UP	UP
Attached Telecommunication Facilities	10-40.60.320	P	P	P	P	P
Collocation Facility	10-40.60.320	P	P	P	P	P
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.320	P	P	P	P	P
Stealth Telecommunication Facilities	10-40.60.320	P	P	P	P	P
<b>Transportation and Infrastructure</b>						
Accessory Wind Energy Systems	10-40.60.040	P	P	P	P	P
Garages, Off-Street		P	P	P	P	P
Parking Lots, Off-Street	10-50.80	P	P	P	P	P

**Table 10-40.30.040.B.**  
**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Passenger Transportation Facilities		--	--	UP	UP	UP
<b>Urban Agriculture</b>						
Community Gardens	10-40.60.140	P	P	P	P	P
Food Production		--	--	UP <sup>2</sup>	UP <sup>2</sup>	--
<b>Vehicle Sales and Services</b>						
Automobile Service Station and Convenience Store	10-40.60.090	P	P	P	P	--
Automobile and Trailer Rental		--	--	P	P	--
Automobile/Vehicle Sales and Service, New and Used		--	UP	P	P	UP
Automobile/Vehicle Repair Garages – Minor	10-40.60.100	--	UP	P	P	--
Automobile/Vehicle Repair Garages – Major	10-40.60.100	--	--	P	P	--
Car Washes		P	P	P	--	--
Mobile Homes and Recreational Vehicles, Sales, and Service		--	--	P	--	--
<b>End Notes</b>						
<sup>1</sup> 1. A definition of each listed use type is in Chapter 10-80, Definitions.						
<sup>2</sup> 2. Only allowed on lots that do not have highway frontage or behind existing/new commercial uses.						
<sup>3</sup> 3. Only permitted when incidental to permitted use.						
<sup>4</sup> 4. This use shall be screened. See Division 10-50.50, Fences and Screening, for fencing and screening requirements.						
<sup>5</sup> 5. A conditional use permit is required if liquor is sold or if facilities exceed 250 seats.						
<sup>6</sup> 6. Residential uses with more than two units are allowed as part of a mixed-use development located above or behind the commercial uses <b>subject to the development standards established in the HR zone</b> and as a planned residential development (Section 10-40.60.280). <b>New developments that include residential uses with more than two units shall provide a minimum of 15% of the gross lot area in the form of common open space.</b>						

Table 10-40.30.040.B. Commercial Zones – Allowed Uses						
Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
<sup>7</sup> 7.	Residential uses in the CC, HC, CS and CB zones, and residential uses and properties listed on the National Historic Registry or within the Landmarks overlay zone existing prior to the effective date of this Zoning Code are considered legal, nonconforming uses. Residential uses in the CC, HC, CS and CB zones shall be subject to the development standards established in the HR zone.					
<sup>8</sup> 8.	Conditional use permit is required if proximity between shelter facilities is less than one-quarter mile.					
<sup>9</sup> 9.	Single-family and duplex building types (see Division 10-50.110) are permitted by right on lots ≤9,000 sf existing prior to November 1, 2011, subject to the building placement and building form requirements of the MR zone. A conditional use permit is required for all other building types and multifamily residential uses with three or more units regardless of the size of the lot or parcel.					
<sup>10</sup> 10.	A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.					
<b>Key</b>						
P = Permitted Use						
UP = Conditional Use Permit Required						
-- = Use Not Allowed						

Section 14. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.040 Commercial Zones, Subsection C. Commercial Zones – Building Form Standards., as follows – including grid lines and shading:

Section 10-40.30.040 Commercial Zones

- C. Commercial Zones – Building Form **and Property Development** Standards. **The building form and property development standards shown in Table 10-40.30.040.C. shall apply to all property with the corresponding commercial zones.**

Table 10-40.30.040.C. Commercial Zones – Building Form and Property Development Standards					
<del>Building Form Standards</del>	Commercial Zones				
	SC	CC	HC	CS	CB
<b>Building Placement Requirements</b>					
Setback <b>from property line</b>					
Front	15' <b>min.</b> <sup>1</sup>	0'	0' <sup>2</sup>	0'	0'

(See also Also see Section 10-50.60.040.B)					
Side					
Adjacent to Residential Use	----- 15' min. <sup>7</sup> 15' min. <sup>6</sup> -----				
<del>All Other Uses</del>	0'	-	-	-	-
Exterior Street Side (min.)	10 <sup>13</sup>	10 <sup>13</sup>	10 <sup>13</sup>	10 <sup>13</sup>	0'
All Other sides	----- 0' -----				
Rear					
Adjacent to Residential	----- 15' min. -----				
All Other rears	----- 0' -----				
<b>Building Form Requirements</b>					
Building Height (max.)	35'	60 <sup>14,8</sup> 60 <sup>4,7</sup>	60 <sup>14</sup>	60 <sup>14</sup>	60 <sup>14</sup>
Gross FAR (max.)	0.8 <sup>5</sup> 0.8	2.5 <sup>5</sup> 2.5	3.0 <sup>5</sup> 3.0	2.0 <sup>5</sup> 2.0	No max.
<b>Density Requirements</b>					
Gross Density (units/acre) (max.) (Not Applicable to Mixed Use)	13	----- Refer to HR Zone 29 -----			
<b>Lot Requirements</b>					
Area (Gross sf) (min.) <sup>6</sup> (min.) <sup>5</sup>	6,000	9,000	9,000	9,000	7,000
Width (min.) <sup>6</sup> (min.) <sup>5</sup>	50'	60'	60'	60'	50'
Depth (min.) <sup>6</sup> (min.) <sup>5</sup>	100'	100'	100'	100'	--
<b>Open Space</b>					
Developments with Two or More Dwelling Units	----- 15 percent of the net lot area -----				
<b>Other Requirements</b>					
Fences and Screening	See Division 10-50.50				
Landscaping	See Division 10-50.60				
Outdoor Lighting	See Division 10-50.70				
Parking	See Division 10-50.80				
Signs	See Division 10-50.100				
<b>End Notes</b>					
<sup>1</sup> 1. Front setbacks shall be equal to 15' or match adjacent residential development, whichever is less.					
<sup>2</sup> 2. No front setback required, except when required by the adoption of building setback lines along specified streets.					
<sup>3</sup> 3. Setback may be reduced to 5' min., if the landscape street buffer is reduced in accordance with Section 10-50.60.040(B), Nonresidential Zone Buffers.					
<sup>4</sup> 4. Conditional use permit required for structures over 60' in height.					
<del><sup>5</sup> 5. Excludes residential square feet (gross) when above or behind commercial uses.</del>					
<sup>6</sup> 5. Within a planned residential development, the minimum area, width, and depth of a lot may vary based on the minimum lot standards applicable to the building types selected for application within a planned residential development (see Section 10-40.60.280, Planned Residential Development).					
<sup>7</sup> 6. Except that the setback from a proposed residential use in a commercial zone to other residential uses shall be 5' min.					

**7.** Single-family dwellings and duplexes in the CC zone shall be limited to a maximum height of 35 feet consistent with the height standard for the MR zone.

Section 15. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.040 Commercial Zones, Subsection D. Miscellaneous Requirements – All Commercial Zones., as follows:

D. Miscellaneous Requirements – All Commercial Zones.

~~1. Storage shall be limited to accessory storage of commodities sold at retail on the premises and shall be within an enclosed building, except as permitted in Section 10-40.60.020(E), Permanent Outdoor Accessory Uses.~~

~~2. Every commercial zoned lot shall have frontage on a public street.~~

**1. In accordance with Title 11 Subdivision and Land Split Regulations, and Title 12 Engineering Design Standards and Specifications for New Infrastructure, of the City Code, all land subdivided into lots or parcels shall abut a public right-of-way or private street tract, and have water and sewer infrastructure service.**

~~3.~~ **2.** All products incidental to a permitted use which are manufactured or processed on the premises shall be sold on the premises and at retail only, and shall be further limited as follows:

a. In the CC and CB zones, such activity shall be restricted to not over 25 percent of ground floor area of the building or buildings.

b. In the CS zone, such activity shall be restricted to not over 50 percent of ground floor area of the building or buildings.

c. In the CC and CB zones, not more than five employees shall be engaged in such activity.

d. In the CS zone, not more than 10 employees shall be engaged in such activity.

4. Every development in the commercial zones shall have a refuse storage area constructed and provided in accordance with City standards.

5. Temporary uses shall be permitted in compliance with Section 10-20.40.150, Temporary Use Permits.

~~6. The cultivation of vegetable gardens for home use is allowed in all commercial zones where residential uses are permitted.~~

**6. Accessory Uses:**

**a. An Accessory Dwelling Unit (ADU) use is allowed in commercial zones on a lot containing a single-family dwelling unit as the primary use.**

**b. All other accessory uses are allowed in accordance with section 10-40.60.025.**

- 7. Accessory structures:
  - a. An Accessory Dwelling Unit (ADU) structure that complies with section 10-40.60.030. is allowed in Community Commercial (CC) zone on a lot containing a detached single-family dwelling.
  - b. All other accessory structures are allowed in accordance with section 10-40.60.020.

Section 16. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.050 Industrial Zones, subsection B. Industrial Zones – Allowed Uses, Table 10-40.30.050.B. Industrial Zones – Allowed Uses, to add Outdoor Storage under the use category Industrial, Manufacturing, Processing and Wholesaling, in alphabetical order, and to amend the Warehousing Specific Use Regulations, as follows:

**10-40.30.050 Industrial Zones**

B. **Industrial Zones – Allowed Uses.** The allowed land uses of each of the Industrial zones are shown in Table 10-40.30.050.B.

Table 10-40.30.050.B. Industrial Zones – Allowed Uses						
Land Use <sup>1</sup>	Specific Use Regulations	Industrial Zones				
		RD	LI	LI-O	HI	HI-O
<b>Industrial, Manufacturing, Processing and Wholesaling</b>						
Outdoor Storage	10-40.60.275.	--	--	--	P	P
Warehousing	<del>10-40.60.330</del>	--	P	P	P	P

Section 17. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.050 Industrial Zones, Subsection D. Miscellaneous Requirements – All Industrial Zones., as follows:

- D. **Miscellaneous Requirements – All Industrial Zones.** ~~Temporary uses shall be permitted in compliance with Section 10-20.40.150, Temporary Use Permits.~~
  - 1. In accordance with Title 11 Subdivision and Land Split Regulations, and Title 12 Engineering Design Standards and Specifications for New Infrastructure, of the City Code, all land subdivided into lots or parcels shall abut a public right-of-way or private street tract, and have water and sewer infrastructure service.
  - 2. Accessory uses are allowed in accordance with section 10-40.60.025.
  - 3. Accessory structures are allowed in accordance with section 10-40.60.020.

Section 18.

Amend Title 10 FLAGSTAFF ZONING CODE, 10-40.30.060 Public and Open Space Zones, Subsection B. Public and Open Space Zones – Allowed Uses, as follows – including table format, grid lines and shading:

**10-40.30.060 Public and Open Space Zones**

**B. Public and Open Space Zones – Allowed Uses. The allowed land uses of each of the Public and Open Space zones are shown in Table 10-40.30.060.B**

<b>Table 10-40.30.060.B. Public and Open Space Zones – Allowed Uses</b>				
<del>Land Use<sup>1</sup></del> Land Use	Specific Use Regulations	Public and Open Space Zones		
		<del>PF<sup>2</sup></del> PF	PLF	POS
<b>Industrial, Manufacturing, Processing and Wholesaling</b>				
Quarrying Operations	10-40.60.280	UP	--	--
<b>Ranching, Forestry and Animal Keeping</b>				
Forestry		--	P	--
Ranching		--	P	--
<b>Recreation, Education and Assembly</b>				
Commercial Campgrounds	10-40.60.130	UP	--	--
Commercial Recreation Facilities, Indoor		UP	--	--
Commercial Recreation Facilities, Outdoor	10-40.60.270	UP	--	--
Libraries, Museums		P	--	--
Outdoor Public Uses, General		P	--	--
Open Spaces		P	P	P
Parks or Recreation Facilities				
Active Recreation		P	--	--
<del>Passive Recreation<sup>3</sup></del> Passive Recreation		P	P	P
Schools – Public and Charter		P	--	--
Schools – Private		UP	--	--
Universities and Colleges		P	--	--
<b>Residential</b>				
<del>Accessory Building and Structures</del>	<del>10-40.60.020</del>	<del>P</del>	<del>--</del>	<del>--</del>
<del>Congregate Care Facilities</del>		<del>P</del>	<del>--</del>	<del>--</del>

**Table 10-40.30.060.B.  
Public and Open Space Zones – Allowed Uses**

<del>Land Use</del> <sup>1</sup> Land Use	Specific Use Regulations	Public and Open Space Zones		
		<del>PF</del> <sup>2</sup> PF	PLF	POS
Employee Housing		P	--	--
Institutional Residential				
<b>Congregate Care Facilities</b>		<b>P</b>	<b>--</b>	<b>--</b>
Convents or Monasteries		UP	--	--
Custodial Care Facilities		UP	--	--
Homeless Shelters	10-40.60.190			
Emergency Shelters		UP	--	--
Short Term Housing		UP	--	--
Transitional Housing		UP	--	--
Nursing Homes		UP	--	--
Sheltered Care Homes		UP	--	--
<b>Retail Trade</b>				
Farmers Markets and Flea Markets		P	--	--
<b>Services</b>				
Cemeteries		UP	--	--
Governmental Offices		P	--	--
Public Services				
Public Services Major		UP	--	--
Public Services Minor		UP	UP	--
Emergency Services		UP	--	--
<b>Telecommunication Facilities</b>				
AM Broadcasting Facilities	10-40.60.310	UP	UP	--
Antenna-supporting Structure	10-40.60.310	UP	UP	--
Attached Telecommunication Facilities	10-40.60.310	P	P	--
Collocation Facility	10-40.60.310	P	P	--
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	P	UP	--
Stealth Telecommunication Facilities	10-40.60.310	P	P	--
<b>Transportation and Infrastructure</b>				
Accessory Wind Energy Systems	10-40.60.040	P	P	--

<b>Table 10-40.30.060.B. Public and Open Space Zones – Allowed Uses</b>				
<del>Land Use</del> <sup>1</sup> Land Use	Specific Use Regulations	Public and Open Space Zones		
		<del>PF</del> <sup>2</sup> PF	PLF	POS
Wind Energy Production Facility		UP	P	--
Airports/Landing Strips, Heliports, or Helistops	10-40.60.060	UP	--	--
Government Service/Maintenance Facilities		P	--	--
Municipal Airports		P	--	--
<b>Urban Agriculture</b>				
Community Gardens	10-40.60.140	P	--	--
<b>End Notes</b>				
<del><sup>1</sup> A definition of each listed use type is in Chapter 10-80, Definitions.</del>				
<del><sup>2</sup> A change in any allowed use to another allowed use shall be noticed in accordance with the requirements of Section 10-20.30.080, Notice of Public Hearings.</del>				
<del><sup>3</sup> Includes parking areas and restroom facilities.</del>				
<b>Key</b>				
<b>P = Permitted Use</b>				
<b>UP = Conditional Use Permit Required</b>				
<b>-- = Use Not Allowed</b>				

Section 19. Amend Title 10 FLAGSTAFF ZONING CODE, 10-40.30.060 Public and Open Space Zones, to add Subsection D. Miscellaneous Requirements – Public and Open Space Zones., as follows:

**10-40.30.060 Public and Open Space Zones**

**D. Miscellaneous Requirements – Public and Open Space Zones.**

1. In accordance with Title 11 Subdivision and Land Split Regulations, and Title 12 Engineering Design Standards and Specifications for New Infrastructure, of the City Code, all land subdivided shall: a) front/about a public right-of-way or private street tract with an improved street; and b) have water and sewer infrastructure serving each lot or parcel.
2. Accessory uses are allowed in accordance with section 10-40.60.025.
3. Accessory structures are allowed in accordance with section 10-40.60.020.

Section 20. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.40.100 T6 Downtown (T6) Standards, Subsection C. Building Placement, **Miscellaneous**, to delete the phrase “stucco or”, as follows:

**10-40.40.100 T6 Downtown (T6) Standards**

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**C. Building Placement**

**Miscellaneous**

Street facades must be built to BTL within 50’ of each street corner. E

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The entire BTL must be defined by a building or a 24" to 48" high ~~stucco or~~ masonry wall.

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Loading docks, overhead doors and other service entries shall not be located on front or street-facing facades.

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Section 21. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.020 Accessory Buildings and Structures, as follows:

**10-40.60.020 Accessory ~~Buildings and~~ Structures**

~~A. — Applicability. Accessory buildings and structures shall be permitted in all zones in compliance with this section, provided each is incidental and subordinate to the principal use or structure. There must be a primary use established and either a principal structure on the parcel or a building permit for a principal structure issued prior to, or simultaneously with, the issuance of a building permit for an accessory building or structure. Children’s play houses and tree houses less than 200 square feet in floor area are not considered accessory structures and do not require a building permit. Sheds less than or equal to 200 square feet in floor area also do not require a building permit.~~

**A. Allowance.**

1. An Accessory Dwelling Unit (ADU) structure is allowed in accordance with Sections 10-40.30.030.D. and 10-40.30.040.D.
2. All other accessory structures are allowed in all zones in compliance with this section.

~~**B. — Uses.**~~

- ~~1. An accessory structure shall be used in compliance with the permitted uses of the zone within which it is located and, if applicable, the home occupation regulations in Section 10-40.60.180, Home Occupations.~~
- ~~2. The use of accessory buildings or structures shall be incidental to the primary use and shall not alter the character of the primary use.~~
- ~~3. Temporary, occasional, seasonal or periodic uses in connection with established retail stores or shopping centers, such as outdoor garden centers, sidewalk sales, or sales promotions, are considered accessory uses and not subject to a temporary use permit in compliance with Section 10-20.40.150, Temporary Use Permits.~~

**C. B Approvals and Standards.**

1. The property owner shall obtain permits and approvals for an accessory structure in accordance with Division 10-20.40: Permits and Approvals.
2. An accessory structure shall not be allowed on a lot or parcel without a primary structure on the same property.
3. A primary structure shall be established prior to the issuance of a permit for an accessory structure, except that a permit for an accessory structure may be issued concurrent, or after, a permit is issued for the primary structure.
- ~~1.~~ 4. No manufactured home, mobile home, trailer, semi-trailer, bus, recreational vehicle, boxcar or storage container shall be used as an accessory ~~buildings or~~ structure, except as permitted in subsection ~~(D)~~ C. of this section.
- ~~2. Accessory buildings and structures shall be governed by the lot coverage, floor area ratio and setback requirements of the zone in which they are located, except as provided below.~~
5. Accessory Dwelling Units shall comply with Section 10-40.60.030.
6. Permanent Storage Structures shall comply with subsection C. of this section.
7. All other accessory structures shall comply with the property development standards of the property's zone, except as specified below:
  - a. On any residential lot less than one acre, the total floor area of all accessory ~~buildings and~~ structures ~~(including ADUs [Section 10-40.60.030])~~ shall be less than that of the lot's or parcel's ~~principal building(s) primary structure on the site.~~
  - b. The distance between a ~~principal primary~~ structure and an accessory structure shall ~~be established by comply with~~ the Building Code. ~~This distance may vary by occupancy type.~~
  - ~~c. Accessory buildings and structures are not permitted in any exterior side setback and shall not occupy any portion of a required setback except as provided in Table 10-40.60.020.A, Accessory Structure Height and Location Standards.~~
  - c. An accessory structure is not allowed in any Street Side Yard.

~~d. One story accessory structure(s) no more than 16 feet in height may be constructed on any lot no closer than five feet from the rear or interior side property line, except that on corner lots no accessory structure shall be permitted in any exterior yard.~~

d. Allowed Encroachments into the required setbacks in addition to Section 10-50.40.020. A non-habitable structure (e.g., garage, workshop, carport, shed, greenhouse, etc.) may encroach into the property's required zone setbacks in accordance with Table 10-40.60.020.B.7.d.

Table 10-40.60.020.B.7.d. Allowed Accessory Structure Encroachments into Setbacks	
Yard of Encroachment	Minimum Setback
Rear yard abutting a public alley right-of-way or private alley tract:	0 feet.
Rear yard abutting another lot or parcel:	5 feet.
Interior side yard:	5 feet.
Street side yard:	No encroachment allowed.
Front Yard:	No encroachment allowed.
<b>Notes</b>	
1. Refer to Section 10-50.50.030 Siting and Building Standards regarding the locations and heights of walls and fences.	

~~e. Encroachments into minimum required setbacks shall be in compliance with Division 10-50.40, Encroachments.~~

e. The maximum height of an accessory structure shall comply with Table 10-40.60.020.B.7.e.

Table 10-40.60.020.B.7.e. Allowed Height of Accessory Structure	
Location of Accessory Structure	Setback Requirement
Within the building envelope:	24 feet.
All other locations allowed pursuant to Table 10-40.60.020.B.7.d.	16 feet.

~~f.—The maximum height of all accessory buildings and structures shall be 24 feet except as provided in Table 10-40.60.020.A, Accessory Structure Height and Location Standards, unless the zone or overlay zone has a more restrictive height limit.~~

~~Table 10-40.60.020.A: Accessory Structure Height and Location Standards~~

<del>Location</del>	<del>Max. Height (feet)</del>
<del>Non-livable structures (e.g., garage, workshop, carport, shed, greenhouse)</del>	
<del>Within Buildable Area</del>	<del>24'</del>
<del>Min. 5' Setback to Rear and Interior Side Property Line, and 0' Setback to Rear Property Line with Alley<sup>1</sup></del>	<del>16'</del>
<del>Livable structures (e.g., ADU, studio or home office)<sup>2</sup></del>	
<del>Within Buildable Area</del>	<del>24'</del>
<del>Min. 5' Setback to Rear and Interior Side Property Line</del>	<del>16'</del>
<del>End Notes</del>	
<del><sup>1</sup> Structures located on property lines shall be required to comply with applicable City Building Code and Fire Code requirements.</del>	
<del><sup>2</sup> These livable structures may be located above a garage or other non-livable space.</del>	

~~D.—Temporary and Permanent Storage Containers.~~

~~1.—Residential Zones. The following standards apply to the temporary and permanent use of storage containers located in all residential zones.~~

~~a.—Temporary Use.~~

~~(1)—In the case of fire, flood, or other emergency situation, storage containers may be placed, stored, or used for temporary storage on property zoned for residential use, provided the owner has applied for a temporary use permit from the Director within three days of the emergency. The duration of the temporary storage use shall be limited to a maximum of 90 days within a calendar year, with the option to renew the permit one time, for each period not to exceed 90 days.~~

~~(2)—Storage containers may be placed, stored, or used for temporary storage on property zoned for residential use for minor remodeling~~

~~projects for which a building permit is not required provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 90 days within a calendar year, with the option to renew the permit one time, for a period not to exceed 90 days.~~

- ~~(3) Storage containers may be placed, stored, or used for temporary storage on property zoned for residential use if a building permit has been obtained from the City for major/new construction involving principal or accessory structures located on the subject property. The use shall be permitted for the time period beginning with issuance of the building permit, and expiring seven days after the issuance of a certificate of occupancy, at which time the storage container shall be removed.~~
- ~~(4) Storage containers used for temporary storage may be placed within the rear, side, or front setback, and shall not be placed in the public right-of-way unless a right-of-way encroachment permit has been obtained from the City Engineering Section.~~
- ~~(5) Storage containers may be temporarily placed on property zoned for residential use for the purpose of loading or unloading household contents while in the process of moving, for a period not to exceed 14 days.~~
- ~~(6) Storage containers mounted on trailers/wheels shall not be permitted for temporary use in residential zones.~~
- ~~(7) No signs shall be permitted to be placed on any part of a storage container, except for a sign displaying the name of the storage container business which shall be limited to a sign area of six square feet.~~

~~b. Permanent Use. Storage containers may be permitted for permanent use in residential zones, subject to approval of a minor improvement permit (see Section 10-20.40.080) and the following conditions:~~

- ~~(1) The storage container shall be considered an accessory structure to the principal structure. No storage containers are permitted on vacant or undeveloped lots where no primary structure or use has been established;~~
- ~~(2) Storage containers may only be placed in rear yards and interior side yards in compliance with the standards provided in Table 10-50.40.020.A (Allowed Encroachments into Setbacks, and Heights), and are not permitted in front yards or exterior side yards. Compliance with all applicable regulations of the Zoning Code is required, including lot coverage restrictions;~~
- ~~(3) No more than one storage container is permitted on any residential lot or parcel;~~

- ~~(4) The maximum size for a storage container located on property zoned for residential use shall be Ground floor uses0 square feet;~~
- ~~(5) The maximum height of a storage container used for storage purposes shall be nine feet measured from natural grade to the top of the container;~~
- ~~(6) Storage containers shall be painted a neutral, earth tone, or to match the building by which they are placed;~~
- ~~(7) Storage containers shall be used for storage only, and shall not otherwise be occupied as habitable space. Storage containers shall not be connected to sewer, water or gas service, but may be permitted to have electrical service for lighting/plug-ins;~~
- ~~(8) No signs shall be permitted to be placed on any part of a storage container; and~~
- ~~(9) Storage containers mounted on trailers/wheels shall not be permitted for permanent use in residential zones.~~

~~2.—Commercial and Research and Development Zones. The following standards apply to the temporary and permanent use of storage containers located in all commercial and research and development zones.~~

~~a.—Temporary Use.~~

- ~~(1) In the case of fire, flood, or other emergency situation, storage containers may be placed, stored, or used for temporary storage on property zoned for commercial or research and development uses, provided the owner has applied for a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time at the discretion of the Director, for a period not to exceed 90 days. Storage containers may be placed within the front setback, and shall not be placed in the public right-of-way unless a right-of-way encroachment permit has been obtained from the City Engineering Section.~~
- ~~(2) Storage containers may be placed, stored, or used for temporary storage on property zoned for research and development uses for minor remodeling projects for which a building permit is not required, provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 90 days within a calendar year, with the option to renew the permit one time, for a period not to exceed 90 days.~~
- ~~(3) Storage containers may be placed, stored, or used for temporary storage on property zoned for commercial or research and development uses if a building permit has been obtained from the City for major/new construction on the subject property. The use shall be permitted for the time period beginning with issuance of the~~

~~building permit, and expiring seven days after the issuance of a final certificate of occupancy, at which time the storage container shall be removed. Storage containers may be placed within the front setback, and shall not be placed in the public right-of-way unless a right-of-way encroachment permit has been obtained from the City Engineering Section.~~

~~(4) In the case of seasonal sales events, storage containers may be placed, stored, or used for temporary storage on property zoned for commercial or research and development uses, provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use during a seasonal sales event shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time by the Director, for a period not to exceed 30 days. Storage containers used for sales events shall be placed in an area that is not visible from the public right-of-way, unless the container is placed in the loading/dock area of the subject business.~~

~~(5) Storage containers mounted on trailers/wheels shall not be permitted for temporary use in commercial and research and development zones.~~

~~(6) No signs shall be permitted to be placed on any part of a storage container, except for a sign displaying the name of the storage container business which shall be limited to a sign area of six square feet.~~

~~b. Permanent Use. Storage containers may be permitted for permanent use in commercial and research and development zones, subject to approval of a minor improvement permit (see Section 10-20.40.080) and the following conditions:~~

~~(1) The storage container shall be considered an accessory structure to the principal structure. No storage containers are permitted on vacant or undeveloped lots where no primary structure or use has been established;~~

~~(2) Storage containers shall only be placed in compliance with all applicable regulations of the Zoning Code, including setbacks, FAR, and lot coverage restrictions;~~

~~(3) Storage containers shall not be placed in parking areas nor in a location where they are visible from public rights-of-way, unless the container is placed in the loading/dock area of the subject business;~~

~~(4) The maximum size for a storage container located on property zoned for commercial or research and development uses shall be 384 square feet;~~

~~(5) The maximum height of a storage container used for storage purposes shall be 10 feet measured from natural grade to the top of the container;~~

- ~~(6) Storage containers shall be painted a neutral, earth tone, or to match the primary building near where they are placed;~~
  - ~~(7) Storage containers shall be used for storage only, and shall not otherwise be occupied as habitable space. Storage containers shall not be connected to sewer, water or gas service, but may be permitted to have electrical service for lighting/plug-ins;~~
  - ~~(8) No signs shall be permitted to be placed on any part of a storage container; and~~
  - ~~(9) Storage containers mounted on trailers/wheels shall not be permitted in commercial and research and development zones.~~
- ~~3. Industrial and Public Lands Zones. The following standards apply to the temporary and permanent use of storage containers located in all Industrial and Public Lands zones.~~
- ~~a. Temporary Use.~~
    - ~~(1) In the case of fire, flood, or other emergency situation, storage containers may be placed, stored, or used for temporary storage on property zoned for industrial or public lands use, provided the owner has applied for a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time at the discretion of the Director, for a period not to exceed 90 days.~~
    - ~~(2) Storage containers may be placed, stored, or used for temporary storage on property zoned for industrial or public lands use for minor remodeling projects for which a building permit is not required, provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time, for a period not to exceed 90 days.~~
    - ~~(3) Storage containers may be placed, stored, or used for temporary storage on property zoned for industrial or public lands use if a building permit has been obtained from the City for new development on the subject property. The use shall be permitted for the time period beginning with issuance of the building permit, and expiring seven days after the issuance of a certificate of occupancy, at which time the storage container shall be removed.~~
    - ~~(4) Storage containers used for temporary storage may be placed within the front setback, and shall not be placed in the public right of way unless a right of way encroachment permit has been obtained from the City Engineering Section.~~
    - ~~(5) No signs shall be permitted to be placed on any part of a storage container, except for a sign displaying the name of the storage~~

~~container business which shall be limited to a sign area of six square feet.~~

~~b. Permanent Use. Permanent storage containers shall be permitted on property zoned for industrial or public facilities use, subject to approval of a minor improvement permit (see Section 10-20.40.080) and the following conditions:~~

- ~~(1) The storage container shall be considered an accessory structure to the principal structure;~~
- ~~(2) The storage container shall only be placed in compliance with all regulations of the Zoning Code, including setbacks, FAR, and lot coverage restrictions;~~
- ~~(3) The maximum size permitted for a storage container located on property zoned for industrial or public lands use shall be 320 square feet;~~
- ~~(4) The maximum height of a storage container used for storage purposes shall be 10 feet measured from natural grade to the top of the container;~~
- ~~(5) Storage containers shall be painted a neutral, earth tone, or to match the primary building near where they are placed;~~
- ~~(6) Storage containers shall be used for storage only, and shall not otherwise be occupied as habitable space. Storage containers shall not be connected to sewer, water or gas service, but may be permitted to have electrical service for lighting/plug-ins; and~~
- ~~(7) No signs shall be permitted to be placed on any part of a storage container.~~

~~E. Permanent Outdoor Accessory Uses. Permanent, outdoor accessory uses, including nurseries or garden centers, are permitted with the following conditions:~~

- ~~1. The accessory use is clearly incidental to the primary commercial use of the property;~~
- ~~2. The accessory use shall not occupy more than 10 percent of the total area of the site;~~
- ~~3. To accommodate the accessory use, the number of parking spaces shall not be reduced more than 10 percent below the number of spaces required by Division 10-50.80, Parking Standards, or more than 10 percent of the spaces provided;~~
- ~~4. The accessory use shall be conducted only between the hours of 6:00 a.m. and 9:00 p.m. or during the established business hours of operation, whichever is shorter; and~~
- ~~5. The accessory use shall not be located in improved parking stalls or areas.~~

## C. Permanent Storage Structures.

### 1. Placement.

- a. Residential and Transect Zones. A storage structure shall be placed in: 1) the building envelope, and behind the rear of the primary structure; 2) the

rear yard or interior side yard in compliance with the standards provided in subsection B.7.d. of this section; or 3) a combination of the building envelope's rear yard, or interior side yard in compliance with the standards provided in subsection B.7.d. of this section.

- b. **Commercial Zones.** A storage structure shall: 1) be placed in compliance with the property development requirements of the property's zone; 2) be placed in a location where it is not visible from the public right-of-way, unless the container is placed in the loading/dock area; and, 3) not be placed in parking areas.
  - c. **Industrial and Public Facility Zones.** A storage structure shall only be placed: 1) in compliance with the property development standards of the property's zone; and, 2) in a location where it is not visible from the public right-of-way, unless the container is placed in the loading/dock area.
3. **Maximum floor area.**
- a. **Residential and Transect Zones.** A storage structure's floor area shall not exceed 160 square feet.
  - b. **Commercial, Industrial, and Public and Open Space Zones.** A storage structure's floor area shall not exceed 384 square feet.
4. **Maximum height.** A storage structure shall not exceed a height of 10 feet measured from finish grade directly below the container.
5. **Maximum number of storage structures on a property in all residential and transect zones: one.**
6. **Additional requirements in the Commercial, Industrial, and Public and Open Space Zones.** All property development standards of the property's zone not specified in this subsection shall apply to a storage structure.
7. **Additional requirements in all zones.**
- a. **A storage structure shall:**
    - (1) Have an exterior color that is an earth tone with a light reflectance value of 50 or less, or matches the main color of a building on property that the structure is placed nearest to;
    - (2) Be non-habitable, and used only for storage purposes; and
    - (3) Not be connected to any utility service, except for an electrical service to provided lighting and electrical plugs.
  - b. **Storage structures mounted on trailers/wheels shall not be permitted.**

Section 22. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.60: Specific to Uses, to add Section 10-40.60.025 Accessory Uses, as follows:

**10-40.60.025 Accessory Uses.**

**A. Accessory Uses Allowed.**

1. An Accessory Dwelling Unit (ADU) use is allowed where specified in Sections 10-40.30.030 and 10-40.30.040.
2. All other accessory uses of a property are allowed in connection with a primary use on the same property.
3. An accessory use shall require the approval of a Conditional Use Permit when the accessory use is listed as primary use that requires a Conditional Use Permit in the same zone.

**B. Determination of an Accessory Use. In determining that a use is accessory to a primary use, the Zoning Administrator shall find that the accessory use is clearly customary, subordinate and incidental to the primary use on the same property.**

**D. Additional Criteria for Accessory Uses.**

1. **Outdoor Storage.** All outdoor storage areas shall comply with Section 10-40.60.275.
2. **Animal Keeping.** Animal keeping shall be maintained in conformance with Section 10-40.60.070.
3. **An Accessory Dwelling Unit (ADU) shall comply with Section 10-40.60.030.**

Section 23. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.150 Day Care Home and Center, as follows:

**10-40.60.150 Day Care Home and Center**

**A. Day Care Home.**

1. No more than one full-time person not residing on the premises may be employed in the home day care use.
2. The home day care shall be conducted in a manner that does not create adverse impacts on the residential character of the neighborhood , **including, but not limited to dust, noise, order, and traffic.**
3. During the hours of activity of the day care use, there is no limit on the amount of floor area devoted to this secondary use.
4. Outdoor activities and equipment associated with the home day care are permitted and must be screened by a minimum five-foot-high fence or wall.
5. The hours of operation shall not create adverse impacts on adjoining properties.
6. **The maximum number of persons that day care services may be provided for in a dwelling or a dwelling's accessory structure shall not exceed eight persons. The maximum number of eight persons shall include children under the age of 14, and any older individual, or disabled person (14 years of age or older) that resides in the dwelling and supervision is provided for.**

7. Supervision of children, older individuals, or disabled adults is limited to less than 24-hours.
8. When required by the State of Arizona, all day care homes shall maintain an active state issued license.

**B. Day Care Center.**

1. Day care center facilities shall comply with all applicable State and fire codes, including Arizona Revised Statutes.
2. Day care center on-site exterior lighting shall be consistent with Division 10-50.70, Outdoor Lighting Standards.
3. A six-foot-high solid fence or wall shall be constructed on all property lines or around the outdoor activity areas of day care centers, except in the front setback or within a traffic safety visibility area, in compliance with Division 10-50.50, Fences and Screening.
4. All day care center facilities shall have public access.
5. The hours of operation shall not create adverse impacts on adjoining properties.
6. Supervision of children, older individuals, or disabled adults is limited to less than 24-hours.
7. When required by the State of Arizona, all day care homes shall maintain an active state issued license.

Section 24. Amend Title 10 FLAGSTAFF ZONING CODE, 10-40.60.250 Mini–Storage Warehousing., as follows:

10-40.60.250 Mini–Storage Warehousing

- A. ~~No sales, service, or repair activities other than the rental of storage units are permitted on the premises.~~  
**No business shall be operated out of a storage unit or outdoor storage area.**
- B. **All storage shall be within an enclosed building, except for accessory outdoor storage: 1) is limited to operable vehicles with a valid governmental registration; and 2) shall not exceed 10 percent of the gross site area; and, shall comply with Section 10-40.60.275. Outdoor Storage.**
- B. Maximum ~~leasable space per tenant shall be~~ **area of an individual storage unit:** 1,000 square feet.
- C. ~~Outdoor storage, or the~~ **The** storage of ~~junk refuse, compost,~~ **junk refuse, compost,** explosives, ~~or~~ **or** flammable materials, and other noxious or dangerous **materials, as determined by the City Fire Marshall,** are ~~specifically~~ **specifically** prohibited.
- D. **Minimum vehicle drive aisle width: There shall be a of** 21 feet ~~between warehouse buildings for driveway, parking and fire lane purposes.~~

E. Minimum fire lane width: Comply with the Fire Code.

~~E. All storage shall be within an enclosed building except that within the compound of a self-storage warehouse where operable recreational vehicles and motor vehicles may be placed in outdoor storage areas that are separated from view from adjacent streets and property in compliance with Table 10-50.60.040.B, Buffer and Screening Requirements. Outdoor recreational vehicle storage areas shall not exceed 10 percent of the gross site area.~~

Section 25. Amend Title 10 FLAGSTAFF ZONING CODE, to add Section 10-40.60.275 Outdoor Storage, as follows:

**10-40.60.275. Outdoor Storage.**

**A. Screening requirement for a primary or accessory outdoor storage use.**

1. Heavy Industrial (HI) and Heavy Industrial – Open sub-zone (HI-O) zones. All outdoor storage shall be completely enclosed within an area contained by a solid wall or fence, or chain link fence with slats that has minimum height of six (6) feet. A screen wall or fence within the required building area may be constructed to the maximum height allowed by the property's zone.

2. All other zones:

- a. All outdoor storage shall be completely enclosed within an area contained by a solid wall or fence that is at least one (1) foot taller than the tallest object being screened.
- b. The maximum height of a wall or fence within the required setbacks shall comply with Table 10-50.50.030.A.
- c. A screen wall or fence within the required building area may be constructed to the maximum height allowed by the property's zone.

**B Ground surface treatment.** The ground of an outdoor storage area, including areas used for vehicle circulation, shall be maintained weed-free and have a dust-free surface (e. g., gravel, decomposed granite, etc.) approved by the Director. Based upon the intensity or frequency of vehicle traffic that is anticipated within the storage area, or the proximity to an adjacent residential use, the Director may require an outdoor storage area or vehicle travel lanes to have a pavement surface.

**C. Non-conforming outdoor storage.** Screening and ground surfaces for all outdoor storage areas shall be provide in compliance with the requirements of this section when the cumulative expansion of a non-conforming outdoor storage area, or a building with a non-conforming outdoor storage area, is enlarged by 25 percent or more.

Section 26. Amend Title 10 FLAGSTAFF ZONING CODE, Table 10-40.60.280.A: Planned Residential Development Building Type Options, as follows:

Table 10-40.60.280.A: Planned Residential Development Building Type Options											
Building Type	Residential Zones See Section 10-40.30.030(C) for Building Form Standards						Commercial Zones See Section 10-40.30.040(C) for Building Form Standards				
	RR	ER	RI	R1N	MR	HR	SC	CC	HC	CS	CB
Carriage House	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	--
Single-family											
Estate	✓	✓	✓	--	--	--	--	--	--	--	--
House	✓	✓	✓	✓	✓	✓	--	✓	--	--	--
Cottage	✓	✓	✓	✓	✓	✓		✓	--	--	--
Bungalow Court	✓	✓	✓	✓	✓	✓	--	✓	--	--	--
Duplex											
Side-by-Side	✓	✓	✓	✓	✓	✓	✓	✓	--	--	--
Stacked	✓	✓	✓	✓	✓	✓	✓	✓	--	--	--
Front-and-Back	✓	✓	✓	✓	✓	✓	✓	✓	--	--	--
Stacked Triplex	--	--	--	--	✓	✓	✓	✓	--	--	--
Townhouse	--	--	✓	- ✓	✓	✓	✓	✓	✓	✓	--
Apartment House	--	--	--	--	✓	✓	✓	✓	✓	✓	--
Courtyard Apartment	--	--	--	--	✓	✓	✓	✓	✓	✓	--
Apartment Building	--	--	--	--	✓	✓	--	--	✓	--	--
Live/Work	--	--	--	--	✓	✓	✓	✓	✓	✓	✓
Commercial Block	--	--	--	--	--	--	--	✓	✓	✓	✓

Section 27. Delete Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.320 Warehousing in its entirety, as follows:

**10-40.60.320-Warehousing**

~~Warehousing, where permitted, includes outdoor storage provided the entire storage yard is screened by a minimum six-foot high solid fence or wall, or chain-link fencing with slats. Outdoor storage includes storage yards for recreational vehicles, boats, trailers, and contractor's storage and supply yards. Surfacing requirements are to be determined by the Director, based upon the intensity of use, and may range from pavement to a permeable, dust-free, weed-free surface (e.g., gravel). Any expansions of existing storage yards or buildings with storage yards, of 25 percent or more in area, shall also provide screening for the entire yard area.~~

Section 28. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.30.030 How Building Height Is Measured, subsection A. Applicable to All Zones., paragraph 1. Building Height Plane subparagraph b., as follows:

**Section 10-50.30.030 How Building Height Is Measured**

**A. Applicable to All Zones.**

**1. Building Height Plane.**

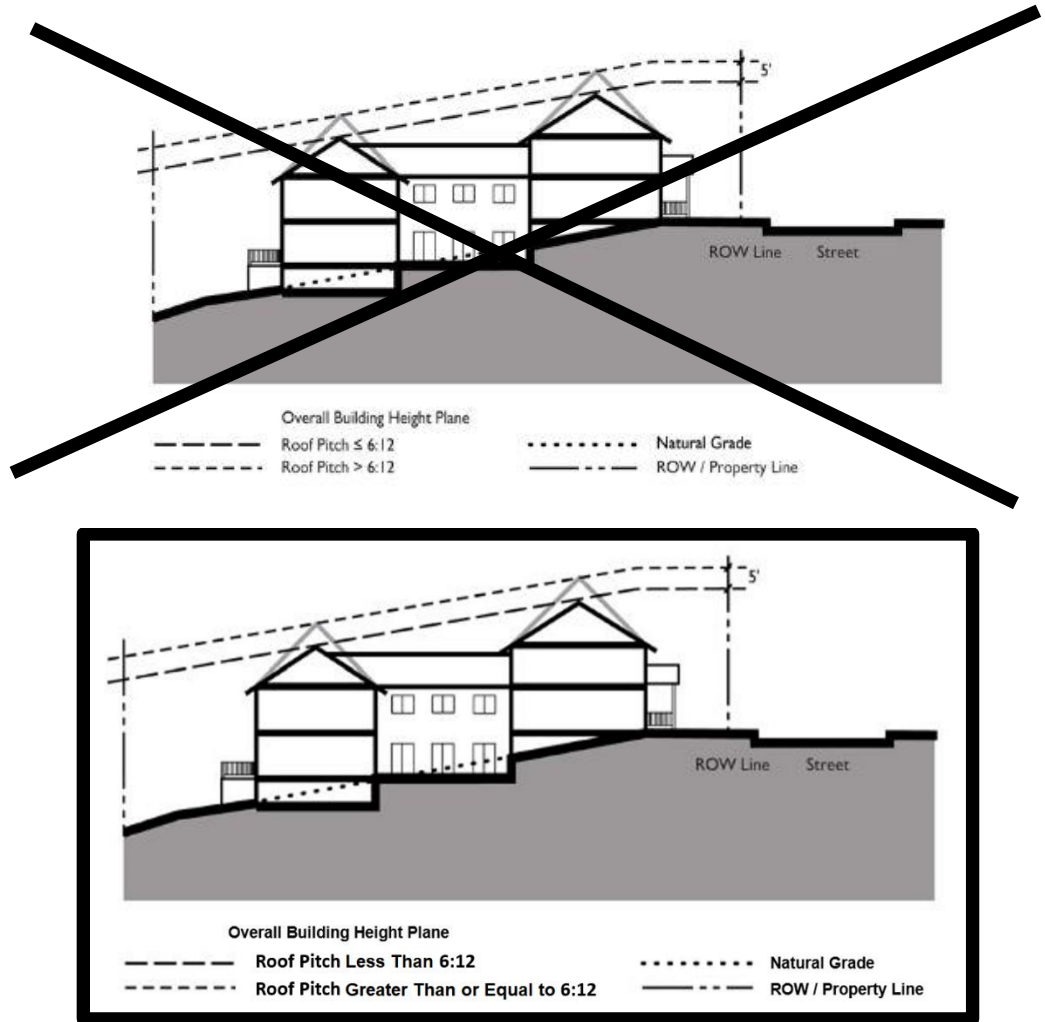
- b. Primary buildings with a roof pitch greater than **or equal to** 6:12 shall be allowed an additional five feet above the maximum building height in the zone. Accessory buildings and structures regardless of roof pitch shall not be allowed any additional building height.

Section 29.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.30.030 How Building Height Is Measured, subsection A. Applicable to All Zones., Figure 10-50.30.030B. Pitched roof building height measurements (not drawn to scale)., as follows:

**Section 10-50.30.030 How Building Height Is Measured**

**A. Applicable to All Zones.**



**Figure 10-50.30.030B.**

**Pitched roof building height measurements (not drawn to scale).**

Section 30.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.40.020 Encroachments into Minimum Required Setbacks, Table 10-50.40.020.A: Allowed Encroachments into Setbacks and Heights, as follows – including adding grid lines and shading to the table:

<b>Table 10-50.40.020.A: Allowed Encroachments into Setbacks and Heights</b>	
<b>Arbors, Awnings, Canopies, Court Yards, Decks, Patios, Pergolas, Porches, Stoops, Trellis, Hooded Entries, Carports and Balconies<sup>1,2,3</sup></b>	
Front, Rear, <del>Exterior</del> Street Side Setback (max.)	<del>5'</del> <b>5 feet</b>
Interior Side Setback (max.)	<del>3'</del> <b>3 feet</b>
<b>Accessory Dwelling Units (ADUs)<sup>1</sup></b>	
See Section <del>10-40.60.040</del> <b>10-40.60.030</b>	
<b>Accessory <del>Buildings and</del> Structures<sup>1</sup></b>	
See Section 10-40.60.020	
<b>Ground Mounted Solar Panels</b>	
Front, Rear, <del>Exterior</del> Street Side Setback (max.)	<del>5'</del> <b>5 feet</b>
Interior Side Setback (max.)	<del>3'</del> <b>3 feet</b>
<b>Bay Windows, Open Eaves, Cornices, Fireplaces and Chimneys, and Window Sills</b>	
All Setbacks (max.)	<del>2'</del> <b>2 feet</b>
<b>End Notes:</b>	
<sup>1</sup> <b>1</b> In no case shall the permitted encroachment exceed 50 percent of the required setback. <sup>2</sup> <b>2</b> Refer to applicable Building Code sections for permitted projections into setback areas and ensure that a 3' space is maintained between an open stairway and the property line. <sup>3</sup> <b>3</b> Refer to applicable Building Code sections for construction less than 5' from a property line.	

Section 31.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.60.050 Landscaping Standards, subsection A. Landscape Design., Table 10-50.60.050.A: Landscape Credits for Existing Trees., as follows – including adding grid lines to the table:

**Section 10-50.60.050 Landscaping Standards**

**A. Landscape Design.**

Table 10-50.60.050.A: Landscape Credits for Existing Trees.	
Existing Tree Size (DBH)	No. of Trees Not Required
<del>6–10"</del> Equal to 6 inches, and less than 10 inches	1 Tree <sup>1</sup>
<del>10–18"</del> Equal to 10 inches, and less than 18 inches	2 Trees <sup>1</sup>
<del>&gt;18"</del> Equal to, or greater than, 18 inches	3 Trees <sup>1</sup>
<b>End Note</b>	
<sup>±</sup> 1. For each tree not required to be planted, the requirement for shrubs and groundcovers associated with that tree shall be waived.	

Section 32. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.90.060. Forest, subsection B. Methodology., as follows:

**10-50.90.060 Forest**

**B. Methodology**

1. This section establishes a minimum forest resource protection threshold for all parcels subject to the Resource Protection Overlay (RPO). Forest resources are determined according to the resources survey requirements (Section 10-50.90.070, Resources Survey Requirements), which establish the quality and priority for forest resource protection based on a point rating system.
2. Tables ~~10-50.90.060.A~~ **10-50.90.060.B.2.a. and 10-50.90.060.B.2.b., Forest Resource Protection Thresholds as a Percentage of Site Area**, shall be used to determine the minimum amount of forest resources that must be retained on-site. Protection thresholds applicable to affordable housing developments are located in Division 10-30.20, Affordable Housing Incentives.

~~Table 10-50.90.060.A: Forest Resource Protection Thresholds as a Percentage of Site Area~~

~~| Public Lands | Residential | Commercial | Industrial | TNCP |
|--------------|-------------|------------|------------|------|
| 30%          | 50%         | 30%        | 20%        | 30%  |~~

Table 10-50.90.060.B.2.a			
Forest Resource Protection Thresholds as a Percentage of Site Area			
Commercial Zones	Industrial Zones	Public and Open Space Zones	Residential Zones
30%	20%	30%	50%

Table 10-50.90.060.B.2.b			
Forest Resource Protection Thresholds as a Percentage of Site Area			
T1 Natural <sup>1</sup> and T2 Rural <sup>1</sup> zones	T3 Neighborhood <sup>1</sup> 1 and 2 zones	T4 Neighborhood <sup>1</sup> 1 and 2 zones	TNCP
80%	50%	30%	See Section 10-50.90.060.B.5.
End Notes			
1. The percentage of forest resource protection also apply to a zones sub-zones			

3. The amount of forest resources required to be protected ~~on a development site property~~ may be reduced through the application of the following sections of this code:
  - a. Section 10-30.20.040, Affordable Housing Incentives;
  - b. Section 10-30.60.030(B), Solar Orientation or Aspect;
  - c. Section 10-30.60.090(B)(1), Civic or Public Space Requirement;
  - d. Section 10-50.60.050(A)(1), Plant Material Considerations; and
  - e. Section 10-50.80.060(E), Parking Reductions for Forest Resources.

- ~~3-~~ 4. Where forest resources on a site overlap with steep slope resources, the following standards apply:
  - a. For affordable housing developments, refer to the standards in Section 10-30.20.040, Affordable Housing Incentives.
  - b. For all other developments located within the Resource Protection Overlay, up to 25 percent of the forest resources in the steep slope area may be counted towards the required amount of forest resources for the entire site at a ratio of one credit point for forest resources to 50 square feet of slope area.
- ~~3-~~ ~~Traditional neighborhood community plans (TNCP), Division 10-30.80, are primarily concerned with the form and character of development through the application of transect zones. The transect zones provide a variety of rural to urban forms where the level of forest protection may vary. In the more urban zones such as the T4 Neighborhood and T5 Main Street transect zones, protection of forest resources is secondary to the creation of urban form and character, and, while the protection of forest resources is strongly encouraged, in most cases it may not be feasible. However, in the T1 Natural and T2 Rural transect zones virtually all of the forest resources shall be protected, while in the T3 Neighborhood zones, most forest resources shall be protected. In order to account for this character, forest resources in a traditional neighborhood community plan shall be calculated as an average across the entire site, and not specifically for each transect zone within the traditional neighborhood community plan.~~
- 5. Minimum Forest Resource Protection shall be the greater of:
  - a. Thirty (30) percent of the gross lot, calculated as an average across the entire site; or,
  - b. The total percentage calculated shall be based on the location and allocation of the transect zones in the Traditional Neighborhood Community Plans (TNCP) and the corresponding transect zone requirements of Table 10-50.90.060.B.2.b.

Section 33. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.010 Definitions, “A”, the terms “Accessory Buildings and Structures”, “Accessory Dwelling Unit (ADU), Attached”, and “Accessory Dwelling Unit (ADU), Detached”, and to add the term “Accessory Dwelling Unit (ADU), Interior”, as follows: as follows:

**10-80.20.010 Definitions, “A”**

**Accessory ~~Buildings and Structures~~ Structure:** is a ~~Buildings or structures~~ building or structure (including sheds, barns, garages, carports, ~~artist or craft studios, home offices~~, greenhouses, detached solar systems, ~~or~~ shade structures, light pole, flag pole, pool, fence, wall, or other accessory structure as determined by the Zoning Administrator which:

1. ~~Are~~ **Is** subordinate in building area, intensity of use, or purpose to the ~~principal primary building structure or use served~~;
2. Contribute to the comfort, convenience, ~~and~~ **or** necessity of the occupants of the ~~principal primary~~ building or use served; and
3. Are located on the same lot as the ~~principal primary building structure~~ or use served, with the single exception of accessory off-street parking facilities that are permitted to locate elsewhere.

Section 34.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.020 Definitions, “B”, for the term, “Bed and Breakfast”, “Block face”, “Building Code”, and “Building Envelope”, as follows:

**Section 10-80.20.020 Definitions, “B”**

**Bed and Breakfast:** ~~Accommodations~~ **Is an accommodation provided and offered to transient guests for stays of less than thirty (30) days in offered by** a private home, consisting of a room for ~~the night~~ **sleeping, which may include separate sanitation facilities in each room,** and breakfast **is provided to the guest(s) the next morning for one-inclusive and is included in the price of the room. Bed and breakfast is not a Travel accommodation, vacation rental or short-term rental.**

**Building Code:** ~~The currently in effect codes of the City of Flagstaff that establish minimum acceptable levels of safety for the construction, renovation, demolition, and occupancy of buildings and structures.~~ **Is the regulations contained in Title 4 Building Regulations of the Flagstaff City Code.**

**Building envelope:** **is the three (3) dimensional space on a lot or parcel delineated by the property’s zone requirements for building height, setback, stepback, yards and other provisions of the Zoning Code.**

Section 35.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.040 Definitions, “D”, for the terms “Day Care, Center” and “Day Care, Home”, “Development Site”, “Dwelling”, “Dwelling, Cluster”, and to add the terms “Development, Multiple-Family”, “Development - Attached, Single-Family”, “Development - Detached, Single-Family”, and “Development, Duplex” as follows:

**Day Care, Center:** A facility, ~~other than a dwelling unit or an accessory structure of a dwelling unit, regulated by the State that provides where~~ **supervision for less than 24 hours per day for nine or more of** children, ~~elderly older individuals,~~ **or disabled persons in a facility other than a residence is provided for less than 24-hours.** This includes adult day care or adult day health as defined in A.R.S. § 46-191.1., **as amended.**

~~Day Care, Home: A home occupation in any dwelling established consistent with the State of Arizona requirements, which receives no more than eight children, elderly, or disabled adults for less than 24 hours per day. The maximum number of eight children shall be reduced in number by the number of children residing in the dwelling under the age of 14. This includes adult day care or adult day health as defined in A.R.S. § 46-191.1.~~

Day Care, Home: A home occupation in any dwelling or an accessory structure of a dwelling, where supervision of children, older individuals, or disabled persons is provided for less than 24-hours. This includes adult day care or adult day health as defined in A.R.S. § 46-191.1., as amended.

Development Site: Any ~~plot~~ lot or parcel of land, or combination of contiguous lots or parcels of land, whether under common ownership or multiple ownership, which constitutes a site on which development is proposed, under construction, or exists.

Dwelling Unit: ~~One or more habitable rooms for residential use that are used as a home, residence, or sleeping place by one or more persons and which shall contain sleeping, sanitary, and cooking facilities. Dwelling includes an apartment or condominium. This does not include a motel or hotel room (see "Lodging") or suite or guest rooms in a boarding house or bed and breakfast (see "Bed and Breakfast").~~ Is one or more rooms as a single unit used as an independent residential living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. A dwelling unit does not include suites or guest rooms in a travel accommodation or bed and breakfast.

Development - Multiple-Family: Is a development consisting of any number of structures, or portion thereof, that contains a total of three or more dwelling units on a lot or parcel.

~~Dwelling, Multiple-Family: A dwelling contained in a building comprised of three or more dwelling units.~~

Development - Attached, Single-Family: Is a development consisting of one or more lots or parcels that contains a dwelling unit that is attached to dwelling unit on another lot or parcel.

Development - Detached, Single-Family: Is a development consisting of one or more lots or parcels that contains a single-family dwelling that is detached from a dwelling unit on another lot or parcel. A single-family development – detached include lot and parcels that contain a primary dwelling unit and an accessory dwelling unit in accordance with the provision of this code.

Development, Duplex: Is a development consisting of one or more lots or parcels that contains a duplex.

~~Dwelling, Development - Cluster, Single-Family: Fully detached single family residential uses~~ Is a Single-Family Development – Detached or co-housing located on individual lots that ~~include, as part of the subdivision design,~~ includes common open space and is developed to the requirements of this code.

Section 36. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.060 Definitions, “F”, for the term, “Factory Built Building”, and add the term “Fire Code”, as follows:

**10-80.20.060 Definitions, “F”**

**Factory Built Building:** ~~A building including a dwelling or habitable room that is either wholly or in substantial part manufactured at an off-site location to be assembled on site, except that it does not include a manufactured home, recreational vehicle, or mobile home as defined by this chapter. Does include modular homes. These structures are built to the 2003 International Residential Code, 1994 Uniform Plumbing Code, 2003 International Mechanical Code and 2002 NEC standards as dictated by the Arizona Department of Building and Life Safety. These units are considered a permanent structure, to be installed only once. The manufacturer of the factory built will provide a “blue” manufacturer’s plate affixed to the exterior of the unit. The foundation for the factory built unit must be approved by the State Office of Manufactured Housing before the installation of the factory built building. See also “Dwelling, Single Family.”~~

As defined by the Arizona Revised Statutes §41-4001, as amended, a factory built residential or commercial building is: (i) either wholly or substantially manufactured at an off-site location and transported for installation or completion, or both, on-site; (ii) constructed in compliance with adopted codes, standards and procedures of the State of Arizona; and, (iii) installed temporarily or permanently. A factory built building does not include a manufactured home, recreational vehicle, panelized building or domestic or light commercial storage building.

**Fire Code:** Is the regulations contained in Title 5 Fire Code of the Flagstaff City Code.

Section 37. Amend Title 10 FLAGSTAFF ZONING CODE, 10-80.20.090 Definitions, “I”, for the term “Industrial, Light – General”, as follows:

**10-80.20.090 Definitions, “I”**

**Industrial, Light – General:** This use includes manufacturing, storage, transportation, construction, repair, and wholesale uses that do not include hazardous wastes or resulting large truck usage/parking on the site. Light industrial uses include, but are not limited to, the following:

<del>Auto-towing and storage yards</del> Vehicle Towing	Leather, except tanning and finishing
	Local and interurban passenger transit

<b>Auto Vehicle</b> repair including top, body and upholstery repair and paint shops and tire retreading and repair shops	Lumber and wood products
Communications	Miscellaneous manufacturing industries
<b>Drugs Pharmaceutical Manufacturing</b>	Office and computing machines
Electric and electronic equipment (except electronic distribution and electrical industrial)	Paper products, except mills
	Printing and publishing
Fabricated metal	Special trade contractors
Food products, including liquor distribution, except meat products	Special warehousing and storage
	Textiles and apparel
Fuel and ice dealers	Transportation services
Furniture and fixtures	Trucking and general warehousing including mini-storage
General building contractors	Welding repair
Instruments and related products	Wholesale trade, durable and nondurable
Large truck, industrial truck and tractor repair	
<b>Vehicle Storage, excluding Federal Highway Administration class 7, and above, vehicles and heavy equipment/construction vehicles</b>	

Section 38. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.160 Definitions, “O”, for the term “Older Individual” and “Outdoor Storage,” as follows:

**10-80.20.160 Definitions, “O”,**

**Older Individual: Is any person 60 years of age, or older, unless otherwise defined in 42 U.S. Code § 3002, in which case the statute shall govern.**

**Outdoor Storage: is the storage of commodities, equipment, materials, merchandise, vehicles, etc. outside of a completely enclosed building.**

Section 39. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.160 Definitions, “P”, for the terms “Parcel,” and to add the terms “Parking, Tuck-under,” “Parking Structure,” “Parking Structure, Above-Ground,” “Parking Structure, Podium,” “Parking Structure, Underground,” and “Passive Recreation,” in alphabetical order, as follows:

**10-80.20.160 Definitions, “P”,**

Parcel: ~~A defined~~ Is an area of land defined by a legal description, and not part of a platted subdivision

**Parking, Tuck-under: is vehicle parking on fifty (50) percent or less of the ground level of a habitable building.**

Parking Structure: ~~A building containing two or more stories of parking above natural grade.~~ is an above-ground, podium, or underground structure used for parking vehicles.

**Parking Structure, Above-Ground: is a structure of two (2) or more levels, starting at or above-ground level.**

**Parking Structure, Podium: is one (1) level of vehicle parking at ground level or partially below ground level, which may have habitable structure or open space area, such as a courtyard, above the parking.**

**Parking Structure, Underground: is a structure of one (1) or more levels, fully below ground level, except for the ramp into the parking structure.**

**Passive Recreation: is the use of land in its substantial natural or restored natural state for the preservation of wildlife, the environment and recreational purposes that requires minimal development, including park and ranger facilities, facilities for picnics, pavilions, multi-use trails and paths, canoeing, fishing, educational facilities that promote the education or preservation of such lands, etc., and relate support accessory uses such as parking, restrooms, and areas for the health and well-being of the public. Passive recreation does not include the use of recreational motorized vehicles, except when authorize by law, permit, or license granted by the city, state, or federal government.**

Section 40. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.190 Definitions, “s”, for “sign”, and to add the terms “sanitation facilities,” “Seasonal Sales”, “short-term rental or vacation rental”, “Storage Structure”, “Storage Structure, Permanent”, and “Storage Structure, Temporary” as follows:

**10-80.20.190 Definitions, “S”,**

**Sanitation Facilities:** is bathroom that contains any combination of, or individually, a toilet, shower, sink, tub or related bathing and sanitation fixtures.

**Seasonal Sales:** is a sale event that occurs during one particular time of the year for a limited period of time, including the sale of annually harvested food products, holiday trees, fireworks, pumpkins, and similar sale events uses as determined by the Zoning Administrator.

**Sign:** A structure, device, figure, display, message placard or other contrivance, or any part thereof, situated outdoors or indoors, which is designed, constructed, intended or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, or social information, or direct or attract attention to an object, person, institution, business, product, service, message, event or location by any means including ~~words, letters, figures, designs, symbols, fixtures, colors, or illumination.~~ branding, color bands, corporate colors, designs, figures, fixtures, illumination, letters, logos, symbols, and words.

**Short-term Rental or Vacation Rental:** is a defined in accordance with the Arizona Revised Statutes § 9-500.39., as amended.

**Storage Structure:** is a manufactured shipping container, moving container, or similar container, as determined by the Zoning Administrator, used to store one or more objects on a property. A storage structure is not a barn, garage, shed, or similar accessory structure. (Also see the definitions for Storage Structure, Permanent; and Storage Structure, Temporary.)

**Storage Structure, Permanent:** is a storage structure that is attached to the ground by a foundation or device in accordance with the Building Code.

**Storage Structure, Temporary:** is a storage structure that is not attached to the ground and is placed on a lot or parcel.

Section 41.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.220 Definitions, “W”, for the term “Warehousing”, as follows:

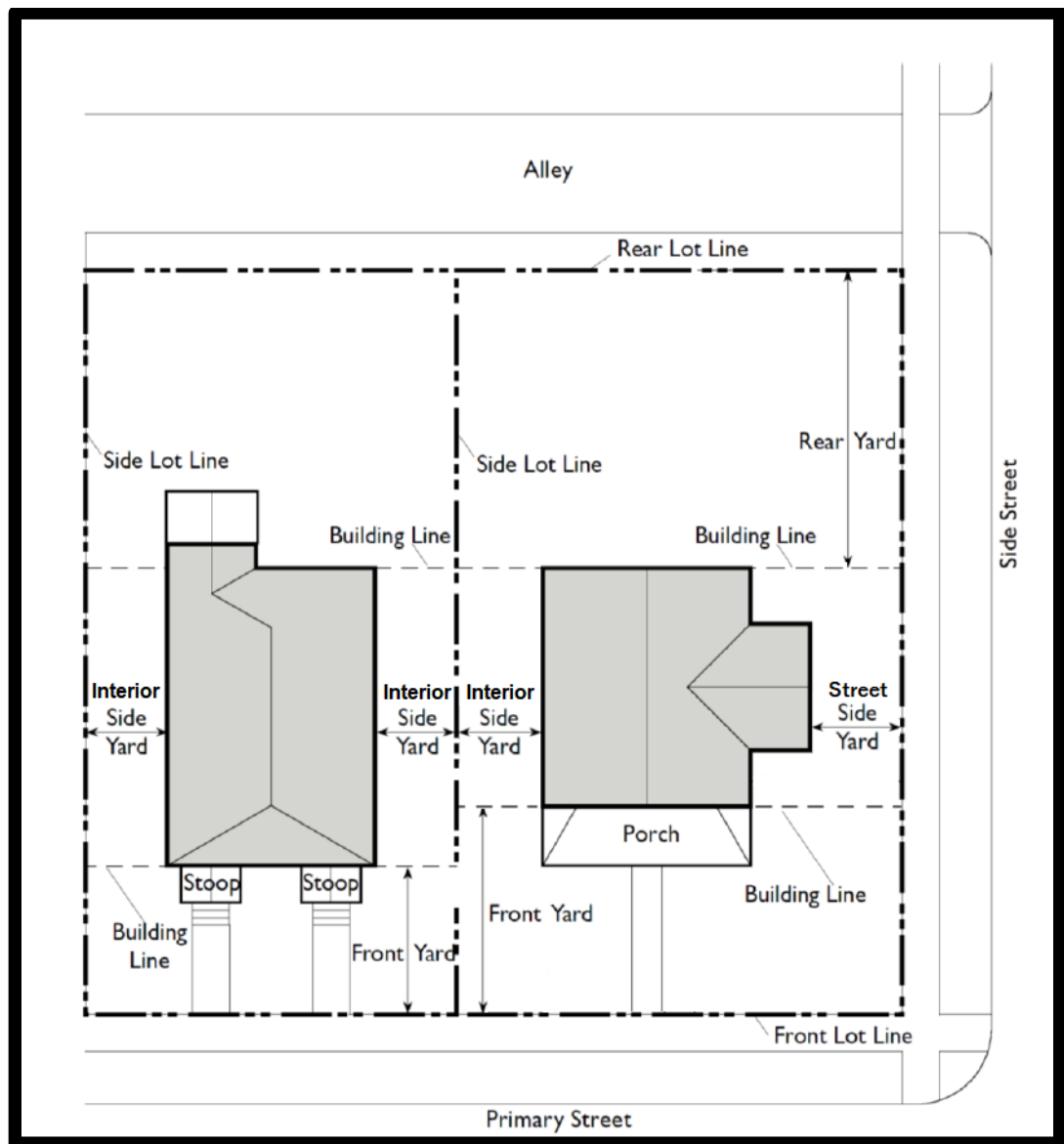
**Warehousing:** ~~Warehouse and storage operations, including screened outdoor storage.~~ Is the storage of merchandise, commodities or vehicles in an enclosed building.

Section 42.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.250 Definitions, “Y”, for the terms, “Yard”, “Yard, Exterior”, “Yard, Front”, and “Yard, Interior”, as follows:

**Section 10-80.20.250 Definitions, “Y**

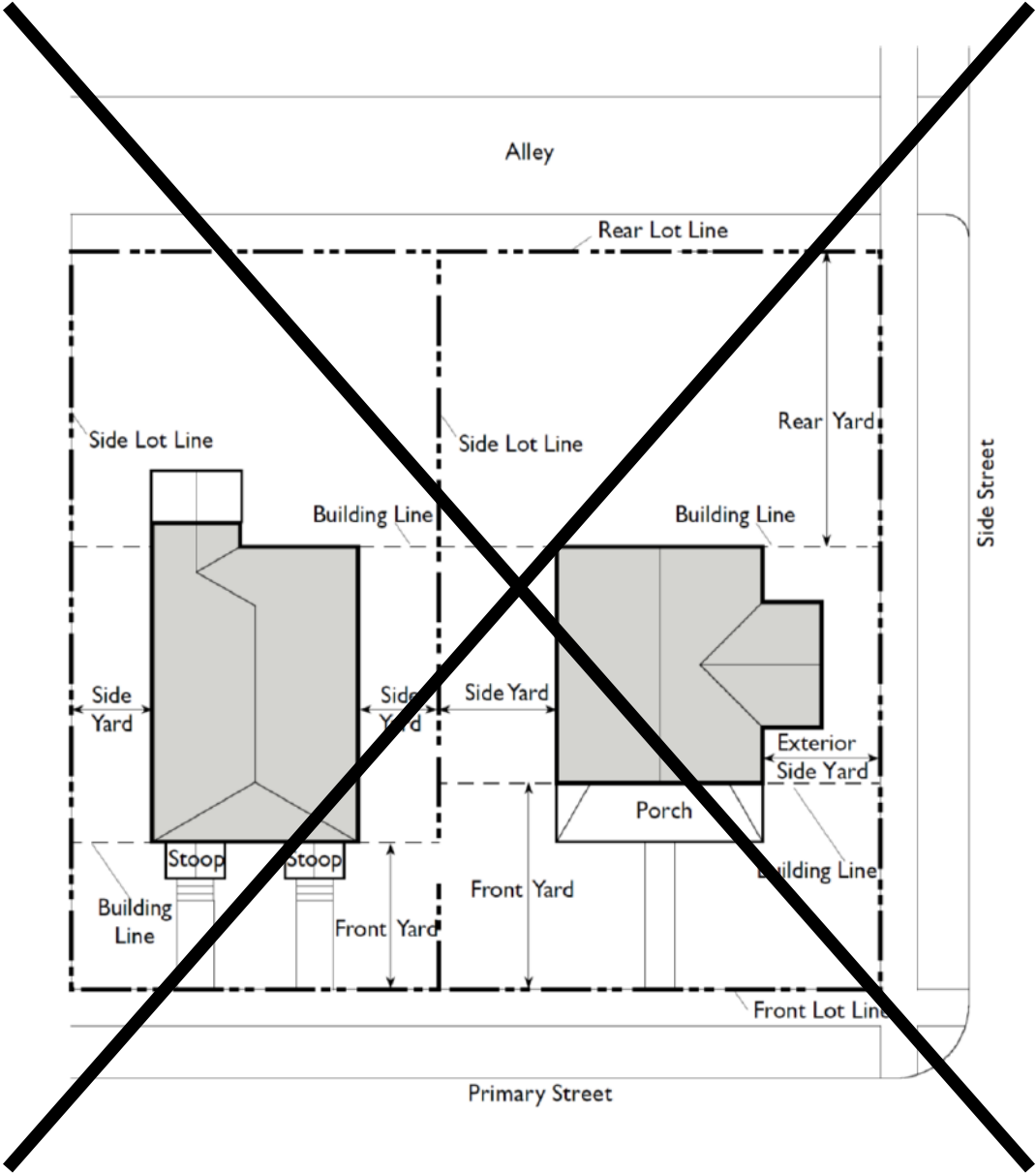
**Yard:** An is an open area at-grade that is unoccupied and unobstructed from the ground upward, except as allowed by the Zoning Code, between a principal or accessory building structure, or buildings a structure and the nearest lot line that is unoccupied and unobstructed from the ground upward except as may be specifically provided in this Zoning Code. Typical yard locations are identified in the Figure 10-80.20.250. Yards.



**Figure 10-80.20.250. Yards.**

**Yard, Exterior Street Side:** A yard extending from the front yard to the rear yard, between any building and the exterior side lot line abutting a street. On corner lots, the exterior side yard is adjacent to a street other than the one which determines the front yard.

**Yard, Front:** A yard extending across the full width of a lot between any building and the front lot line, and measured perpendicular to the building at the closest point to the front lot line.



**Yard, Interior Side:** A yard extending from the front yard to the rear yard between the ~~principal~~ primary building and the side lot line adjacent to another lot measured perpendicular from the side lot line to the closest point of the ~~principal~~ primary building.

**ORDINANCE NO. 2019-32**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE , TITLE 10, FLAGSTAFF ZONING CODE, CHAPTERS 10-20, 10-30, 10-40, 10-50, AND 10-80, AS PROVIDED IN THAT CERTAIN DOCUMENT ENTITLED “CASE NO. PZ-19-00094 UPDATES TO ZONING CODE 2019 – MISCELLANEOUS PART 1” DECLARED TO BE A PUBLIC RECORD BY RESOLUTION NO. 2019-32; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.**

**RECITALS:**

WHEREAS, the City of Flagstaff wishes to amend Title 10 of the Flagstaff City Code, Chapters 10-20, 10-30, 10-40, 10-50, and 10-80, to ensure, among other things, correction of known errors, ease of use through simplified standards, consistency in interpretation and application of standards and procedures, and greater predictability in the application of the Zoning Code; and

WHEREAS, the Mayor and Council have, by resolution, previously declared that certain document entitled “*Case No. PZ-19-00094 Updates to Zoning Code 2019 – Miscellaneous Part 1*” (the “Proposed Zoning Code Text Amendments”) to be a public record by Resolution No. 2019-32 of the City of Flagstaff; and

WHEREAS, a citizen review session was held at the Planning Commission work session on June 12, 2019, to discuss the Proposed Zoning Code Text Amendments in accordance with Section 10-20.50.040 of the Flagstaff Zoning Code; and

WHEREAS, the Planning and Zoning Commission held a public meeting on June 26, 2019, and provided a recommendation to City Council on the Proposed Zoning Code Text Amendments; and

WHEREAS, the Council has determined that the Proposed Zoning Code Text Amendments are in conformance with the General Plan, and the findings of Section 10-20.50.040 of the Flagstaff Zoning Code have been met.

**ENACTMENTS:**

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

SECTION 1. That certain document known as “*Case No. PZ-19-00094 Updates To Zoning Code 2019 – Miscellaneous Part 1*”, one (1) paper copy and (1) electronic copy are on file in the office of the City Clerk of the City of Flagstaff, Arizona, which document is declared a public record by Resolution No. 2019-32 of the City of Flagstaff, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

SECTION 2. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

**SECTION 3. Severability**

If any section, subsection, sentence, clause, phrase, or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 4. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 5. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

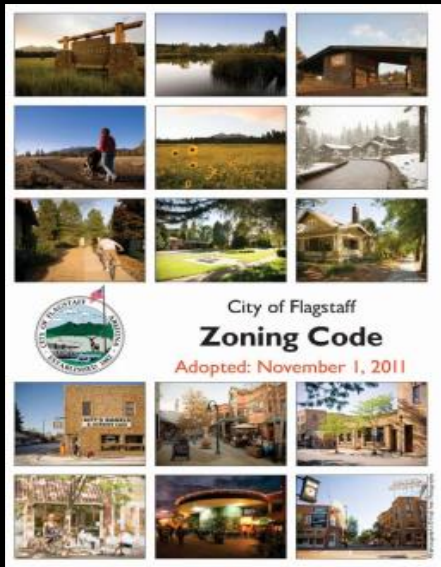
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CITY ATTORNEY

# City Council

## City's Request to Amend the Zoning Code



**Dan Symer, AICP**  
**Zoning Code Manager**

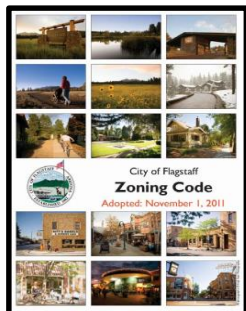




## City's Proposed Zoning Code Text Amendment:

### Purpose:

- **Resolve conflicts, incorporate technical and clarity corrections, simplify the requirements and remove redundancy, and**
- **Add to the definitions**

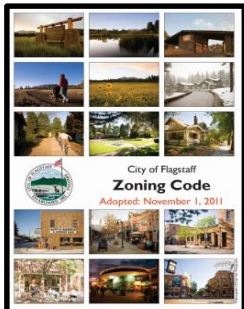




## City's Proposed Zoning Code Text Amendment

### *Chapter 10-20: Administration, Procedures, and Enforcement:*

- **Notification**
  - Preliminary subdivision plat and public facilities
- **Minor Improvement Permits**
  - Types (sheds, decks, fences, garden walls, patios, pergolas, trellises, wall, etc)
  - Modifications to the exterior of a structure and landscaping
- **Exemptions.**
  - Children's play houses and tree houses

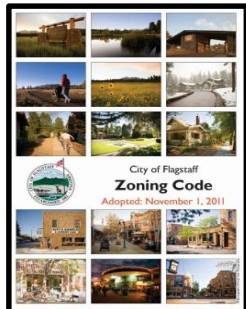




## City's Proposed Zoning Code Text Amendment

### *Chapter 10-20: Administration, Procedures, and Enforcement:*

- **Temporary Use Permits and Exempt Temporary Activities**
  - **Temporary Storage Structures**
  - **Construction Yard(s)**
  - **Temporary Construction Trailer(s)**
  - **Outdoor Retail Activities (garden sale, sidewalk sale, etc.)**

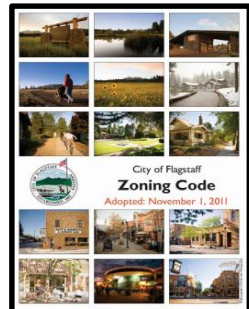




## City's Proposed Zoning Code Text Amendment

### ***Section 10-40.30.030 Residential Zones:***

- **Animal Keeping, as a primary use**
  - **Rural Residential (RR) and Estate Residential (ER)**
  - **Lots five acres, or greater**
- **Accessory building, structures, and dwelling units**
- **Existing subdivisions with platted setbacks and lot size**

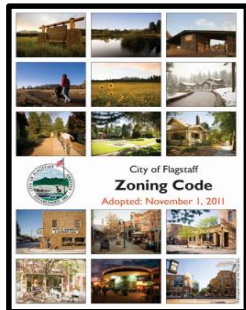




## City's Proposed Zoning Code Text Amendment

### ***Section 10-40.30.040 Commercial Zones:***

- Replaced the use of Lodging with Travel Accommodations
- Removed cross reference to High Density Residential (HR) standards for density and open space and incorporated into development standards table

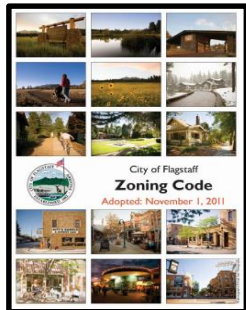




## City's Proposed Zoning Code Text Amendment

### *Section 10-40.30.050 Industrial Zones:*

- Separated the outdoor storage use from warehouse, allowed in Heavy Industrial and Heavy Industrial – Open as a primary use

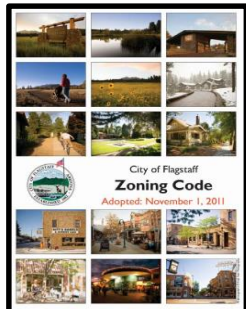




## City's Proposed Zoning Code Text Amendment

### *Section 10-40.60.020 Accessory Buildings and Structures:*

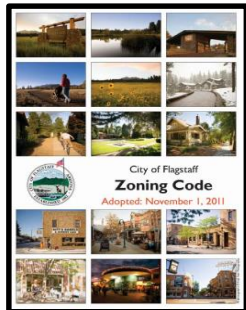
- Separated accessory buildings and Structures into separate sections
  - Accessory Structures - Section 10-40.60.020
  - Accessory Use - Section 10-40.60.025
- Deleted temporary and permanent storage containers section
  - Relocated temporary provision
  - Create a permanent storage containers section and simplified standard





## City's Proposed Zoning Code Text Amendment

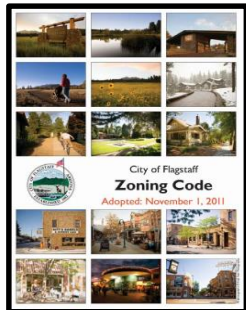
- **Added definitions for temporary and permanent storage containers section**
  - **Storage Structure:** is a manufactured shipping container, moving container, or similar container, as determined by the Zoning Administrator, used to store one or more objects on a property. A storage structure is not a barn, garage, shed, or similar accessory structure.
  - **Storage Structure, Permanent:** is a storage structure that is attached to the ground by a foundation or device in accordance with the Building Code.
  - **Storage Structure, Temporary:** is a storage structure that is not attached to the ground and is placed on a lot or parcel for a specific time frame no greater than the time frame allowed by the Zoning Code.





## City's Proposed Zoning Code Text Amendment

- **10-40.60.150 Day Care Home and Center**
  - **Update standards to comply with Arizona Revised Statutes**
- **10-40.60.250 Mini-Storage Warehousing**
  - **Outdoor storage of vehicle shall be operable and registered**

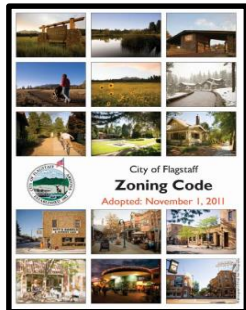




## City's Proposed Zoning Code Text Amendment

### ***Section 10-50.90.060 Forest:***

- Clarified that the forest resource protection requirements are based on the property's zone
- Incorporated forest resource protection requirements for the Transect Zones with the Resource Protection Overlay
- Clarified the forest resource protection requirements of the a development with a Traditional neighborhood community plan

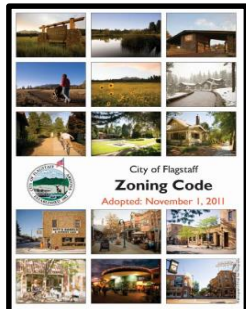




## City's Proposed Zoning Code Text Amendment

### *Technical Additions and Modifications:*

- **Miscellaneous**
  - **Various references and cross reference, scrivener's, technical, and table and formatting changes**
  - **Clarified and added definitions**

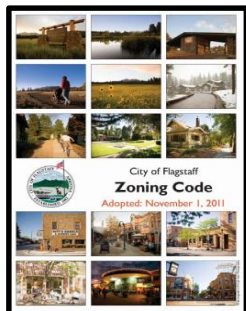




## City's Proposed Zoning Code Text Amendment

### *Required Findings:*

- **The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;**
- **The proposed amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the City; and**
- **The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.**





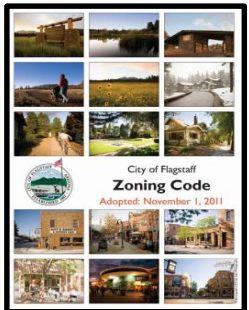
City Council



# City's Proposed Zoning Code Text Amendment

***City Council***

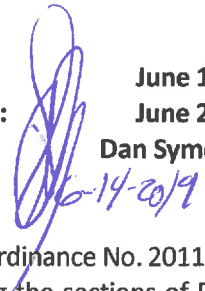
***Comments, Questions and Discussion***



**PLANNING AND DEVELOPMENT SERVICES REPORT**  
**Zoning Code Text Amendment**

**PUBLIC HEARING**  
**PZ-19-00094**

DATE: June 14, 2019  
MEETING DATE: June 25, 2019  
REPORT BY: Dan Symer, AICP



**REQUEST:**

For a Zoning Code Text Amendment (Case No.: PZ-19-00094) to amend the Flagstaff Zoning Code (Ordinance No. 2011-20) for the purpose of modifying chapters, divisions, and sections of Title 10 Flagstaff Zoning Code, including the sections of Division 10-20.30: Common Procedures, Division 10-20.40: Permits and Approvals, Division 10-30.60: Site Planning Design Standards, Division 10-40.30: Non-Transect Zones, Division 10-40.40: Transect Zones, Division 10-40.60: Specific to Uses, Division: 10-50.30 Building Height, Division: 10-50.40 Encroachments, Division 10-50.50: Fences and Screening, Division: 10-50.60 Landscaping Standards, Division 10-50.100: Sign Standards, Division 10-50.90: Resource Protection Standards, and Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, to resolve conflicts, incorporating technical corrections and clarity, and to add new, and modify existing, requirements, provisions, and definitions.

**STAFF RECOMMENDATION:**

Staff recommends the Planning and Zoning Commission, in accordance with the findings presented in this report, find that the required findings of the Zoning Code have been met, and make a recommendation to the City Council for approval of the Zoning Code Text Amendment.

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**I. Project Introduction**

**A. Background**

The Zoning Code was adopted by the City Council on November 1, 2011, to replace the former Land Development Code. Since its adoption, the code has been amended several times to address procedures, add clarity, resolve conflicts, address planning initiatives (accessory dwelling units), incorporate applicant's requests (West University Drive Entrance Sign District), and to address changes in state law and U.S. Supreme Court decisions (i.e. Reed vs the Town of Gilbert). In addition, on June 12, 2019 the Planning and Zoning Commission recommended approval to the City Council of an amendment to the Zoning Code to address a series of technical, conflict resolution, and clarity modifications – including the addition of the Seasonal Amusement/Entertainment and Sales, Indoor and related provision to the into the Light Industrial (LI) zone.

**B. Proposed Amendment**

The proposed amendment includes multiple changes to the Zoning Code to resolve conflicts, incorporating technical corrections, add clarity, and to simplify the existing requirements. New provisions are being added, and several sections of the reference divisions are being modified, relocated, or deleted.

The most significant of the modifications include:

- Limiting land use of Animal Keeping to be an accessory use in most residential districts, and as a primary allowed use in the Rural Residential (RR) zone and Estate Rural (ER) on lots or parcels with five acres, or greater;
- Adding provisions to allow existing residential subdivisions, and homes within these subdivisions, to be developed or modified in accordance with the setback and lot size provisions shown on record subdivision plat approved by the City Council;
- Add outdoor storage as primary allowed use in the Heavy Industrial (HI) zone and Heavy Industrial – Open (HI-O) zone;
- Incorporate standards for day care home and day care center in compliance with the State of Arizona requirements; and

- Limiting the size of vehicle that maybe stored in the Industrial, Light – General land use to FHA class 6 vehicle and smaller.

*Summary of the Staff Revisions to Zoning Code:*

The proposed amendment includes:

1. **Notice of Public Hearings (Section 10-20.30.080):** Changes to the public hearing notice for preliminary plats and uses within a public facility zone.
2. **Minor Improvement Permits (Section 10-20.40.080):** Changes to clarify the requirements
3. **Temporary Use Permits (Section 10-20.40.150):** Incorporate changes to relocate and modify the requirements pertaining to temporary storage structures, off-site temporary construction trailer(s), and exemptions
4. **Residential Zones (Section 10-40.30.030):** Incorporate modifications to the land use, building form, and miscellaneous requirements. A summary of the modifications includes changes to: animal keeping as primary land use; relocation of requirements to other sections; setback modifications; allowances for lot sizes and setbacks for previously platted subdivisions. In addition, the modifications include changes to various, miscellaneous, technical, term and cross references, and relocation of provisions.
5. **Commercial Zones (Section 10-40.30.040):** Incorporate modifications to the allowed uses, building form, and miscellaneous requirements. A summary of the modifications includes changes to: renaming the allowed use of Lodging to Travel Accommodations; and relocation and addition of open space requirements for residential developments. In addition, the modifications include changes to various, miscellaneous, technical, term and cross references, and relocation of provisions.
6. **Industrial Zones (Section 10-40.30.050):** Add outdoor storage as an allowed use in the Heavy Industrial and Heavy Industrial – Open zones; and, modifications to various, miscellaneous, technical, and cross references provisions.
7. **Public and Open Space Zones (Section 10-40.30.060):** Correct the adoption, scrivener's and table errors of the allowed uses. In addition, the modifications include changes to various, miscellaneous, technical, cross references, and relocation of provisions.
8. **Accessory Buildings and Structures (Section 10-40.60.020):** Incorporate modifications to relocate the accessory use to a new section (Section 10-40.60.025), simplify and clarify provisions, and relocate temporary storage containers to section 10-20.40.150.
9. **Accessory Uses (Section 10-40.60.025):** Add a new section specific to accessory uses.
10. **Day Care Home and Center (Section 10-40.60.150):** Incorporate technical modifications to conform with State of Arizona requirements, and clarify provisions.
11. **Outdoor storage (Section 10-40.60.275):** Add a new section specific to outdoor storage.
12. **Warehousing (Section 10-40.60.320):** Delete section and incorporate provisions into outdoor storage.
13. **Forest (Section 10-50.90.060):** Incorporate changes to clarify and modify the requirements of Forest Resource Protection Thresholds as a Percentage of Site Area for the non-transect and transect zones
14. **Definition of Specialized Terms, Phrases, and Building Functions (Division 10-80.20)** Modify and add various definition of the Zoning Code, including: Accessory Buildings and Structures; Bed and Breakfast; Day Care, Center; Development Site; Development, Multiple-Family; Development – Attached Single-

Family; Development - Detached, Single-Family; Development, Duplex; Development - Cluster, Dwelling, Multiple-Family, Single-Family; Factory Built Building; Industrial, Light – General; Older Individual; Parcel; Parking Structure, Above-Ground; Parking Structure, Underground; Passive Recreation; Residential Community Building Area; Sanitation facilities; Sign; Travel Accommodation; Use, Secondary; Warehousing; Yard; Yard, Exterior; and Yard, Interior.

**15. Additional Enforcement, Technical, Figure and Term Modifications (Sections 10-30.60.040, 10-40.40.100, 10-40.60.240, 10-40.60.250, 10-40.60.280, 10-50.30.030, 10-50.40.020, 10-50.60.050, and 10-50.90.060):** Incorporate, correct, clarify, and modify various technical, enforcement, cross references modifications.

**II. Zoning Code Text Amendment**

An application for a Zoning Text Amendment shall be submitted to the Planning Director and shall be reviewed and a recommendation prepared. The Planning Director’s recommendation shall be transmitted to the Planning and Zoning Commission in the form of a staff report prior to a scheduled public hearing. The recommendation shall include: an evaluation of the consistency and conformance of the proposed amendment with the goals and policies of the General Plan and any applicable specific plans; the grounds for the recommendation based on the standards and purposes of the zones set forth in Section 10-40.20 (Establishment of Zones) of the Zoning Code; and, whether the amendment should be granted, or denied.

A Zoning Code Text Amendment shall be evaluated based on the following findings:

**A. Finding #1:**

- **The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;**

The proposed amendments are primarily to resolving conflicts, incorporate technical corrections and add clarity to zoning code. Clerical in nature, the amendments do not substantively modify the existing provisions of the Zoning Code and maintains consistency and conformance with the objectives and policies of the Regional Plan (General Plan) and applicable specific plans.

Incorporated in the proposed amendment are clarification to the requirements for forest resource protection. Currently the code does not address the transect zones and existing standards are based on uses instead of the zones. The modified requirements treat all property in a particular zone consistently, regardless of use, and incorporate requirements for property that utilize the transect zones ((E&C 3.3, E&C 4.1, E&C 6.3, E&C 10.1, E&C 10.2, and CC 1.1) of the Regional Plan).

**B. Finding #2**

- **The proposed amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the City;**

The proposed amendments are not anticipated to be detrimental to the public interest, health, safety, convenience or welfare of the City. These amendments are primarily to resolving conflicts, incorporate technical corrections and add clarity to zoning code.

**C. Finding #3**

- **The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.**

The proposed amendments enhance the zoning code’s internally consistency by resolving conflicts, incorporate technical corrections and adding clarity. Furthermore, the proposed amendments are intended to maintain the zoning code’s purpose as a comprehensive contemporary set land uses and requirements that are straightforward, usable and easily understood.

June 12, 2019

**V. CITIZEN PARTICIPATION**

In accordance with State Statute and the Zoning Code, the Planning and Zoning Commission work session and public hearing for these amendments was advertised in the Arizona Daily Sun on May 25, 2019. Also, persons of interest that are on file with the Planning and Development Services Department were notified of the work sessions and hearings via first class mail. As of the date of this report, staff has not received any comments from the public pertaining these amendments.

**VI. PLANNING AND ZONING COMMISSION WORK SESSION**

At the May 22, 2019 Planning and Zoning Commission Work Session, staff and the applicant reviewed the text amendment applications with the Commission. A summary Commission's comments included:

- Clarification pertaining to AirBnB and similar uses (vacation rentals and travel accommodations) was requested. Staff clarified that these uses are not include in the definition of Travel Accommodations; and, the Arizona Revised Statues limits the ability of cities to regulate much of the operation of vacation rentals and travel accommodations.
- Clarification pertaining to deletion of accessory uses from the allowed primary use table;
- A request to clarify and simplify the determination of an accessory use;
- Comments and clarification pertaining to mixed use development setbacks; and
- Editorial comments.

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**Attachments:**

1. Draft of the Proposed Ordinance Revisions

## Corrections for Adoption in Flagstaff Zoning Code

### Part 1 of Staff Corrections

#### HOW TO READ THIS DOCUMENT

Unless otherwise stated, provisions that are being deleted are shown in bold red strikethrough text, like this: ~~Provisions that are being deleted are shown with a bold red strikethroughs text.~~

Provisions that are being added are shown in bold blue text, like this: **Provisions that are being added are shown in bold blue text.**

Graphics/Figures that are being deleted are indicated with an "X" over the graphic/figure.

Graphics/Figures that are being added are indicated with a border  around the graphic/figure.

Tables that are being deleted are indicated with an "X" over the Tables.

Tables that are being added are indicated with a thick border  around the Tables.

Section 1. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.30.080 Notice of Public Hearings, as follows:

#### **10-20.30.080 Notice of Public Hearings**

**A. Notice of Application.** Prior to consideration of any action for a General Plan amendment, specific plan amendment, Zoning Code text amendment, Zoning Map amendment, conditional use permit, ~~preliminary subdivision plat~~, variance, or appeal heard by the Board of Adjustment, ~~or change of use within the PF (Public Facility) zone~~, notice shall be given in compliance with the requirements of this section. In those cases where a public hearing is required as part of the approval process, no hearing shall be scheduled until the applicant has paid the required fee(s). Fees are listed in Appendix 2, Planning Fee Schedule. All of the following applicable provisions shall be met:

~~A.~~ **B. Notice Requirements.** Any changes to State law notice requirements shall control over this provision in the manner of providing notice.

1. **Contents.** Every published, posted and mailed notice of public hearing shall include:
  - a. The date, time, location and purpose of the hearing;
  - b. The name of the body conducting the hearing, and a telephone number to receive additional information;
  - c. The location and times at which the complete application and development file may be viewed by the public;

- d. The address or location of the subject property;
  - e. A general description of the proposed development or action and the property included in the application;
  - f. A statement that any interested person or authorized agent may appear and be heard;
  - g. A statement describing how and when to submit written comments;
  - h. The existing zone classification; and
  - i. The word "Zoning," if applicable.
2. **Manner of Posting.**
- a. Notices of public hearings for requests to amend the Zoning Map shall be posted on the subject property and printed so that the following are visible from a distance of 100 feet: the word "zoning"; the existing zone; the proposed zone; and the date, time and place of the hearing.
  - b. Notices of public hearings for all other applications such as General Plan amendments, conditional use permits, or Board of Adjustment hearings shall be posted on the subject property and printed so that the date, time and place of the hearing is visible from a distance of 100 feet.
3. **Manner of Notification.** Notices of required public hearings shall be sent by first class mail to the following persons:
- a. Each real property owner (if different from the applicant) as shown on the last assessment of the property, of any land within the areas subject to the application for which the public hearing is required.
  - b. Each real property owner (if different from the applicant) as shown on the last assessment of the property of any land which is located within 300 feet of the property subject to the application for which the public hearing is required. The Director may expand the notification area based on the location and context of the subject property if it is determined that the potential impact of the development extends beyond the required notification boundary.
  - c. The situs or actual address of all tenants and residents living on the subject property.
  - d. All local government agencies which have reviewed and commented on the proposed development or Zoning Map amendment or which abut the subject property.
4. **Failure to Receive Notice.** Notwithstanding the notice requirements set forth in subsections (A)(2) and (3) of this section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the amendments for which the notice was given.
5. **Responsibility for Providing Notice.**

- a. The Director shall be responsible for placing the public hearing notices required by this section in a newspaper of general circulation within the City.
  - b. The applicant shall post the notice(s) as required by this section on the subject property. The applicant is required to maintain the posting and remove the sign within seven days after the public hearing and final action. Failure to remove the sign may result in the City removing the sign and charging the applicant for costs incurred. The applicant shall submit a notarized affidavit of posting and photographs of the signs posted on the subject property to the Director no less than 15 days prior to the public hearing date.
  - c. If notice is required to be provided by mail, the applicant is responsible for establishing a list of names and addresses of property owners in compliance with the requirements of Section 10-20.30.060(D)(3) and (5), as well as the names and situs addresses of all tenants and residents living on the subject property, in compliance with this section. The applicant shall mail a public hearing notice to each of the property owners on the list referenced above no later than 15 days prior to the public hearing date. A notarized copy of the mailing list shall be submitted to the Director prior to or on the fifteenth day prior to the public hearing date.
  - d. Failure to provide the documentation described in subsections (A)(5)(b) and (c) of this section will result in continuance of the case to the next available public hearing date.
6. **Time of Notice.** All required notices shall be posted or published within a time frame prior to the public hearing determined in compliance with State law as well as the review schedule on file with the Planning Section.

**B. C. Registry of Interested Persons or Groups.** Any interested persons or groups may contact the Planning Section to register their names, addresses and other contact information so that they can be notified of all public meetings and public hearings of the Board of Adjustment, Planning Commission and/or Council.

**G. D. Additional Noticing Requirements.**

- 1. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided as described in subsections (C)(2) and (3) of this section:
  - a. A 10 percent or more increase or decrease in the number of square feet or units that may be developed.
  - b. A 10 percent or more increase or reduction in the allowable height of buildings.
  - c. An increase or reduction in the allowable number of stories of buildings.
  - d. A 10 percent or more increase or decrease in setback or open space requirements.
  - e. An increase or reduction in permitted uses.

2. Notice shall be sent to all persons or groups whose names are on the registry of persons and groups described in subsection (B) of this section who are interested in receiving such notice.
3. Notice shall be provided to real property owners in compliance with at least one of the following notification procedures:
  - a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property would be directly governed by the changes.
  - b. Notice shall be included with water bills or other City mass mailings.
  - c. Notice shall be published in a newspaper of general circulation published or circulated in the City in the form of a "display ad" covering not less than one-eighth of a full page.
4. In proceedings where additional requirements for citizen outreach are required as provided in Section 10-20.30.070, Additional Requirements for Citizen Outreach, full compliance with the notification requirements of that section is required.

Section 2. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.080 Minor Improvement Permits, as follows:

**10-20.40.080 Minor Improvement Permits**

- A. Purpose.** ~~This section establishes the requirements for a minor improvement permit to~~ To ensure that compliance with the applicable provisions of ~~this the~~ Zoning Code ~~is achieved~~ , this section establishes the requirements for a Minor Improvement Permit. ~~A minor improvement permit shall be reviewed, approved and issued by the Director prior to the placement, installation, construction or development of the following structures that do not otherwise require a building permit as required by applicable City building codes:~~
- ~~1.—Decks;~~
  - ~~2.—Garden wall;~~
  - ~~3.—Accessory structures, such as sheds or storage containers; and~~
  - ~~4.—Fences (see Division 10-50.50, Fences and Screening).~~
- B. Application.** The property owner shall obtain approval of an application for a Minor Improvement Permit prior to the placement, installation, construction or development of structure that does not require a building permit in accordance with the Building Code. Structures that require the approval of an application for a Minor Improvement Permit include:
1. Accessory structures, such as sheds, storage containers, decks, fences, garden walls, patios, pergolas, trellises, wall, etc;

2. **Modification to the exterior of a structure, including materials and colors, determined to be minor by the Director for properties that are required to comply with Division 10-50.20 pursuant to Section 10-50.20.020;**
3. **Landscape modifications determined to be minor by the Director for properties that are required to comply with Division 10-50.60 pursuant to Section 10-50.60.020;**
4. **Other minor improvements determined by the Director.**

**B. C. Review and Final Decision.**

1. The Director shall review the minor improvement permit application and supporting documentation required by Section 10-20.30.020, Application Process, for compliance with the requirements of the Zoning Code.
2. The Director, in compliance with the review schedule on file with the Planning Section, shall determine whether the minor improvement permit can be issued or if additional information is required from the applicant to complete the application. If the application is denied, the reason shall be stated in writing.

**D. Exemptions. Children’s play houses and tree houses less than 200 square feet in floor area do not require the approval of an application for a Minor Improvement Permit.**

Section 3.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.150 Temporary Use Permits, subsection D. Allowed Temporary Uses., paragraph 2., as follows:

**Section 10-20.40.150 Temporary Use Permits**

D. **Allowed Temporary Uses.** A temporary use permit shall be required for the following temporary activities. Other temporary or short-term activities that do not fall within the categories defined below shall comply with the planning permit requirements and development standards that otherwise apply to the property.

2. ~~Construction Yards~~ **Construction Yard(s)** – Off-Site. Off-site contractors’ construction yards, for an approved construction project require a temporary use permit. Written authorization from the property owner(s) or property management company(ies) representing the property owner(s) shall be provided prior to the establishment of the off-site construction yard. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the building permit authorizing the construction project, whichever occurs first. **Immediately upon removal of the construction yard(s), the property shall be restored to the condition pre-existing the construction yard(s), or a condition approved by the Director.**

Section 4.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.150 Temporary Use Permits, subsection D. Allowed Temporary Uses., paragraph 14., and add paragraphs 15 and 16, in numerical order, as follows:

## Section 10-20.40.150 Temporary Use Permits

- D. **Allowed Temporary Uses.** A temporary use permit shall be required for the following temporary activities. Other temporary or short-term activities that do not fall within the categories defined below shall comply with the planning permit requirements and development standards that otherwise apply to the property.

~~14. Similar Temporary Activities. The Director may authorize other temporary activities that are similar to the activities listed in this subsection and that are compatible with the applicable zone and surrounding land uses.~~

### 14. Temporary Storage Structures.

- a. **Emergency situations and construction activities that do not require a building permit.** The property owner shall obtain the approval of a Temporary Use Permit within five (5) business days of the emergency, or prior to the placement of the structure for construction purposes. The maximum duration that the storage structure may remain on a property:
- (1) **Residential and Transect Zones.** Ninety (90) consecutive days, with the option of a one-time extension of additional 90 consecutive days, for a maximum total of 180 consecutive days within one year from the date that the initial temporary use permit was issued.
  - (2) **Commercial, Industrial and Public and Open Space Zones.** One hundred twenty (120) consecutive days, with the option for a one-time extension of the Temporary Use Permit additional 90 consecutive days, for a maximum total of 210 consecutive days within one year from the date that the initial temporary use permit was issued.
- d. **Seasonal sales storage structure.**
- (1) **Zones allowed in:** Commercial and Industrial zones.
  - (2) **The maximum duration that the storage structure may remain on a property for any one seasonal sale event:** forty-nine (49) consecutive days, with the option for a one-time extension of the Temporary Use Permit additional 14 consecutive days, for a maximum total of 63 consecutive days from the date that the initial temporary use permit was issued.
  - (3) **Maximum occurrences in a calendar year that a storage structure may be placed on a property for seasonal sales:** two (2).
- e. **Placement in all zones.**
- (1) **Seasonal sales storage structure.** In the commercial and industrial zones, storage structure shall be placed on the property of the seasonal sales event in a loading/dock area, or in an area where it is not visible from the public right-of-way.
  - (2) **All other temporary storage structures.** Storage structures may be placed within the rear, side, street side or front yard setback. A

storage structure may be placed in the right-of-way upon obtaining a right-of-way encroachment permit from the City's Engineering section.

- f. **Prohibited types of storage structures in all zones.** Storage structures mounted on chassis or wheels shall not be allowed.
15. **Temporary Construction Trailer(s) – Off-site.** Construction trailer(s) for an approved construction project that is not located on the lot or parcel of the associated development activity is required to obtain a temporary use permit. Written authorization from the property owner(s) or property management company(ies) representing the property owner(s) shall be provided with the application for a temporary use permit. The construction trailer(s) shall be removed immediately upon completion of the development project, or the expiration of the building permit authorizing the development project, whichever occurs first. Immediately upon removal of the construction trailer(s), the property shall be restored to the condition pre-existing the construction trailer(s), or a condition approved by the Director.
16. **Similar Temporary Activities.** The Director may authorize other temporary activities that are similar to the activities listed in this subsection and that are compatible with the applicable zone and surrounding land uses.

Section 5.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-20.40.150 Temporary Use Permits, subsection E. Exempt Temporary Activities., to add paragraphs 7, 8 and 9 in numerical order, as follows:

**Section 10-20.40.150 Temporary Use Permits**

- E. **Exempt Temporary Activities.** The following temporary activities are allowed without a temporary use permit.
  7. **Temporary storage structures associated with a building permit.** Storage structure(s) used for the purpose of construction activities may be placed on a property after a building permit for the construction activities on the property has been obtained. The owner shall cause the storage structure(s) to be removed from property within seven days after the issuance of a Certificate-of-Occupancy, Certificate-of-Completion, final inspection or expiration of the permit pertaining to the construction activities. Storage structures mounted on chassis shall not be allowed.
  8. **Storage structures used for moving in all zones.** For the purpose of loading or unloading contents while in the process of moving, storage structures may be placed on a property for duration not to exceed 14 days. Storage structures mounted on trailers or wheels shall not be allowed.
  9. **Temporary Outdoor Retail Activities, Excluding Seasonal Sales.** Retail uses are allowed temporary outdoor activities, such as a garden sale, sidewalk sale (excluding the use of sidewalks in the right-of-way), sales promotion, or a similar activity as determined by the Zoning Administrator.

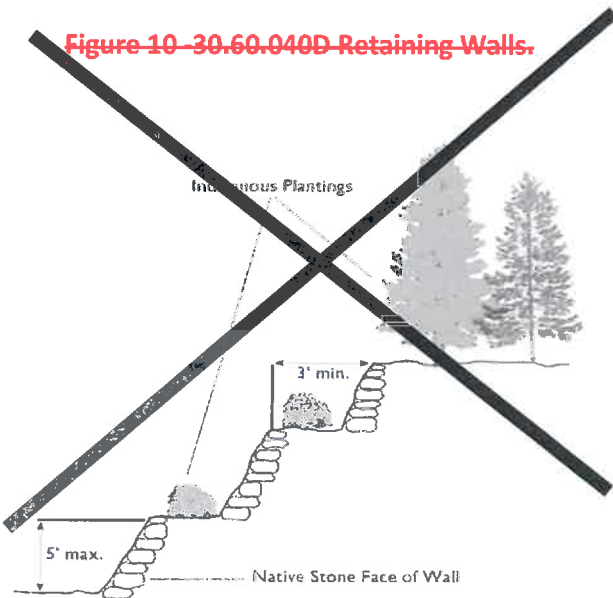
- a. The maximum occurrences that a temporary outdoor retail activity may occur on a property: One (1) occurrence per month.
- b. Maximum duration of any one occurrence of a temporary outdoor retail activity: fourteen (14) days.
- c. A temporary outdoor retail activity shall occur on the same property as the primary retail use that is directly associated with the activity. The temporary retail activity shall not create a nuisance (noise, smoke, odor, dust, vibration or illumination) that is greater than the primary retail use directly associated with the activity.

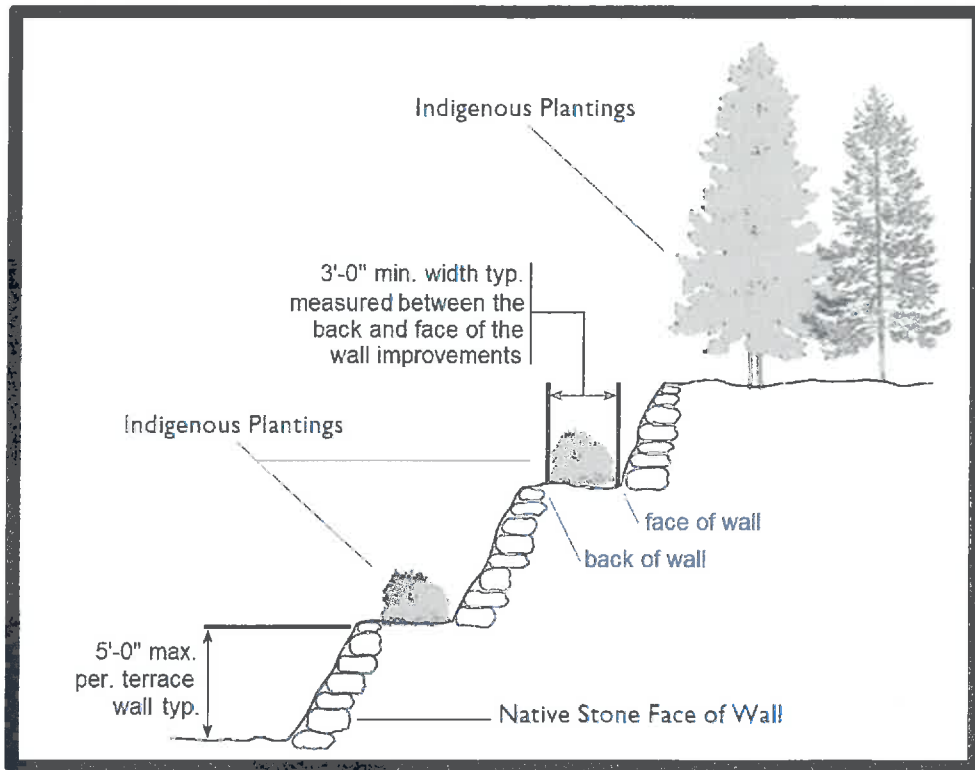
Section 6. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-30.60.040 Natural Features and Site Drainage, Subsection A. Applicable to All Zones., paragraph 1. Topography., Figure 10 -30.60.040D Retaining Walls., as follows:

**10-30.60.040 Natural Features and Site Drainage**

**A. Applicable to All Zones.**

**1. Topography.**





**Figure 10 -30.60.040D Retaining Walls.**

Section 7. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection B. Residential Zones – Allowed Uses, and the associated table, as follows – including adding grid lines and shading to the table:

**Section 10-40.30.030 Residential Zones**

~~**B.—Residential Zones—Allowed Uses.**~~

**B. Residential Zones – Allowed Uses.** The allowed land uses of each of the Residential Zones are shown in Table 10-40.30.050.B.

Table 10-40.30.030.B. Residential Zones – Allowed Uses.								
Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<b>Ranching, Forestry and Animal Keeping</b>								
<del>Animal Keeping</del>		<del>See Section 10-40.60.070</del>						
Animal Keeping	10-40.60.070	p <sup>6</sup>	p <sup>6</sup>	--	--	--	--	--
<del>Ranching</del>		--	--	--	--	--	--	--

**Table 10-40.30.030.B.  
Residential Zones – Allowed Uses.**

Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<b>Recreation, Education and Assembly</b>								
Commercial Campgrounds	10-40.60.130	UP	--	--	--	--	--	--
Golf Courses and Facilities		UP	UP	UP	--	--	--	--
Equestrian Recreational Facilities		UP	UP	UP	--	--	--	--
Libraries, Museums		UP	UP	UP	UP	UP	UP	UP
Meeting Facilities, Public and Private	10-40.60.230							
Regional		--	--	--	--	--	--	--
Neighborhood		P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>	P/UP <sup>2</sup>
Outdoor Public Uses, General		P	P	P	--	P	P	P
Places of Worship		P/UP <sup>6</sup> P/UP <sup>5</sup>	P/UP <sup>6</sup> P/UP <sup>5</sup>	P/UP <sup>6</sup> P/UP <sup>5</sup>	P/UP <sup>6</sup> P/UP <sup>5</sup>	P/UP <sup>6</sup> P/UP <sup>5</sup>	P/UP <sup>6</sup> P/UP <sup>5</sup>	P/UP <sup>6</sup> P/UP <sup>5</sup>
Schools – Public and Charter		p <sup>3</sup>	p <sup>3</sup>	p <sup>3</sup>	p <sup>3</sup>	P	P	p <sup>3</sup>
Schools – Private		P	P	P	P	P	P	P
Trade Schools		--	--	--	--	--	--	--
<b>Residential</b>								
<b>Accessory Building and Structures</b>	<b>10-40.60.020</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
<b>Accessory Dwelling Units</b>	<b>10-40.60.030</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
Co-housing	10-40.60.120	P	P	<b>P PRD</b>	--	P	P	--
Congregate Care Facilities		UP	UP	UP	UP	P	P	UP
Day Care, Centers	10-40.60.150.B	UP	UP	UP	UP	UP	UP	UP
Day Care, Home	10-40.60.150.A	P	P	P	P	P	P	P
Dormitories		--	--	--	--	UP	UP	--
<b>Development, Duplex</b>		<b>P<sup>4</sup></b> <b>PRD</b>	<b>P<sup>4</sup></b> <b>PRD</b>	<b>P<sup>4</sup></b> <b>PRD</b>	P	P	P	--
<b>Dwelling: Development - Cluster, Single-Family</b>	10-40.60.170	P	P	-- <b>PRD</b>	--	--	--	--
<b>Dwelling: Multiple-Family Development, Multiple-Family</b>		<b>P<sup>4</sup></b> <b>PRD</b>	<b>P<sup>4</sup></b> <b>PRD</b>	<b>P<sup>4</sup></b> <b>PRD</b>	--	P	P	--

**Table 10-40.30.030.B.  
Residential Zones – Allowed Uses.**

Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<b>Dwelling: Single-Family Development, Single-Family</b>		P	P	P	P	<del>P<sup>4,5</sup></del> PRD <sup>4</sup>	<del>P<sup>4,5</sup></del> PRD <sup>4</sup>	P
Group Home		P	P	P	P	P	P	P
Home Occupation	10-40.60.180	P	P	P	P	P	P	P
Institutional Residential								
Custodial Care Facilities		UP	UP	UP	UP	UP	UP	UP
Homeless Shelters	10-40.60.190							
Emergency Shelters		UP	UP	UP	UP	UP	UP	UP
Short Term Housing		UP	UP	UP	UP	UP	UP	UP
Transitional Housing		UP	UP	UP	UP	UP	UP	UP
Sheltered Care Homes		UP	UP	UP	UP	UP	UP	UP
Nursing Homes		--	UP	UP	UP	UP	UP	UP
Live/Work	10-40.60.200	--	--	--	--	<del>UP<sup>4</sup></del> UP/PRD	<del>UP<sup>4</sup></del> UP/PRD	--
Manufactured Home	10-40.60.210	--	--	--	--	--	--	P
Manufactured Home Park	10-40.60.210.D	--	--	--	--	--	--	P
Manufactured Home Subdivision	10-40.60.210.C	--	--	--	--	--	--	P
Mobile Home		--	--	--	--	--	--	P
Planned Residential Development	10-40.60.280	P	P	P	P	P	P	--
Rooming and Boarding Facilities		--	UP	--	--	UP	UP	UP
Single Room Occupancy, Fraternities and Sororities		--	--	--	--	UP	UP	--
<b>Retail Trade</b>								
Neighborhood Market								
≤ 1,500 sf		--	--	UP	--	--	--	UP
≤ 2,500 sf		--	--	--	--	UP	--	--
≤ 5,000 sf		--	--	--	--	--	UP	--
Offices		--	--	--	--	--	UP	--
<b>Services</b>								

**Table 10-40.30.030.B.  
Residential Zones – Allowed Uses.**

Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
Bed and Breakfast Establishments	10-40.60.110	P	P	P	P	P	P	P
Cemeteries		UP	UP	UP	--	UP	UP	UP
Hospitals		UP	UP	UP	UP	UP	UP	UP
<b>Public Services</b>								
Public Services Minor		P	P	P	P	P	P	P
Public Services Major		--	--	--	--	--	--	--
Emergency Services		UP	UP	UP	UP	UP	UP	UP
<b>Transportation and Infrastructure</b>								
Accessory Wind Energy Systems	10-40.60.040	P	P	P	--	P	P	P
Telecommunications Facilities								
AM Broadcasting Facilities	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Antenna-supporting Structure	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Attached Telecommunication Facilities	10-40.60.310	P	P	P	P	P	P	P
Colocation Facility	10-40.60.310	P	P	P	UP	P	P	P
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	UP	UP	UP	UP	UP	UP	UP
Stealth Telecommunication Facilities	10-40.60.310	P	P	P	P	P	P	P
<b>Urban Agriculture</b>								
Community Garden	10-40.60.140	P	P	P	P	P	P	P
Nurseries		UP	--	--	--	--	--	--
<b>End Notes</b>								
<sup>1</sup> <b>1.</b> A definition of each listed use type is in Chapter 10-80, Definitions.								
<sup>2</sup> <b>2.</b> A conditional use permit is required if liquor is sold or if facilities exceed 250 seats.								
<sup>3</sup> <b>3.</b> Charter schools proposed in existing single-family residences shall be located on residential lots one acre or greater. Charter schools shall be subject to the review processes established in A.R.S. §15-189.01., <b>as amended.</b>								
<sup>4</sup> <del>Permitted as Planned Residential Development (see Section 10-40.60.270, Planned Residential Development).</del>								

ADD

Table 10-40.30.030.B. Residential Zones – Allowed Uses.								
Land Use <sup>1</sup>	Specific Use Regulations	Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
<sup>5</sup> 4. Existing single-family uses and lots recorded in MR and HR, prior to the effective date of this Zoning Code, are considered legal, conforming uses.								
<sup>6</sup> 5. A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.								
<b>6. Use is allowed only on a lot or parcel with a net lot area of five acres, or greater.</b>								
<b>Key</b>								
P = Permitted Use								
UP = Conditional Use – Requires the Approval of a Conditional Use Permit								
<b>PRD = Allowed Use only when part of a Planned Residential Development (see Section 10-40.60.280)</b>								
<b>UP/PRD = Conditional Use – Requires the Approval of a Conditional Use Permit, and the use shall be part of a Planned Residential Development (see Section 10-40.60.280)</b>								
-- = Use Not Allowed								

Section 8. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection C. Residential Zones – Building Form Standards., as follows – including adding grid lines and shading to the table:

**10-40.30.030 Residential Zones**

- C. **Residential Zones – Building Form Standards and Property Development Standards. The building form and property development standards shown in Table 10-40.30.030.C. shall apply to all property within the corresponding residential zone.**

**Table 10-40.30.030.C.  
Residential Zones – Building Form and Property Development Standards.**

	Residential Zones						
	RR	ER	R1	R1N	MR	HR	MH
<b>Residential development subdivided by a plat that was recorded before December 5, 2011</b>							
<b>Lot sizes</b>	<p>(1) Lot sizes and setbacks shall be provided in accordance with the requirements delineated on the recorded plat. When a recorded plat does not have setbacks delineated, the Building Placement Requirements of this table shall govern.</p> <p>(2) Any lot(s) created or reconfigured in accordance with the subdivision code on, or after December 5, 2011, from a lot(s) platted before December 5, 2011, shall conform with the current requirements of the property's zone.</p>						
<b>Setbacks</b>							
<b>Building Placement Requirements</b>							
<b>Setback Setbacks</b>							
<b>Front (min.)</b>							
2nd Floor and Below	75'	50'	15'	15'	10'	10'	15'
Above 2nd Floor	75'	50'	15'	15'	15'	15'	15'
For Parking	--	--	25' <sup>1</sup>	--	--	--	--
<b>Side (min.)</b>							
Interior Lots <b>Side Yard</b>	10'	20'min./45'total	8'	6'	5'	5'	8'
<del>Corner Lots (interior)</del>	<del>10'</del>	<del>20'min./45'total</del>	<del>8'</del>	<del>6'</del>	<del>5'</del>	<del>5'</del>	<del>12'</del>
<del>Corner Lots (exterior)</del> <b>Street Side Yard</b>	25'	20'	20' <sup>2</sup> 15'	6'	5'	5'	12'
Rear (min.)	10'	60'	25' <sup>3</sup> 25' <sup>2</sup>	15'	15' <sup>4</sup> 15' <sup>3</sup>	15' <sup>4</sup> 15' <sup>3</sup>	10'
<b>Building Form Requirements</b>							
Building Height (max.)	35'	35'	35'	35'	35'	60' <sup>5</sup> 60' <sup>4</sup>	30'
Coverage (max.)	20%	17%	35%	35%	40%	50%	43%
<b>Density Requirements See Division 10-30.20, Affordable Housing Incentives</b>							
<b>Density: Gross (units/acre)</b>							
Min.	--	--	2	2	6	10	--
Max. Outside the RPO	1	1	6	14	14	29 <sup>6</sup> 29 <sup>5</sup>	11

**Table 10-40.30.030.C.  
Residential Zones – Building Form and Property Development Standards.**

		Residential Zones						
		RR	ER	R1	R1N	MR	HR	MH
Max. Within the RPO		1	1	5	--	9	22	4
<b>Lot Requirements</b>								
Area								
Gross (min.)		1 <del>ac</del> <sup>7</sup> ac <sup>6</sup>	1 ac	6,000 sf	6,000 sf	6,000 sf	6,000 sf	5 ac
Per Unit (min.)		1 <del>ac</del> <sup>7</sup> ac <sup>6</sup>	1 ac	6,000 sf	3,000 sf	<del>Endnote<sup>6</sup></del> Endnote <sup>5</sup>	<del>Endnote<sup>6</sup></del> Endnote <sup>5</sup>	4,000 sf
Width								
Interior Lots (min.)		<del>100<sup>18</sup></del> 100 <sup>17</sup>	<del>140<sup>19</sup></del> 149 <sup>18</sup>	<del>60<sup>19,10</sup></del> 60 <sup>18,9</sup>	50'	<del>50<sup>19,10</sup></del> 50 <sup>18,9</sup>	<del>50<sup>19,11</sup></del> 50 <sup>18,10</sup>	--
Corner Lots (min.)		<del>100<sup>18</sup></del> 100 <sup>17</sup>	<del>140<sup>19</sup></del> 149 <sup>18</sup>	<del>65<sup>19,10</sup></del> 60 <sup>18,9</sup>	50'	<del>50<sup>19,10</sup></del> 50 <sup>18,9</sup>	<del>50<sup>19,11</sup></del> 50 <sup>18,10</sup>	--
Depth (min.)		<del>200<sup>18</sup></del> 200 <sup>17</sup>	--	<del>100<sup>19</sup></del> 100 <sup>18</sup>	100'	<del>100<sup>19</sup></del> 100 <sup>18</sup>	<del>75<sup>19,11</sup></del> 75 <sup>18,10</sup>	--
<b>Other Requirements</b>								
Open Space ( <del>% of Gross Lot Area</del> ) (% of Gross Lot Area) <sup>11</sup>		--	--	--	--	See Table 10-40.30.030.A		
Fences and Screening		See Division 10-50.50						
Landscaping		See Division 10-50.60						
Lighting		See Division 10-50.70						
Parking		See Division 10-50.80						
Signs		See Division 10-50.100						
<b>End Notes</b>								
<sup>1</sup> 1. 15' for side entrance garages, where the garage is designed as an integral element of the primary dwelling (i.e., doors and windows are consistent with the overall architectural character).								
<del><sup>2</sup> 15' on existing lots with less than 8,000 sf or less than 65' in width.</del>								
<sup>3</sup> 2. One or two story residential buildings and decks attached to those buildings may be built to 15' from the rear property line; provided, that any portion of the structure located closer than 25' to the rear property line does not exceed 50% of the lot width.								
<sup>4</sup> 3. May be reduced for zones not subject to the Resource Protection Overlay when a minimum of 350 sf of open yard area per unit is provided, see Section 10-40.30.030(H).								
<sup>5</sup> 4. Building height can be exceeded with approval of a Conditional Use Permit.								

<b>Table 10-40.30.030.C. Residential Zones – Building Form and Property Development Standards.</b>							
	<b>Residential Zones</b>						
	RR	ER	R1	R1N	MR	HR	MH
<sup>6</sup> 5.	The maximum number of units for each lot is based on the following:						
<sup>7</sup> 6.	Five-acre minimum where public water supply and public streets are not available to serve the property.						
<sup>8</sup> 7.	Where public water supply and public streets are not available to serve the property a minimum lot width of 200' and lot depth of 250' are required.						
<sup>9</sup> 8.	Within a Planned Residential Development the minimum width and depth of a lot may vary based on the minimum lot standards applicable to the building types selected for application within a Planned Residential Development (See Section 10-40.60.280, Planned Residential Development).						
<sup>10</sup> 9.	Lot width measured at the setback line.						
<sup>11</sup> 10.	On lots greater than 9,000 sf: 70' minimum width on interior lots, 75' minimum width on corner lots and 100' minimum depth on all lots.						
<sup>12</sup> 11.	Any required common open space as required in Division 10-50.110, Specific to Building Types, and areas set aside for resource preservation such as floodplains, slopes and forests (Division 10-50.90, Resource Protection Standards) may be used to satisfy this standard. In this context, "open space" includes active and passive recreation uses, landscape areas, and community gardens.						
<b>Key</b>							
-- Not Applicable							

Section 9. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, D. Miscellaneous Requirements – All Residential Zones., as follows:

**D. Miscellaneous Requirements – All Residential Zones.**

- ~~1. Building form standards may be modified (reduced or exceeded) by the Director with the application of the clustered, affordable, or planned residential development; provided, that such application is consistent with the General Plan.~~
- ~~2. Land subdivided or developed within each residential zone shall be served by public water and sewer facilities, except for five-acre lots in the RR zone unless required by the Subdivision Regulations, City Code Title 11.~~
1. In accordance with Title 11 Subdivision and Land Split Regulations, of the City Code, except as specified in the RR zone (Section 10-40.30.030.E):
  - a. all land subdivided or split into lots or parcels shall abut a public right-of-way or private street tract; and

- b. Water and sewer infrastructure shall be provided to each lot or parcel when required.
- ~~3.~~ 2. Temporary uses are permitted in compliance with Section 10-20.40.150, Temporary Use Permits.
- 3. Accessory Uses:
  - a. An Accessory Dwelling Unit (ADU) use is allowed in all residential zones.
  - b. All other accessory uses are allowed in accordance with section 10-40.60.025.
- ~~4. The cultivation of vegetable gardens for home use is permitted in all residential zones.~~
- 4. Accessory structures:
  - a. An Accessory Dwelling Unit (ADU) structure shall comply with section 10-40.60.030.
  - b. All other accessory structures are allowed in accordance with section 10-40.60.020.

Section 10. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, to amend Subsection E. Miscellaneous Requirements – RR Zone., as follows:

E. Miscellaneous Requirements – RR Zone.

- ~~1. Five-acre parcels shall have frontage on either a public right-of-way or an access easement approved by the City Engineer.~~
- ~~2. One-acre parcels shall have frontage on either a public or private street improved with a paved roadway satisfactory to the City Engineer.~~
- 1. In accordance with Title 11 Subdivision and Land Split Regulations, of the City Code:
  - a. all land subdivided or split into lots or parcels less than five acres shall abut a public right-of-way or private street tract;
  - b. all land subdivided into lots or parcels five acres or greater shall abut a public right-of-way or private street tract, or unless otherwise allowed by Title 11 of the City Code, an access easement approved by the City Engineer; and
  - b. Water and sewer infrastructure shall be provided to each lot or parcel when required.

Section 11. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection F. Miscellaneous Requirements – R1 Zone., as follows:

F. Miscellaneous Requirements – RR, ER, and R1 Zone.

1. ~~No more than one single-family dwelling shall be permitted on each lot, plus such accessory uses, as are related, incidental, and not detrimental to the residential environment. (Refer to subsection (F)(2) of this section for exceptions.)~~

Unless otherwise allowed as part of a Planned Residential Development (PRD), only one single-family dwelling unit, or a single-family dwelling unit with an Accessory Dwelling Unit (ADU), is allowed a lot or parcel.

2. ~~Clustered development shall be allowed in planned residential and co-housing developments~~
3. ~~Each lot shall have frontage on a dedicated public street.~~

Section 12. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.030 Residential Zones, Subsection G. Miscellaneous Requirements – MR and HR Zone., as follows:

G. Miscellaneous Requirements – MR and HR Zone.

1. ~~Each lot shall have frontage on a dedicated public street.~~

2. 1. Common open space for other building types not specifically listed in Division 10-50.110, Specific to Building Types, such as an apartment complex, shall be provided based on the following standards:

Table <del>10-40.30.030.A</del> 10-40.30.030.G: Common Open Space Requirements	
Area <del>Area</del> <sup>1</sup>	15% of gross lot area; at least one open space area shall be no less than 400 sq. ft.
Width	15' min.
Depth	15' min.
No private open space is required	
<b>End Notes</b>	
<sup>±</sup> 1. Roof decks and courtyards <del>may be</del> <b>are</b> included in the open space area calculation, but not driveways or vehicle parking areas.	

3. 2. In addition to the 15 percent open space requirement established in ~~subsection (C) of this section~~ **Table 10-40.30.030.C., Building Form Standards,** residential projects over 50 units or more ~~are also required to~~ **shall** provide a minimum of five percent civic space. (See Section ~~10-30.60.090 (B)(1)~~ **10-30.60.090,** Civic or Public Space Requirement.)

Section 13.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.040 Commercial Zones, Subsection B. Commercial Zones – Allowed Uses., as follows – including adding grid lines and shading:

**10-40.30.040 Commercial Zones**

B. Commercial Zones – Allowed Uses. **The allowed land uses of each of the Commercial zones are shown in Table 10-40.30.040.B.**

<b>Table 10-40.30.040.B.</b>						
<b>Commercial Zones – Allowed Uses</b>						
Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
<b>Industrial, Manufacturing, Processing and Wholesaling</b>						
Carpenter or Cabinet Shops		--	--	--	P	-
Flammable Liquid, Gas, and Bulk Fuel – Storage and Sale		--	--	UP	--	
Manufacturing and Processing – Incidental		--	P	P	P	P
Machine or Metal Working Shops		--	--	--	P	--
Micro-brewery or Micro-distillery	10-40.60.240	--	P	P	P	P
Mini-storage Warehousing	10-40.60.250	--	--	UP <sup>2</sup>	P	--
Research and Development Uses	10-40.60.300	--	--	UP	--	--
Transportation or Trucking Yards		--	--	--	P	--
Vehicle Towing/Impound Yard		--	--	p <sup>4</sup>	--	--
Warehousing	10-40.60.330	--	p <sup>3</sup>	p <sup>3</sup>	--	p <sup>3</sup>
Wholesaling and Distribution		--	--	--	P	p <sup>3</sup>
<b>Recreation, Education and Assembly</b>						
Automobile, Go-kart, Miniature Automobile Racing	10-40.60.080	--	UP	UP	--	--
Commercial Campgrounds	10-40.60.130	--	--	P	--	--
Commercial Recreation Facilities, Indoor		P	P	P	--	P

**Table 10-40.30.040.B.**  
**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Commercial Recreation Facilities, Outdoor	10-40.60.270	--	UP	UP	--	--
Libraries, Museums		P	P	P	P	P
Meeting Facilities, Public or Private	10-40.60.230					
Regional		--	P/UP <sup>5</sup>	P/UP <sup>5</sup>	P/UP <sup>5</sup>	P/UP <sup>5</sup>
Neighborhood		P <sup>5</sup>	P/UP <sup>5</sup>	--	--	--
Outdoor Public Uses, General		P	P	P	--	--
Places of Worship		P/UP <sup>10</sup>	P/UP <sup>10</sup>	P/UP <sup>10</sup>	P/UP <sup>10</sup>	P/UP <sup>10</sup>
Schools – Public and Charter		P	P	P	P	P
Schools – Private		P	P	P	P	P
Theaters		P	P	P	--	P
Trade Schools		--	UP	UP	UP	UP
<b>Residential<sup>7</sup></b>						
<del>Accessory Building and Structures</del>	<del>10-40.60.020</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>
<del>Accessory Dwelling Units</del>	<del>10-40.60.030</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>
Co-housing	10-40.60.120	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
Congregate Care Facilities		UP	P	P	P	UP
Day Care, Centers	10-40.60.150.B	P	P	P	UP	UP
Day Care, Home	10-40.60.150.A	P	P	P	P	P
Dormitories		UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>
Development, Duplex		p <sup>6</sup>	p <sup>6,9</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
<del>Dwelling: Multiple-Family Development, Multiple-Family</del>		p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
<del>Dwelling: Single-Family Development, Single-Family</del>		--	p <sup>9</sup>	--	--	--
Fraternities and Sororities		UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>
Group Homes		p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
Home Occupation	10-40.60.180	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>

**Table 10-40.30.040.B.**

**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
<b>Institutional Residential</b>						
Custodial Care Facilities		p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>
Homeless Shelters	10-40.60.190					
Emergency Shelters		p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>
Short Term Housing		p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>	p <sup>8</sup>
Transitional Housing		P	P	P	P	P
Nursing Homes		UP	UP	UP	UP	UP
Sheltered Care Homes		P	P	P	P	P
Live/Work	10-40.60.200	P	P	P	P	P
Planned Residential Development	10-40.60.280	P/UP	P/UP <sup>9</sup>	UP	UP	UP
Residence for Owner, Caretaker or Manager		p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>	p <sup>6</sup>
Rooming and Boarding Facilities		UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>	UP <sup>6</sup>
Single Room Occupancy		UP	--	P	--	P
<b>Retail Trade</b>						
Bars/Taverns		P	P	P	P	P
Crematorium		P	P	P	P	--
Drive-through Retail	10-40.60.160	P	P	P	--	--
Drive-through Service		P	P	P	--	--
Farmers Markets and Flea Markets		--	P	P	P	P
General Retail Business		P	P	P	P	P
Mixed Use	10-40.60.260	P	P	P	P	P
Restaurant or Cafe		P	P	P	P	P
<b>Services</b>						
Bed and Breakfast Establishments	10-40.60.110	P	P	P	P	P
Cemeteries		UP	UP	UP	UP	--
Dry-cleaning, Processing		P	P	P	--	--

**Table 10-40.30.040.B.**  
**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Equipment Rental Yard		--	UP	P	P	--
Funeral Homes, Chapels and Mortuaries		--	P	P	--	UP
General Services		P	P	P	P	P
Hospital		UP	UP	UP	UP	UP
<b>Lodging</b>		<b>UP</b>	<b>--</b>	<b>P</b>	<b>--</b>	<b>P</b>
Medical Marijuana Dispensary	10-40.60.220	--	--	P	--	--
Office		P	P	P	P	P
Public Services						
Public Services Major		--	--	--	--	--
Public Services Minor		P	P	P	P	P
<b>Travel Accommodations</b>		<b>UP</b>	<b>--</b>	<b>P</b>	<b>--</b>	<b>P</b>
Emergency Services		UP	UP	UP	UP	UP
Veterinary Clinics		P	P	P	P	--
Veterinary Hospitals		--	--	UP	UP	--
<b>Telecommunication Facilities</b>						
AM Broadcasting Facilities	10-40.60.320	UP	UP	UP	UP	UP
Antenna-Supporting Structure	10-40.60.320	UP	UP	UP	UP	UP
Attached Telecommunication Facilities	10-40.60.320	P	P	P	P	P
Collocation Facility	10-40.60.320	P	P	P	P	P
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.320	P	P	P	P	P
Stealth Telecommunication Facilities	10-40.60.320	P	P	P	P	P
<b>Transportation and Infrastructure</b>						
Accessory Wind Energy Systems	10-40.60.040	P	P	P	P	P
Garages, Off-Street		P	P	P	P	P
Parking Lots, Off-Street	10-50.80	P	P	P	P	P

**Table 10-40.30.040.B.**  
**Commercial Zones – Allowed Uses**

Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Passenger Transportation Facilities		--	--	UP	UP	UP
<b>Urban Agriculture</b>						
Community Gardens	10-40.60.140	P	P	P	P	P
Food Production		--	--	UP <sup>2</sup>	UP <sup>2</sup>	--
<b>Vehicle Sales and Services</b>						
Automobile Service Station and Convenience Store	10-40.60.090	P	P	P	P	--
Automobile and Trailer Rental		--	--	P	P	--
Automobile/Vehicle Sales and Service, New and Used		--	UP	P	P	UP
Automobile/Vehicle Repair Garages – Minor	10-40.60.100	--	UP	P	P	--
Automobile/Vehicle Repair Garages – Major	10-40.60.100	--	--	P	P	--
Car Washes		P	P	P	--	--
Mobile Homes and Recreational Vehicles, Sales, and Service		--	--	P	--	--
<b>End Notes</b>						
<sup>1</sup> <b>1.</b> A definition of each listed use type is in Chapter 10-80, Definitions.						
<sup>2</sup> <b>2.</b> Only allowed on lots that do not have highway frontage or behind existing/new commercial uses.						
<sup>3</sup> <b>3.</b> Only permitted when incidental to permitted use.						
<sup>4</sup> <b>4.</b> This use shall be screened. See Division 10-50.50, Fences and Screening, for fencing and screening requirements.						
<sup>5</sup> <b>5.</b> A conditional use permit is required if liquor is sold or if facilities exceed 250 seats.						
<sup>6</sup> <b>6.</b> Residential uses with more than two units are allowed as part of a mixed-use development located above or behind the commercial uses <b>subject to the development standards established in the HR zone</b> and as a planned residential development (Section 10-40.60.280). <b>New developments that include residential uses with more than two units shall provide a minimum of 15% of the gross lot area in the form of common open space.</b>						

Table 10-40.30.040.B.						
Commercial Zones – Allowed Uses						
Land Use <sup>1</sup>	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
<sup>7</sup> 7.	Residential uses in the CC, HC, CS and CB zones, and residential uses and properties listed on the National Historic Registry or within the Landmarks overlay zone existing prior to the effective date of this Zoning Code are considered legal, nonconforming uses. Residential uses in the CC, HC, CS and CB zones shall be subject to the development standards established in the HR zone.					
<sup>8</sup> 8.	Conditional use permit is required if proximity between shelter facilities is less than one-quarter mile.					
<sup>9</sup> 9.	Single-family and duplex building types (see Division 10-50.110) are permitted by right on lots ≤9,000 sf existing prior to November 1, 2011, subject to the building placement and building form requirements of the MR zone. A conditional use permit is required for all other building types and multifamily residential uses with three or more units regardless of the size of the lot or parcel.					
<sup>10</sup> 10.	A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.					
<b>Key</b>						
P = Permitted Use						
UP = Conditional Use Permit Required						
-- = Use Not Allowed						

Section 14. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.040 Commercial Zones, Subsection C. Commercial Zones – Building Form Standards., as follows – including grid lines and shading:

Section 10-40.30.040 Commercial Zones

C. Commercial Zones – Building Form and Property Development Standards. **The building form and property development standards shown in Table 10-40.30.040.C. shall apply to all property with the corresponding commercial zones.**

Table 10-40.30.040.C.						
Commercial Zones – Building Form and Property Development Standards						
<del>Building Form Standards-</del>	Commercial Zones					
	SC	CC	HC	CS	CB	
<b>Building Placement Requirements</b>						
<b>Setback from property line</b>						
Front	15' min. <sup>1</sup>	0'	0' <sup>2</sup>	0'	0'	

(See also Also see Section 10-50.60.040.B)					
Side					
Adjacent to Residential Use	----- 15' min. <sup>7</sup> 15' min. <sup>6</sup> -----				
<del>All Other Uses</del>	0'	-	-	-	-
Exterior Street Side (min.)	10' <sup>3</sup>	10' <sup>3</sup>	10' <sup>3</sup>	10' <sup>3</sup>	0'
All Other sides	----- 0' -----				
Rear					
Adjacent to Residential	----- 15' min. -----				
All Other rears	----- 0' -----				
<b>Building Form Requirements</b>					
Building Height (max.)	35'	60' <sup>14,8</sup> 60' <sup>4,7</sup>	60' <sup>14</sup>	60' <sup>14</sup>	60' <sup>14</sup>
Gross FAR (max.)	0.8 <sup>5</sup> 0.8	2.5 <sup>5</sup> 2.5	3.0 <sup>5</sup> 3.0	2.0 <sup>5</sup> 2.0	No max.
<b>Density Requirements</b>					
Gross Density (units/acre) (max.) (Not Applicable to Mixed Use)	13	----- Refer to HR Zone 29 -----			
<b>Lot Requirements</b>					
Area (Gross sf) (min.) <sup>6</sup> (min.) <sup>5</sup>	6,000	9,000	9,000	9,000	7,000
Width (min.) <sup>6</sup> (min.) <sup>5</sup>	50'	60'	60'	60'	50'
Depth (min.) <sup>6</sup> (min.) <sup>5</sup>	100'	100'	100'	100'	--
<b>Open Space</b>					
Developments with Two or More Dwelling Units	----- 15 percent of the net lot area -----				
<b>Other Requirements</b>					
Fences and Screening	See Division 10-50.50				
Landscaping	See Division 10-50.60				
Outdoor Lighting	See Division 10-50.70				
Parking	See Division 10-50.80				
Signs	See Division 10-50.100				
<b>End Notes</b>					
<sup>1</sup> 1. Front setbacks shall be equal to 15' or match adjacent residential development, whichever is less.					
<sup>2</sup> 2. No front setback required, except when required by the adoption of building setback lines along specified streets.					
<sup>3</sup> 3. Setback may be reduced to 5' min., if the landscape street buffer is reduced in accordance with Section 10-50.60.040(B), Nonresidential Zone Buffers.					
<sup>4</sup> 4. Conditional use permit required for structures over 60' in height.					
<del><sup>5</sup> 5. Excludes residential square feet (gross) when above or behind commercial uses.</del>					
<sup>6</sup> 5. Within a planned residential development development, the minimum area, width, and depth of a lot may vary based on the minimum lot standards applicable to the building types selected for application within a planned residential development (see Section 10-40.60.280, Planned Residential Development).					
<sup>7</sup> 6. Except that the setback from a proposed residential use in a commercial zone to other residential uses shall be 5' min.					

**7.** Single-family dwellings and duplexes in the CC zone shall be limited to a maximum height of 35 feet consistent with the height standard for the MR zone.

Section 15. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.040 Commercial Zones, Subsection D. Miscellaneous Requirements – All Commercial Zones., as follows:

D. Miscellaneous Requirements – All Commercial Zones.

~~1.—Storage shall be limited to accessory storage of commodities sold at retail on the premises and shall be within an enclosed building, except as permitted in Section 10-40.60.020(E), Permanent Outdoor Accessory Uses.~~

~~2.—Every commercial zoned lot shall have frontage on a public street.~~

**1. In accordance with Title 11 Subdivision and Land Split Regulations, and Title 12 Engineering Design Standards and Specifications for New Infrastructure, of the City Code, all land subdivided into lots or parcels shall abut a public right-of-way or private street tract, and have water and sewer infrastructure service.**

~~3.~~ **2.** All products incidental to a permitted use which are manufactured or processed on the premises shall be sold on the premises and at retail only, and shall be further limited as follows:

a. In the CC and CB zones, such activity shall be restricted to not over 25 percent of ground floor area of the building or buildings.

b. In the CS zone, such activity shall be restricted to not over 50 percent of ground floor area of the building or buildings.

c. In the CC and CB zones, not more than five employees shall be engaged in such activity.

d. In the CS zone, not more than 10 employees shall be engaged in such activity.

4. Every development in the commercial zones shall have a refuse storage area constructed and provided in accordance with City standards.

5. Temporary uses shall be permitted in compliance with Section 10-20.40.150, Temporary Use Permits.

~~6.—The cultivation of vegetable gardens for home use is allowed in all commercial zones where residential uses are permitted.~~

**6. Accessory Uses:**

a. **An Accessory Dwelling Unit (ADU) use is allowed in commercial zones on a lot containing a single-family dwelling unit as the primary use.**

b. **All other accessory uses are allowed in accordance with section 10-40.60.025.**

**7. Accessory structures:**

- a. An Accessory Dwelling Unit (ADU) structure that complies with section 10-40.60.030. is allowed in Community Commercial (CC) zone on a lot containing a detached single-family dwelling.
- b. All other accessory structures are allowed in accordance with section 10-40.60.020.

Section 16.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.050 Industrial Zones, subsection B. Industrial Zones – Allowed Uses, Table 10-40.30.050.B. Industrial Zones – Allowed Uses, to add Outdoor Storage under the use category Industrial, Manufacturing, Processing and Wholesaling, in alphabetical order, and to amend the Warehousing Specific Use Regulations, as follows:

**10-40.30.050 Industrial Zones**

**B. Industrial Zones – Allowed Uses.** The allowed land uses of each of the Industrial zones are shown in Table 10-40.30.050.B.

Table 10-40.30.050.B. Industrial Zones – Allowed Uses						
Land Use <sup>1</sup>	Specific Use Regulations	Industrial Zones				
		RD	LI	LI-O	HI	HI-O
Industrial, Manufacturing, Processing and Wholesaling						
Outdoor Storage	10-40.60.275.	--	--	--	P	P
Warehousing	<del>10-40.60.330</del>	--	P	P	P	P

Section 17.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.30.050 Industrial Zones, Subsection D. Miscellaneous Requirements – All Industrial Zones., as follows:

- D. Miscellaneous Requirements – All Industrial Zones. ~~Temporary uses shall be permitted in compliance with Section 10-20.40.150, Temporary Use Permits.~~**
- 1. In accordance with Title 11 Subdivision and Land Split Regulations, and Title 12 Engineering Design Standards and Specifications for New Infrastructure, of the City Code, all land subdivided into lots or parcels shall abut a public right-of-way or private street tract, and have water and sewer infrastructure service.
  - 2. Accessory uses are allowed in accordance with section 10-40.60.025.
  - 3. Accessory structures are allowed in accordance with section 10-40.60.020.

Section 18. Amend Title 10 FLAGSTAFF ZONING CODE, 10-40.30.060 Public and Open Space Zones, Subsection B. Public and Open Space Zones – Allowed Uses, as follows – including table format, grid lines and shading:

**10-40.30.060 Public and Open Space Zones**

**B. Public and Open Space Zones – Allowed Uses. The allowed land uses of each of the Public and Open Space zones are shown in Table 10-40.30.060.B**

<b>Table 10-40.30.060.B. Public and Open Space Zones – Allowed Uses</b>				
<del>Land-Use</del> <sup>1</sup> Land Use	Specific Use Regulations	Public and Open Space Zones		
		<del>PF</del> <sup>2</sup> PF	PLF	POS
<b>Industrial, Manufacturing, Processing and Wholesaling</b>				
Quarrying Operations	10-40.60.280	UP	--	--
<b>Ranching, Forestry and Animal Keeping</b>				
Forestry		--	P	--
Ranching		--	P	--
<b>Recreation, Education and Assembly</b>				
Commercial Campgrounds	10-40.60.130	UP	--	--
Commercial Recreation Facilities, Indoor		UP	--	--
Commercial Recreation Facilities, Outdoor	10-40.60.270	UP	--	--
Libraries, Museums		P	--	--
Outdoor Public Uses, General		P	--	--
Open Spaces		P	P	P
Parks or Recreation Facilities				
Active Recreation		P	--	--
<del>Passive Recreation</del> <sup>3</sup> Passive Recreation		P	P	P
Schools – Public and Charter		P	--	--
Schools – Private		UP	--	--
Universities and Colleges		P	--	--
<b>Residential</b>				
<del>Accessory Building and Structures</del>	<del>10-40.60.020</del>	<del>P</del>	<del>--</del>	<del>--</del>
<del>Congregate Care Facilities</del>		<del>P</del>	<del>--</del>	<del>--</del>

**Table 10-40.30.060.B.  
Public and Open Space Zones – Allowed Uses**

<b>Land-Use<sup>1</sup> Land Use</b>	<b>Specific Use Regulations</b>	<b>Public and Open Space Zones</b>		
		<b>PF<sup>2</sup> PF</b>	<b>PLF</b>	<b>POS</b>
Employee Housing		P	--	--
<b>Institutional Residential</b>				
<b>Congregate Care Facilities</b>		<b>P</b>	<b>--</b>	<b>--</b>
Convents or Monasteries		UP	--	--
Custodial Care Facilities		UP	--	--
Homeless Shelters	10-40.60.190			
Emergency Shelters		UP	--	--
Short Term Housing		UP	--	--
Transitional Housing		UP	--	--
Nursing Homes		UP	--	--
Sheltered Care Homes		UP	--	--
<b>Retail Trade</b>				
Farmers Markets and Flea Markets		P	--	--
<b>Services</b>				
Cemeteries		UP	--	--
Governmental Offices		P	--	--
Public Services				
Public Services Major		UP	--	--
Public Services Minor		UP	UP	--
Emergency Services		UP	--	--
<b>Telecommunication Facilities</b>				
AM Broadcasting Facilities	10-40.60.310	UP	UP	--
Antenna-supporting Structure	10-40.60.310	UP	UP	--
Attached Telecommunication Facilities	10-40.60.310	P	P	--
Collocation Facility	10-40.60.310	P	P	--
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	P	UP	--
Stealth Telecommunication Facilities	10-40.60.310	P	P	--
<b>Transportation and Infrastructure</b>				
Accessory Wind Energy Systems	10-40.60.040	P	P	--

<b>Table 10-40.30.060.B. Public and Open Space Zones – Allowed Uses</b>				
<del>Land Use</del> <sup>1</sup> Land Use	Specific Use Regulations	Public and Open Space Zones		
		<del>PF</del> <sup>2</sup> PF	PLF	POS
Wind Energy Production Facility		UP	P	--
Airports/Landing Strips, Heliports, or Helistops	10-40.60.060	UP	--	--
Government Service/Maintenance Facilities		P	--	--
Municipal Airports		P	--	--
<b>Urban Agriculture</b>				
Community Gardens	10-40.60.140	P	--	--
<b>End Notes</b>				
<del><sup>1</sup>A definition of each listed use type is in Chapter 10-80, Definitions.</del>				
<del><sup>2</sup>A change in any allowed use to another allowed use shall be noticed in accordance with the requirements of Section 10-20.30.080, Notice of Public Hearings.</del>				
<del><sup>3</sup>Includes parking areas and restroom facilities.</del>				
<b>Key</b>				
<b>P = Permitted Use</b>				
<b>UP = Conditional Use Permit Required</b>				
<b>-- = Use Not Allowed</b>				

Section 19. Amend Title 10 FLAGSTAFF ZONING CODE, 10-40.30.060 Public and Open Space Zones, to add Subsection D. Miscellaneous Requirements – Public and Open Space Zones., as follows:

**10-40.30.060 Public and Open Space Zones**

**D. Miscellaneous Requirements – Public and Open Space Zones.**

1. In accordance with Title 11 Subdivision and Land Split Regulations, and Title 12 Engineering Design Standards and Specifications for New Infrastructure, of the City Code, all land subdivided shall: a) front/abut a public right-of-way or private street tract with an improved street; and b) have water and sewer infrastructure serving each lot or parcel.
2. Accessory uses are allowed in accordance with section 10-40.60.025.
3. Accessory structures are allowed in accordance with section 10-40.60.020.

Section 20. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.40.100 T6 Downtown (T6) Standards, Subsection C. Building Placement, **Miscellaneous**, to delete the phrase “stucco or”, as follows:

**10-40.40.100 T6 Downtown (T6) Standards**

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**C. Building Placement**

---

**Miscellaneous**

---

Street facades must be built to BTL within 50’ of each street corner. E

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The entire BTL must be defined by a building or a 24" to 48" high ~~stucco or~~ masonry wall.

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Loading docks, overhead doors and other service entries shall not be located on front or street-facing facades.

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Section 21. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.020 Accessory Buildings and Structures, as follows:

**10-40.60.020 Accessory ~~Buildings and~~ Structures**

~~A. Applicability. Accessory buildings and structures shall be permitted in all zones in compliance with this section, provided each is incidental and subordinate to the principal use or structure. There must be a primary use established and either a principal structure on the parcel or a building permit for a principal structure issued prior to, or simultaneously with, the issuance of a building permit for an accessory building or structure. Children’s play houses and tree houses less than 200 square feet in floor area are not considered accessory structures and do not require a building permit. Sheds less than or equal to 200 square feet in floor area also do not require a building permit.~~

**A. Allowance.**

1. An Accessory Dwelling Unit (ADU) structure is allowed in accordance with Sections 10-40.30.030.D. and 10-40.30.040.D.
2. All other accessory structures are allowed in all zones in compliance with this section.

~~B. Uses.~~

- ~~1.—An accessory structure shall be used in compliance with the permitted uses of the zone within which it is located and, if applicable, the home-occupation regulations in Section 10-40.60.180, Home Occupations.~~
- ~~2.—The use of accessory buildings or structures shall be incidental to the primary use and shall not alter the character of the primary use.~~
- ~~3.—Temporary, occasional, seasonal or periodic uses in connection with established retail stores or shopping centers, such as outdoor garden centers, sidewalk sales, or sales promotions, are considered accessory uses and not subject to a temporary use permit in compliance with Section 10-20.40.150, Temporary Use Permits.~~

**C. B Approvals and Standards.**

1. The property owner shall obtain permits and approvals for an accessory structure in accordance with Division 10-20.40: Permits and Approvals.
2. An accessory structure shall not be allowed on a lot or parcel without a primary structure on the same property.
3. A primary structure shall be established prior to the issuance of a permit for an accessory structure, except that a permit for an accessory structure may be issued concurrent, or after, a permit is issued for the primary structure.
- ~~1.~~ 4. No manufactured home, mobile home, trailer, semi-trailer, bus, recreational vehicle, boxcar or storage container shall be used as an accessory ~~buildings or~~ structure, except as permitted in subsection ~~(D)~~ C. of this section.
- ~~2.— Accessory buildings and structures shall be governed by the lot coverage, floor area ratio and setback requirements of the zone in which they are located, except as provided below.~~
5. Accessory Dwelling Units shall comply with Section 10-40.60.030.
6. Permanent Storage Structures shall comply with subsection C. of this section.
7. All other accessory structures shall comply with the property development standards of the property's zone, except as specified below:
  - a. On any residential lot less than one acre, the total floor area of all accessory ~~buildings and~~ structures ~~(including ADUs {Section 10-40.60.030})~~ shall be less than that of the lot's or parcel's ~~principal building(s)~~ primary structure ~~on the site~~.
  - b. The distance between a ~~principal primary~~ structure and an accessory structure shall ~~be established by~~ comply with the Building Code. ~~This distance may vary by occupancy type.~~
  - ~~c.—Accessory buildings and structures are not permitted in any exterior side setback and shall not occupy any portion of a required setback except as provided in Table 10-40.60.020.A, Accessory Structure Height and Location Standards.~~
  - c. An accessory structure is not allowed in any Street Side Yard.

~~d. One-story accessory structure(s) no more than 16 feet in height may be constructed on any lot no closer than five feet from the rear or interior side property line, except that on corner lots no accessory structure shall be permitted in any exterior yard.~~

d. Allowed Encroachments into the required setbacks in addition to Section 10-50.40.020. A non-livable structure (e.g., garage, workshop, carport, shed, greenhouse, etc.) may encroachment into the property's required zone setbacks in accordance with Table 10-40.60.020.B.7.d.

Table 10-40.60.020.B.7.d. Allowed Accessory Structure Encroachments into Setbacks	
Yard of Encroachment	Minimum Setback
Rear yard abutting a public alley right-of-way or private alley tract:	0 feet.
Rear yard abutting another lot or parcel:	5 feet.
Interior side yard:	5 feet.
Street side yard:	No encroachment allowed.
Front Yard:	No encroachment allowed.

~~e. Encroachments into minimum required setbacks shall be in compliance with Division 10-50.40, Encroachments.~~

e. The maximum height of an accessory structure shall comply with Table 10-40.60.020.B.7.e.

Table 10-40.60.020.B.7.e. Allowed Height of Accessory Structure	
Location of Accessory Structure	Setback Requirement
Within the building envelope:	24 feet.
All other location allowed pursuant to Table 10-40.60.020.B.7.d.	16 feet.

~~f. The maximum height of all accessory buildings and structures shall be 24 feet except as provided in Table 10-40.60.020.A, Accessory Structure~~

~~Height and Location Standards, unless the zone or overlay zone has a more restrictive height limit.~~

~~Table 10-40.60.020.A: Accessory Structure Height and Location Standards~~

<del>Location</del>	<del>Max. Height (feet)</del>
<del>Non-livable structures (e.g., garage, workshop, carport, shed, greenhouse)</del>	
<del>Within Buildable Area</del>	<del>24'</del>
<del>Min. 5' Setback to Rear and Interior Side Property Line, and 0' Setback to Rear Property Line with Alley</del>	<del>16'</del>
<del>Livable structures (e.g., ADU, studio or home office)<sup>2</sup></del>	
<del>Within Buildable Area</del>	<del>24'</del>
<del>Min. 5' Setback to Rear and Interior Side Property Line</del>	<del>16'</del>
<del>End Notes</del>	
<del><sup>1</sup> Structures located on property lines shall be required to comply with applicable City Building Code and Fire Code requirements.</del>	
<del><sup>2</sup> These livable structures may be located above a garage or other non-livable space.</del>	

~~D.—Temporary and Permanent Storage Containers.~~

~~1.—Residential Zones. The following standards apply to the temporary and permanent use of storage containers located in all residential zones.~~

~~a.—Temporary Use.~~

~~(1) In the case of fire, flood, or other emergency situation, storage containers may be placed, stored, or used for temporary storage on property zoned for residential use, provided the owner has applied for a temporary use permit from the Director within three days of the emergency. The duration of the temporary storage use shall be limited to a maximum of 90 days within a calendar year, with the~~

~~option to renew the permit one time, for each period not to exceed 90 days.~~

~~(2) Storage containers may be placed, stored, or used for temporary storage on property zoned for residential use for minor remodeling projects for which a building permit is not required provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 90 days within a calendar year, with the option to renew the permit one time, for a period not to exceed 90 days.~~

~~(3) Storage containers may be placed, stored, or used for temporary storage on property zoned for residential use if a building permit has been obtained from the City for major/new construction involving principal or accessory structures located on the subject property. The use shall be permitted for the time period beginning with issuance of the building permit, and expiring seven days after the issuance of a certificate of occupancy, at which time the storage container shall be removed.~~

~~(4) Storage containers used for temporary storage may be placed within the rear, side, or front setback, and shall not be placed in the public right-of-way unless a right-of-way encroachment permit has been obtained from the City Engineering Section.~~

~~(5) Storage containers may be temporarily placed on property zoned for residential use for the purpose of loading or unloading household contents while in the process of moving, for a period not to exceed 14 days.~~

~~(6) Storage containers mounted on trailers/wheels shall not be permitted for temporary use in residential zones.~~

~~(7) No signs shall be permitted to be placed on any part of a storage container, except for a sign displaying the name of the storage container business which shall be limited to a sign area of six square feet.~~

~~b. Permanent Use. Storage containers may be permitted for permanent use in residential zones, subject to approval of a minor improvement permit (see Section 10-20.40.080) and the following conditions:~~

~~(1) The storage container shall be considered an accessory structure to the principal structure. No storage containers are permitted on vacant or undeveloped lots where no primary structure or use has been established;~~

~~(2) Storage containers may only be placed in rear yards and interior side yards in compliance with the standards provided in Table 10-50.40.020.A (Allowed Encroachments into Setbacks, and Heights), and are not permitted in front yards or exterior side yards. Compliance with all applicable regulations of the Zoning Code is required, including lot coverage restrictions;~~

- ~~(3) No more than one storage container is permitted on any residential lot or parcel;~~
- ~~(4) The maximum size for a storage container located on property zoned for residential use shall be Ground floor uses0 square feet;~~
- ~~(5) The maximum height of a storage container used for storage purposes shall be nine feet measured from natural grade to the top of the container;~~
- ~~(6) Storage containers shall be painted a neutral, earth tone, or to match the building by which they are placed;~~
- ~~(7) Storage containers shall be used for storage only, and shall not otherwise be occupied as habitable space. Storage containers shall not be connected to sewer, water or gas service, but may be permitted to have electrical service for lighting/plug-ins;~~
- ~~(8) No signs shall be permitted to be placed on any part of a storage container; and~~
- ~~(9) Storage containers mounted on trailers/wheels shall not be permitted for permanent use in residential zones.~~

~~2. Commercial and Research and Development Zones. The following standards apply to the temporary and permanent use of storage containers located in all commercial and research and development zones.~~

~~a. Temporary Use.~~

- ~~(1) In the case of fire, flood, or other emergency situation, storage containers may be placed, stored, or used for temporary storage on property zoned for commercial or research and development uses, provided the owner has applied for a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time at the discretion of the Director, for a period not to exceed 90 days. Storage containers may be placed within the front setback, and shall not be placed in the public right-of-way unless a right-of-way encroachment permit has been obtained from the City Engineering Section.~~
- ~~(2) Storage containers may be placed, stored, or used for temporary storage on property zoned for research and development uses for minor remodeling projects for which a building permit is not required, provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 90 days within a calendar year, with the option to renew the permit one time, for a period not to exceed 90 days.~~
- ~~(3) Storage containers may be placed, stored, or used for temporary storage on property zoned for commercial or research and development uses if a building permit has been obtained from the~~

~~City for major/new construction on the subject property. The use shall be permitted for the time period beginning with issuance of the building permit, and expiring seven days after the issuance of a final certificate of occupancy, at which time the storage container shall be removed. Storage containers may be placed within the front setback, and shall not be placed in the public right-of-way unless a right-of-way encroachment permit has been obtained from the City Engineering Section.~~

~~(4) In the case of seasonal sales events, storage containers may be placed, stored, or used for temporary storage on property zoned for commercial or research and development uses, provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use during a seasonal sales event shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time by the Director, for a period not to exceed 30 days. Storage containers used for sales events shall be placed in an area that is not visible from the public right-of-way, unless the container is placed in the loading/dock area of the subject business.~~

~~(5) Storage containers mounted on trailers/wheels shall not be permitted for temporary use in commercial and research and development zones.~~

~~(6) No signs shall be permitted to be placed on any part of a storage container, except for a sign displaying the name of the storage container business which shall be limited to a sign area of six square feet.~~

~~b. Permanent Use. Storage containers may be permitted for permanent use in commercial and research and development zones, subject to approval of a minor improvement permit (see Section 10-20.40.080) and the following conditions:~~

~~(1) The storage container shall be considered an accessory structure to the principal structure. No storage containers are permitted on vacant or undeveloped lots where no primary structure or use has been established;~~

~~(2) Storage containers shall only be placed in compliance with all applicable regulations of the Zoning Code, including setbacks, FAR, and lot coverage restrictions;~~

~~(3) Storage containers shall not be placed in parking areas nor in a location where they are visible from public rights-of-way, unless the container is placed in the loading/dock area of the subject business;~~

~~(4) The maximum size for a storage container located on property zoned for commercial or research and development uses shall be 384 square feet;~~

- ~~(5) The maximum height of a storage container used for storage purposes shall be 10 feet measured from natural grade to the top of the container;~~
- ~~(6) Storage containers shall be painted a neutral, earth tone, or to match the primary building near where they are placed;~~
- ~~(7) Storage containers shall be used for storage only, and shall not otherwise be occupied as habitable space. Storage containers shall not be connected to sewer, water or gas service, but may be permitted to have electrical service for lighting/plug-ins;~~
- ~~(8) No signs shall be permitted to be placed on any part of a storage container; and~~
- ~~(9) Storage containers mounted on trailers/wheels shall not be permitted in commercial and research and development zones.~~

~~3. Industrial and Public Lands Zones. The following standards apply to the temporary and permanent use of storage containers located in all Industrial and Public Lands zones.~~

~~a. Temporary Use.~~

- ~~(1) In the case of fire, flood, or other emergency situation, storage containers may be placed, stored, or used for temporary storage on property zoned for industrial or public lands use, provided the owner has applied for a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time at the discretion of the Director, for a period not to exceed 90 days.~~
- ~~(2) Storage containers may be placed, stored, or used for temporary storage on property zoned for industrial or public lands use for minor remodeling projects for which a building permit is not required, provided the owner has obtained a temporary use permit from the Director. The duration of the temporary storage use shall be limited to a maximum of 120 days within a calendar year, with the option to renew the permit one time, for a period not to exceed 90 days.~~
- ~~(3) Storage containers may be placed, stored, or used for temporary storage on property zoned for industrial or public lands use if a building permit has been obtained from the City for new development on the subject property. The use shall be permitted for the time period beginning with issuance of the building permit, and expiring seven days after the issuance of a certificate of occupancy, at which time the storage container shall be removed.~~
- ~~(4) Storage containers used for temporary storage may be placed within the front setback, and shall not be placed in the public right-of-way unless a right-of-way encroachment permit has been obtained from the City Engineering Section.~~

~~(5) No signs shall be permitted to be placed on any part of a storage container, except for a sign displaying the name of the storage container business which shall be limited to a sign area of six square feet.~~

~~b. Permanent Use. Permanent storage containers shall be permitted on property zoned for industrial or public facilities use, subject to approval of a minor improvement permit (see Section 10-20.40.080) and the following conditions:~~

~~(1) The storage container shall be considered an accessory structure to the principal structure;~~

~~(2) The storage container shall only be placed in compliance with all regulations of the Zoning Code, including setbacks, FAR, and lot coverage restrictions;~~

~~(3) The maximum size permitted for a storage container located on property zoned for industrial or public lands use shall be 320 square feet;~~

~~(4) The maximum height of a storage container used for storage purposes shall be 10 feet measured from natural grade to the top of the container;~~

~~(5) Storage containers shall be painted a neutral, earth tone, or to match the primary building near where they are placed;~~

~~(6) Storage containers shall be used for storage only, and shall not otherwise be occupied as habitable space. Storage containers shall not be connected to sewer, water or gas service, but may be permitted to have electrical service for lighting/plug-ins; and~~

~~(7) No signs shall be permitted to be placed on any part of a storage container.~~

~~E. Permanent Outdoor Accessory Uses. Permanent, outdoor accessory uses, including nurseries or garden centers, are permitted with the following conditions:~~

~~1. The accessory use is clearly incidental to the primary commercial use of the property;~~

~~2. The accessory use shall not occupy more than 10 percent of the total area of the site;~~

~~3. To accommodate the accessory use, the number of parking spaces shall not be reduced more than 10 percent below the number of spaces required by Division 10-50.80, Parking Standards, or more than 10 percent of the spaces provided;~~

~~4. The accessory use shall be conducted only between the hours of 6:00 a.m. and 9:00 p.m. or during the established business hours of operation, whichever is shorter; and~~

~~5. The accessory use shall not be located in improved parking stalls or areas.~~

**C. Permanent Storage Structures.**

**1. Placement.**

- a. **Residential and Transect Zones.** A storage structure shall be placed in: 1) the building envelope, and behind the rear of the primary structure; 2) the rear yard or interior side yard in compliance with the standards provided in subsection B.7.d. of this section; or 3) a combination of the building envelope's rear yard, or interior side yard in compliance with the standards provided in subsection B.7.d. of this section.
  - b. **Commercial Zones.** A storage structure shall: 1) be placed in compliance with the property development requirements of the property's zone; 2) be placed in a location where it is not visible from the public right-of-way, unless the container is placed in the loading/dock area; and, 3) not be placed parking areas.
  - c. **Industrial and Public Facility Zones.** A storage structure shall only be placed: 1) in compliance with the property development standards of the property's zone; and, 2) in a location where it is not visible from the public right-of-way, unless the container is placed in the loading/dock area.
3. **Maximum floor area.**
- a. **Residential and Transect Zones.** A storage structure's floor area shall not exceed 160 square feet.
  - b. **Commercial, Industrial, and Public and Open Space Zones.** A storage structure's floor area shall not exceed 384 square feet.
4. **Maximum height.** A storage structure shall not exceed a height of 10 feet measured from finish grade directly below the container.
5. **Maximum number of storage structures on a property in all residential and transect zones: one.**
6. **Additional requirements in the Commercial, Industrial, and Public and Open Space Zones.** All property development standards of the property's zone not specified in this subsection shall apply to a storage structure.
7. **Additional requirements in all zones.**
- a. **A storage structure shall:**
    - (1) Have an exterior color that is an earth tone with a light reflectance value of 50 or less, or matches the main color of a building on property that the structure is placed nearest to;
    - (2) Be non-habitable, and used only for storage purposes; and
    - (3) Not be connected to any utility service, except for an electrical service to provided lighting and electrical plugs.
  - b. **Storage structures mounted on trailers/wheels shall not be permitted.**

Section 22. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.60: Specific to Uses, to add Section 10-40.60.025 Accessory Uses, as follows:

**10-40.60.025 Accessory Uses.**

**A. Accessory Uses Allowed.**

1. An Accessory Dwelling Unit (ADU) use is allowed where specified in Sections 10-40.30.030 and 10-40.30.040.
2. All other accessory uses of a property are allowed in connection with a primary use on the same property.
3. An accessory use shall require the approval of a Conditional Use Permit when the accessory use is listed as primary use that requires a Conditional Use Permit in the same zone.

**B. Determination of an Accessory Use.** In determining that a use is accessory to a primary use, the Zoning Administrator shall find that the accessory use is clearly customary, subordinate and incidental to the primary use on the same property.

**D. Additional Criteria for Accessory Uses.**

1. **Outdoor Storage.** All outdoor storage areas shall comply with Section 10-40.60.275.
2. **Animal Keeping.** Animal keeping shall be maintained in conformance with Section 10-40.60.070.
3. **An Accessory Dwelling Unit (ADU) shall comply with Section 10-40.60.030.**

Section 23.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.150 Day Care Home and Center, as follows:

**10-40.60.150 Day Care Home and Center**

**A. Day Care Home.**

1. No more than one full-time person not residing on the premises may be employed in the home day care use.
2. The home day care shall be conducted in a manner that does not create adverse impacts on the residential character of the neighborhood , **such as dust, noise, order, and traffic.**
3. During the hours of activity of the day care use, there is no limit on the amount of floor area devoted to this secondary use.
4. Outdoor activities and equipment associated with the home day care are permitted and must be screened by a minimum five-foot-high fence or wall.
5. The hours of operation shall not create adverse impacts on adjoining properties.
6. **The maximum number of persons that day care services may be provided for in a dwelling or a dwelling's accessory structure shall not exceed eight persons. The maximum number of eight persons shall include children under the age of 14, and any older individual, or disabled person (14 years of age or older) that resides in the dwelling and supervision is provided for.**

*Just Submit  
APR. →*

7. Supervision of children, older individuals, or disabled adults is limited to less than 24-hours.
8. When required by the State of Arizona, all day care homes shall maintain an active state issued license.

**B. Day Care Center.**

1. Day care center facilities shall comply with all applicable State and fire codes, including Arizona Revised Statutes.
2. Day care center on-site exterior lighting shall be consistent with Division 10-50.70, Outdoor Lighting Standards.
3. A six-foot-high solid fence or wall shall be constructed on all property lines or around the outdoor activity areas of day care centers, except in the front setback or within a traffic safety visibility area, in compliance with Division 10-50.50, Fences and Screening.
4. All day care center facilities shall have public access.
5. The hours of operation shall not create adverse impacts on adjoining properties.
6. Supervision of children, older individuals, or disabled adults is limited to less than 24-hours.
7. When required by the State of Arizona, all day care homes shall maintain an active state issued license.

Section 24. Amend Title 10 FLAGSTAFF ZONING CODE, 10-40.60.250 Mini-Storage Warehousing., as follows:

10-40.60.250 Mini-Storage Warehousing

- A. ~~No sales, service, or repair activities other than the rental of storage units are permitted on the premises.~~  
**No business shall be operated out of a storage unit or outdoor storage area.**
- B. **All storage shall be within an enclosed building, except for accessory outdoor storage: 1) is limited to operable vehicles with a valid governmental registration; and 2) shall not exceed 10 percent of the gross site area; and, shall comply with Section 10-40.60.275. Outdoor Storage.**
- B. Maximum ~~leasable space per tenant shall be~~ **area of an individual storage unit:** 1,000 square feet.
- C. ~~Outdoor storage, or the~~ **The storage of junk refuse, compost, explosives, or flammable materials, and other noxious or dangerous materials, as determined by the City Fire Marshall, are specifically prohibited.**
- D. **Minimum vehicle drive aisle width: There shall be a of 21 feet between warehouse buildings for driveway, parking and fire lane purposes.**

**E. Minimum fire lane width: Comply with the Fire Code.**

~~**E.—All storage shall be within an enclosed building except that within the compound of a self-storage warehouse where operable recreational vehicles and motor vehicles may be placed in outdoor storage areas that are separated from view from adjacent streets and property in compliance with Table 10-50.60.040.B, Buffer and Screening Requirements. Outdoor recreational vehicle storage areas shall not exceed 10 percent of the gross site area.**~~

Section 25. Amend Title 10 FLAGSTAFF ZONING CODE, to add Section 10-40.60.275 Outdoor Storage, as follows:

**10-40.60.275. Outdoor Storage.**

**A. Screening requirement for a primary or accessory outdoor storage use.**

- 1. Heavy Industrial (HI) and Heavy Industrial – Open sub-zone (HI-O) zones.** All outdoor storage shall be completely enclosed within an area contained by a solid wall or fence, or chain link fence with slats that has minimum height of six (6) feet. A screen wall or fence within the required building area may be constructed to the maximum height allowed by the property's zone.
- 2. All other zones:**
  - a. All outdoor storage shall be completely enclosed within an area contained by a solid wall or fence that is at least one (1) foot taller than the tallest object being screened.**
  - b. The maximum height of a wall or fence within the required setbacks shall comply with Table 10-50.50.030.A.**
  - c. A screen wall or fence within the required building area may be constructed to the maximum height allowed by the property's zone.**

**B Ground surface treatment.** The ground of an outdoor storage area, including areas used for vehicle circulation, shall be maintained weed-free and have a dust-free surface (e. g., gravel, decomposed granite, etc.) approved by the Director. Based upon the intensity or frequency of vehicle traffic that is anticipated within the storage area, or the proximity to an adjacent residential use, the Director may require an outdoor storage area or vehicle travel lanes to have a pavement surface.

**C. Non-conforming outdoor storage.** Screening and ground surfaces for all outdoor storage areas shall be provide in compliance with the requirements of this section when the cumulative expansion of a non-conforming outdoor storage area, or a building with a non-conforming outdoor storage area, is enlarged by 25 percent or more.

Section 26. Amend Title 10 FLAGSTAFF ZONING CODE, Table 10-40.60.280.A: Planned Residential Development Building Type Options, as follows:

Table 10-40.60.280.A: Planned Residential Development Building Type Options											
Building Type	Residential Zones See Section 10-40.30.030(C) for Building Form Standards						Commercial Zones See Section 10-40.30.040(C) for Building Form Standards				
	RR	ER	RI	R1N	MR	HR	SC	CC	HC	CS	CB
Carriage House	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	--
Single-family											
Estate	✓	✓	✓	--	--	--	--	--	--	--	--
House	✓	✓	✓	✓	✓	✓	--	✓	--	--	--
Cottage	✓	✓	✓	✓	✓	✓		✓	--	--	--
Bungalow Court	✓	✓	✓	✓	✓	✓	--	✓	--	--	--
Duplex											
Side-by-Side	✓	✓	✓	✓	✓	✓	✓	✓	--	--	--
Stacked	✓	✓	✓	✓	✓	✓	✓	✓	--	--	--
Front-and-Back	✓	✓	✓	✓	✓	✓	✓	✓	--	--	--
Stacked Triplex	--	--	--	--	✓	✓	✓	✓	--	--	--
Townhouse	--	--	✓	-- ✓	✓	✓	✓	✓	✓	✓	--
Apartment House	--	--	--	--	✓	✓	✓	✓	✓	✓	--
Courtyard Apartment	--	--	--	--	✓	✓	✓	✓	✓	✓	--
Apartment Building	--	--	--	--	✓	✓	--	--	✓	--	--
Live/Work	--	--	--	--	✓	✓	✓	✓	✓	✓	✓
Commercial Block	--	--	--	--	--	--	--	✓	✓	✓	✓

Section 27. Delete Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.320 Warehousing in its entirety, as follows:

~~10-40.60.320 Warehousing~~

~~Warehousing, where permitted, includes outdoor storage provided the entire storage yard is screened by a minimum six-foot-high solid fence or wall, or chain-link fencing with slats. Outdoor storage includes storage yards for recreational vehicles, boats, trailers, and contractor's storage and supply yards. Surfacing requirements are to be determined by the Director, based upon the intensity of use, and may range from pavement to a permeable, dust-free, weed-free surface (e.g., gravel). Any expansions of existing storage yards or buildings with storage yards, of 25 percent or more in area, shall also provide screening for the entire yard area.~~

Section 28. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.30.030 How Building Height Is Measured, subsection A. Applicable to All Zones., paragraph 1. Building Height Plane subparagraph b., as follows:

**Section 10-50.30.030 How Building Height Is Measured**

**A. Applicable to All Zones.**

**1. Building Height Plane.**

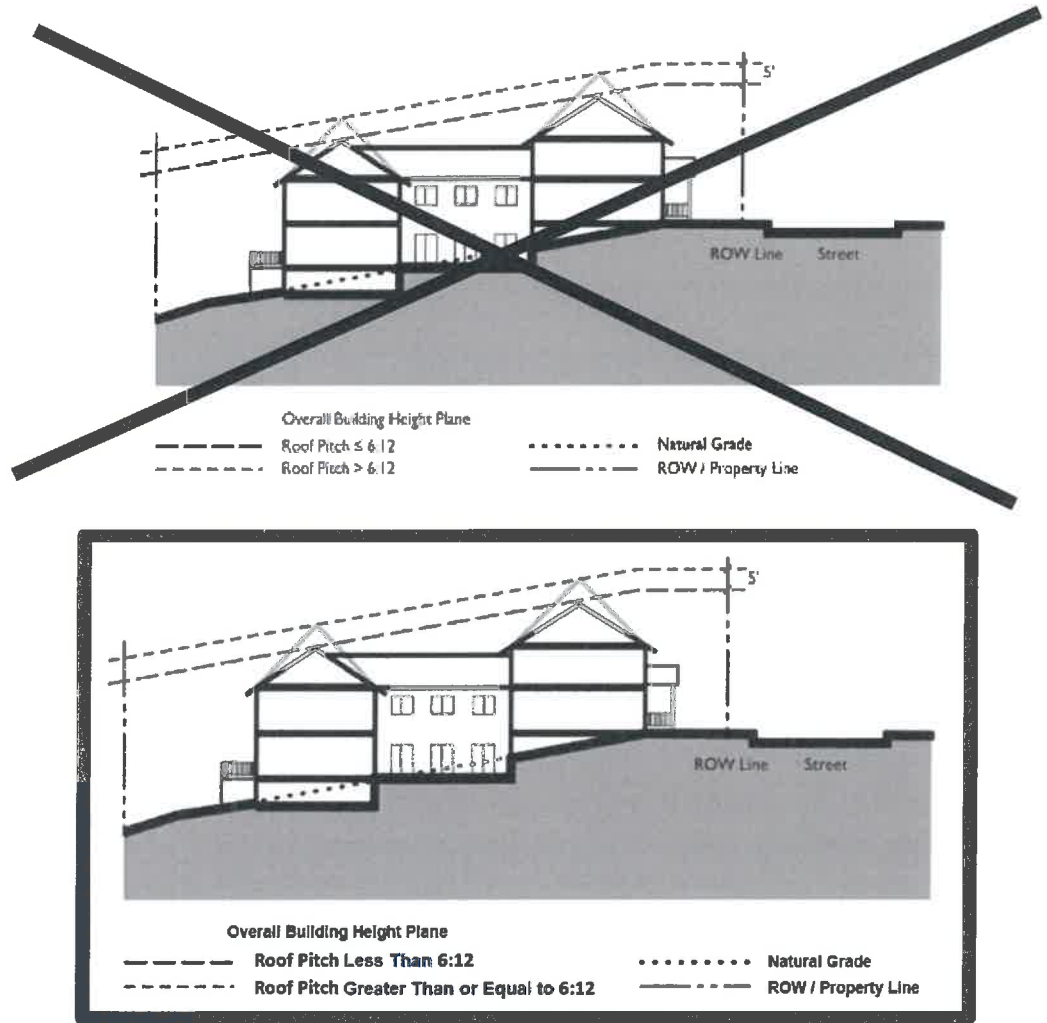
- b. Primary buildings with a roof pitch greater than **or equal to** 6:12 shall be allowed an additional five feet above the maximum building height in the zone. Accessory buildings and structures regardless of roof pitch shall not be allowed any additional building height.

Section 29.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.30.030 How Building Height Is Measured, subsection A. Applicable to All Zones., Figure 10-50.30.030B. Pitched roof building height measurements (not drawn to scale), as follows:

**Section 10-50.30.030 How Building Height Is Measured**

**A. Applicable to All Zones.**



**Figure 10-50.30.030B.**

**Pitched roof building height measurements (not drawn to scale).**

Section 30.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.40.020 Encroachments into Minimum Required Setbacks, Table 10-50.40.020.A: Allowed Encroachments into Setbacks and Heights, as follows – including adding grid lines and shading to the table:

<b>Table 10-50.40.020.A: Allowed Encroachments into Setbacks and Heights</b>	
<b>Arbors, Awnings, Canopies, Court Yards, Decks, Patios, Pergolas, Porches, Stoops, Trellis, Hooded Entries, Carports and Balconies<sup>1,2,3</sup></b>	
Front, Rear, <del>Exterior-Street</del> Side Setback (max.)	<del>5'</del> 5 feet
Interior Side Setback (max.)	<del>3'</del> 3 feet
<b>Accessory Dwelling Units (ADUs)<sup>1</sup></b>	
See Section <del>10-40.60.040</del> 10-40.60.030	
<b>Accessory <del>Buildings and</del> Structures<sup>1</sup></b>	
See Section 10-40.60.020	
<b>Ground Mounted Solar Panels</b>	
Front, Rear, <del>Exterior-Street</del> Side Setback (max.)	<del>5'</del> 5 feet
Interior Side Setback (max.)	<del>3'</del> 3 feet
<b>Bay Windows, Open Eaves, Cornices, Fireplaces and Chimneys, and Window Sills</b>	
All Setbacks (max.)	<del>2'</del> 2 feet
<b>End Notes:</b>	
<sup>1</sup> 1 In no case shall the permitted encroachment exceed 50 percent of the required setback. <sup>2</sup> 2 Refer to applicable Building Code sections for permitted projections into setback areas and ensure that a 3' space is maintained between an open stairway and the property line. <sup>3</sup> 3 Refer to applicable Building Code sections for construction less than 5' from a property line.	

Section 31.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.60.050 Landscaping Standards, subsection A. Landscape Design., Table 10-50.60.050.A: Landscape Credits for Existing Trees., as follows – including adding grid lines to the table:

**Section 10-50.60.050 Landscaping Standards**

**A. Landscape Design.**

Table 10-50.60.050.A: Landscape Credits for Existing Trees.	
Existing Tree Size (DBH)	No. of Trees Not Required
<p style="text-align: center;"><del>6–10"</del></p> <p style="text-align: center;">Equal to 6 inches, and less than 10 inches</p>	1 Tree <sup>1</sup>
<p style="text-align: center;"><del>10–18"</del></p> <p style="text-align: center;">Equal to 10 inches, and less than 18 inches</p>	2 Trees <sup>1</sup>
<p style="text-align: center;"><del>&gt;18"</del></p> <p style="text-align: center;">Equal to, or greater than, 18 inches</p>	3 Trees <sup>1</sup>
<b>End Note</b>	
<sup>1</sup> 1. For each tree not required to be planted, the requirement for shrubs and groundcovers associated with that tree shall be waived.	

Section 32. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-50.90.060. Forest, subsection B. Methodology., as follows:

**10-50.90.060 Forest**

**B. Methodology**

1. This section establishes a minimum forest resource protection threshold for all parcels subject to the Resource Protection Overlay (RPO). Forest resources are determined according to the resources survey requirements (Section 10-50.90.070, Resources Survey Requirements), which establish the quality and priority for forest resource protection based on a point rating system.
2. Tables ~~10-50.90.060.A~~ **10-50.90.060.B.2.a. and 10-50.90.060.B.2.b.**, ~~Forest Resource Protection Thresholds as a Percentage of Site Area~~, shall be used to determine the minimum amount of forest resources that must be retained on-site. Protection thresholds applicable to affordable housing developments are located in Division 10-30.20, Affordable Housing Incentives.

~~Table 10-50.90.060.A: Forest Resource Protection Thresholds as a Percentage of Site Area~~

~~| Public Lands | Residential | Commercial | Industrial | TNCP |
|--------------|-------------|------------|------------|------|
| 30%          | 30%         | 30%        | 20%        | 30%  |~~

Table 10-50.90.060.B.2.a Forest Resource Protection Thresholds as a Percentage of Site Area			
Commercial Zones	Industrial Zones	Public and Open Space Zones	Residential Zones
30%	20%	30%	50%

Table 10-50.90.060.B.2.b Forest Resource Protection Thresholds as a Percentage of Site Area			
T1 Natural <sup>1</sup> and T2 Rural <sup>1</sup> zones	T3 Neighborhood <sup>1</sup> 1 and 2 zones	T4 Neighborhood <sup>1</sup> 1 and 2 zones	TNCP
80%	50%	30%	See Section 10-50.90.060.B.5.
<b>End Notes</b>			
1. The percentage of forest resource protection also apply to a zones sub-zones			

3. The amount of forest resources required to be protected **on a development site property** may be reduced through the application of the following sections of this code:
- Section 10-30.20.040, Affordable Housing Incentives;
  - Section 10-30.60.030(B), Solar Orientation or Aspect;
  - Section 10-30.60.090(B)(1), Civic or Public Space Requirement;
  - Section 10-50.60.050(A)(1), Plant Material Considerations; and
  - Section 10-50.80.060(E), Parking Reductions for Forest Resources.

- ~~3. 4.~~ Where forest resources on a site overlap with steep slope resources, the following standards apply:
- a. For affordable housing developments, refer to the standards in Section 10-30.20.040, Affordable Housing Incentives.
  - b. For all other developments located within the Resource Protection Overlay, up to 25 percent of the forest resources in the steep slope area may be counted towards the required amount of forest resources for the entire site at a ratio of one credit point for forest resources to 50 square feet of slope area.
- ~~3. Traditional neighborhood community plans (TNCP), Division 10-30.80, are primarily concerned with the form and character of development through the application of transect zones. The transect zones provide a variety of rural to urban forms where the level of forest protection may vary. In the more urban zones such as the T4 Neighborhood and T5 Main Street transect zones, protection of forest resources is secondary to the creation of urban form and character, and, while the protection of forest resources is strongly encouraged, in most cases it may not be feasible. However, in the T1 Natural and T2 Rural transect zones virtually all of the forest resources shall be protected, while in the T3 Neighborhood zones, most forest resources shall be protected. In order to account for this character, forest resources in a traditional neighborhood community plan shall be calculated as an average across the entire site, and not specifically for each transect zone within the traditional neighborhood community plan.~~
5. Minimum Forest Resource Protection shall be the greater of:
- a. Thirty (30) percent, <sup>gross lot</sup> calculated as an average across the entire site; or,
  - b. The total percentage calculated shall be based on the location and allocation of the transect zones in the Traditional Neighborhood Community Plans (TNCP) and the corresponding transect zone requirements of Table 10-50.90.060.B.2.b.

Section 33. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.010 Definitions, "A", the terms "Accessory Buildings and Structures", "Accessory Dwelling Unit (ADU), Attached", and "Accessory Dwelling Unit (ADU), Detached", and to add the term "Accessory Dwelling Unit (ADU), Interior", as follows: as follows:

**10-80.20.010 Definitions, "A"**

**Accessory ~~Buildings and Structures~~ Structure:** is a ~~Buildings or structures~~ building or structure (including sheds, barns, garages, carports, ~~artist or craft studios, home offices,~~ greenhouses, detached solar systems, ~~or~~ shade structures, light pole, flag pole, pool, fence, wall, or other accessory structure as determined by the Zoning Administrator which:

1. ~~Are~~ **Is** subordinate in building area, intensity of use, or purpose to the **principal primary building structure or use served**;
2. Contribute to the comfort, convenience, ~~and~~ **or** necessity of the occupants of the **principal primary** building or use served; and
3. Are located on the same lot as the **principal primary building structure** or use served, with the single exception of accessory off-street parking facilities that are permitted to locate elsewhere.

Section 34. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.020 Definitions, “B”, for the term, “Bed and Breakfast”, “Block face”, “Building Code”, and “Building Envelope”, as follows:

**Section 10-80.20.020 Definitions, “B”**

**Bed and Breakfast:** ~~Accommodations~~ **Is an accommodation provided and offered to transient guests for stays of less than thirty (30) days in offered by** a private home, consisting of a room for ~~the night~~ **sleeping, which may include separate sanitation facilities in each room, and breakfast is provided to the guest(s) the next morning for one-inclusive and is included in the price of the room. Bed and breakfast is not a Travel accommodation, vacation rental or short-term rental.**

**Building Code:** ~~The currently in effect codes of the City of Flagstaff that establish minimum acceptable levels of safety for the construction, renovation, demolition, and occupancy of buildings and structures.~~ **Is the regulations contained in Title 4 Building Regulations of the Flagstaff City Code.**

**Building envelope:** **is the three (3) dimensional space on a lot or parcel delineated by the property’s zone requirements for building height, setback, stepback, yards and other provisions of the Zoning Code.**

Section 35. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.040 Definitions, “D”, for the terms “Day Care, Center” and “Day Care, Home”, “Development Site”, “Dwelling”, “Dwelling, Cluster”, and to add the terms “Development, Multiple-Family”, “Development - Attached, Single-Family”, “Development - Detached, Single-Family”, and “Development, Duplex” as follows:

**Day Care, Center:** A facility, ~~other than a dwelling unit or an accessory structure of a dwelling unit, regulated by the State that provides where~~ **supervision for less than 24 hours per day for nine or more of children, elderly older individuals, or disabled persons in a facility other than a residence is provided for less than 24-hours.** This includes adult day care or adult day health as defined in A.R.S. § 46-191.1., **as amended.**

~~Day Care, Home: A home occupation in any dwelling established consistent with the State of Arizona requirements, which receives no more than eight children, elderly, or disabled adults for less than 24 hours per day. The maximum number of eight children shall be reduced in number by the number of children residing in the dwelling under the age of 14. This includes adult day care or adult day health as defined in A.R.S. § 46-191.1.~~

**Day Care, Home:** A home occupation in any dwelling or an accessory structure of a dwelling, where supervision of children, older individuals, or disabled persons is provided for less than 24-hours. This includes adult day care or adult day health as defined in A.R.S. § 46-191.1., as amended.

**Development Site:** Any ~~plot~~ lot or parcel of land, or combination of contiguous lots or parcels of land, whether under common ownership or multiple ownership, which constitutes a site on which development is proposed, under construction, or exists.

~~**Dwelling Unit:** One or more habitable rooms for residential use that are used as a home, residence, or sleeping place by one or more persons and which shall contain sleeping, sanitary, and cooking facilities. Dwelling includes an apartment or condominium. This does not include a motel or hotel room (see "Lodging") or suite or guest rooms in a boarding house or bed and breakfast (see "Bed and Breakfast").~~ Is one or more rooms as a single unit used as an independent residential living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. A dwelling unit does not include suites or guest rooms in a travel accommodation or bed and breakfast.

**Development - Multiple-Family:** Is a development consisting of any number of structures, or portion thereof, that contains a total of three or more dwelling units on a lot or parcel.

~~**Dwelling, Multiple-Family:** A dwelling contained in a building comprised of three or more dwelling units.~~

**Development - Attached, Single-Family:** Is a development consisting of one or more lots or parcels that contains a dwelling unit that is attached to dwelling unit on another lot or parcel.

**Development - Detached, Single-Family:** Is a development consisting of one or more lots or parcels that contains a single-family dwelling that is detached from a dwelling unit on another lot or parcel. A single-family development – detached include lot and parcels that contain a primary dwelling unit and an accessory dwelling unit in accordance with the provision of this code.

**Development, Duplex:** Is a development consisting of one or more lots or parcels that contains a duplex.

~~**Dwelling, Development - Cluster, Single-Family:** Fully detached single family residential uses~~ Is a Single-Family Development – Detached or co-housing located on individual lots that include, as part of the subdivision design, includes common open space and is developed to the requirements of this code.

Section 36. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.060 Definitions, "F", for the term, "Factory Built Building", and add the term "Fire Code", as follows:

**10-80.20.060 Definitions, "F"**

~~**Factory Built Building:** A building including a dwelling or habitable room that is either wholly or in substantial part manufactured at an off-site location to be assembled on site, except that it does not include a manufactured home, recreational vehicle, or mobile home as defined by this chapter. Does include modular homes. These structures are built to the 2003 International Residential Code, 1994 Uniform Plumbing Code, 2003 International Mechanical Code and 2002 NEC standards as dictated by the Arizona Department of Building and Life Safety. These units are considered a permanent structure, to be installed only once. The manufacturer of the factory built will provide a "blue" manufacturer's plate affixed to the exterior of the unit. The foundation for the factory built unit must be approved by the State Office of Manufactured Housing before the installation of the factory built building. See also "Dwelling, Single-Family."~~

As defined by the Arizona Revised Statutes §41-4001, as amended, a factory built residential or commercial building is: (i) either wholly or in substantial part manufactured at an off-site location and transported for installation or completion, or both, on-site; (ii) constructed in compliance with adopted codes, standards and procedures of the State of Arizona; and, (iii) installed temporarily or permanently. A factory built building does not include a manufactured home, recreational vehicle, panelized building or domestic or light commercial storage building.

**Fire Code:** Is the regulations contained in Title 5 Fire Code of the Flagstaff City Code.

Section 37. Amend Title 10 FLAGSTAFF ZONING CODE, 10-80.20.090 Definitions, "I", for the term "Industrial, Light – General", as follows:

**10-80.20.090 Definitions, "I"**

**Industrial, Light – General:** This use includes manufacturing, storage, transportation, construction, repair, and wholesale uses that do not include hazardous wastes or resulting large truck usage/parking on the site. Light industrial uses include, but are not limited to, the following:

*Look @*

<del>Auto towing and storage yards</del>	Leather, except tanning and finishing
<b>Vehicle Towing</b>	Local and interurban passenger transit

<b>Auto Vehicle</b> repair including top, body and upholstery repair and paint shops and tire retreading and repair shops	Lumber and wood products
Communications	Miscellaneous manufacturing industries
<b>Drugs Pharmaceutical Manufacturing</b>	Office and computing machines
Electric and electronic equipment (except electronic distribution and electrical industrial)	Paper products, except mills
	Printing and publishing
Fabricated metal	Special trade contractors
Food products, including liquor distribution, except meat products	Special warehousing and storage
	Textiles and apparel
Fuel and ice dealers	Transportation services
Furniture and fixtures	Trucking and general warehousing including mini-storage
General building contractors	Welding repair
Instruments and related products	Wholesale trade, durable and nondurable
Large truck, industrial truck and tractor repair	
<b>Vehicle Storage, excluding Federal Highway Administration class 7, and above, vehicles and heavy equipment/construction vehicles</b>	

Section 38. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.160 Definitions, "O", for the term "Older Individual" and "Outdoor Storage," as follows:

**10-80.20.160 Definitions, "O",**

**Older Individual: Is any person 60 years of age, or older, unless otherwise defined in 42 U.S. Code § 3002.**

**Outdoor Storage:** is the storage of commodities, equipment, materials, merchandise, vehicles, etc. outside of a completely enclosed building.

Section 39.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.160 Definitions, "P", for the terms "Parcel," and to add the terms "Parking, Tuck-unde," "Parking Structure," "Parking Structure, Above-Ground," "Parking Structure, Podium," "Parking Structure, Underground," and "Passive Recreation," in alphabetical order, as follows:

**10-80.20.160 Definitions, "P",**

**Parcel:** ~~A defined~~ **Is an area of land defined by a legal description, and** not part of a platted subdivision

**Parking, Tuck-under:** is vehicle parking on fifty (50) percent or less of the ground level of a habitable building.

**Parking Structure:** ~~A building containing two or more stories of parking above natural grade.~~ **is an above-ground, podium, or underground structure used for parking vehicles.**

**Parking Structure, Above-Ground:** is a structure of two (2) or more levels, starting at or above-ground level.

**Parking Structure, Podium:** is one (1) level of vehicle parking at ground level or partially below ground level, which may have habitable structure or open space area, such as a courtyard, above the parking.

**Parking Structure, Underground:** is a structure of one (1) or more levels, fully below ground level, except for the ramp into the parking structure.

**Passive Recreation:** is the use of land in its substantial natural or restored natural state for the preservation of wildlife, the environment and recreational purposes that requires minimal development, including park and ranger facilities, facilities for picnics, pavilions, multi-use trails and paths, canoeing, fishing, educational facilities that promote the education or preservation of such lands, etc., and relate support accessory uses such as parking, restrooms, and areas for the health and well-being of the public. Passive recreation does not include the use of recreational motorized vehicles, except when authorize by law, permit, or license granted by the city, state, or federal government.

Section 40.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.190 Definitions, "s", for "sign", and to add the terms "sanitation facilities," "Seasonal Sales" and "short-term rental or vacation rental", as follows:

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Fence  
Not  
Change*

**10-80.20.190 Definitions, "S",**

**Sanitation Facilities:** is bathroom that contains any combination of, or individually, a toilet, shower, sink, tub or related bathing and sanitation fixtures.

**Seasonal Sales:** is a sale event that occurs during one particular time of the year for a limited period of time, including the sale of annually harvested food products, holiday trees, fireworks, pumpkins, and similar sale events uses as determined by the Zoning Administrator.

**Sign:** A structure, device, figure, display, message placard or other contrivance, or any part thereof, situated outdoors or indoors, which is designed, constructed, intended or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, or social information, or direct or attract attention to an object, person, institution, business, product, service, message, event or location by any means including ~~words, letters, figures, designs, symbols, fixtures, colors, or illumination.~~ branding, color bands, corporate colors, designs, figures, fixtures, illumination, letters, logos, symbols, and words.

**Short-term Rental or Vacation Rental:** is a defined in accordance with the Arizona Revised Statutes § 9-500.39., as amended.

Section 41. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.220 Definitions, "W", for the term "Warehousing", as follows:

**Warehousing:** ~~Warehouse and storage operations, including screened outdoor storage.~~ Is the storage of merchandise, commodities or vehicles in an enclosed building.

Section 42. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.250 Definitions, "Y", for the terms, "Yard", "Yard, Exterior", "Yard, Front", and "Yard, Interior", as follows:

**Section 10-80.20.250 Definitions, "Y**

**Yard:** ~~An is an~~ open area ~~at-grade that is unoccupied and unobstructed from the ground upward, except as allowed by the Zoning Code,~~ between a principal or accessory ~~building structure,~~ or ~~buildings a~~ structure and the nearest lot line ~~that is unoccupied and unobstructed from the ground upward except as may be specifically provided in this Zoning Code.~~ Typical yard locations are identified in the Figure 10-80.20.250. Yards.

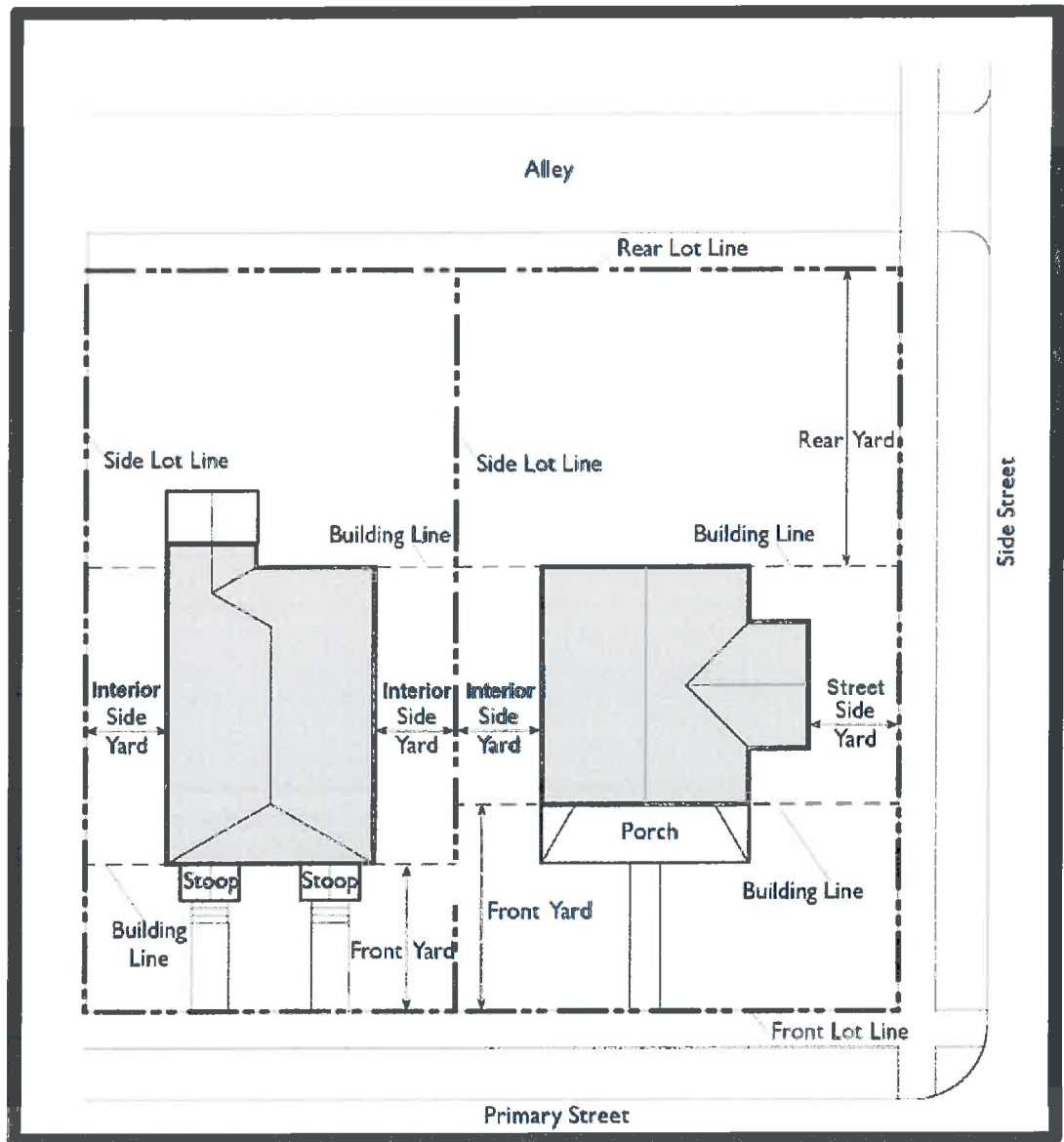
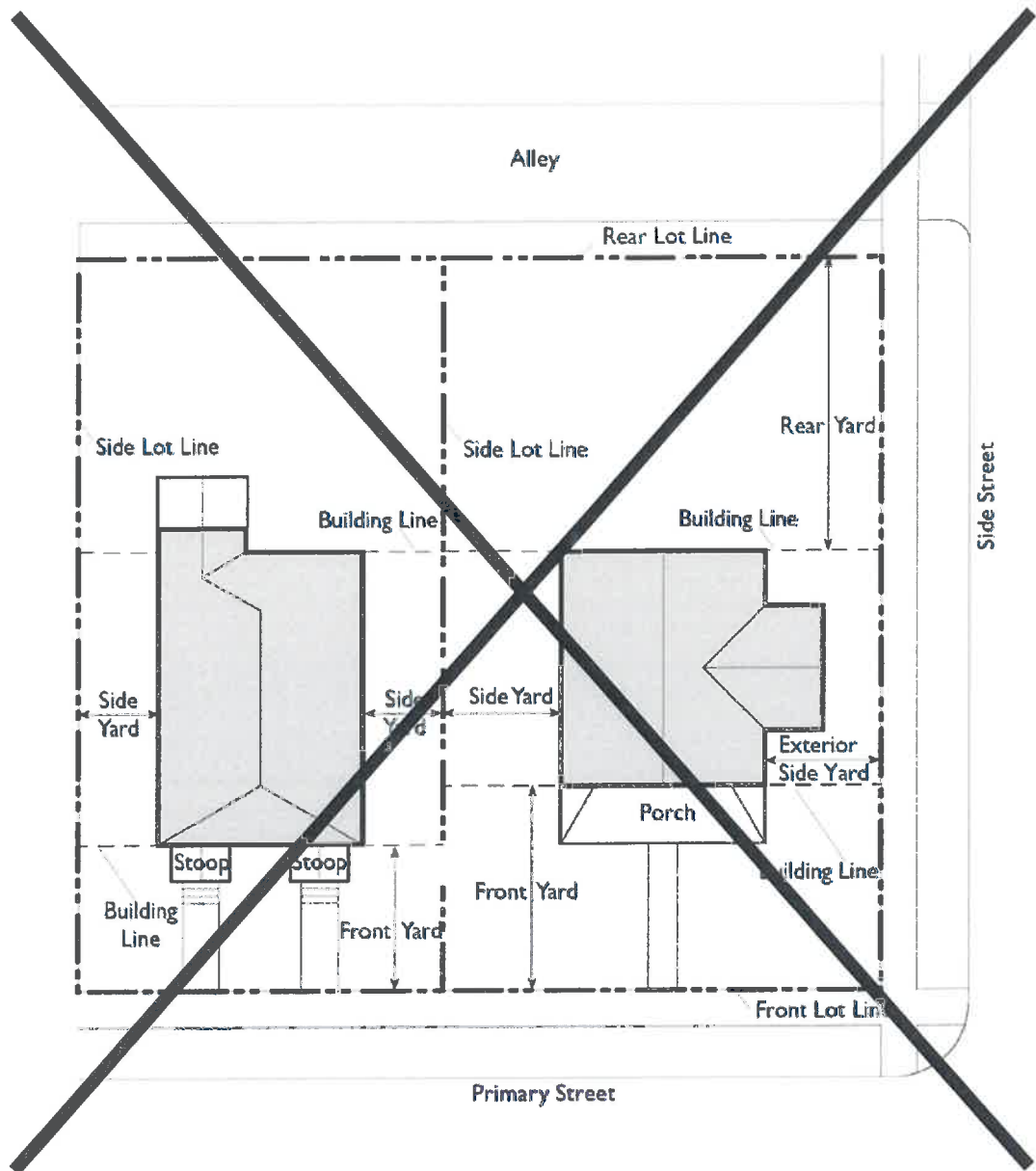


Figure 10-80.20.250. Yards.

**Yard, Exterior Street Side:** A yard extending from the front yard to the rear yard, between any building and the exterior-side lot line abutting a street. ~~On corner lots, the exterior-side yard is adjacent to a street other than the one which determines the front yard.~~

**Yard, Front:** A yard extending across the full width of a lot between any building and the front lot line, and measured perpendicular to the building at the closest point to the front lot line.



**Yard, Interior Side:** A yard extending from the front yard to the rear yard between the **principal primary** building and the side lot line adjacent to another lot measured perpendicular from the side lot line to the closest point of the **principal primary** building.

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Dan Symer, Zoning Code Manager  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Adoption of Resolution No. 2019-48 and Ordinance No. 2019-31:** A Resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "Case No. PZ-19-00095 Updates to Zoning Code 2019 - Accessory Dwelling Units"; and, an Ordinance of the City Council of the City of Flagstaff, Coconino County, Arizona, amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code (Ordinance No. 2011-20), for the purpose of modifying chapters, divisions, and sections of Title 10, Flagstaff Zoning Code, including the sections of Division 10-40.60: Specific to Uses, and Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, to resolve conflicts, incorporate technical corrections and clarity, and to add new and modify existing requirements, provisions, and definitions.

**STAFF RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2019-48
- 2) Read Ordinance No. 2019-31 by title only for the final time
- 3) City Clerk reads Ordinance No. 2019-31 by title only (if approved above)
- 4) Adopt Ordinance No. 2019-31

**Executive Summary:**

The proposed amendment (Case No. PZ-19-00095) includes changes to the Zoning Code to resolve conflicts, incorporate technical corrections, add clarity, and to simplify the existing requirements pertaining to accessory dwelling units.

On August 14, 2019, the Planning and Zoning Commission recommended approval of the proposed amendment to the City Council with a vote of 4-0.

**Financial Impact:**

There are no anticipated financial impacts affiliated with the proposed Zoning Code Text Amendment.

**Policy Impact:**

There are no anticipated policy impacts affiliated with the proposed Zoning Code Text Amendment.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

Council Goals:

Revise the zoning code to remove ambiguities, and ensure it is consistent with the community values and the Regional Plan.

Team Flagstaff Strategic Plan:

Work in partnership with to enhance a safe and livable community.

Regional Plan:

Please refer to the attached Planning and Zoning Commission staff report.

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

The Zoning Code was adopted by the City Council on November 1, 2011, to replace the former Land Development Code. Since its adoption, the code has been amended several times to address procedures, add clarity, resolve conflicts, address planning initiatives (accessory dwelling units), incorporate applicant requests (West University Drive Entrance Sign District and Seasonal Amusement, Entertainment and Sales, Indoor), and to address changes in state law and U.S. Supreme Court decisions (i.e., Reed vs. the Town of Gilbert).

**Options and Alternatives:**

The City Council may adopt, modify, or deny the amendment.

**Background/History:**

**Background**

The Zoning Code was adopted by the City Council on November 1, 2011, to replace the former Land Development Code. Since its adoption, the Code has been amended several times to address procedures, add clarity, resolve conflicts, address planning initiatives (accessory dwelling units), incorporate applicant requests (West University Drive Entrance Sign District), and to address changes in state law and U.S. Supreme Court decisions (i.e., Reed vs. the Town of Gilbert). In addition, on June 12, 2019, the Planning and Zoning Commission recommended approval to the City Council of an amendment to the Zoning Code to address a series of technical, conflict resolution, and clarity modifications, including adding the Seasonal Amusement/Entertainment and Sales, Indoor and related provisions to the Light Industrial (LI) zone. Also, on June 26, 2019, the Planning and Zoning Commission recommended approval to the City Council of an amendment to the Zoning Code to address a series of miscellaneous technical, conflict resolution, and clarity modifications.

**Proposed Amendment**

The proposed amendment includes multiple changes to the Zoning Code to resolve conflicts, incorporate technical corrections, add clarity, and to simplify the existing requirements. New provisions are being added, and several sections of the reference divisions are being modified, relocated, or deleted. The proposed amendment includes:

- Accessory Dwelling Units (ADUs) (10-40.60.030): Modify the design and development standards for ADUs to reclassify attached and detached ADUs to attached, detached, and interior ADUs. Revise,

consolidate, and clarify the provisions for the ADUs to address the new types of ADUs. Incorporate provisions related to subdividing a lot that contains an existing ADU. Incorporate clarifications and modifications pertaining to an ADU on a lot greater than one acre.

- Definition of Specialized Terms, Phrases, and Building Functions (Division 10-80.20): Modify and add various definitions of the Zoning Code, including: Accessory Dwelling Unit (ADU), Attached; Accessory Dwelling Unit (ADU), Detached; and Accessory Dwelling Unit (ADU), Interior.

### **Key Considerations:**

A Zoning Code Text Amendment shall be evaluated based on the following findings:

#### **A. Finding #1:**

- **The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan.**

The most significant of the proposed modifications pertain to the reclassification of attached and detached ADUs to attached, detached, and interior ADUs. This modification is intended to provide clarity to the different types of ADUs and maintains promoting this use, where appropriate (NH 3.2 of the Regional Plan).

The proposed amendments are primarily to resolve conflicts, incorporate technical corrections, and add clarity to the Zoning Code. Clerical in nature, the amendments do not substantively modify the existing provisions of the Zoning Code and maintain consistency and conformance with the objectives and policies of the Regional Plan (General Plan) and applicable specific plans.

#### **B. Finding #2**

- **The proposed amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the City.**

The proposed amendments are not anticipated to be detrimental to the public interest, health, safety, convenience, or welfare of the City. These amendments are primarily to resolve conflicts, incorporate technical corrections, and add clarity to the Zoning Code.

#### **C. Finding #3**

- **The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.**

The proposed amendments enhance the Zoning Code's internal consistency by resolving conflicts, incorporating corrections, and adding clarity. Furthermore, the proposed amendments are intended to maintain the Zoning Code's purpose as a comprehensive contemporary set of land uses and requirements that are straightforward, usable, and easily understood.

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

Please refer to the key considerations included in this report.

### **Community Involvement:**

On May 29, 2019, a public open house meeting and the Planning and Zoning Commission's work session and public hearing were advertised in the Arizona Daily Sun in accordance with State Statute and the Zoning Code. Also, persons of interest that were on file with the Planning and Development Services Division were notified of the work session and hearing via first class mail. Additional notification of the Planning and Zoning Commission's public hearing was published in the Arizona Daily Sun on July 27, 2019, in accordance with State Statute and the Zoning Code. The public open house meeting was held on June 10, 2019, which was attended by one person. The Planning and Zoning Commission's work session was held on June 26, 2019, and the Commission's public hearing was held on August 14, 2019. In addition, the City Council held a work session on these amendments on September 17, 2019. The City Council's public hearings were advertised in the Arizona Daily Sun on September 28, 2019.

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**Attachments:**    [Res. 2019-48](#)  
                          [Exhibit A to Resolution 2019-48](#)  
                          [Ord. 2019-31](#)  
                          [Presentation](#)  
                          [Planning and Zoning Commission Report](#)

**RESOLUTION NO. 2019-48**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED “CASE NO. PZ-19-00095 UPDATES TO ZONING CODE 2019 – ACCESSORY DWELLING UNITS”**

**RECITALS:**

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full;

**ENACTMENTS:**

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

SECTION 1. That certain document known as “*Case No. PZ-19-00095 Updates to Zoning Code 2019 - Accessory Dwelling Units*” attached hereto as Exhibit A is hereby declared to be a public record, and one (1) paper copy and one (1) electronic copy shall remain on file with the City Clerk in compliance with A.R.S. § 44-7041, and said copies shall remain on file with the City Clerk.

SECTION 2. Effective Date.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

Exhibits:

Case No. PZ-19-00095 Updates to Zoning Code 2019 - Accessory Dwelling Units


**Case No. PZ-19-00095 Updates to Zoning Code 2019 - Accessory Dwelling Units  
Proposed Flagstaff Zoning Code Amendment**

**HOW TO READ THIS DOCUMENT**


Unless otherwise stated, provisions that are being deleted are shown in bold red strikethrough text, like this: ~~Provisions that are being deleted are shown with a bold red strikethrough text.~~

Provisions that are being added are shown in bold blue text, like this: **Provisions that are being added are shown in bold blue text.**

Graphics/Figures that are being deleted are indicated with an “X” over the graphic/figure.

Graphics/Figures that are being added are indicated with a border  around the graphic/figure.

Tables that are being deleted are indicated with an “X” over the Tables.

Tables that are being added are indicated with a thick border  around the Tables.

Section 1. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs), subsection A. Applicability., as follows – including adding grid lines to the table:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

A. **Applicability.** Accessory dwelling units (ADUs) or carriage houses (see Section 10-50.110.040, Carriage House,) where allowed by Division 10-40.30, Non-Transect Zones, and Division 10-40.40, Transect Zones, are subject to the **following** requirements ~~and standards. of this section.~~

- ~~1.— Existing Dwelling. An ADU may only be permitted on a lot if a detached single family dwelling already exists on the lot or the single family dwelling will be constructed in conjunction with the ADU.~~
- ~~2.— Occupancy. The property owner, which shall include title holders and contract purchasers, must occupy either the primary residence or the ADU as their principal residence. The residence or ADU that is not occupied by the property owner may be rented or leased for a period of no less than 30 days to unrelated persons.~~
- ~~3.— Movable Habitable Space. A mobile home, recreational vehicle, or other movable habitable space that does not comply with the Building Code shall not be used as an ADU. A manufactured or modular unit placed on a~~

~~permanent foundation may be used as a second unit in compliance with this section.~~

- ~~B.~~ **Not Intended for Sale. Not to be sold.** An ADU shall not be sold separately from the primary structure.

Section 2. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs), subsection B. Design and Development Standards., as follows – including adding grid lines to the table:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

**~~B.~~ C. Design, and Development and Exception Standards.**

- ~~1.—An ADU shall meet the design and development standards established in Table 10-40.60.030.A, Design and Development Standards, and Table 10-40.60.030.B, Building Form Standard Exceptions.~~
- ~~2.—The maximum height of all accessory buildings and structures shall comply with Table 10-40.60.030.A, Design and Development Standards, unless the zone or overlay zone has a more restrictive height limit.~~
- 1. An ADU shall comply with Table 10-40.60.030.C. Design, Development and Exceptions Standards.**

Size	<p>An ADU, excluding any garage or carport area and other non-living areas such as workshops or greenhouses, shall be no less than 300 square feet in gross floor area and shall not exceed 600 square feet in gross floor area, except that on residential lots one acre or more in size, the area of an ADU may be increased to a maximum of 1,000 square feet.</p> <p>The area of ADUs that utilize alternative green construction methods that cause the exterior wall thickness to be greater than normal shall be measured based on the interior dimensions of the walls.</p>
Building Height	Standards for the height of accessory structures and ADUs are established in Table 10-40.60.020.A, Accessory Structure Height and Location Standards.
Density	In single-family residential zones no more than one ADU per single-family residential lot may be established. In multifamily residential zones the density limit applicable to that zone shall apply.

Amenities	An ADU shall contain a kitchenette and bathroom (sink, toilet, shower), as well as living and sleeping spaces, which may be in the same room (i.e., a studio).
Attachment	An attached ADU shall share at least one wall or roof structure with the primary dwelling and shall have an access connection to a common area within the primary dwelling that is either continuously open or may be locked off with the use of a door. An attached ADU may have an additional external access. An ADU not meeting these requirements is a detached ADU.
Number of occupants	No more than two persons shall reside in an ADU.
Architectural Compatibility	<ul style="list-style-type: none"> <li>• ADU shall be designed as a subordinate structure to the primary structure on the in terms of its mass, size and architectural character.</li> <li>• ADU shall maintain the architectural design, character, style and appearance of the primary structure as a single-family dwelling.</li> <li>• Exterior materials, windows, doors, roof pitch, and architectural details shall be consistent and compatible between the primary residence and the ADU.</li> <li>• Windows facing an adjoining residential property shall be designed to protect the privacy of neighbors; alternatively, fences, or walls shall be required to provide screening in compliance with Division 10-50.50, Fences and Screening.</li> </ul>
Alley Orientation	When an ADU is adjacent to an alley, every effort shall be made to orient the ADU to the alley with the front access door and windows facing the alley. Parking provided off the alley shall maintain a 24-foot back-out area, inclusive of the alley.
Entrance	An entrance to an attached ADU or an ADU located within a primary residence shall be located on the side or rear of the primary residence, and shall not face a street.
Parking	Parking shall be in compliance with Division 10-50.80, Parking Standards, and the parking standards in Division 10-40.40, Transect Zones.

Table 10-40.60.030.A : Design and Development Standards	
Utility Service	An ADU shall be connected to the utilities (except telephone and television) of the primary dwelling unit and may not have separate services.
Building Form Standards	ADUs shall meet the same building form standards as a principal building in the zone. See Table 10-40.60.020.A, Accessory Structure Height and Location Standards.
Home Occupations	Home occupations shall be allowed subject to Section 10-40.60.180, Home Occupations, in either the ADU or the primary residence, but not both.

Table 10-40.60.030.B: Building Form Standard Exceptions <sup>1</sup>			
	Parcel/Lot Size (Min.)	Setback (Min.)	Lot Coverage
Detached	6,000 sf	In compliance with Table 10-40.60.020.A	Exempt from lot coverage requirements <sup>1</sup>
Attached	No minimum <sup>1</sup>	In compliance with the standards of the underlying zone	
End Notes			
<sup>1</sup> ADUs in the RR zone shall meet the requirements established in Section 10-40.30.030(C).			

**Table 10-40.60.030.C.**

**Accessory Dwelling Units Design, Development and Exceptions Standards.**

<p><b>(1) ADU Standards</b></p>	<p><b>(a) Attached ADU:</b> An Attached ADU shall share a common wall or roof structure with the remainder of the primary dwelling unit, and comply with the fire separations of the building and fire codes.</p> <p><b>(b) Detached ADU:</b> A Detached ADU shall be physically detached, from the primary dwelling unit, including a separate roof structure, and comply with the fire separations of the building and fire codes.</p> <p><b>(c) Interior ADU:</b> An interior ADU is a delineated area within the primary dwelling unit, and is neither attached or detached.</p> <p>(Please refer to the definition of Attached, Detached, and Interior ADU in Division 10-80.20.)</p>
<p><b>(2) Alley Orientation (Detached ADU)</b></p>	<p><b>(a)</b> When a detached ADU is adjacent to an alley, the ADU's primary entry/exit access door and windows shall face the alley, unless approved by the Planning Director.</p>
<p><b>(3) Amenities</b></p>	<p><b>(a)</b> An ADU shall contain independent living, sleeping, eating, cooking, and sanitation facilities as part of the ADU, which may be in the same room (i.e., a studio/efficiency dwelling).</p>
<p><b>(4) Architectural Compatibility</b></p>	<p><b>(a)</b> An Attached or Detached ADU shall be designed as a subordinate structure to the primary structure on the lot or parcel in terms of its mass and size; and, the ADU's architectural character (colors, details, doors, materials, roof pitch, and windows, etc.) shall be compatible with the primary dwelling unit.</p> <p><b>(b)</b> An Interior ADU shall be designed as an integrated and subordinate part of the primary dwelling unit. The Interior ADU shall, at a minimum, have interior pedestrian access to the common areas such as a foyer, living room, laundry room, basement, etc., of the primary dwelling unit, and share the primary entrance and exit. Exterior modifications to accommodate an interior ADU, shall be developed with an architectural character (colors, details, doors, materials, roof pitch, and windows, etc.) with the existing structure.</p> <p><b>(c)</b> Windows facing an adjoining residential property shall be designed to protect the privacy of neighbors; alternatively, fences, or walls shall be required to</p>

**Table 10-40.60.030.C.**

**Accessory Dwelling Units Design, Development and Exceptions Standards.**

	provide screening in compliance with Division 10-50.50, Fences and Screening.
<b>(5) Building Form and Property Development Standards</b>	<p>(a) <b>Setbacks.</b> An ADU shall comply with the setback requirements of the property’s zone, and as allowed in (d) and 14 of this table.</p> <p>(b) <b>Building height.</b> The maximum height of an attached and detached ADU, measured in accordance with 10-50.30.030: 24 feet</p> <p>(c) <b>Lot Coverage.</b> The lot coverage requirements of a property’s zone shall:</p> <ul style="list-style-type: none"><li>(i) Not apply to attached and detached ADU; and,</li><li>(ii) Apply to a dwelling unit containing an interior ADU.</li></ul> <p>(d) <b>Encroachment into setbacks.</b></p> <ul style="list-style-type: none"><li>(i) The encroachments specified in Section 10-50.40.020 are allowed.</li><li>(ii) The development of a detached ADU on the second floor of a garage that was developed prior to February 16, 2016, and is in the required setback(s), shall be allowed, provided that no exterior additions or an increase in building height was developed to accommodate the ADU.</li></ul>
<b>(6) Density</b>	<p>(a) In single-family residential zones no more than one ADU per single-family residential lot or parcel is allowed.</p> <p>(b) In zones that allow multiple-family developments, the density requirements of the zone count an ADU as a dwelling unit.</p>
<b>(7) Entrance (Attached and Interior ADU)</b>	<p>(a) <b>Attached ADU.</b> The pedestrian entrance to an Attached ADU shall not face the same street as the pedestrian entrance of the primary dwelling unit, except:</p> <ul style="list-style-type: none"><li>(i) In zones that allow duplexes that are not required to be part of a Planning Residential Development;</li><li>(ii) If the façade of the ADU with the pedestrian entrance is setback at least 50 feet from the property line; or</li></ul>

**Table 10-40.60.030.C.**

**Accessory Dwelling Units Design, Development and Exceptions Standards.**

	<p>(iii) If the ADU's pedestrian entrance will not be visible from the same street that the pedestrian entrance of the primary dwelling unit is visible from.</p> <p>(b) Interior ADU. A pedestrian entrance to an Interior ADU shall be located on the interior side or rear side of the primary dwelling unit, and may be located on a street side façade of the primary dwelling unit, provided that the primary entrance to the primary dwelling does not face the same street side.</p>
<p><b>(8) Home Occupations</b></p>	<p>(a) Home occupations shall be allowed subject to Section 10-40.60.180, Home Occupations, in either the ADU or the primary residence, but not both.</p>
<p><b>(9) Lot Size, (Detached ADU)</b></p>	<p>(a) Minimum lot size: 6,000 square feet.</p>
<p><b>(10) Movable Habitable Space</b></p>	<p>(a) A mobile home, recreational vehicle, or other movable habitable space shall not be used as an ADU.</p> <p>(b) A manufactured or modular unit placed and secured on a permanent foundation in conformance with the Building Code may be used as an ADU in compliance with this section.</p>
<p><b>(11) Number of occupants</b></p>	<p>(a) Maximum number of persons allowed to reside in an ADU: two persons.</p>
<p><b>(12) Required Occupancy</b></p>	<p>(a) The property owner, which includes title holders and contract purchasers, shall occupy either the primary residence or the ADU as their principal residence. The residence or ADU that is not occupied by the property owner that is rented or leased shall be for a period of no less than 30 days.</p>
<p><b>(13) Parking</b></p>	<p>(a) Parking shall be in compliance with Division 10-50.80, Parking Standards, and the parking standards in Division 10-40.40, Transect Zones.</p> <p>(b) Parking provided with alley access shall maintain a 24-foot wide back-out area, inclusive of the alley.</p>
<p><b>(14) Placement</b></p>	<p>(a) An ADU shall be constructed or placed on the same lot or parcel as the primary dwelling unit.</p>

**Table 10-40.60.030.C.**

**Accessory Dwelling Units Design, Development and Exceptions Standards.**

	<p>(a) An ADU is allowed only on a lot or parcel containing a detached single-family dwelling unit.</p> <p>(b) An ADU is not allowed on a lot or parcel containing a duplex or triplex on properties zoned Rural Residential (RR), Estate Residential (ER), Single-Family Residential (R1), Single-Family Residential Neighborhood (R1N), Manufactured Housing (MH).</p> <p>(c) Additional placement regulations are contained in Section 10-40.60.030.D.</p>
<p><b>(15) Size, ADU</b></p>	<p>(a) Minimum Size: 300 square feet in gross floor area.</p> <p>(b) Maximum Size.</p> <p>(i) Lots less than one acre: 600 square feet in gross floor area.</p> <p>(ii) Lots equal to or greater than one acre: 1,000 square feet in gross floor area; but, an ADU shall not be larger than fifty percent of the gross floor area of the primary dwelling unit, or 600 square feet, whichever is greater.</p> <p>(c) Allowance for Green Construction. The maximum size of an ADU constructed with green construction methods that cause the exterior walls to be greater than eight-inches shall be:</p> <p>(i.) Minimum Size: 300 square feet in gross floor area, minus the area of the exterior walls.</p> <p>(ii) Maximum Size.</p> <p>(ii.a.) Lots less than one acre: 600 square feet in gross floor area, minus the area of the exterior walls.</p> <p>(ii.b.) Lots equal to or greater than one acre: 1,000 square feet in gross floor area; but, an ADU shall not be larger than fifty percent of the gross floor area of the primary dwelling unit, or 600 square feet, whichever is greater. The area of the ADU shall include the area of the exterior walls.</p>
<p><b>(16) Subdividing a lot with an ADU</b></p>	<p>(a) Attached and Interior ADU. A lot or parcel containing an ADU shall not be subdivided into two or more lots or parcels unless each lot or parcel complies with the Zoning</p>

<b>Table 10-40.60.030.C.</b> <b>Accessory Dwelling Units Design, Development and Exceptions Standards.</b>	
	<p><b>Code and Subdivision Ordinance.</b> The ADU shall completely remain on one lot.</p> <p><b>(b) Detached ADU.</b> The lot or parcel containing a Detached ADU shall not be subdivided into two or more lots or parcels unless each lot or parcel complies with the Zoning Code and Subdivision Ordinance.</p> <p><b>(i)</b> When an existing detached ADU will remain on the new lot or parcel created by subdivision, the property owner is required to modify the primary dwelling unit and ADU of the subdivided lots to comply with the Flagstaff City Code, including providing separate utility services connected to each unit, and obtain a new Certification-of-Occupancy for the units (when required by the Building Official), prior to City Staff recording the subdivision of the property. The ADU that remains on the new lot or parcel shall be considered a primary dwelling unit, unless a new primary dwelling unit is constructed on the new lot or parcel.</p>
<b>(17) Utility Service</b>	<b>(a)</b> An ADU shall be connected to the utilities (except internet, telephone and television) of the primary dwelling unit and may not have separate services.

Section 3. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs)., subsection C. Building Placement., as follows:

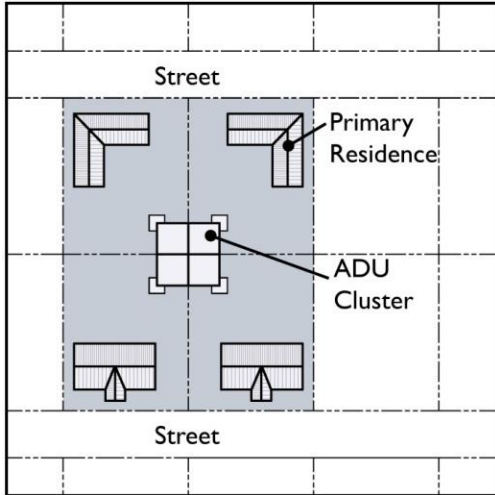
**10-40.60.030 Accessory Dwelling Units (ADUs)**

**C. D. Building Placement.** In addition to the standards provided in Table ~~10-40.60.030.A 10-40.60.030.C. , Design and Development Standards~~, ADUs proposed as part of the subdivision platting and approval process may be located on the rear or interior side property line under the following conditions ~~as~~ illustrated in Figures ~~10-40.60.030A 10-40.60.030.D.1. and 10-40.60.030B 10-40.60.030.D.2., and:~~

1. The ADU is located above a garage; and
2. Four ADUs designed and constructed together are located at the common intersection of the rear and interior side of four lots; or

3. Two ADUs designed and constructed together and with direct access to an alley are located at the common intersection of the rear and interior side of two lots.

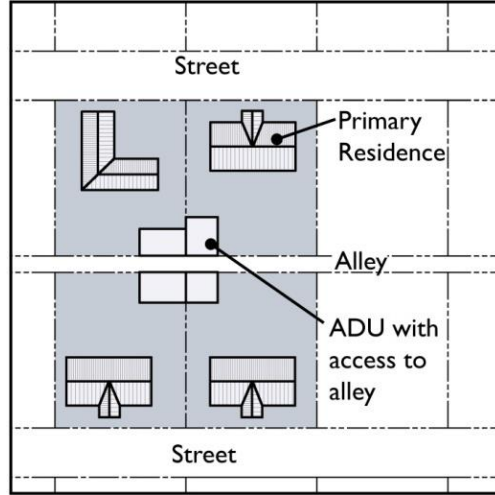
**Figure 10-40.60.030A**



**Figure 10-40.60.030.D.1.**

Four ADUs located at the common intersection of the rear and interior side of four lots

**Figure 10-40.60.030B**



**Figure 10-40.60.030.D.2.**

Two ADUs with direct access to an alley

Section 4. Amend the subsection letter of Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs), subsection D. Restrictive Covenant., as follows:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

~~D.~~ **E. Restrictive Covenant.**

Section 5. Amend the subsection letter of Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs), subsection E. Findings for Approval of ADUs., as follows:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

~~E.~~ **F. Findings for Approval of ADUs.** An application for approval of an ADU shall be based on the following findings:

1. The exterior design of the ADU is compatible with the primary residence and does not dominate it or surrounding properties. This has been achieved through use of compatible and complimentary architectural building forms, construction

materials, colors, landscaping, and other methods that conform to acceptable construction practices.

2. The exterior design of the ADU is in suitable proportion with and maintains the scale of the neighborhood.
3. The ADU does not result in excessive noise, traffic or parking congestion.
4. The site plan provides open space and landscaping that is useful for both the ADU and the primary residence. Open space and landscaping provides for privacy and screening of adjacent properties.
5. The location and design of the ADU maintains a compatible relationship to adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.
6. Major access stairs, decks, entry doors and major windows on one and one-half and two story structures face the primary residence to the maximum extent it is feasible, or the rear alley, if applicable. Windows that face neighboring side or rear setbacks are installed so the bottom of the window is a minimum of six feet above the floor.
7. Buildings, structures, and other features of the site plan, such as walkways and driveways, are oriented and located to maintain natural and historic resources to the maximum extent feasible and to minimize alteration of natural landforms.

Section 6.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.010 Definitions, “A”, for the terms, “**Accessory Dwelling Unit (ADU), Attached**”, and “**Accessory Dwelling Unit (ADU), Detached**”, and add the term “Accessory Dwelling Unit (ADU), Interior”, as follows:

**10-80.20.010 Definitions, “A”**

**Accessory Dwelling Unit (ADU), Attached:** ~~A subordinate living unit added to or created within a primary dwelling that provides basic requirements for independent living, sleeping, eating, cooking, and sanitation. The ADU shares a common wall or roof structure with the primary dwelling and has an access connection to a common area within the primary dwelling.~~ Is a subordinate dwelling unit on a lot or parcel that is physically attached to the primary dwelling unit by a wall or roof. An Attached ADU does not include a duplex, two-family dwelling, townhouse or townhome, condominium unit, single room occupancy development or co-housing.

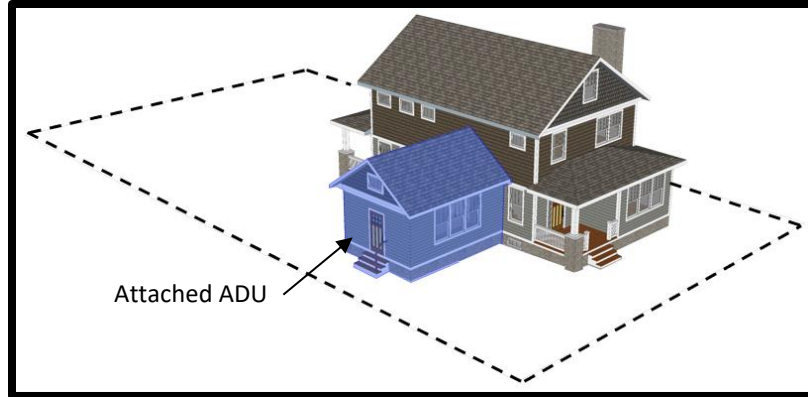


Figure 10-80.20.010. Accessory Dwelling Unit (ADU), Attached.

Accessory Dwelling Unit (ADU), Detached: ~~A subordinate living unit added to or detached from a primary dwelling that has a primary access that is completely detached from the primary dwelling and that provides basic requirements for independent living, sleeping, eating, cooking, and sanitation.~~ Is a subordinate dwelling unit on a lot or parcel that is physically detached from the primary dwelling unit.

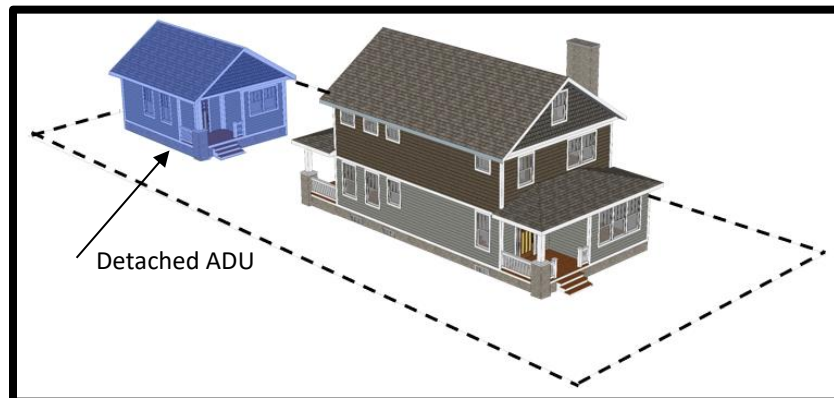
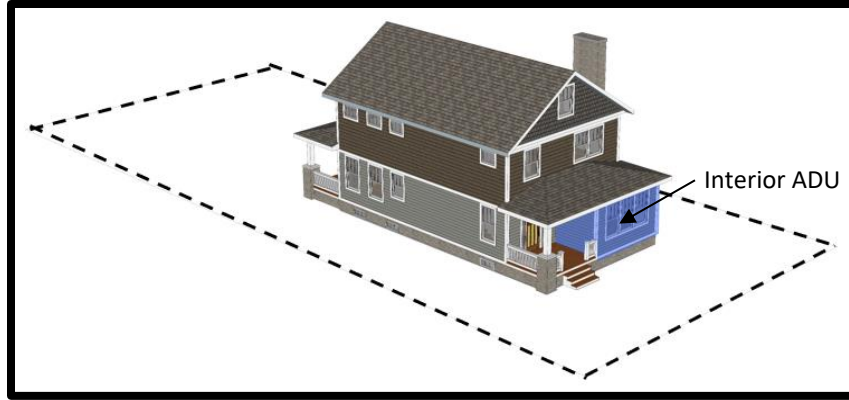


Figure 10-80.20.010. Accessory Dwelling Unit (ADU), Detached.

Accessory Dwelling Unit (ADU), Interior: Is a delineated living area located within a dwelling unit that has interior pedestrian access to the common area of the dwelling unit, such as a foyer, living room laundry room, basement, etc., shares a primary entrance and exit, contains permanent facilities for living, sleeping, eating, cooking and sanitation, and may have a separate secondary entrance/exit.



**Figure 10-80.20.010. Accessory Dwelling Unit (ADU), Interior.**

**ORDINANCE NO. 2019-31**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE , TITLE 10, FLAGSTAFF ZONING CODE, CHAPTERS 10-40 AND 10-80, AS PROVIDED IN THAT CERTAIN DOCUMENT ENTITLED “CASE NO. PZ-19-00095 UPDATES TO ZONING CODE 2019 – ACCESSORY DWELLING UNITS” DECLARED TO BE A PUBLIC RECORD BY RESOLUTION NO. 2019-48; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City of Flagstaff wishes to amend Title 10 of the Flagstaff City Code, Chapters 10-40 and 10-80, to ensure, among other things, correction of known errors, ease of use through simplified standards, consistency in interpretation and application of standards and procedures, and greater predictability in the application of the Zoning Code; and

WHEREAS, the Mayor and Council have, by resolution, previously declared that certain document entitled “*Case No. PZ-19-00095 Updates to Zoning Code 2019 - Accessory Dwelling Units*” (the “Proposed Zoning Code Text Amendments”) to be a public record by Resolution No. 2019-48 of the City of Flagstaff; and

WHEREAS, a citizen review session was held at the Planning Commission work session on June 26, 2019, to discuss the Proposed Zoning Code Text Amendments in accordance with Section 10-20.50.040 of the Flagstaff Zoning Code; and

WHEREAS, the Planning and Zoning Commission held a public meeting on August 14, 2019, and provided a recommendation to City Council on the Proposed Zoning Code Text Amendments; and

WHEREAS, the Council has determined that the Proposed Zoning Code Text Amendments are in conformance with the General Plan, and the findings of Section 10-20.50.040 of the Flagstaff Zoning Code have been met.

**ENACTMENTS:**

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

SECTION 1. That certain document known as “Case No. PZ-19-00095 Updates to Zoning Code 2019 – Accessory Dwelling Units”, one (1) paper copy and (1) electronic copy are on file in the office of the City Clerk of the City of Flagstaff, Arizona, which document is declared a public record by Resolution No. 2019-48 of the City of Flagstaff, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

**SECTION 2. Repeal of Conflicting Ordinances**

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

**SECTION 3. Severability**

If any section, subsection, sentence, clause, phrase, or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 4. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 5. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

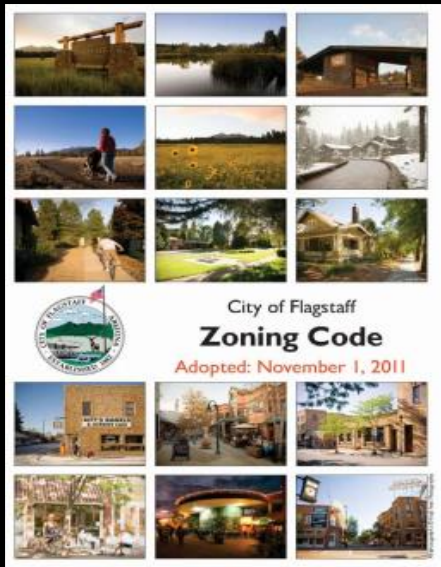
# City Council

City's Request  
to Amend the Zoning Code

Accessory Dwelling Units



Dan Symer, AICP  
Zoning Code Manager

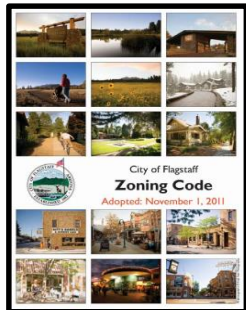




## City's Proposed Zoning Code Text Amendment

### *Accessory Dwelling Units (ADU):*

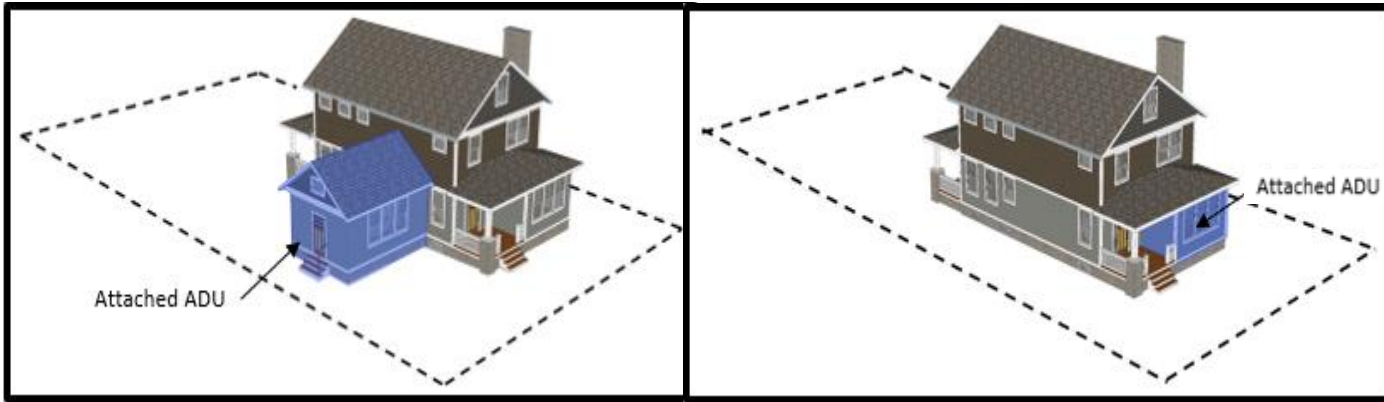
- **Modify types:**
  - **Existing: Attached and Detached**
  - **Proposed: Attached, Detached, and Interior**
- **Resolve conflicts, incorporating technical and clarity corrections**



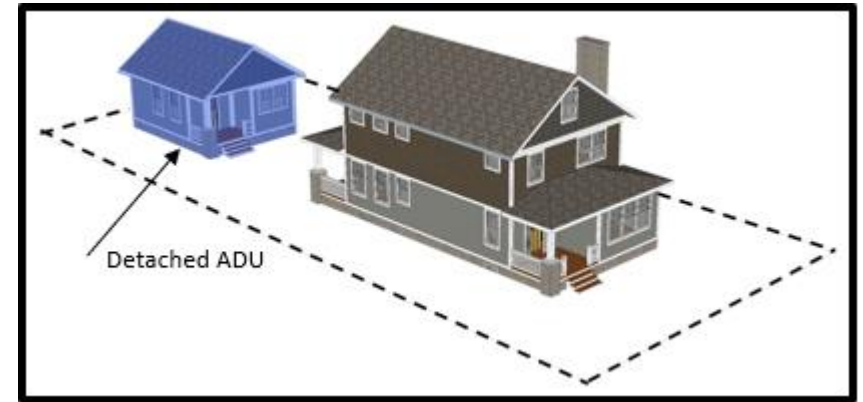


## City's Current Zoning Code Provisions

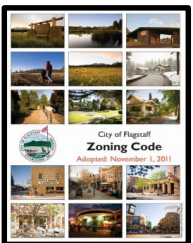
### *Accessory Dwelling Units:*



**Attached**



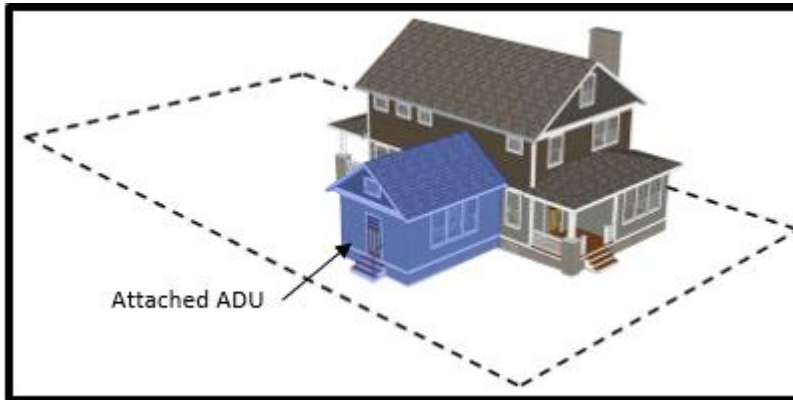
**Detached**



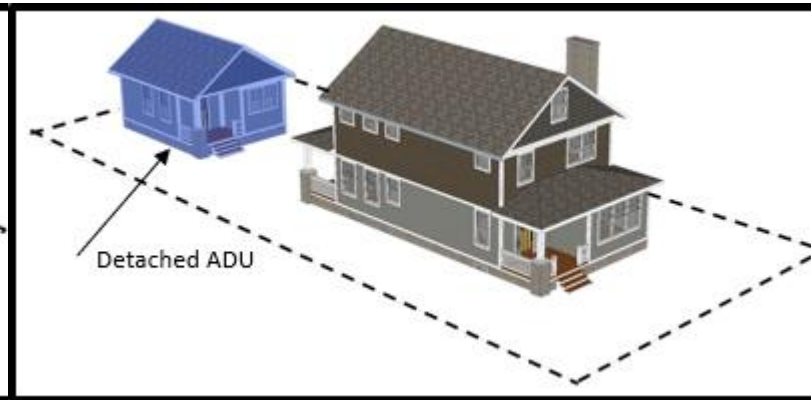


## City's Proposed Zoning Code Text Amendment

### *Accessory Dwelling Units:*



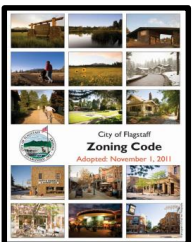
**Attached**



**Detached**



**Interior**

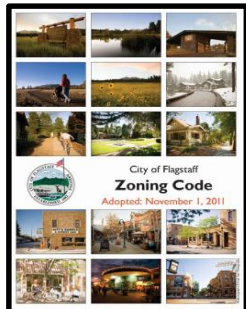




## City's Proposed Zoning Code Text Amendment

### *Accessory Dwelling Units:*

- **Modify standards to address proposed ADU types**
- **Clarify size maximum of an ADU on lots greater than 1 acre.**
- **Clarify that a ADU may only be provide on properties that contains a detached single-family dwelling unit**
- **Incorporate provisions to subdivide a lot containing an ADU**





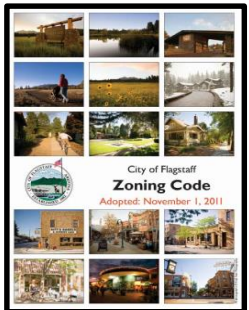
City Council



# City's Proposed Zoning Code Text Amendment

*City Council*

*Comments, Questions and Discussion*



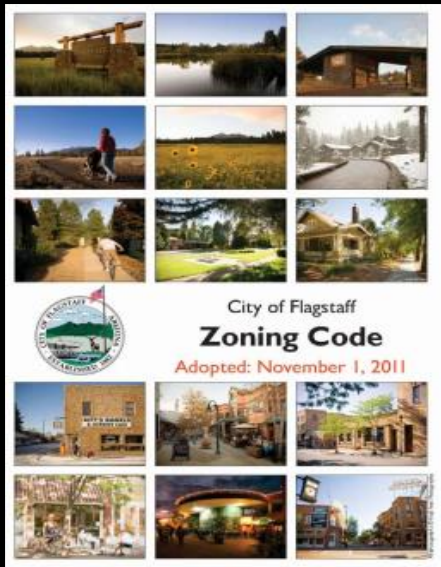
# City Council

City's Request  
to Amend the Zoning Code

Accessory Dwelling Units



Dan Symer, AICP  
Zoning Code Manager



**PLANNING AND DEVELOPMENT SERVICES REPORT**  
**Zoning Code Text Amendment**

**PUBLIC HEARING**  
**PZ-19-00095**

**DATE:** August 1, 2019  
**MEETING DATE:** August 14, 2019  
**REPORT BY:**  Dan Symer, AICP

**REQUEST:**

For a Zoning Code Text Amendment (Case No.: PZ-19-00095) to amend the Flagstaff Zoning Code (Ordinance No. 2011-20) for the purpose of modifying chapters, divisions, and sections of Title 10 Flagstaff Zoning Code, including the sections of Division 10-40.60: Specific to Uses, and Division 10-80.20: Definition of Specialized Terms, Phrases, and Building Functions, to resolve conflicts, incorporate technical corrections and clarity, and to add new and modify existing, requirements, provisions, and definitions.

**STAFF RECOMMENDATION:**

Staff recommends the Planning and Zoning Commission, in accordance with the findings presented in this report, find that the requirements of the Zoning Code have been met, and make a recommendation to the City Council for approval of the Zoning Code Text Amendment.

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**I. Project Introduction**

**A. Background**

The Zoning Code was adopted by the City Council on November 1, 2011, to replace the former Land Development Code. Since its adoption, the code has been amended several times to address procedures, add clarity, resolve conflicts, address planning initiatives (accessory dwelling units), incorporate applicant's requests (West University Drive Entrance Sign District), and to address changes in state law and U.S. Supreme Court decisions (i.e. Reed vs the Town of Gilbert). In addition, on June 12, 2019 the Planning and Zoning Commission recommended approval to the City Council of an amendment to the Zoning Code to address a series of technical, conflict resolution, and clarity modifications – including adding the Seasonal Amusement/Entertainment and Sales, Indoor and related provisions to the Light Industrial (LI) zone. Also, on June 26, 2019 the Planning and Zoning Commission recommended approval to the City Council of an amendment to the Zoning Code to address a series of miscellaneous technical, conflict resolution, and clarity modifications.

**B. Proposed Amendment**

The proposed amendment includes multiple changes to the Zoning Code to resolve conflicts, incorporate technical corrections, add clarity, and to simplify the existing requirements. New provisions are being added, and several sections of the reference divisions are being modified, relocated, or deleted. The proposed amendment includes:

- **Accessory Dwelling Units (ADUs) (10-40.60.030):** Modify the design and development standards for ADUs to reclassify attached and detached ADUs to attached, detached, and interior ADUs. Revise, consolidate, and clarify the provisions for the ADUs to address the new types of ADUs. Incorporate provisions related to subdividing a lot that contains an existing ADU. Incorporate clarifications and modifications pertaining to an ADU on a lot greater than one acre.
- **Definition of Specialized Terms, Phrases, and Building Functions (Division 10-80.20):** Modify and add various definition of the Zoning Code, including: Accessory Dwelling Unit (ADU), Attached; Accessory Dwelling Unit (ADU), Detached; and Accessory Dwelling Unit (ADU), Interior.

**II. Zoning Code Text Amendment**

An application for a Zoning Text Amendment shall be submitted to the Planning Director and shall be reviewed and a recommendation prepared. The Planning Director's recommendation shall be transmitted to the Planning and Zoning Commission in the form of a staff report prior to a scheduled public hearing. The recommendation shall include: an evaluation of the consistency and conformance of the proposed amendment with the goals and policies of the General Plan (Regional Plan) and any applicable specific plans; the grounds for the recommendation based on the standards and

purposes of the zones set forth in Section 10-40.20 (Establishment of Zones) of the Zoning Code; and, whether the amendment should be granted, or denied.

A Zoning Code Text Amendment shall be evaluated based on the following findings:

**A. Finding #1:**

- **The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;**

The most significant of the proposed modifications pertains to the reclassification attached and detached ADUs to attached, detached, and interior ADUs. This modification is intended to provide clarity to the different types of ADUs, and maintains promoting this use, where appropriate (NH 3.2 of the Regional Plan).

The proposed amendments are primarily to resolve conflicts, incorporate technical corrections and add clarity to the Zoning Code. Clerical in nature, the amendments do not substantively modify the existing provisions of the Zoning Code and maintains consistency and conformance with the objectives and policies of the Regional Plan (General Plan) and applicable specific plans.

**B. Finding #2**

- **The proposed amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the City;**

The proposed amendments are not anticipated to be detrimental to the public interest, health, safety, convenience or welfare of the City. These amendments are primarily to resolving conflicts, incorporate technical corrections and add clarity to the Zoning Code.

**C. Finding #3**

- **The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.**

The proposed amendments enhance the zoning code's internal consistency by resolving conflicts, incorporate corrections and adding clarity. Furthermore, the proposed amendments are intended to maintain the zoning code's purpose as a comprehensive contemporary set of land uses and requirements that are straightforward, usable and easily understood.

**V. CITIZEN PARTICIPATION**

In accordance with State Statute and the Zoning Code, the Planning and Zoning Commission work session and public hearing for these amendments was advertised in the Arizona Daily Sun on May 29, 2019. Also, persons of interest that are on file with the Planning and Development Services Department were notified of the work sessions and hearings via first class mail. Also, on June 10, 2019 a public open house meeting was held. This meeting was attended by one person that merely desired to obtain a copy of the proposed amendments.

**VI. PLANNING AND ZONING COMMISSION WORK SESSION**

At the June 26, 2019 Planning and Zoning Commission Work Session, staff reviewed the text amendment application with the Commission. The Commission had a series of questions to clarify there understanding of the code and editorial comments.

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**Attachments:**

1. Proposed Ordinance Revisions

Proposed Flagstaff Zoning Code Amendment.

Accessory Dwelling Units

Case No. PZ-190095

**HOW TO READ THIS DOCUMENT**

Unless otherwise stated, provisions that are being deleted are shown in bold red strikethrough text, like this: ~~Provisions that are being deleted are shown with a bold red strikethrough text.~~

Provisions that are being added are shown in bold blue text, like this: **Provisions that are being added are shown in bold blue text.**

Graphics/Figures that are being deleted are indicated with an “X” over the graphic/figure.

Graphics/Figures that are being added are indicated with a border  around the graphic/figure.

Tables that are being deleted are indicated with an “X” over the Tables.

Tables that are being added are indicated with a thick border  around the Tables.

Section 1. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs)., subsection A. Applicability., as follows – including adding grid lines to the table:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

A. **Applicability.** Accessory dwelling units (ADUs) or carriage houses (see Section 10-50.110.040, Carriage House,) where allowed by Division 10-40.30, Non-Transect Zones, and Division 10-40.40, Transect Zones, are subject to the ~~following~~ requirements ~~and standards.~~ **of this section.**

- ~~1.—Existing Dwelling. An ADU may only be permitted on a lot if a detached single-family dwelling already exists on the lot or the single family dwelling will be constructed in conjunction with the ADU.~~
- ~~2.—Occupancy. The property owner, which shall include title holders and contract purchasers, must occupy either the primary residence or the ADU as their principal residence. The residence or ADU that is not occupied by the property owner may be rented or leased for a period of no less than 30 days to unrelated persons.~~
- ~~3.—Movable Habitable Space. A mobile home, recreational vehicle, or other movable habitable space that does not comply with the Building Code shall not be used as an ADU. A manufactured or modular unit placed on a~~

~~permanent foundation may be used as a second unit in compliance with this section.~~

4. ~~B. Not Intended for Sale.~~ **Not to be sold.** An ADU shall not be sold separately from the primary structure.

Section 2.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs), subsection B. Design and Development Standards., as follows – including adding grid lines to the table:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

~~B. C. Design, and Development and Exception Standards.~~

~~1. An ADU shall meet the design and development standards established in Table 10-40.60.030.A, Design and Development Standards, and Table 10-40.60.030.B, Building Form Standard Exceptions.~~

~~2. The maximum height of all accessory buildings and structures shall comply with Table 10-40.60.030.A, Design and Development Standards, unless the zone or overlay zone has a more restrictive height limit.~~

**1. An ADU shall comply with Table 10-40.60.030.C. Design, Development and Exceptions Standards.**

Size	<p>An ADU, excluding any garage or carport area and other non-living areas such as workshops or greenhouses, shall be no less than 300 square feet in gross floor area and shall not exceed 600 square feet in gross floor area, except that on residential lots one acre or more in size, the area of an ADU may be increased to a maximum of 1,000 square feet.</p> <p>The area of ADUs that utilize alternative green construction methods that cause the exterior wall thickness to be greater than normal shall be measured based on the interior dimensions of the walls.</p>
Building Height	Standards for the height of accessory structures and ADUs are established in Table 10-40.60.020.A, Accessory Structure Height and Location Standards.
Density	In single-family residential zones no more than one ADU per single-family residential lot may be established. In multifamily residential zones the density limit applicable to that zone shall apply.

Table 10-40.60.030.A : Design and Development Standards

Amenities	An ADU shall contain a kitchenette and bathroom (sink, toilet, shower), as well as living and sleeping spaces, which may be in the same room (i.e., a studio).
Attachment	An attached ADU shall share at least one wall or roof structure with the primary dwelling and shall have an access connection to a common area within the primary dwelling that is either continuously open or may be locked off with the use of a door. An attached ADU may have an additional external access. An ADU not meeting these requirements is a detached ADU.
Number of occupants	No more than two persons shall reside in an ADU.
Architectural Compatibility	<ul style="list-style-type: none"> <li>• ADU shall be designed as a subordinate structure to the primary structure on the in terms of its mass, size and architectural character.</li> <li>• ADU shall maintain the architectural design, character, style and appearance of the primary structure as a single-family dwelling.</li> <li>• Exterior materials, windows, doors, roof pitch, and architectural details shall be consistent and compatible between the primary residence and the ADU.</li> <li>• Windows facing an adjoining residential property shall be designed to protect the privacy of neighbors; alternatively, fences, or walls shall be required to provide screening in compliance with Division 10-50.50, Fences and Screening.</li> </ul>
Alley Orientation	When an ADU is adjacent to an alley, every effort shall be made to orient the ADU to the alley with the front access door and windows facing the alley. Parking provided off the alley shall maintain a 24-foot back-out area, inclusive of the alley.
Entrance	An entrance to an attached ADU or an ADU located within a primary residence shall be located on the side or rear of the primary residence, and shall not face a street.
Parking	Parking shall be in compliance with Division 10-50.80, Parking Standards, and the parking standards in Division 10-40.40, Transect Zones.

**Table 10-40.60.030.A : Design and Development Standards**

Utility Service	Any ADU shall be connected to the utilities (except telephone and television) of the primary dwelling unit and may not have separate services.
Building Form Standards	ADUs shall meet the same building form standards as a principal building in the zone. See Table 10-40.60.020.A, Accessory Structure Height and Location Standards.
Home Occupations	Home occupations shall be allowed subject to Section 10-40.60.180, Home Occupations, in either the ADU or the primary residence, but not both.

**Table 10-40.60.030.B: Building Form Standard Exceptions<sup>1</sup>**

	Parcel/Lot Size (Min.)	Setback (Min.)	Lot Coverage
Detached	6,000 sf	In compliance with Table 10-40.60.020.A	Exempt from lot coverage requirements <sup>1</sup>
Attached	No minimum <sup>1</sup>	In compliance with the standards of the underlying zone	
End Notes			
<sup>1</sup> ADUs in the RR zone shall meet the requirements established in Section 10-40.30.030(C).			

Table 10-40.60.030.C.

Accessory Dwelling Units Design, Development and Exceptions Standards.

<p><b>(1) ADU Standards</b></p>	<p>(a) <b>Attached ADU:</b> An Attached ADU shall share a common wall or roof structure with the remainder of the primary dwelling unit, and comply with the fire separations of the building and fire codes.</p> <p>(b) <b>Detached ADU:</b> A Detached ADU shall be physically detached, from the primary dwelling unit, including a separate roof structure, and comply with the fire separations of the building and fire codes.</p> <p>(c) <b>Interior ADU:</b> An interior ADU is a delineated area within the primary dwelling unit, and is neither attached or detached.</p> <p>(Please refer to the definition of Attached, Detached, and Interior ADU in Division 10-80.20.)</p>
<p><b>(2) Alley Orientation (Detached ADU)</b></p>	<p>(a) When a detached ADU is adjacent to an alley, the ADU's primary entry/exit access door and windows shall face the alley, unless approved by the Planning Director.</p>
<p><b>(3) Amenities</b></p>	<p>(a) An ADU shall contain independent living, sleeping, eating, cooking, and sanitation facilities as part of the ADU, which may be in the same room (i.e., a studio/efficiency dwelling).</p>
<p><b>(4) Architectural Compatibility</b></p>	<p>(a) An Attached or Detached ADU shall be designed as a subordinate structure to the primary structure on the lot or parcel in terms of its mass and size; and, the ADU's architectural character (colors, details, doors, materials, roof pitch, and windows, etc.) shall be compatible with the primary dwelling unit.</p> <p>(b) An Interior ADU shall be designed as an integrated and subordinate part of the primary dwelling unit. The Interior ADU shall, at a minimum, have interior pedestrian access to the common areas such as a foyer, living room, laundry room, basement, etc., of the primary dwelling unit, and share the primary entrance and exit. Exterior modifications to accommodate an interior ADU, shall be developed with an architectural character (colors, details, doors, materials, roof pitch, and windows, etc.) with the existing structure.</p> <p>(c) Windows facing an adjoining residential property shall be designed to protect the privacy of neighbors; alternatively, fences, or walls shall be required to</p>

**Table 10-40.60.030.C.**

**Accessory Dwelling Units Design, Development and Exceptions Standards.**

	<p>provide screening in compliance with Division 10-50.50, Fences and Screening.</p>
<p><b>(5) Building Form and Property Development Standards</b></p>	<p>(a) <b>Setbacks.</b> An ADU shall comply with the setback requirements of the property's zone, and as allowed in (d) and 14 of this table.</p> <p>(b) <b>Building height.</b> The maximum height of an attached and detached ADU, measured in accordance with 10-50.30.030: 24 feet</p> <p>(c) <b>Lot Coverage.</b> The lot coverage requirements of a property's zone shall:</p> <ul style="list-style-type: none"> <li>(i) Not apply to attached and detached ADU; and,</li> <li>(ii) Apply to a dwelling unit containing an interior ADU.</li> </ul> <p>(d) <b>Encroachment into setbacks.</b></p> <ul style="list-style-type: none"> <li>(i) The encroachments specified in Section 10-50.40.020 are allowed.</li> <li>(ii) The development of a detached ADU on the second floor of a garage that was developed prior to February 16, 2016, and is in the required setback(s), shall be allowed, provided that no exterior additions or an increase in building height was developed to accommodate the ADU.</li> </ul>
<p><b>(6) Density</b></p>	<p>(a) In single-family residential zones no more than one ADU per single-family residential lot or parcel is allowed.</p> <p>(b) In zones that allow multiple-family developments, the density requirements of the zone count an ADU as a dwelling unit.</p>
<p><b>(7) Entrance</b> <b>(Attached and Interior ADU)</b></p>	<p>(a) <b>Attached ADU.</b> The pedestrian entrance to an Attached ADU shall not face the same street as the pedestrian entrance of the primary dwelling unit, except:</p> <ul style="list-style-type: none"> <li>(i) In zones that allow duplexes that are not required to be part of a Planning Residential Development;</li> <li>(ii) If the façade of the ADU with the pedestrian entrance is setback at least 50 feet from the property line; or</li> </ul>

Table 10-40.60.030.C.

Accessory Dwelling Units Design, Development and Exceptions Standards.

	<p>(iii) If the ADU's pedestrian entrance will not be visible from the same street that the pedestrian entrance of the primary dwelling unit is visible from.</p> <p>(b) Interior ADU. A pedestrian entrance to an Interior ADU shall be located on the interior side or rear side of the primary dwelling unit, and may be located on a street side façade of the primary dwelling unit, provided that the primary entrance to the primary dwelling does not face the same street side.</p>
(8) Home Occupations	(a) Home occupations shall be allowed subject to Section 10-40.60.180, Home Occupations, in either the ADU or the primary residence, but not both.
(9) Lot Size, (Detached ADU)	(a) Minimum lot size: 6,000 square feet.
(10) Movable Habitable Space	<p>(a) A mobile home, recreational vehicle, or other movable habitable space shall not be used as an ADU.</p> <p>(b) A manufactured or modular unit placed and secured on a permanent foundation in conformance with the Building Code may be used as an ADU in compliance with this section.</p>
(11) Number of occupants	(a) Maximum number of persons allowed to reside in an ADU: two persons.
(12) Required Occupancy	(a) The property owner, which includes title holders and contract purchasers, shall occupy either the primary residence or the ADU as their principal residence. The residence or ADU that is not occupied by the property owner that is rented or leased shall be for a period of no less than 30 days.
(13) Parking	<p>(a) Parking shall be in compliance with Division 10-50.80, Parking Standards, and the parking standards in Division 10-40.40, Transect Zones.</p> <p>(b) Parking provided with alley access shall maintain a 24-foot wide back-out area, inclusive of the alley.</p>
(14) Placement	(a) An ADU shall be constructed or placed on the same lot or parcel as the primary dwelling unit.

Table 10-40.60.030.C.

Accessory Dwelling Units Design, Development and Exceptions Standards.

	<ul style="list-style-type: none"><li>(a) An ADU is allowed only on a lot or parcel containing a detached single-family dwelling unit.</li><li>(b) An ADU is not allowed on a lot or parcel containing a duplex or triplex on properties zoned Rural Residential (RR), Estate Residential (ER), Single-Family Residential (R1), Single-Family Residential Neighborhood (R1N), Manufactured Housing (MH).</li><li>(c) Additional placement regulations are contained in Section 10-40.60.030.D.</li></ul>
<p>(15) Size, ADU</p>	<ul style="list-style-type: none"><li>(a) Minimum Size: 300 square feet in gross floor area.</li><li>(b) Maximum Size.<ul style="list-style-type: none"><li>(i) Lots less than one acre: 600 square feet in gross floor area.</li><li>(ii) Lots equal to or greater than one acre: 1,000 square feet in gross floor area; but, an ADU shall not be larger than fifty percent of the gross floor area of the primary dwelling unit, or 600 square feet, whichever is greater.</li></ul></li><li>(c) Allowance for Green Construction. The maximum size of an ADU constructed with green construction methods that cause the exterior walls to be greater than eight-inches shall be:<ul style="list-style-type: none"><li>(i.) Minimum Size: 300 square feet in gross floor area, minus the area of the exterior walls.</li><li>(ii) Maximum Size.<ul style="list-style-type: none"><li>(ii.a.) Lots less than one acre: 600 square feet in gross floor area, minus the area of the exterior walls.</li><li>(ii.b.) Lots equal to or greater than one acre: 1,000 square feet in gross floor area; but, an ADU shall not be larger than fifty percent of the gross floor area of the primary dwelling unit, or 600 square feet, whichever is greater. The area of the ADU shall include the area of the exterior walls.</li></ul></li></ul></li></ul>
<p>(16) Subdividing a lot with an ADU</p>	<ul style="list-style-type: none"><li>(a) Attached and Interior ADU. A lot or parcel containing an ADU shall not be subdivided into two or more lots or parcels unless each lot or parcel complies with the Zoning</li></ul>

<b>Table 10-40.60.030.C.</b> <b>Accessory Dwelling Units Design, Development and Exceptions Standards.</b>	
	<p><b>Code and Subdivision Ordinance.</b> The ADU shall completely remain on one lot.</p> <p><b>(b) Detached ADU.</b> The lot or parcel containing a Detached ADU shall not be subdivided into two or more lots or parcels unless each lot or parcel complies with the Zoning Code and Subdivision Ordinance.</p> <p><b>(i)</b> When an existing detached ADU will remain on the new lot or parcel created by subdivision, the property owner is required to modify the primary dwelling unit and ADU of the subdivided lots to comply with the Flagstaff City Code, including providing separate utility services connected to each unit, and obtain a new Certification-of-Occupancy for the units (when required by the Building Official), prior to City Staff recording the subdivision of the property. The ADU that remains on the new lot or parcel shall be considered a primary dwelling unit, unless a new primary dwelling unit is constructed on the new lot or parcel.</p>
<b>(17) Utility Service</b>	<b>(a)</b> An ADU shall be connected to the utilities (except telephone and television) of the primary dwelling unit and may not have separate services.

Section 3. Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs)., subsection C. Building Placement., as follows:

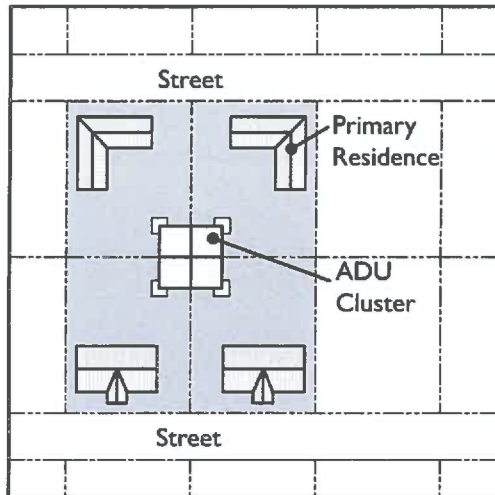
**10-40.60.030 Accessory Dwelling Units (ADUs)**

**G. D. Building Placement.** In addition to the standards provided in Table ~~10-40.60.030.A 10-40.60.030.C.~~ ~~Design and Development Standards~~, ADUs proposed as part of the subdivision platting and approval process may be located on the rear or interior side property line under the following conditions **as** illustrated in Figures ~~10-40.60.030A 10-40.60.030.D.1.~~ and ~~10-40.60.030B 10-40.60.030.D.2.,~~ and:

1. The ADU is located above a garage; and
2. Four ADUs designed and constructed together are located at the common intersection of the rear and interior side of four lots; or

- Two ADUs designed and constructed together and with direct access to an alley are located at the common intersection of the rear and interior side of two lots.

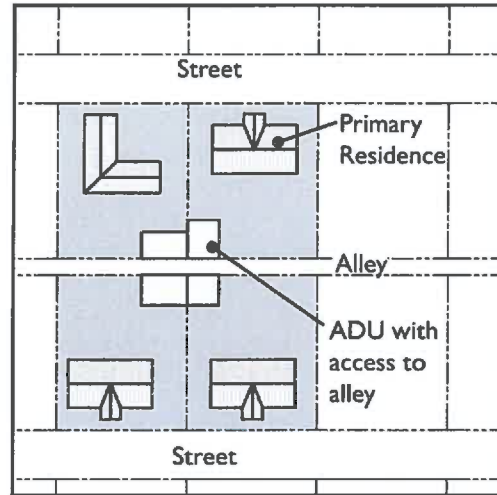
**Figure 10-40.60.030A**



**Figure 10-40.60.030.D.1.**

Four ADUs located at the common intersection of the rear and interior side of four lots

**Figure 10-40.60.030B**



**Figure 10-40.60.030.D.2.**

Two ADUs with direct access to an alley

Section 4. Amend the subsection letter of Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs), subsection D. Restrictive Covenant., as follows:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

~~D.~~ **E. Restrictive Covenant.**

Section 5. Amend the subsection letter of Title 10 FLAGSTAFF ZONING CODE, Section 10-40.60.030 Accessory Dwelling Units (ADUs), subsection E. Findings for Approval of ADUs., as follows:

**10-40.60.030 Accessory Dwelling Units (ADUs)**

~~E.~~ **F. Findings for Approval of ADUs.** An application for approval of an ADU shall be based on the following findings:

- The exterior design of the ADU is compatible with the primary residence and does not dominate it or surrounding properties. This has been achieved through use of compatible and complimentary architectural building forms, construction

materials, colors, landscaping, and other methods that conform to acceptable construction practices.

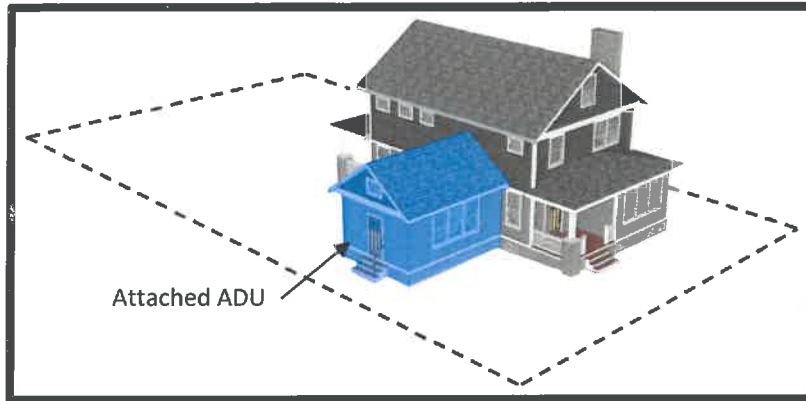
2. The exterior design of the ADU is in suitable proportion with and maintains the scale of the neighborhood.
3. The ADU does not result in excessive noise, traffic or parking congestion.
4. The site plan provides open space and landscaping that is useful for both the ADU and the primary residence. Open space and landscaping provides for privacy and screening of adjacent properties.
5. The location and design of the ADU maintains a compatible relationship to adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.
6. Major access stairs, decks, entry doors and major windows on one and one-half and two story structures face the primary residence to the maximum extent it is feasible, or the rear alley, if applicable. Windows that face neighboring side or rear setbacks are installed so the bottom of the window is a minimum of six feet above the floor.
7. Buildings, structures, and other features of the site plan, such as walkways and driveways, are oriented and located to maintain natural and historic resources to the maximum extent feasible and to minimize alteration of natural landforms.

Section 6.

Amend Title 10 FLAGSTAFF ZONING CODE, Section 10-80.20.010 Definitions, "A", for the terms, "Accessory Dwelling Unit (ADU), Attached", and "Accessory Dwelling Unit (ADU), Detached", and add the term "Accessory Dwelling Unit (ADU), Interior", as follows:

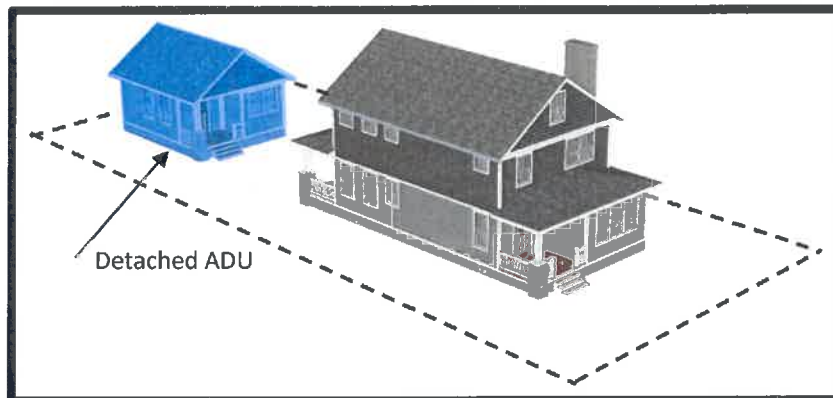
**10-80.20.010 Definitions, "A"**

**Accessory Dwelling Unit (ADU), Attached:** ~~A subordinate living unit added to or created within a primary dwelling that provides basic requirements for independent living, sleeping, eating, cooking, and sanitation. The ADU shares a common wall or roof structure with the primary dwelling and has an access connection to a common area within the primary dwelling.~~ Is a subordinate dwelling unit on a lot or parcel that is physically attached to the primary dwelling unit by a wall or roof. An Attached ADU does not include a duplex, two-family dwelling, townhouse or townhome, condominium unit, single room occupancy development or co-housing.



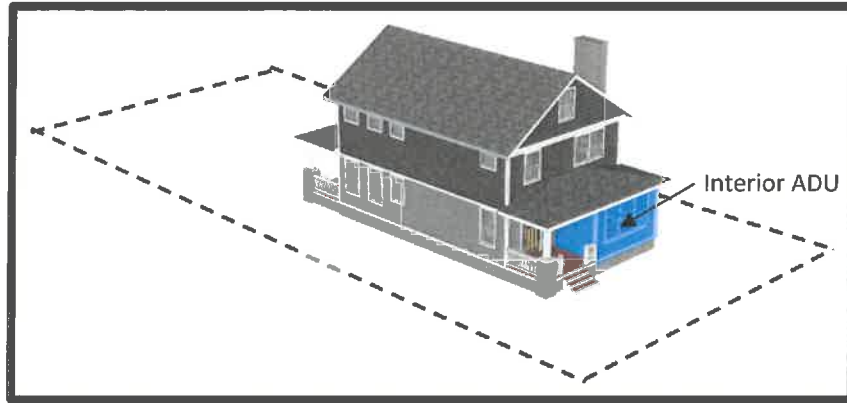
**Figure 10-80.20.010. Accessory Dwelling Unit (ADU), Attached.**

**Accessory Dwelling Unit (ADU), Detached:** ~~A subordinate living unit added to or detached from a primary dwelling that has a primary access that is completely detached from the primary dwelling and that provides basic requirements for independent living, sleeping, eating, cooking, and sanitation.~~ Is a subordinate dwelling unit on a lot or parcel that is physically detached from the primary dwelling unit.



**Figure 10-80.20.010. Accessory Dwelling Unit (ADU), Detached.**

**Accessory Dwelling Unit (ADU), Interior:** Is a delineated living area located within a dwelling unit that has interior pedestrian access to the common area of the dwelling unit, such as a foyer, living room, laundry room, basement, etc., shares a primary entrance and exit, contains permanent facilities for living, sleeping, eating, cooking and sanitation, and may have a separate secondary entrance/exit.



**Figure 10-80.20.010. Accessory Dwelling Unit (ADU), Interior.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Dylan Lenzen, Sustainability Specialist  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Consideration and Adoption of Resolution No. 2019-53 and Ordinance No. 2019-36:** A resolution of the Flagstaff City Council declaring as a public record that certain document filed with the City Clerk and entitled "*Animal Keeping Code Amendments*," and an ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, Title 6, Police Regulations, Chapter 3, Animal Keeping, by referencing that certain document entitled "*Animal Keeping Code Amendments*"; providing for repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.

**STAFF RECOMMENDED ACTION:**

At the November 5, 2019 Council Meeting:

- 1) Read Resolution No. 2019-53 by title only
- 2) City Clerk reads Resolution No. 2019-53 by title only (if approved above)
- 3) Read Ordinance No. 2019-36 by title only for the first time
- 4) City Clerk reads Ordinance No. 2019-36 by title only (if approved above)

At the November 19, 2019 Council Meeting:

- 5) Adopt Resolution No. 2019-53
- 6) Read Ordinance No. 2019-36 by title only for the final time
- 7) City Clerk reads Ordinance No. 2019-36 by title only (if approved above)
- 8) Adopt Ordinance No. 2019-36

**Executive Summary:**

In 2016, the Animal Keeping Code was revised to clarify rules, reduce barriers for animal keeping on small lot sizes within City limits and incorporate animal welfare considerations. As part of that process, staff committed to re-evaluate the effectiveness of the revisions and return to Council with any necessary updates.

Revisions to the Code are designed reduce nuisances for neighbors and make enforcement easier, while still allowing for backyard livestock to be raised in City limits. The proposed revisions to the Animal Keeping Code are in response to feedback from residents, City staff, and direction from City Council. The revisions also address inconsistencies within the Zoning Code. Key revisions include:

- A permitting system modeled after the existing Minor Improvement Permit process
- Prohibiting pygmy and miniature goats in zones other than estate residential and rural

residential

- Adjusting setback requirements, including a 20-foot distance requirement between livestock shelters and neighboring dwellings
- Containing livestock in shelters from sunset until sunrise
- Requiring wings of winged animals be clipped to ensure containment
- Guidelines for reducing nuisances, including the proper location for feed and water, as well as disposal of waste

### **Financial Impact:**

Staff is seeking guidance from City Council on what the cost of the animal keeping permit and level of cost recovery for City staff labor. At 100% cost recovery, Community Development staff can process an animal keeping permit application at a cost of \$80.

If City Council would prefer to offer a more affordable permit fee, such as \$20, the permit could be processed by Sustainability staff. In either scenario, staff will evaluate the impacts over the first year and propose adjustments to costs and components as necessary.

### **Policy Impact:**

Backyard animal keeping supports the Climate Action and Adaptation Plan by increasing access to healthy, affordable food that also has a lower carbon footprint.

### **Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

#### Council Goals:

- Take meaningful climate change action
- Actively manage and protect all environmental and natural resources
- Achieve comprehensive and equitable code compliance

#### Regional Plan:

- Goal E&C.2. Reduce greenhouse gas emissions
- Goal E&C.3. Strengthen community and natural environment resiliency through climate adaptation efforts

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

Yes. In 2016, City Council approved amendments to Animal Keeping Code that made it feasible to practice animal keeping on small lot sizes within City limits.

### **Options and Alternatives:**

1. Approve the ordinance amending the Animal Keeping Code.
2. Approve the ordinance amending the Animal Keeping Code with additional revisions.
3. Do not approve the ordinance.

### **Background/History:**

In 2016, the Animal Keeping Code was revised to clarify rules, reduce barriers for animal keeping on small lot sizes within City limits and incorporate animal welfare considerations. As part of that process, staff committed to re-evaluate the effectiveness of the revisions and return to Council with any necessary updates.

Allowing animal keeping in urban areas has multiple benefits, including increasing access to locally grown food and an inexpensive source of eggs, meat, and dairy. Yet, without proper regulations, backyard animal keeping can create nuisances for the surrounding neighborhood that are difficult to address.

#### *Community Feedback*

A community-wide satisfaction survey was conducted in December 2018 through January 2019 and received 233 responses. The results indicate that the majority (58% of respondents) are satisfied with the existing code. The survey also indicated that 46% of residents aware of animal keeping by their neighbors experienced some nuisance. Noise and odor were the most common complaints. While many respondents recommended shortening the existing setback requirements for animal shelters (10 feet from the property line), the restrictiveness and setback requirements of the code were mentioned only five times out of 153 comments.

#### *City Personnel Feedback*

When discussing the animal keeping code with Code Compliance and Animal Control personnel, they are receiving calls for service for noise and odor nuisances which can be difficult to enforce, animals escaping owner's property, kept animals becoming prey to predators, attraction of rodents and/or other pests, and increasing number of kept animals due to yearlings.

#### **Key Considerations:**

Currently, livestock are allowed to roam up to the property line, as well as in the side and front yards, which can lead to containment issues and the creation of odor and noise near neighboring houses.

Currently, the setback requirements for animal shelters are inconsistent with similar requirements stipulated in the Zoning Code. Staff recommend modeling these requirements after accessory structure setbacks in the Zoning Code, with the additional requirement that shelters be at least 20 feet from the neighboring dwelling residence.

The current code also allows for pygmy and miniature goats, which can create significant nuisances and do not provide as large of a food security benefit.

#### **Expanded Financial Considerations:**

If the City Council is interested in 100% cost recovery for the permit application process, Community Development staff would process permits. If City Council desires a lower permit fee, Sustainability staff will handle the permitting process, which will have a financial impact. The processing of permits and inspection efforts will be absorbed by existing Sustainability staff. The impacts to existing workload are unknown at this time.

**Community Benefits and Considerations:**

The proposed revisions are designed to reduce nuisances experienced by neighbors. The permitting process requires additional effort on the part of residents interested in keeping livestock and will allow staff to educate residents on key best-practices.

**Community Involvement:**

Consult: A community-wide satisfaction survey was conducted in December 2018 through January 2019 and received 233 responses.

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**Attachments:** [Animal Keeping Code Presentation](#)

[Res. 2019-53](#)

[Ord. 2019-36](#)

# Animal Keeping Code Revisions

Dylan Lenzen, Sustainability  
Specialist





# Recap of Previous Discussion

1. Introduce a streamlined permitting system
2. Adjust setback requirements
  - Keep animals out of side and front yards
  - Shelters 20 feet away from neighboring dwelling
3. Do not require animals be kept in animal runs
  - Consider other mechanisms for reducing nuisances
4. Prohibit goats in zones other than Estate and Rural Residential
  - Allow a grace period to relocate existing goats

# Animal Keeping Permit Process

## Mirror Minor Improvement Permit Process:

1. Fee for permit
2. Short questionnaire
3. Plot drawing with location of shelter
4. Site inspection
5. Shelters for small livestock would be exempt from Minor Improvement Permit requirement

## Permit Cost:

1. 100% cost recovery for Community Development necessitates an \$80 fee
2. For a lower fee, Sustainability staff could manage the review process, the impact on existing workload is unknown at this time



# Example of a Plot Drawing



- Rear yard outlined in **yellow**
- Chicken coop location outlined in **red**

### Note:

- Coop is twenty feet from nearest neighboring dwelling
- Coop is at least five feet from all property lines other than the one abutting an alley



# Adjust Setback Requirements

**Existing requirements:** “Shelters and fenced enclosures for housing, keeping or caring for small livestock must meet be located no less than ten feet from any property line”

**Revise to:** “Shelters for small livestock must meet the following requirements:

- a. Be located no less than five feet from property lines abutting another lot or parcel
- b. May extend up to any property line abutting a public alley right-of-way or private alley tract
- c. Be located at least twenty feet from the nearest neighboring dwelling”

# Additional Revisions

1. Feed and watering troughs must be 20 feet from neighboring dwelling residence
  - This should aid in keeping animal waste away from property line
2. Require that wings be clipped to ensure containment
  - In lieu of covered animal run requirement
3. Require that yards be maintained to prevent odor from being detected beyond the property line





# Prohibit Goats on Small Lots

- Pygmy and miniature goats will no longer be allowed on lots other than those zoned as Estate and Rural Residential (40,000+ sq. ft.)
- Those keeping goats in prohibited zones will be given a 6-month grace period following the effective date of the code revisions (effective date: May 2020) to relocate animals safely and humanely



# Prohibit Goats on Small Lots



Type of Animal	Zones in which Specific Animals are Permitted	Maximum Number of Animals Permitted per Lot Size						
		≤19,999 sq ft	20,000 – 29,999 sq ft	30,000 – 39,999 sq ft	40,000 – 79,999 sq ft	80,000 – 119,999 sq ft	120,000 – 159,999 sq ft	≥160,000 sq ft
<b>Large Livestock</b>								
Equine, Cattle, Swine, Llamas, Alpacas, Goats, Sheep	ER and RR	0	0	0	4	5	6	7
<b>Small Livestock</b>								
Goats (miniature, pygmy, dwarf)	All zones*	<del>20</del>	<del>20</del>	<del>20</del>	4	4	4	4
Ducks, Rabbits, Chickens	All zones*	5	10	15	20	25	25	25
<b>Bees</b>								
Bee Colonies	All zones*	2	4	6	8	8	8	8



# Education and Outreach

Staff will begin developing outreach materials following code adoption

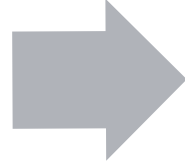
- Direct and digital outreach
  - Postcards
  - Doorhangers
  - Social media
  - Newsletters
- Partner with relevant organizations to offer workshops



# Internal Process

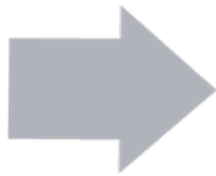
## Community Outreach

- Sustainability



## Permit Processing & Initial Inspection

- Sustainability or Code Compliance (depending upon permit fee)



## Respond to questions, complaints, document violations/nuisances

- Code Compliance and Animal Control



## Revoke/Suspend Permits

- Sustainability (based on documentation collected by Code compliance and Animal Control)

# Questions?



**RESOLUTION NO. 2019-53**

**A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED “ANIMAL KEEPING CODE AMENDMENTS”**

**RECITALS:**

WHEREAS, pursuant to A.R.S. § 9-802, a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full.

**ENACTMENTS:**

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

SECTION 1. In General.

That certain document known as “*Animal Keeping Code Amendments*” attached hereto as Exhibit A is hereby declared to be a public record, and one (1) paper copy and one (1) electronic copy shall remain on file with the City Clerk in compliance with A.R.S. § 44-7041, and said copies shall remain on file with the City Clerk.

SECTION 2. Effective Date.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 19th day of November, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

Exhibits:  
Animal Keeping Code Amendments

## EXHIBIT A

### Chapter 6-03 ANIMAL KEEPING

#### SECTIONS:

6-03-001-0001	PURPOSE
6-03-001-0002	DEFINITIONS
6-03-001-0003	KEEPING OF LIVESTOCK
6-03-001-0004	BEE KEEPING
6-03-001-0005	VIOLATION

#### SECTION 6-03-001-0001 PURPOSE:

The purpose of this Chapter is to ensure that the keeping, raising, and maintenance of livestock animals and bees within the City does not create an adverse impact on adjacent properties by reason of dust, fumes, noise, odor, insect or vermin infestations, or visual blight, and to maintain the animal welfare and public health, safety, and well-being. This chapter does not pertain to common domestic household pets such as dogs, cats, and others.

#### SECTION 6-03-001-0002 DEFINITIONS:

For the purposes of this Chapter, the following terms, phrases and words and their derivations will have the meaning given as set forth below when not inconsistent with the context.

**Beehive:** A structure for housing honey bees.

**Bee Colony:** The hive and its equipment and appurtenances including honey bees, comb, honey, pollen and brood.

**Equine:** Horse or other member of the horse family including mules and donkeys.

**Flyway Barrier:** A solid wall, fence, dense vegetation, or combination of these materials at least six feet high that extends at least 10 feet beyond the hives on each end of a Bee Colony.

**Poultry:** A domesticated bird that is used to produce meat or eggs, including but not limited to, chickens, ducks, pigeons, and quail.

**Livestock:** Domesticated animals commonly raised to produce commodities such as food, fiber, and labor.

**Large Livestock:** Equine, cattle, swine, donkeys, mules, llamas, ostriches, goats, sheep, alpaca, and other similarly sized animals.

**Small Livestock:** Rabbits, chickens, miniature, dwarf or pygmy goats that are neutered, and other similarly sized animals.

**Pasture:** Open, uncultivated land used for the grazing of Livestock.

**Shelter:** A structure or environment, adequate to the species of animal, which provides protection from adverse weather conditions and predators (e.g., chicken coop, rabbit hutch, barn, etc).

Shelters must be covered, properly ventilated, and designed to be easily accessed, cleaned, and maintained.

Livestock Containment Area: The portion of a property where Livestock are held or kept, including runs, pens, stalls, yards, and cages. The location of Shelters, including any associated fencing or screen walls, shall comply with the Accessory Structures and Fencing and Screening requirements of Section 10-50.50 (Fencing and Screening) and 10-40.60.020 (Accessory Structures).

**Nuisance:** Anything offensive or obnoxious to the health and welfare of the inhabitants of the City; or any act or thing repugnant to, or creating a hazard to, or having a detrimental effect on the property of another person or to the community.

Manager: The Sustainability Manager, or designee.

## **SECTION 6-03-001-0003 KEEPING OF LIVESTOCK**

The following standards apply to the keeping of livestock animals within city limits.

### **A. GENERAL RULES AND RESTRICTIONS**

1. The number of animals permitted in each Zone is established in Table 6-03-001-0003.A (Number of Animals Permitted by Zoning Designation) below.
2. The principal use of the property on which livestock animals are kept must be residential or educational.
3. At all times, Livestock must be contained in rear yard of residence unless such residence is on a parcel zoned Estate Residential or Rural Residential. Livestock Containment Areas or Shelters must be provided to sufficiently contain the Livestock on the property and keep them from roaming at large.
4. Offspring of animals maintained on the same property that are less than four months old or that have not been weaned, whichever is longer, will not be subject to the maximum number of animals permitted per lot size established by this Chapter.
5. All animals, Livestock Containment Areas, and Shelters must be maintained in such a manner so as to not become a public health nuisance. Livestock Containment Areas and Shelters must be clean and sanitary, and generally free of fecal and other matter that may attract flies, rodents, or cause an offensive odor that can be detected from beyond the property line. Fecal and other matter must be double-bagged and disposed of in City garbage receptacles. Nothing in this Subsection shall be deemed to prohibit the use of animal manure or droppings to fertilize any farm, garden, lawn or ranch in such a manner and for such purposes as are compatible with customary methods of good horticulture.
6. Feeding of Livestock shall be done exclusively from containers (e.g., troughs) or on an impervious platform. The area where Livestock is fed must be located at least twenty feet from any neighboring dwelling. Food for feeding Livestock shall be stored in rodent and predator resistant containers.

7. Watering troughs or tanks shall be provided for Livestock, which shall be equipped with adequate facilities for draining the overflow, so as to prevent the ponding of water, the breeding of flies, mosquitoes or other insects, or any additional health hazards. Watering troughs must be located at least twenty feet from a neighboring dwelling.
8. Shelters must be maintained to reduce the risk of fire in accordance with the City of Flagstaff Fire Code.
9. No incineration of animal refuse shall be permitted on the premises.
10. Only chickens, domestic fowl, or rabbits can be slaughtered on site. Slaughter shall not occur in view from any public area or any adjacent property owned by another. Slaughter shall be done in a humane and sanitary manner. Slaughter must be for personal consumption and in compliance with all county, state, and federal laws.
11. All animal-keeping facilities must be designed in a manner such that water runoff does not become a health hazard or nuisance to uses on other properties, and is contained and disposed of and does not contribute to the pollution of local groundwater or the flooding of adjacent properties.
12. No person shall keep or harbor any animal which by frequent or habitual howling, yelping, barking, crowing or the making of any other noise, day or night, unreasonably disturbs the peace and quiet of any person or persons.
13. Small Livestock must be kept in a Shelter from sunset to sunrise.
14. All waste from animals must be contained on site. Any pollutants or non-stormwater related discharges shall be subject to Chapter 12-03 (Stormwater Illicit Discharges).

**B. Permitting Requirements**

1. No person shall keep, harbor, or maintain care, custody, or control over any Livestock without obtaining a permit. Any person desiring a permit shall submit an application to the Sustainability Section.
2. Permit applications shall include:
  - a. A signed statement that the applicant will comply with the provisions of this Chapter.
  - b. Proof of satisfactory knowledge of animal keeping best practices by completing a short questionnaire designed by the Sustainability Section.
  - c. The submittal of a site plan demonstrating the design, size, and location of Shelters and Livestock Containment Areas, as well as feed and watering trough locations.

3. Animal Keeping in Estate Residential and Rural Residential zones is exempt from the permit requirements of this Chapter.
4. Prior to the issuance of any permit, the applicant must allow an inspection of the property, Shelter, and Livestock Containment Area to determine conformance with the submitted site plan.
5. Approval of a permit application may be subject to reasonable conditions in the Manager's sole discretion.
6. The Manager may suspend, revoke or take other authorized adverse action against any permit granted pursuant to this section if any condition or requirement of this chapter is violated, if the keeping of animals becomes a public nuisance, or for other good cause.

**C. RULES AND RESTRICTIONS – LARGE LIVESTOCK**

1. Shelters for Large Livestock must be located:
  - a. No less than 75 feet from any dwelling unit.
  - b. No less than ten feet from any property line.
2. At least 10,000 square feet of pasture must be made available for each Large Livestock animal.
3. No pigsty shall be built or maintained on marshy ground or land subject to overflow, or within 150 feet of any watercourse or other source of water supply, or within 300 feet of a dwelling unit on an adjoining property.

**D. RULES AND RESTRICTIONS – SMALL LIVESTOCK**

1. Male miniature goats must be neutered by four months of age.
2. Shelters for Small Livestock must meet the following requirements:
  - a. Be located no less than five feet from property lines abutting another lot or parcel.
  - b. May extend up to any property line abutting a public alley right-of-way or private alley tract.
  - c. Be located at least twenty feet from the nearest neighboring dwelling.
  - d. Have a minimum of four square feet of indoor space per Poultry or rabbit.
  - .
  - .
3. Winged animals must have wings clipped in order to ensure containment on property.

4. Livestock Containment Areas must have a minimum of ten square feet of permeable outdoor space per Poultry or rabbit, and 130 square feet of permeable space per miniature goat.
5. Turkeys, peafowl, geese, and all other similarly noisy birds are prohibited in all zones within the City.
6. Male Poultry over the age of four months shall not be permitted within the City.

#### **SECTION 6-03-001-0004 BEE KEEPING**

The following standards apply to provide for the safe and orderly keeping of bees.

- A. Bee keeping is allowed in all zones where the use of the property on which beehives are kept is residential or educational.
- B. Beehives shall only be located in rear yards and shall be placed a minimum of 10 feet from any property line, except that in the Rural Residential (RR) Zone beehives also may be placed in the interior side yards. In all zones the entrance to the beehive shall face away from the property line closest to the hive.
- C. A flyway barrier shall be established and maintained so that all bees are forced to fly at an elevation of at least six feet above ground level in the vicinity of the beehive. Any fence, wall, or natural barrier proposed as a flyway barrier shall comply with the provisions of City Code Title 10, Zoning Code, Division 10-50.50 (Fences and Screening), as well as the following:
  1. Be a minimum of six feet tall;
  2. Be solid such that bees cannot fly through it;
  3. Be placed parallel to the property line; and
  4. Extend a minimum of five feet beyond the beehive(s) in each direction.
- D. A convenient source of water shall be made available for the bees at all times of the year so that bees are less likely to congregate at swimming pools, pet watering bowls, bird baths, or other water sources.
- E. In any instance in which a colony exhibits unusually defensive characteristics by stinging or attempting to sting without provocation or exhibits an unusual disposition toward swarming, beekeepers shall promptly re-queen the colony with another queen. Queens shall be selected with a gentle disposition from stock bred for gentleness. Beekeepers must be able to produce proof of a receipt from a queen breeder.

#### **Table 6-03-001-0003.A Number of Animals Permitted by Zoning Designation**

Type of Animal	Zones in which Specific Animals are Permitted	Maximum Number of Animals Permitted per Lot Size						
		≤19,999 sq ft	20,000 – 29,999 sq ft	30,000 – 39,999 sq ft	40,000 – 79,999 sq ft	80,000 – 119,999 sq ft	120,000 – 159,999 sq ft	≥160,000 sq ft
<b>Large Livestock</b>								
Equine, Cattle, Swine, Llamas, Alpacas, Goats, Sheep, Other Large Livestock Not Prohibited By This Chapter	ER and RR	0	0	0	4	5	6	7
<b>Small Livestock</b>								
Goats (miniature, pygmy, dwarf)	All zones*	0	0	0	4	4	4	4
Ducks, Rabbits, Chickens	All zones*	5	10	15	20	25	25	25
<b>Bees</b>								
Bee Colonies	All zones*	2	4	6	8	8	8	8

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\* The principal use of the property must be residential or educational.

**SECTION 6-03-001-0005 VIOLATION**

- A. It shall be unlawful for any person to cause, facilitate, or aid or abet a violation of any provision of this Chapter or to fail to perform any act or duty required by this Chapter in connection with the keeping of animals.
- B. Any person found responsible for violating any provision of this Chapter will be subject to a fine of no less than \$100 for every offense. Recurring violations will be subject to larger fines. Any violation that is continuing in nature shall constitute a separate offense on each successive date the violation continues.
- C. Civil actions or proceedings to enforce the requirements of this Chapter will be commenced and prosecuted in compliance with City Code Title 1, Administration, Chapter [1-15](#), Municipal Court, Section [1-15-001-0011](#), Civil Enforcement Procedures.

**ORDINANCE NO. 2019-36**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 6, POLICE REGULATIONS, CHAPTER 3, ANIMALS, BY ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT ENTITLED “ANIMAL KEEPING CODE AMENDMENTS”; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City Council of the City of Flagstaff believes it is in the best interest of the City to allow City residents to keep certain animals as a healthy and affordable source of food, fiber, and labor;

WHEREAS, the City Council has determined that Chapter 6-03 of the City Code regarding animal keeping should be amended to clarify the rules and regulations related to the keeping of animals within the City; and

WHEREAS, the City Council intends, by adopting the proposed amendments, to protect and promote the public health, safety, convenience, and general welfare of the citizens of the City of Flagstaff.

**ENACTMENTS:**

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

SECTION 1. That certain document known as “*Animal Keeping Code Amendments*”, one(1) paper copy and (1) electronic copy are on file in the office of the City Clerk of the City of Flagstaff, Arizona, which document is declared a public record by Resolution No. 2019-53 of the City of Flagstaff, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

SECTION 2. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 3. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 4. Clerical Corrections**

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

**SECTION 5. Effective Date**

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 19th day of November, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Scott Overton, Streets Section Director  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE**

**2019 Public Works-Streets Snow Operations Readiness Update**

**STAFF RECOMMENDED ACTION:**

Presentation and report of 2019 Streets Snow Operations

**EXECUTIVE SUMMARY:**

The Streets Section of Public Works is responsible for winter storm response and will complete all snow operations on the 700 lane miles of city transportation network. This presentation is an opportunity for the Council and public to learn more about the Streets operations and snow operations. We strive to complete snow operations to provide a high level of service and allow the traveling public access to a transportation network that is open and passable during winter storms.

**INFORMATION:**

Discussion and Presentation Attached

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**Attachments:** [Presentation](#)



# Snow Operations Readiness Report 2019



# Equipment Preparations

- 16 - 10-wheel Plow/Spreader Box Trucks
- 4 - 6-wheel Plow/Spreader Box Trucks
- 9 - Road Graders
- 4 - Front End Loaders
- 1 - Truck mounted Snow Thrower
- 3 - Tractor-trailers for hauling operations



# Personal Preparations

4 – Full Time Operations Supervisors

18 – Full Time Streets Equipment Operators

6-8 – CDL operators from other sections

12-15 - On-Call community CDL operators

Snow operations are 24/7 with 12-hour shifts



# Storm Preparations



## Winter Storm Event

- NWS and all-weather briefings
- On-call supervisors and weather watch
- Weather and Road Conditions
- Resource deployment
  - Safety, Timing and Temperature
- Agency communication and reporting



# Snow Operations

First Priority Routes – Open and Passable at all times

- Main Routes and Arterials
- Major Hills
- Downtown Core
- NAIPTA Bus Routes

Second Priority Routes –

- Residential Streets and Cul-de-sacs

*Plowing and Ice Control for duration of the storm event.*



# Post Storm Operations

## Community-wide

- Periodic hauling operations – Downtown Parking
- Cul-de-sac stacking and removal
- Intersection clean up and push back
- Signage and damage repairs
- Prolonged Ice control and trouble spots
- Cinder sweeping

Priority is bike lanes and mains.



# Public Operations Assistance

- Limit travel as much as possible
- Provide safe distances and stay alert
- Winter Parking Ordinance

**NO Parking on City Streets November 1<sup>st</sup> to April 1<sup>st</sup>**

Citywide – Midnight to 7:00 AM

N. Downtown Area\* – 3:00 AM to 7:00 AM

- Museum Flood mitigation areas



Questions?



**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Robert Wallace, Open Space Specialist  
**Co-Submitter:** Nicole Antonopoulos, Sustainability Manager  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE:**

**Schultz Creek Trailhead Community Survey Results, Update, and Future Direction:** Staff will share the results of a community surveys that requested input on how the 20-acre City of Flagstaff property in the Schultz Creek area (3620 W Schultz Pass Rd., Parcel # 30047004), zoned as open space, could be developed and managed. Staff will request direction from City Council on development and management of the parcel.

**DESIRED OUTCOME:**

Provide staff with direction on how to develop and manage the parcel.

**EXECUTIVE SUMMARY:**

In 2013, the City Council requested the Open Space Commission review a number of city owned parcels for their open space values. The Commission recommended that Parcel # 30047004 (3620 W Schultz Pass Rd.) be preserved as open space. In addition to the Commission's recommendation, members of the public also voiced their support to protect the parcel. Staff was then directed to incorporate these 20 acres of City property into the City's open space program. The Council requested that staff utilize the parcel to provide access and connectivity to the Schultz Creek area for recreational purposes.

From 2014 -2017 staff worked on annexing the parcel from the County, passing a historic overlay ordinance, and rezoning the parcel from Rural Residential to Public Open Space.

In FY 18, the Open Space Program received \$23,000 in one-time dollars and due to the complexity of the parcel including flood plain and grade, the FY18 budget process included an additional one-time \$75,000 was allocated, for a total of \$98,000.

Open Space staff has been working with the U.S. Forest Service, Flagstaff Trail Initiative, Flagstaff Metropolitan Planning Organization and the Flagstaff community to develop concepts that meet multiples needs.

The parcel has historical significance and the Historic Preservation Commission recommends steps are taken to preserve the parcel as there is a portion of the Beale Rd on the property. Additionally, in 1898 the City of Flagstaff and the Santa Fe Pacific Railroad entered into a contract wherein the railroad would lease the land, water rights, and a pipeline route to the town.

This is the site of the original reservoir for the Inner Basin water line. The water reservoir from this agreement is still visible on the property and the Historic Preservation Commission has recommended its preservation and interpretation.

Staff received over 500 responses to a public survey that has helped identify the community's preferred development and management of the Schultz Creek open space property. When asked about what amenities they thought were important to develop most people indicated that they would prefer that developments or improvements be minimized.

- 53% stated that running water was not needed or least needed
- 55% indicated that picnic tables were not needed or least needed
- 51% did not support a bicycle staging area for events
- 69% did not desire an equestrian staging area

Regarding the development of parking:

- 46% of respondents indicated that they would support parking for between 60 to 100 vehicles;
- 45% supported parking for 60 or less vehicles;
- 5% preferred no parking development.

Feedback indicated an emphasis on maintaining the natural quality of the parcel. Comments included pursuing an opportunity to acquire part of parcel #30047005C (also known as "the Y" property at the intersection of Schultz Pass and Elden Lookout Roads) if an opportunity were to present itself. Comments pertaining to the topic of acquiring part of parcel #30047005C "the Y" indicate the location is preferred because it would minimize impact and because there is public familiarity with the location.

There were additional comments made, which can be viewed on the Flagstaff Community Forum at: <https://www.flagstaff.az.gov/3284/Flagstaff-Community-Forum>.

Given community and partner input, staff developed the following options for consideration:

Option A: Do not move forward with parking lot construction on city property until the opportunities to acquire part of parcel #30047005C "the Y" are investigated. This will minimize impacts to the City's parcel, allow for the open space to be used solely for education and trails, and will capitalize on public familiarity with the Y's location. If by the end of the calendar year 2020 no progress has been made towards an agreement with the property owner that is beneficial to both parties abandon investigations and implement option C.

Option B: Build a parking area to accommodate 28 regular and 2 large vehicle spaces in the southeast corner of the City owned parcel #30047004. Develop a short interpretive trail on the property, a connector to the Forest Service Schultz Creek trail system, and a connector to the Flagstaff Urban Trail System (FUTS). Investigate opportunities to acquire part of parcel #30047005C "the Y" to develop an additional 30 parking spots and to minimize impacts to the City's parcel and capitalize on public familiarity with the Y location. If by the end of the calendar year 2020 no progress has been made towards an agreement with the property owner that is beneficial to both parties abandon investigations and prepare a concept for moving forward for an additional 30 parking spaces.

Option C: Build a parking area to accommodate 56 regular and 4 large vehicle spaces in the southeast corner of the parcel. Develop a short interpretive trail on the property, a connector to the Forest Service Schultz Creek trail system, and a connector to the Flagstaff Urban Trail

System (FUTS). Do not pursue further development of the city property and do not investigate opportunities to acquire part of parcel #30047005C “the Y”.

Option D: Work with the Forest Service to mitigate use challenges at the official Schultz trailhead. This current trailhead is located directly along Schultz Creek, it is sloped, prone to erosion, and accommodates minimal parking.

Option E: Table any further discussion on developing this open space parcel for parking and reprogram the remaining budget within the Open Space Program.

### **INFORMATION:**

The community survey was open from November 28<sup>th</sup>, 2018, through March 31<sup>st</sup>, 2019. Feedback was provided by over 400 Flagstaff residents, special interest groups, such as the Sierra Club, and residents from neighboring communities. Over 36% stated that they use the area 1 to 2 times per week, 26% used the location 2 to 5 times per week, and 27% use the area less than once a month. Comments support incorporating basic amenities in the development plan.

- 68% stated that restrooms are needed
- 39% supported some basic interpretive signage
- 71% supported an informational map kiosk

City Council has provided previous direction:

- In October 2013, the Flagstaff City Council recommended incorporating approximately 20 acres of City property located at 3620 Schultz Pass Road into the City’s open space program after receiving substantial public input regarding the issue.
- From 2014 - 2017 staff worked on annexing the parcel from the County, passing a historic overlay ordinance, and rezoning the parcel from Rural Residential to Public Open Space.
- 2014 ordinance 2014-22 setting aside and preserving the 20 acres as open space.
  - 2014 ordinance 2014-22 set aside and preserved the 20 acres as open space
  - In 2017 ordinance 2017-06 annexed Property to the City of Flagstaff
  - In 2017 ordinance 2017-07 amended the Flagstaff Zoning Map to rezone the Property to Public Open Space and to apply the Land Mark Overlay.
  - December of 2017 a Title Report was completed
  - In FY 2018 the Open Space Program received \$23,000 in one-time dollars. Due to the complexity of the parcel including flood plain and grade, the FY19 budget process included an additional one-time \$75,000, for a total of \$98,000. Thus far \$7,500 has been spent on an engineering firm to explore preliminary options.

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

#### Council Goals:

Enhance public transparency and accessibility

Actively manage and protect all environmental and natural resources

#### Regional Plan:

Goal OS.1. The region has a system of open lands, such as undeveloped natural areas, wildlife corridors and habitat areas, trails, access to public lands, and greenways to support the natural environment that sustains our quality of life, cultural heritage, and ecosystem health.

Goal LU.3. Continue to enhance the region's unique sense of place within the urban, suburban, and rural context (Policy LU.3.3).

Goal CC.2. Preserve, restore, and rehabilitate heritage resources to better appreciate our culture.

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

Goal REC.1. Maintain and grow the region's healthy system of convenient and accessible parks, recreation facilities, and trails.

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**Attachments:**    Presentation  
                          Survey Results Summary

# Schultz Creek Trailhead

Open Space Specialist, Robert Wallace



# Discussion

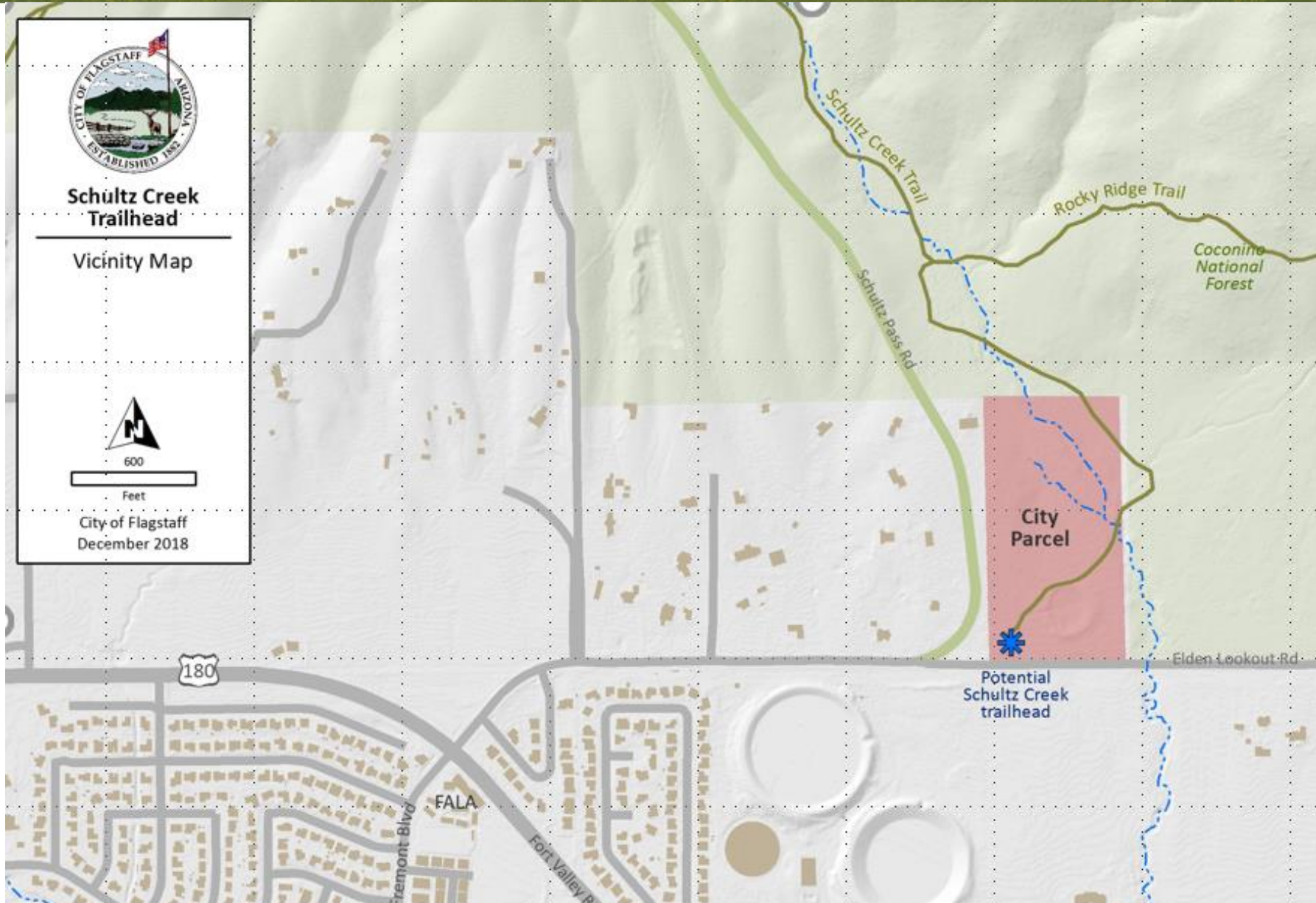


- Background
- Main objective
- Public survey results
- Options to consider
- Request direction





# Schultz Creek Trailhead





# Schultz Creek Trailhead Background



- In 2013, City Council incorporated parcel into the open space program
- In 2017 ordinance 2017- 07 amended the Flagstaff zoning map to open space
- Main objective to provide access and connectivity to the Schultz Creek area

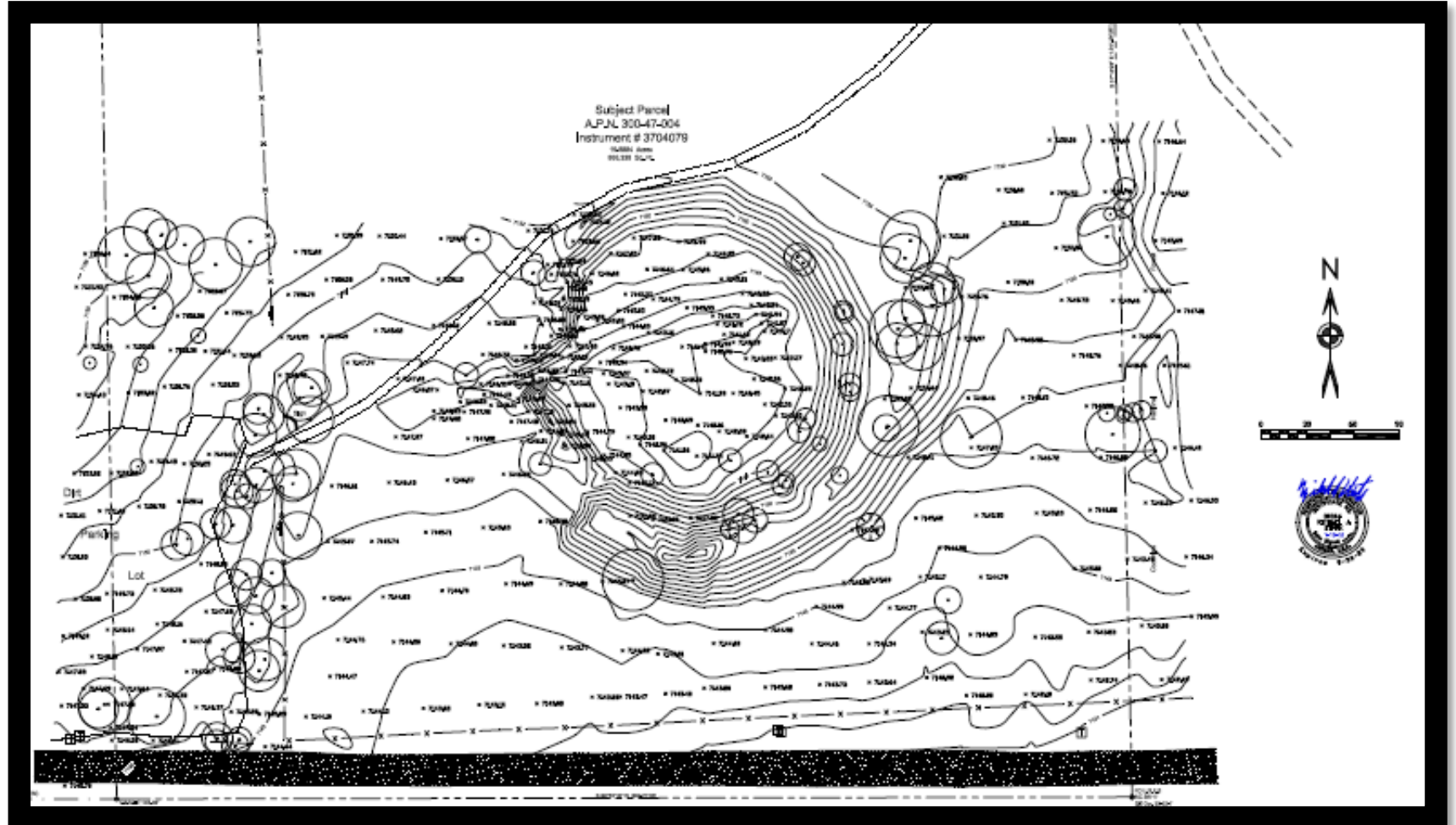




# Schultz Creek Trailhead Background



- Historical significance
- Work completed
- Community concerns
- Public survey conducted





# Schultz Creak Trailhead Survey Results

Feedback from Flagstaff residents, special interest groups, and residents from neighboring communities

- 36% 1 to 2 times/week
- 26% 2 to 5 times/week
- 27% less than once a month



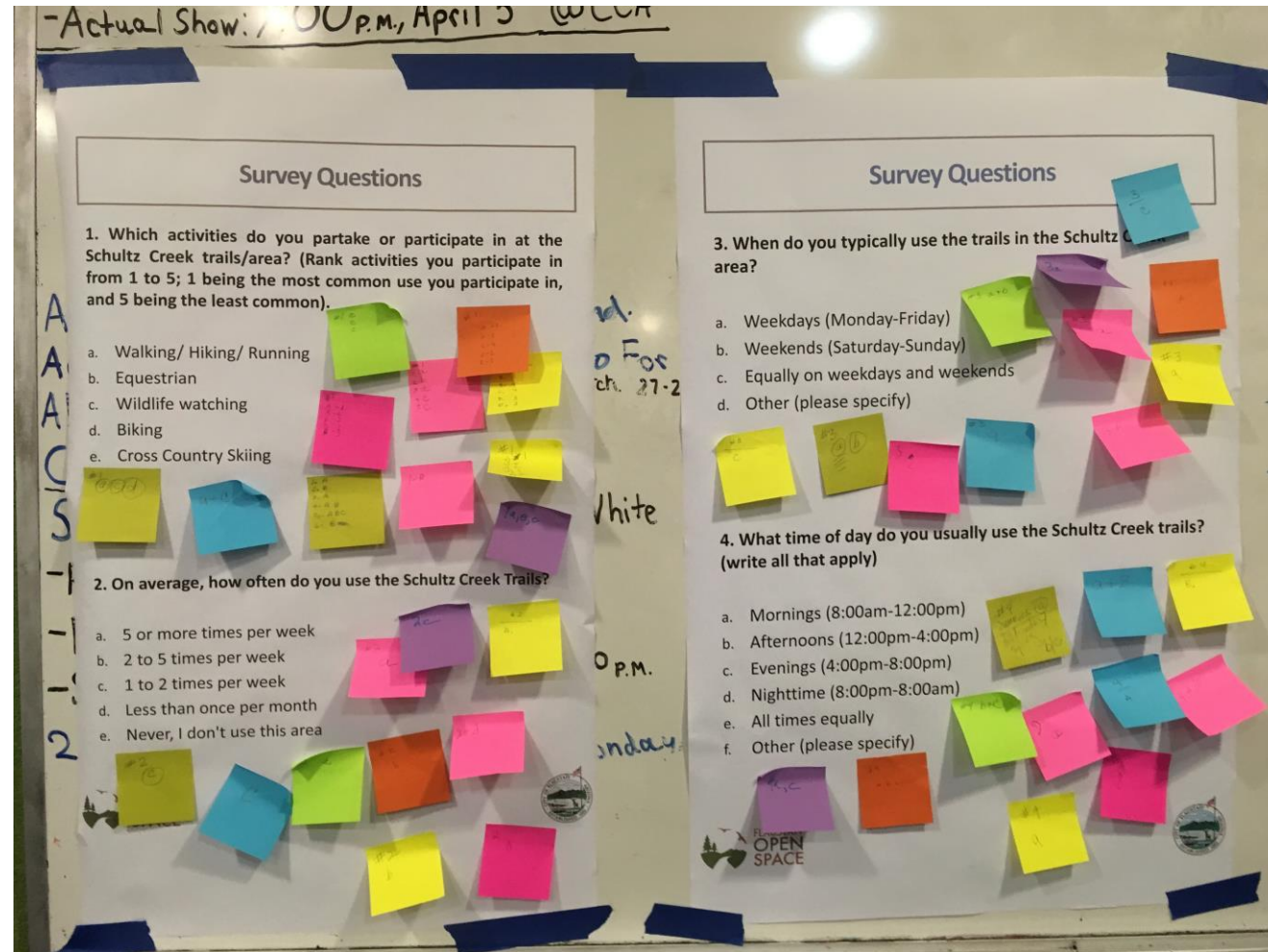


# Schultz Creek Trailhead Survey Results



500 responses

- 400 Flagstaff residents
- 53% running water not needed
- 55% picnic tables not needed
- 51% bicycle staging area not needed
- 69% equestrian staging area not needed





# Schultz Creak Trailhead Survey Results



- 68% restrooms needed
- 39% supported some basic interpretive signage
- 71% supported an informational map kiosk





# Schultz Creek Trailhead Survey Results



- 46% of support parking for between 60 to 100 vehicles
- 45% support parking for 60 or less vehicles
- 5% prefer no parking development





# Schultz Creek Trailhead

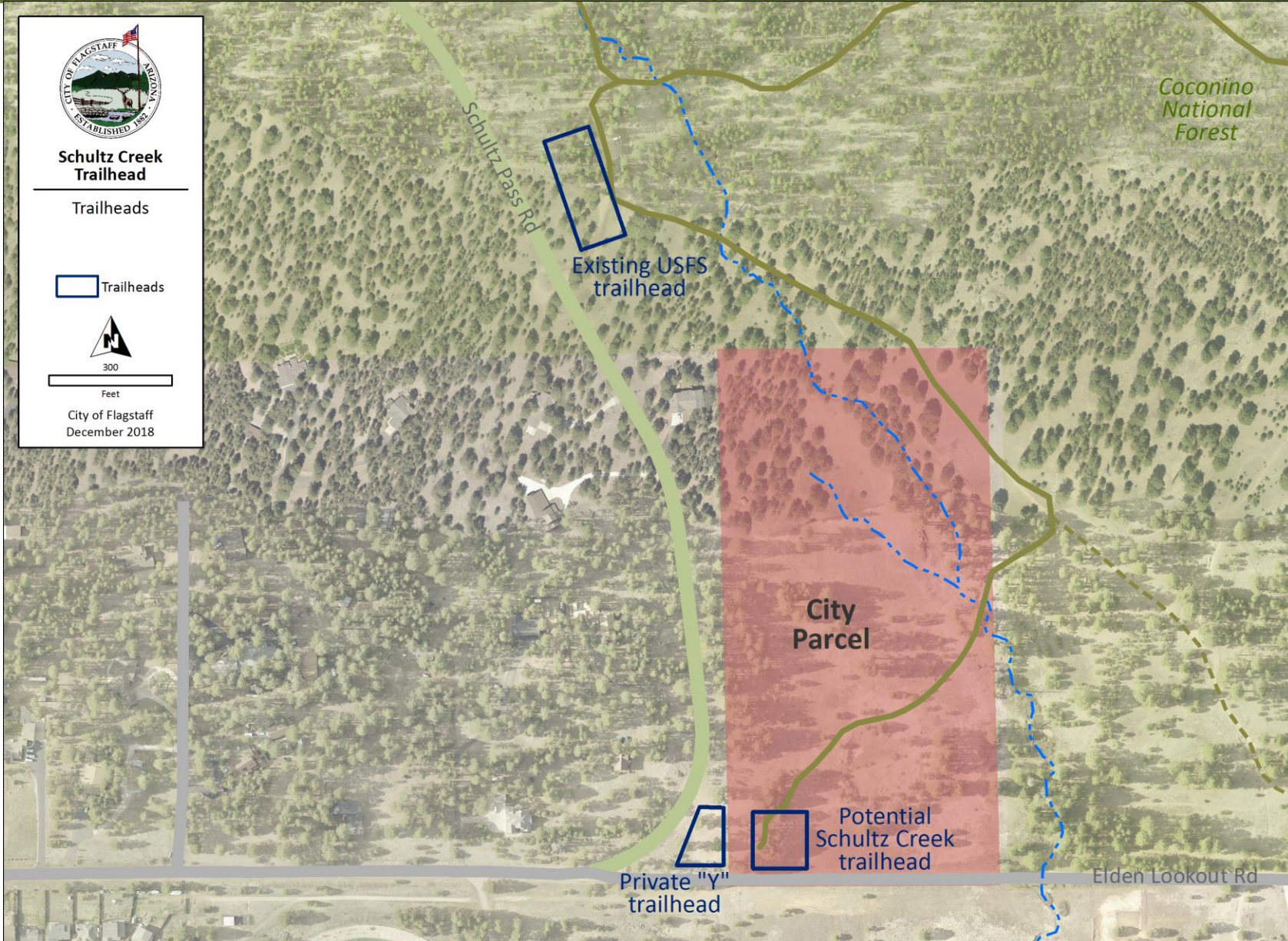
In general

- Some parking and basic facilities are supported
- Feedback indicated an emphasis on maintaining the natural quality of the parcel
- Comments included pursuing an opportunity to acquire part of “the Y”





# Schultz Creek Trailhead





# Schultz Creek Trailhead, "the Y"





# Schultz Creek Trailhead Options

- **A:** Investigate opportunities to acquire “the Y” for trailhead location, if unsuccessful implement option C
- **B:** Build parking on City property for 30 vehicles. Investigate opportunities to acquire “the Y” for to construct further parking. If unsuccessful construct the additional parking on City Property to total 60 spaces
- **C:** Construct parking for 60 vehicles solely on City property.
- **D:** Work with the Forest Service to mitigate use challenges at the official Schultz trailhead
- **E:** Table any further discussion on developing this open space parcel for parking and reprogram the remaining budget within the Open Space Program

# Questions?

Robert Wallace

[Robert.Wallace@flagstaffaz.gov](mailto:Robert.Wallace@flagstaffaz.gov)

928-213-2154



## Schultz Creek Survey Results Summary

*This is a summary of the comments we received. There are additional comments that can be viewed on the Flagstaff Community Forum at: <https://www.flagstaff.az.gov/3284/Flagstaff-Community-Forum>*

### **Overall themes in comments (Includes review of Community Forum survey, written comments, and verbal comments):**

Flagstaff Open Space received over 500 responses during the survey period.

Regarding parking and infrastructure:

- 46% of respondents indicated that they would support parking for between 60 to 100 vehicles, while 45% support parking for 60 or less vehicles, and 5% prefer no parking development.
- Respondents indicated that infrastructure should include restrooms, a basic trail information kiosk/sign, and possibly some minimal interpretive signage.
- Feedback indicated that additional improvements such as picnic tables, running water at the trailhead, space for event staging, and additional trail signage were not as desired.

Feedback indicated an emphasis on maintaining the natural quality of the parcel by minimizing development, and potentially pursuing an opportunity to acquire part of parcel #30047005C (also known as “the Y” property at the intersection of Schultz Pass and Elden Lookout Roads) if an opportunity were to present itself. Comments pertaining to the topic of acquiring part of parcel #30047005C “the Y” indicate the location as preferred because it would minimize impact and because there is public familiarity with the site.

This survey also indicated several significant use trends. The Schultz Creek access point is a popular destination, especially for walking and mountain biking. It is used routinely on both weekdays and weekends spring through fall with noticeably less use in the winter. While the most typical form of transport used to access the area is via personal vehicles, 72% stated that they would consider taking alternative transportation to the trailhead and advocate for additional FUTS connections. Over half, at 54% of respondents indicated that they usually park at “the Y,” and before taking the community survey, 64% were not aware that it is a privately-owned parcel. The community is acutely aware of the popularity and high use of the area and suggest that proper management includes the promotion of other trailheads to more evenly disperse users to the greater Flagstaff area. The community also supports additional trail maintenance and the completion of missing trail links.

The following information is a summary of the comments we received. There were additional comments made, which can be viewed on the Flagstaff Community Forum at: <https://www.flagstaff.az.gov/3284/Flagstaff-Community-Forum>.

We appreciate the detailed and thorough feedback the community provided and will be considering all comments before establishing the best course of action. Thank you.

**Topic Start:** November 28<sup>th</sup>, 2018, 8:40AM

**Topic End:** March 31<sup>st</sup>, 2019, 11:59PM.

**Community Feedback Request Resulted in:**

- Total Community Forum Responses: 405
  - Community Forum Registered User Responses: 197
  - Community Forum Unregistered User Responses: 208
- Open House (2 events) Attendee Responses: 67
- Written Feedback submission: 1
- Numerous verbal comments conveyed to staff.
- Total comments: Over 500

**Questions and Results:**

- 1. Which activities do you partake or participate in at the Schultz Creek trails/area? (Rank activities you participate in from 1 to 5; 1 being the most common use you participate in, and 5 being the least common).**

Note: A was the most common response, in descending order to E which was the least common response.

- a. Walking/hiking/running
  - b. Biking
  - c. Wildlife Watching
  - d. Cross Country Skiing
  - e. Equestrian
- 2. On average, how often do you use the Schultz Creek trails?**
- a. **37%:** 1 to 2 times per week
  - b. **27%:** less than once a month
  - c. **26%:** 2 to 5 times per week
- 3. When do you typically use the trails in the Schultz Creek area?**
- a. **51%:** Equally on weekdays and weekends
  - b. **26%:** Weekdays
  - c. **23%:** Weekends
- 4. What time of day do you usually use the Schultz Creek trails? (check all that apply)**
- a. **68%:** 8AM-12PM
  - b. **47%:** 12PM-4PM
  - c. **30%:** 4PM-8PM
- 5. What time of year do you usually use the Schultz Creek trails? (check all that apply)**
- a. **76%:** Summer
  - b. **72%:** Fall
  - c. **64%:** Spring
  - d. **23%:** All time equally
  - e. **15%:** Winter
- 6. Should a Schultz Creek trailhead be open year-round to accommodate use?**
- a. **89%:** Yes
  - b. **5%:** No
  - c. **5%:** Other

7. **How satisfied are you with current trailhead access and parking for the Schultz Creek trails?**
- 38%:** Moderately Satisfied
  - 30%:** Very Satisfied
  - 25%:** Somewhat satisfied

8. **How often do you experience these while using the Schultz Creek area? (0 being never experienced, 1 being rarely experienced, 3 being regularly experienced)**

- Not enough available parking (regular vehicles, horse trailers, etc.)
  - 47%:** never experienced
  - 29%:** rarely experienced
  - 18%:** sometimes experienced
- Inadequate directions to trailheads
  - 48%:** never experienced
  - 24%:** rarely experienced
  - 16%:** sometimes experienced
- Insufficient trail descriptions, and/or area maps
  - 40%:** never experienced
  - 25%:** rarely experienced
  - 23%:** sometimes experienced
- Incomplete trail signage
  - 34%:** never experienced
  - 25%:** rarely experienced
  - 25%:** sometimes experienced
  - 13%:** regularly experienced

Comments:

- Majority of 'other' responses stated:
  - Toilets and trash service should be considered.
  - Adequate trail information should be available at the trailhead, but is not necessary along routes because many use web-based trail applications
  - Trails are braided due to unauthorized trails efforts should be made to correct this issue to reduce impact to landscape
  - The trail should be open year-round.
- Other topics mentioned in 'other' responses included:
  - The Forest Service Trailhead should not be closed until a solution is determined.
  - There is some user conflict between bikers and hikers
  - Some easier trails for beginners should be defined and labeled
  - current forest thinning project information should be posted at trailhead

9. **Would you consider taking alternative transportation to the trailhead? (biking, walking, public transit, etc.)**

- 72%:** Yes
- 28%:** No

10. **Which potential future FUTS trails would you be most likely to use to access the Schultz Creek area by foot or bicycle?**

- 37%:** Schultz Pass
- 37%:** Karen Cooper Trail to Schultz Pass Trail
- 35%:** Reservoir Trail
- 32%:** Fort Valley Trail to Schultz Pass Trail
- 28%:** Elks Lodge Trail
- 10%:** Other

**11. How do you typically arrive at the Schultz Creek area? (0 being a mode of transportation never used, 1 being the least frequent mode of transportation used, and 3 being the most frequently used)**

- a. Personal motorized vehicle
  - 7%: never used
  - 15%: least frequently used
  - 20%: sometimes used
  - 53%: most frequently used
- b. Bicycle
  - 15%: never used
  - 14%: least frequently used
  - 27%: sometimes used
  - 33%: most frequently used
- c. Foot
  - 31%: never used
  - 19%: least frequently used
  - 13%: sometimes used
  - 16%: most frequently used
- d. Bus/transit
  - 66%: never used
  - 3%: least frequently used
  - .5%: sometimes used
  - 0%: most frequently used
- e. Horse
  - 66%: never used
  - .3%: least frequently used
  - 1%: sometimes used
  - .8%: most frequently used

Comments:

- Majority of 'other' responses stated:
  - Motorcycle
- Other topics mentioned in 'other' responses included:
  - Carpool

**12. Where have you typically accessed information on preferred parking locations for the Schultz Creek trail system? (select all that apply)**

- a. 65%: Personal Experience
- b. 41%: Word of Mouth
- c. 21%: Other websites (Trail Forks, All Trails, Mountain Bike Project, etc.)
- d. 15%: Guidebook/paper maps
- e. 14%: Online maps (Google Maps, Open Street Map)
- f. 12%: Agency website (Coconino National Forest, Coconino County, City of Flagstaff)

**13. If you drive a personal vehicle, where do you usually park to access Schultz Creek trails? (0 being never, 1 being the location you least typically park, and 3 being the location you most frequently park)**

- a. The "Y" (intersection of Schultz Pass Rd. and Mt. Elden Rd.)
  - 10%: never
  - 13%: least frequent
  - 17%: sometimes
  - 54%: most frequent

b. The Forest Service Shultz Creek Trailhead (along Schultz Creek Rd.)

15%: never

19%: least frequent

21%: sometimes

28%: most frequent

c. Along Schultz Pass Road

42%: never

15%: least frequent

10%: sometimes

3%: most frequent

d. Schultz Pass Trailhead/ the Tank

24%: never

26%: least frequent

13%: sometimes

9%: most frequent

e. If you selected other, please specify:

Comments:

There were various responses with no distinctive majority in 'other' comments. Please see the full summary for more information. <https://www.flagstaff.az.gov/3284/Flagstaff-Community-Forum>.

**14. Currently the unofficial parking lot, "the Y", roughly accommodates over 60 vehicles. If "the Y" no longer permitted parking, how should the Schultz Creek Open Space parcel (3620 W Schultz Pass Rd., Parcel # 30047004), be managed to accommodate trailhead parking?**

a. 39%: Parking should accommodate between 60-100 vehicles

b. 30%: Parking should accommodate between 40-60 vehicles

c. 11%: Parking should accommodate 40 or less vehicles

d. 9%: Parking should accommodate over 100 vehicles

e. If you selected other, please specify:

Comments:

• Majority of 'other' responses stated:

○ Comments were split between providing additional parking and leaving the property undeveloped

• Other topics mentioned in 'other' responses included:

○ Provide restrooms

○ Provide trash service

○ Include parking for large vehicle/trailers

**15. Prior to taking this survey, were you aware that the current parking lot area called, "the Y", is privately owned?**

a. 64%: No

b. 35%: Yes

**16. Which amenities would you like to see developed at the Schultz Creek Open Space parcel (3620 W Schultz Pass Rd.)? Score answers from 0 to 3, 0 being not needed/desired, 1 being least needed/desired, and 3 being most needed/desired)**

a. Toilets

17%: not needed

8%: least needed

20%: sometimes needed

49%: most needed

- b. Running Water
  - 38%:** not needed
  - 15%:** least needed
  - 16%:** sometimes needed
  - 16%** most needed
- c. Picnic tables
  - 32%:** not needed
  - 19%:** least needed
  - 19%:** sometimes needed
  - 13%:** most needed
- d. Bicycle racks
  - 33%:** not needed
  - 19%:** least needed
  - 19%:** sometimes needed
  - 13%:** most needed
- e. A bicycle event staging area
  - 33%:** not needed
  - 18%:** least needed
  - 16%:** sometimes needed
  - 13%:** most needed
- f. Hitching posts for horses
  - 47%:** not needed
  - 20%:** least needed
  - 10%:** sometimes needed
  - 3%:** most needed
- g. An equestrian event staging area
  - 55%:** not needed
  - 14%:** least needed
  - 5%:** sometimes needed
  - 2%:** most needed
- h. Interpretive signage
  - 22%:** not needed
  - 19%:** least needed
  - 22%:** sometimes needed
  - 18%:** most needed
- i. ADA accessible trail
  - 31%:** not needed
  - 18%:** least needed
  - 18%:** sometimes needed
  - 10%:** most needed
- j. Trail information/map kiosk
  - 10%:** not needed
  - 11%:** least needed
  - 25%:** sometimes needed
  - 46%:** most needed
- k. No improvements
  - 27%:** not needed
  - 6%:** least needed
  - 5%:** sometimes needed
  - 10%:** most needed

1. If you selected other, please specify:

Comments:

- Majority of 'other' responses stated:
  - Trash services
  - Restrooms
- Other topics mentioned in 'other' responses included:
  - Bike mechanical stand with pump and wrenches
  - An ADA accessible trail.

**17. If you had \$10,000 to spend on the Schultz Creek Trailhead and surrounding area, how would you allocate it across the following categories? (1 dot = \$1,000)**

- a. **28%:** Maintaining existing trails
- b. **25%:** New trails/ complete missing links
- c. **18%:** Improving trailhead (parking, bike racks, maps
- d. **15%:** Benches, picnic areas, bathrooms, water, etc.
- e. **10%:** Improving signs: mileage, directions, interpretation/ education

**18. Do you have other comments you would like to share about the Schultz Creek area/ trails?**

- a. These comments can be viewed on the Flagstaff Community Forum, see link below.  
<https://www.flagstaff.az.gov/3284/Flagstaff-Community-Forum>

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE**

**Future Agenda Item Request (F.A.I.R.):** A request by Councilmember McCarthy to place on a future agenda a discussion as to when and how the City might negotiate an agreement to disallow short term rentals such as through development agreements or rezoning agreements.

**STAFF RECOMMENDED ACTION:**

Council direction.

**EXECUTIVE SUMMARY:**

Rule 4.01, Procedures for Preparation of Council Agendas, of the City of Flagstaff City Council Rules of Procedure outlines the process for bringing items forward to a future agenda. Councilmember McCarthy has requested this item be placed on an agenda under Future Agenda Item Requests (F.A.I.R.) to determine if there are two other members of Council interested in placing it on a future agenda.

**INFORMATION:**

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**Attachments:**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 10/30/2019  
**Meeting Date:** 11/05/2019



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**TITLE**

**Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Aslan to place on a future agenda a discussion about reasonable restrictions on the uses of potable water.

**STAFF RECOMMENDED ACTION:**

Council direction.

**EXECUTIVE SUMMARY:**

Rule 4.01, Procedures for Preparation of Council Agendas, of the City of Flagstaff City Council Rules of Procedure outlines the process for bringing items forward to a future agenda. Councilmember Aslan has requested this item be placed on an agenda under Future Agenda Item Requests (F.A.I.R.) to determine if there are two other members of Council interested in placing it on a future agenda.

**INFORMATION:**

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**Attachments:**

**18. A.**

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, City Clerk  
**Date:** 10/31/2019  
**Meeting Date:** 11/05/2019



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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 Sessions. 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](#)

## City Manager's Report

October 31, 2019

These reports will be included in the City Council packet for regularly scheduled Council meetings, excluding Work Sessions. The reports are intended to be informational, covering miscellaneous events and topics involving the City organization.

### **An Act of Heroism**

One of our off-duty Aircraft Rescue Fire Fighters (ARFF), Joel Barnett, shown in the photo, helped save a life on Monday, September 30<sup>th</sup>. While Joel was fueling his vehicle at the Safeway Store on Cedar Avenue, he heard an individual scream for help. A Flagstaff citizen was driving her husband to the FMC for chest pains when he became unresponsive in the car. The citizen quickly pulled over (into the Safeway gas station) and was trying to help her husband when she screamed for help.



That's when Joel stopped what he was doing and ran over to help. Joel pulled the unresponsive individual out of the vehicle and quickly checked for a pulse. When no pulse was detected, Joel immediately begin doing chest compressions. He continued the compressions until Guardian Medical Transport and the Flagstaff Fire Department arrived. They recognized Joel from the Airport as an Aircraft Rescue Fire Fighter and were able to seamlessly integrate into the situation and provide further care. The individual was transported to the hospital and subsequently admitted into the intensive care unit, awake and alert.

Joel (who is also a certified CPR Instructor) was able to rely on his ARFF and EMS training to provide critical patient care to someone in the Flagstaff Community who was in desperate need of it. As professional first responders, ARFFs practice and train for emergencies just like this, illustrating the important role of training and inter-agency relations.

As noted by Tim Skinner, Airport OPS/ARFF Manager, "they often don't get recognized for things like this, so I just wanted to give a shout-out to all of the ARFFs (including Joel obviously) for the important role they play as first responders at our airport and in our community every day!"

There are many within our emergency responder staff -- firefighters, police, EMS and ARFF -- to be recognized for their heroic actions, but we cannot name them all. While we may make note of the brave actions of one or two, from time to time, we do so while indeed acknowledging that there is a greater story to tell.

## Airport Parking – Winter Preparations

Speaking of the Airport, we have a problem with parking. A task force of City staff members has been meeting on a weekly basis over the past month in an effort to arrive at a short-term plan to better handle the parking capacity, notably in advance of the upcoming winter season. The current parking capacity at the Airport is exceeded by about 150 parked vehicles, resulting in some creative overflow parking along street sides, outside of parking aisles, and ... everywhere. The task force has put together a pretty good strategy that should help alleviate the problem.



Currently, we have applied for, and received, a temporary permit to upgrade the unimproved parking lot presently utilized by the rental car companies and directly adjoining the public parking lot in question. The unimproved lot is fenced, and with some upgrades, it could provide a significant increase of parked vehicles. Upgrades include grading, drainage, parking lot striping, lighting, and a footpath to the terminal. Reused asphalt millings from the City will be utilized as a temporary hard surface.



We are also preparing to install a temporary fence around the existing parking facility, and the placement of large rocks around the outside perimeter of the access road, to prevent the on-street parking from continuing. This will be followed by signage. Our intent is to staff the parking lot area with temporary employees this winter season (*ParkFlag* and temporary agency service employees) who will roam the parking areas and advise motorists of how and where to park, hopefully minimizing the need for enforcement.

The concept plan for the long-term parking solution is also in progress. The vision is to perform enhancements and permanent improvements to the existing lot and a secondary lot that will meet growing capacity needs, and likely involving the implementation of a paid parking system. The generated parking revenues will help reduce overall parking demands while enabling the Airport to cover capital costs for the improvements, parking operations, and future upgrades.

Details of the short-term measures will be addressed during the next Airport Commission meeting on Thursday, November 14<sup>th</sup>. We will also be presenting this plan before the City Council in the near term. Many more details will be provided at that time. There will also be significant public outreach on this very important endeavor. Stay tuned.

## Events & Staff Updates

### Autumn BBQ Picnic

Staff had its Fall BBQ at Thorpe Park on Friday 11<sup>th</sup>. The weather was perfect and the event, consisting of food, a few team sports, and overall fun times, was well attended. Management Services took home the trophy for kickball, proudly displayed at their front counter.

### Mogollon Property Tour

A short tour of the property occurred on October 10<sup>th</sup>. The offices of the Sustainability Team were visited, as well as the old Public Works stone building. The recently scraped and graded property is shown in the image. The future usage of the vacant property, and potentially, the stone building, are the subject of much discussion and growing community interest. Stay tuned.



### First Responders 2019 Awards Luncheon

Hosted by the Exchange Club of Flagstaff, the luncheon on October 16<sup>th</sup> was a great success and our City recipients, Sargent Charlie Hernandez of our Police Department and Captain Earl Callander of the Fire Department, shown in the attached image, will be recognized in front of the Council at the Tuesday meeting.

### Coconino Center for the Arts

The Vision 2030 Community Brainstorm on October 16<sup>th</sup> was a full house of active participants. This open community meeting was the first in a multi-month public engagement process seeking broad community input on Flagstaff's vision for art, science, and culture.

Other meetings and visits of late include an introductory presentation to the Greater Flagstaff Chamber of Commerce Board (October 29<sup>th</sup>) and the Northern Arizona Association of Realtors Advocacy Group (October 30<sup>th</sup>).

