

LICENSE AGREEMENT FOR NAIPTA TRANSFER CENTER

THIS LICENSE is entered into this 1st day of MAY 2019, by and between Northern Arizona Intergovernmental Public Transportation Authority (“NAIPTA” or “Licensee”), and the City of Flagstaff, a municipal corporation (“City”).

WHEREAS, the City owns real property located along West Phoenix Avenue near downtown Flagstaff (“the Property”);

WHEREAS, NAIPTA and the City jointly constructed a parking lot and transfer center on the Property in 2009 using federal funds from the Federal Transit Administration (“FTA”), pursuant to the First Amendment to Transit Service Intergovernmental Agreement dated June 28, 2008 and recorded January 16, 2009 in the records of the Coconino County Recorder 3510880 (“the First Amendment”);

WHEREAS, NAIPTA and the City agreed to use the improved area for transit purposes for 30 years and agreed to reimburse FTA for 80% of residual value if the Property is changed to non-transit use (Section 2.7.3 of the First Amendment);

WHEREAS, NAIPTA operates a transfer center for public busses on the Property pursuant to the First Amendment;

WHEREAS, the City and NAIPTA entered into a new Intergovernmental Agreement for Transportation dated July 1, 2016 (“New Service IGA”) that replaced prior agreements, including the First Amendment, but the New Service IGA did not specifically memorialize their agreement for use of the Property, although use of the Property is necessarily included in the operation of the transfer center for public busses on the Property;

WHEREAS, the parties desire to enter into this License Agreement for use of the Property to memorialize the agreement under the New Service IGA for use of the Property to operate the Transfer Center.

NOW, THEREFORE, the Parties agree as follows:

1. Grant of License. City hereby grants to Licensee, its officials, employees, agents, contractors and subcontractors (hereafter collectively referred to as “Licensee”) a non-exclusive license to use the Property for a Transfer Center and for parking as depicted in Exhibit A. The use is limited to public transportation. The Property may not be used for repairs or fueling.
2. Maintenance. City and Licensee agree to maintain the property as follows:

NAIPTA obligations:

- a. NAIPTA will provide snow removal, litter pick-up and graffiti removal in the bus parking and tracking area of the Property, as shown in the sketch attached as Exhibit A.

- b. NAIPTA will be responsible for cost of repairs to concrete and asphalt in the bus parking and tracking area of the Property. At the City's direction, NAIPTA will procure necessary repair services. NAIPTA will procure and oversee the installation of the parking space striping at the 216 W. Phoenix Avenue parking lot as shown on Exhibit B at their cost.
- c. NAIPTA will be responsible for the lighting fixtures in the bus parking and tracking area of the Property and agrees to keep the units in good working order.

City obligations:

- a. City will provide snow removal, litter pick-up and graffiti removal in the private vehicle parking lot area of the Property, as shown in the sketch attached as Exhibit A.
 - b. City shall maintain all landscaping on the Property, including but not limited to watering, fertilizing, pruning, protection as appropriate from the elements, and replacement of plantings when necessary, in City's reasonable discretion.
 - c. City will grant and sign a minimum of three bus parking stalls in the City parking lot for NAIPTA's designated use.
 - d. City will be responsible for all lighting fixtures in the vehicle parking lot, except as located in the bus parking and tracking area.
 - e. City will designate an additional bus parking stall at 216 W Phoenix Ave for NAIPTA's use, as depicted on Exhibit B. City agrees that NAIPTA may block up to six (6) parking stalls at 116 W Phoenix Ave, as shown on Exhibit A, for auxiliary parking when the designated spot at 216 W Phoenix is temporarily blocked or not accessible because of City Streets operations.
3. **Safe Operations.** Licensee is responsible for safe operations of all its vehicles and in compliance with traffic regulations. Licensee shall use the Property with care, so as not to create any inconvenience to City operations, and to residents and visitors. Any accident involving Licensee on the Property shall be immediately reported to the City Risk Manager, at (928) 213-2082.
 4. **Assumption of Risk.** Licensee may use the City parking lot at Licensee's sole cost and risk. The licensed area is accepted by Licensee AS IS WITH ALL FAULTS basis and City hereby disclaims any and all representations and warranties with respect to the suitability and/or condition of the Property.
 5. **Hazardous Materials.** Licensee shall not cause or permit any hazardous material to be brought upon, kept or used in or about the Property by Licensee, its agents, employees, contractors or invitees, without the prior written consent of City, which consent may be withheld for any reason or for no reason.
 6. **Compliance with Laws.** Both parties will comply with all applicable laws in performance of this License.
 7. **License Term.** This License is for two (2) years, and is renewable by the City Manager, unless sooner terminated.

8. **Federal Repayment.** In the event that the Phoenix Avenue Property is used for non-transit purposes (as defined by the FTA) within 30 years after the completion of the Center, City shall, within 60 days of the change in use, reimburse NAIPTA 80% of the Residual (the "City Reimbursement"). The Residual Value shall be calculated as provided by federal regulations.
9. **Termination.** This License may be terminated by either party upon at least one year's prior notice for convenience. The License may be terminated for cause after written notice to the other party of the violation and reasonable opportunity to cure.
10. **Encumbrances.** The License is subject to all easements, reservations, and restrictions of record and all other utility services currently in place. City may install, construct, repair and maintain improvements, including, without limitation, parking areas, roads, and drainage and utility lines over, under and across the City parking lot, and may grant easements and other rights to third parties.
11. **Insurance.** NAIPTA shall maintain insurance as required by the 16.1 of the NAIPTA Master IGA, as well as any other insurance required by law, including but not limited to Workers Compensation insurance. NAIPTA shall provide City with a copy of the certificate of insurance naming City as an additional insured and specifically referencing this License.
12. **Indemnification.** 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 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.
13. **Notices.** Any notice permitted or required under this License must be given in writing and delivered personally (including by any nationally recognized overnight service):

To Licensee: NAIPTA
 3773 N Kaspar Dr.
 Flagstaff, AZ 86004
 Attn: CEO and General Manager

With a copy to: NAIPTA
 3773 N Kaspar Dr.
 Flagstaff, AZ 86004
 Attn: Administrative Director

To City: City of Flagstaff
 Real Estate Manager
 211 W. Aspen Avenue
 Flagstaff, AZ 86001

Attn: Real Estate Manager

With a copy to:
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
Attn: Public Works Director

Notice of any change in a Party's address will be given as stated above.

14. Entire Agreement. This License, including all Exhibits, constitutes the parties' final and complete agreement and terminates all the prior oral and written agreements regarding this subject. Each party's obligations will survive the Term's end and be fully enforceable thereafter to the full extent necessary to protect the other Party.
15. General Provisions. If any term of this Agreement is held invalid, illegal, or unenforceable by a tribunal of competent jurisdiction, this Agreement will be deemed severable and the rest of the Agreement will remain enforceable and valid.
16. No Waiver. No single or multiple failure or delay in exercising any right or remedy under this License will waive that party's subsequent right to require strict performance.
17. Assignment. This Agreement is binding on each party and their successors and assigns. This License may not be assigned or transferred without the prior written approval of the other party.
18. Governing Laws. This Agreement shall be governed by the laws of the State of Arizona.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this License.

CITY OF FLAGSTAFF

By: *Barbara Goodrich*
Barbara Goodrich, City Manager

Attest: *Stacy Salzburg*
Stacy Salzburg, City Clerk

Approved as to form:
Benjamin W. ...
City Attorney's Office

LICENSEE

By: *Erika Mazza*
Name: Erika Mazza

Title: CEO and General Manager

Approved as to form:
/s/ Scott A. Holcomb/

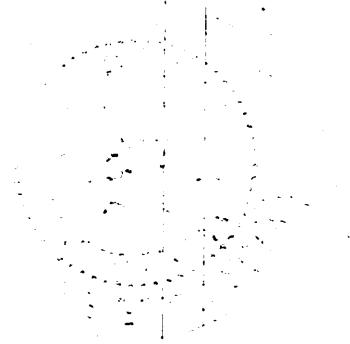
NAIPTA General Counsel

EXHIBIT A

Downtown Connection Center (DCC) License Agreement Map

EXHIBIT B

Parking Plan
216 W. Phoenix Avenue



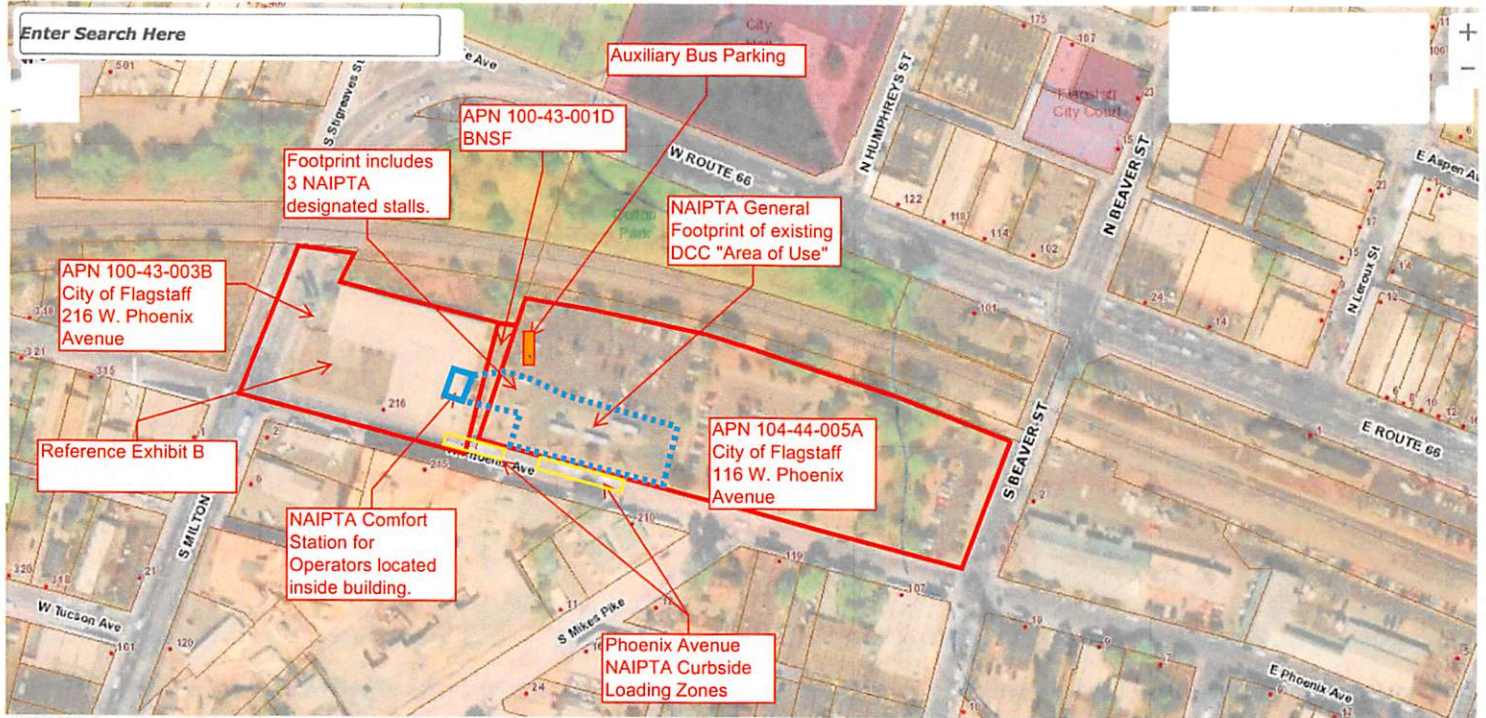
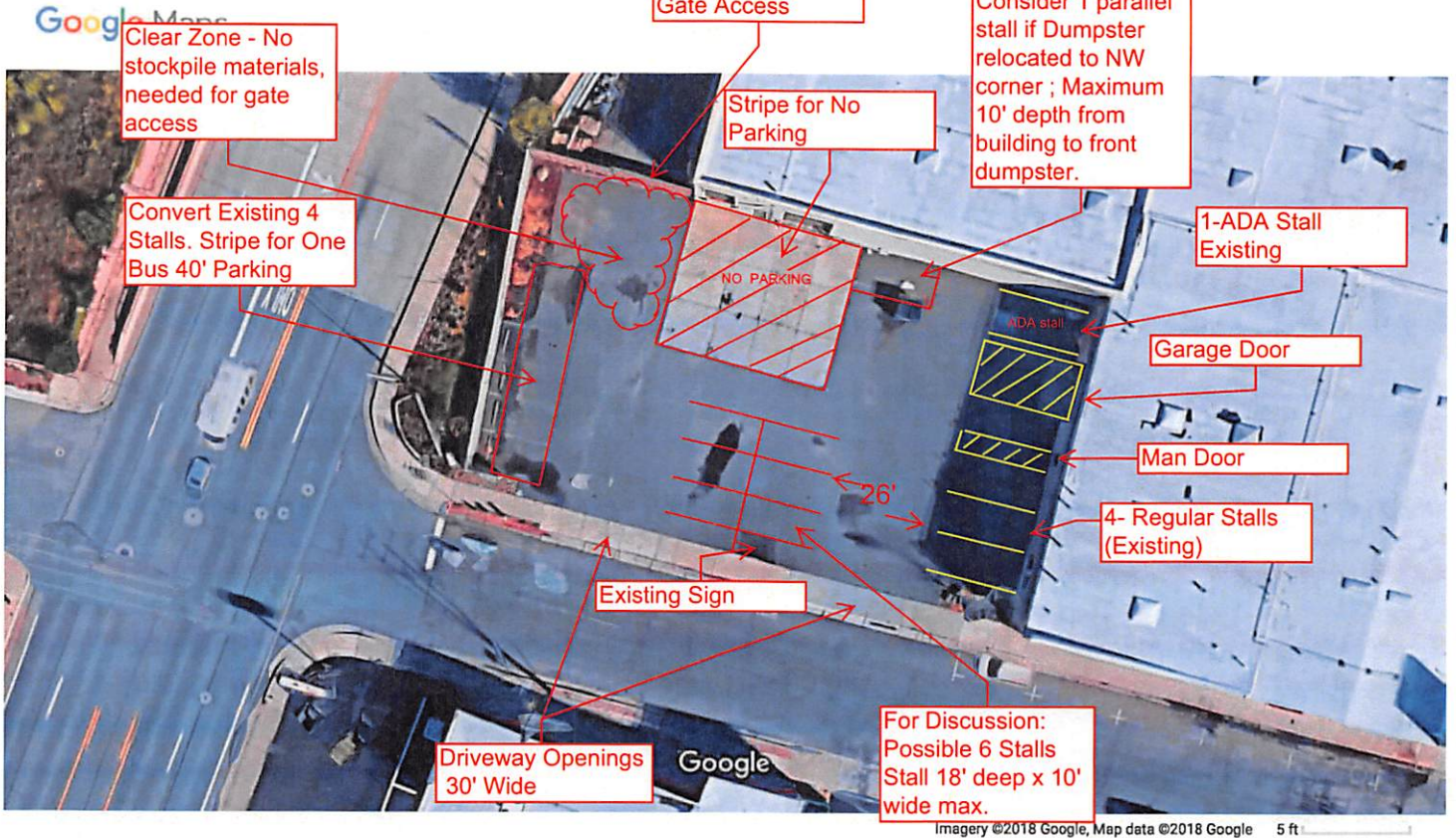


EXHIBIT A:
Downtown Connection Center (DCC)
License Agreement Map

Lat/Long: 35.1985, -111.6547
 40m
 200ft

9/28/2018

Google Maps



Set a home address



Set a work address

Updated just now



EXHIBIT B

216 W. Phoenix Avenue

<https://www.google.com/maps/@35.1976019,-111.6537086,20m/data=!3m1!1e3>