

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Ryan Roberts, Water Services Engineering
Manager
Co-Submitter: Brad Hill
Date: 04/01/2020
Meeting Date: 04/07/2020



TITLE:

Consideration and Approval of Contract: Approval of Amended and Restated Permanent Easement for Wells, Drainage, Sewer, and Water Pipelines (for Fort Tuthill Park and surrounding area development).

STAFF RECOMMENDED ACTION:

1. Approve the agreement with Coconino County;
2. Authorize the City Manager to execute the necessary documents

Executive Summary:

Approval of this agreement acknowledges existing easements granted by the County and acknowledges existing utility infrastructure built by the City on County property under the previous agreement. This agreement also will provide the City with additional permanent and temporary easements necessary to operate and maintain wells, drainage, sewer, and water lines within city limits and to improve utility service in the Ft. Tuthill County Park. In addition, the agreement provides that Coconino County will construct new sewer lines necessary to serve the Park, and the City will pay for the incremental cost of oversizing the sewer line from 8" up to 18" to meet future development needs in the area.

The County Board of Supervisors approved this agreement at their meeting on March 24.

Financial Impact:

The Water Services Division has \$760,000 budgeted in the FY2019-20 Water Services Enterprise Fund in account #203-08-375-3412-0-4463 for reimbursing Coconino County for upsizing and installing this public sewer infrastructure.

Policy Impact:

None

Connection to Council Goal, Regional Plan, CAAP, and/or Strategic Plan:

COUNCIL GOALS: 3) provide sustainable and equitable public facilities, services and infrastructure systems in an efficient and effective manner to serve all population areas and demographics.

Has There Been Previous Council Decision on This:

On March 17, 2009, City Council meeting, the City Council approved the original "Permanent Easement Agreement" for wells, drainage, sewer and water at Fort Tuthill Park. In November 2009 the agreement was amended to clarify the bidding and construction obligations of the parties.

Options and Alternatives:

1. Approve agreement and (confirm) reimbursement payment
2. Approve the agreement with any City Council approved amendments
3. Not approve the revised agreement and have staff continue negotiations.

Background/History:

The City and County entered into a Temporary Easement Agreement in 2006 for the exploration of a well within Fort Tuthill County Park. The City was successful in drilling a well, which is a very productive water source of water for the City of Flagstaff. The City and County then entered into a Permanent Easement Agreement in 2009, that allowed for the design, construction and cost-sharing of a sewer main, wells and well houses (existing and future), water transmission and distribution mains and their easements, within Fort Tuthill County Park. The first phase of the Project was completed in December 2010. The City's cost for the improvements for the well, wellhouse, infrastructure improvements inside the Ft Tuthill Park and the transmission main across Interstate 17 that connects to our water distribution system was \$4,858,279. The County share of that amount for the sewer main was \$300,695.

In 2019, the County approached the City to amend and update the original agreement prepared in 2009. Many of the sections of the original agreement were obsolete and no longer needed. Since September 2019, staff from both the City and County have worked together to prepare this agreement.

This new agreement replaces and updates the original 2009 agreement and the 2009 amendment. The new agreement again provides that the County grants a permanent easement necessary to operate and maintain the existing and future water wells, drainage, sewer lines and waterlines located at Fort Tuthill. Under the original agreement, the City was to construct the sewer line, however, this project is not programmed by the City to occur at this time. The County wishes to proceed now with redevelopment efforts at the Park. Under the new agreement the County will construct sewer lines necessary to provide sewer service to the Park, and the City will pay the incremental costs of upsizing the offsite sewer line in order to provide capacity for future development in the area. The new agreement includes updated provisions related to the bidding and construction of the project. The County will transfer the sewer line improvements to the City for ongoing operations after construction is complete.

Key Considerations:

The substantive revisions in this amended agreement are as follows:

- Added Phase III language stipulating that the county will be responsible for constructing the sewer line and City will pay for the upsizing of this sewer line using capacity fees;
- Added language for recapture agreement, stating the City is willing to consider a 20-year recapture agreement instead of an existing 10-year term (a longer period of time for County to recapture a portion of its costs from future developments in the area);
- Added language specifying the requirement to install sound abatement materials at future pump house #2, similar to what was installed for pump house #1.

At the County's request, a provision has been added stating that the City Council "may" waive applicable water services capacity fees related to the sewer line project for the County. Past practice and current recommendation of staff is to not waive said fees. Should the Council want to do this an in-depth look at existing ordinances would need to occur.

WHEN RECORDED, RETURN TO:

Attention: _____

**AMENDED AND RESTATED PERMANENT EASEMENT FOR
WELLS, DRAINAGE, SEWER, AND WATER PIPELINES
(Fort Tuthill)**

THIS AMENDED AND RESTATED PERMANENT EASEMENT FOR WELLS, DRAINAGE, SEWER AND WATER PIPELINES (this "Agreement") is made this 24 day of march, 2020, between THE CITY OF FLAGSTAFF, an Arizona municipal corporation (the "City") and COCONINO COUNTY, a political subdivision of the State of Arizona (the "County").

RECITALS

A. The City, the County and U.S. Bank Trust National Association entered into that certain Agreement for Temporary Easement for Water Well Exploration and Option to Purchase Perpetual Production Water Well Easement dated November 22, 2006, (the "Temporary Easement"). Pursuant to the Temporary Easement, the City was granted a temporary easement for water well exploration within the Fort Tuthill County Park (the "Park") in the area legally defined and depicted on Exhibits "A-1 and A-2" attached hereto and made a part hereof ("Well Easement Area").

B. In accordance with the rights granted under the Temporary Easement, the City explored and drilled a well upon the Well Easement Area that the City deemed to be of sufficient quantity and quality for its purposes (the "Well").

C. The City and the County entered into a Permanent Easement for Wells, Drainage, Sewer and Water Pipelines recorded on April 6, 2009, in the records of the Coconino County Recorder instrument no. 3519405, and entered into an Amendment, recorded on November 23, 2009, in the records of the Coconino County Recorder, instrument no. 3545682.

D. This Amended and Restated Permanent Easement for Wells, Drainage, Sewer and Water Pipelines will serve to replace the prior recorded instrument nos. 3519405 and 3545682, memorialize the current status of the work, and serve as an updated agreement of the parties.

E. The parties entered into a separate Sewer, Water and Reclaimed Water Pipeline Easement, recorded on November 5, 2009 in the records of the Coconino County Recorder's Office instrument no. 3543878, granting to City an easement for sewer and water pipelines within the Park boundaries.

F. The City and the County desire by this Agreement to, among other things:

i. grant permanent easements to the City for ingress and egress access to, and the location, operation, use and maintenance of, the Well and Well related equipment upon the Well Easement Area shown in Exhibits “A”, “A-1” and “A-2” attached hereto and made a part hereof (Fort Tuthill Well #1 was completed July 7, 2010);

ii. grant a permanent easement for a Well Easement Area to the City for a future well and pipelines to the future well (Fort Tuthill Well #2);

iii. grant permanent easements to the City for the location, operation, maintenance, alteration, repair and/or replacement of underground pipelines, and utility services of all types (the “Utility Easement”) in the location set forth on Exhibit “B” (the “Utility Easement Area”) attached hereto and made a part hereof, including for the construction, operation, maintenance and repair of certain water pipelines (referred to herein as “Water Pipelines”) within the Utility Easement Area in the approximate locations set forth on Exhibit “B-1” attached hereto and made a part hereof (the Water Pipeline from Fort Tuthill Well #1 to the Pumphouse was completed on July 7, 2010);

iv. grant additional permanent Utility Easements to City for Water Pipelines and Sewer Pipelines through the Park property and from the Park’s north boundary to the connection with the City boundary in the approximate locations as conceptually depicted in Exhibit “C-1” (water) and Exhibit “C-2” (sewer) attached hereto and made a part hereof;

v. allocate the cost to install the Water Pipelines and Sewer Pipelines between the City and the County (former cost sharing matrices Exhibits “D” and “E” are obsolete and have been omitted);

vi. grant a permanent easement to the City for the location, operation, maintenance, alteration, repair and/or replacement of drainage way of all types including, but not limited to, swales, culverts, pipes and other City approved drainage systems (the “Drainage Easement”) for Fort Tuthill Well #1 in the area set forth on Exhibit “F” and “F-1” (the “Drainage Easement Area”) and for Fort Tuthill Well #2 in a different area to be determined;

vii. grant additional permanent Utility Easements to the City for the existing water mains that currently are on the Park property as conceptually shown in Exhibit “G” and “G-1” (the “Park Utility Easement Area”);and

viii. provide for City construction of laterals in the Park as shown in Exhibit “H” (“Laterals”);

ix. grant all other permanent and temporary easements necessary for the Phase III Sewer Line project, as shown in Exhibit “I” (“Sewer Pipeline Easements”)

NOW THEREFORE, for and in consideration of the mutual obligations and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the County covenant and agree as follows:

I. WELLS AND WATER PIPELINES

1. Grant of Easement for Well (Fort Tuthill Well #1). The County hereby grants to the City and its successors and assigns, an exclusive, permanent easement to construct, install, operate, maintain, repair and/or replace the Well and Well related equipment, pumps, power and all appurtenant facilities (the “Facilities”), upon, across and under the surface of the Well Easement Area (Exhibits “A”, “A-1” and “A-2”) that may be necessary or proper pertaining to the extraction of water from the Well and the connection to and distribution through the City’s water system, together with such vehicular and pedestrian ingress and egress access to and from the Well Easement Area and other land of the County located adjacent to the Well Easement Area. The County reserves the right to continue to use and operate the area surrounding and in the Well Easement Area for any and all park purposes not inconsistent with the rights and privileges granted herein.

2. Grant of Easement for Additional Well (Fort Tuthill Well #2). If determined by the City, in the City’s sole judgment, that an additional well is necessary, the County hereby grants to the City and its successors and assigns, an exclusive, permanent easement to construct, install, operate, maintain, alter, repair and/or replace an additional well and related Facilities, upon, across and under the surface of the future Well Easement Area pertaining to the extraction of water therefrom and to connect to and distribute such water through the City’s water system, together with such vehicular and pedestrian ingress and egress access to and from the Well Easement Area and other land of the County located within 2000 feet of the existing Well. The construction of the additional well shall also include, and the County agrees to grant to the City, additional Utility Easements to connect the additional well to the Water Pipelines. The location of such Utility Easements pertaining to the additional well shall be identified with particularity following the final design by the City. To the extent hydrologically feasible, the City and the County shall, upon mutual agreement, determine the location of the future well and associated utility lines to minimize the disruption to the Park facilities and events. The City shall be responsible for the cost of the design of the additional well, the preparation of the Utility Easements and the cost of construction of the additional well and Water Pipelines. For purposes of this Agreement, all references to the “Well” shall mean and refer to the Well and any additional well drilled upon the Well Easement Area. The County acknowledges and agrees that the Well, the Facilities and the associated water and water rights, including effluent, are owned solely by the City and the County disclaims any interest or right thereto.

3. Grant of Utility Easement. The County hereby grants to the City and its successors and assigns, a permanent Utility Easement upon, across and under the surface of the Utility Easement Area (Exhibits “B” and “B-1”). This shall include, but not limited to, Water Pipelines and Sewer Pipelines, including those now existing or hereafter constructed as contemplated by this Agreement, reclaimed water, and other City transmission and distribution lines. The Utility Easement includes the right of vehicular and pedestrian ingress and egress across adjacent property owned or controlled by the County where reasonably required to gain access to the Utility Easement Area. This easement is granted on a non-exclusive basis to the City. The City shall have the right to use the easement for City provided public services associated with City approved utilities. This Utility Easement includes the right to remove, alter or maintain vegetation, improvements, or obstructions within the limits of the easement that conflict with the legitimate use of this Utility Easement. Upon completion of any removal, alteration or maintenance of the

utility improvements, the City or assigns, shall have the obligation to restore the physical attributes of the Utility Easement Area disturbed by any removal, alteration or maintenance to as near the pre-disturbance condition, or County approved condition, as the physical characteristics of the installed utility permit. The County shall be responsible for the maintenance of the Utility Easement Area surface after the restoration of the area by the City. All utility infrastructure shall be located below ground. Maintenance of the surface appearance of the Utility Easement Area after any disturbance or restoration caused by the City shall remain the responsibility and associated surface maintenance cost of the County. To the extent permitted by Arizona law, the City hereby covenants to indemnify and save County harmless from any liabilities for injuries or damages to persons or property arising out of the City's or its officers', agents', employees', and invitees use of this Utility Easement granted herein.

4. Well Productivity. The City is solely responsible for the productivity of the Wells and any associated groundwater withdrawal issues including claims by third parties arising from the City's ownership, operation, maintenance and delivery of groundwater from the Wells. Nothing in this Agreement shall obligate or require the City to drill or operate any Well or any Water Pipelines and the City may at any time cease drawing water from the Wells without obligation or liability to the County. Any decision by the City to withdraw groundwater from the Wells, or to cease such operation, does not eliminate the City's obligation to provide water and sewer service to the Park as a metered customer as contemplated in this Agreement.

5. Drainage Easements for Fort Tuthill Well #1. The County hereby grants to the City, its successors and assigns, a permanent Drainage Easement upon the Drainage Easement Area (Exhibit "F" and "F-1") for Fort Tuthill Well #1. This easement includes the right of vehicular and pedestrian ingress and egress across adjacent property owned or controlled by the County where reasonably required to gain access to the Drainage Easement Area. This Drainage Easement is granted on a non-exclusive basis to the City and the City shall have the right to use the easement for public utility services associated with City approved drainage appurtenances. This Drainage Easement includes the right to remove, alter or maintain vegetation, improvements, or obstructions within the limits of the easement that conflict with the legitimate use of this Drainage Easement. The City shall use its reasonable efforts to coordinate with the County to avoid the disruption of natural resources. Upon completion of any removal, alteration or maintenance of the utility improvements, the City or assigns, shall have the obligation to restore the physical attributes of the Drainage Easement Area disturbed by any removal, alteration or maintenance to as near the pre-disturbance condition, or County approved condition, as the physical characteristics of the installed utility permit. The County shall be responsible for the maintenance of the Utility Easement Area surface and associated surface maintenance costs after the restoration of the area by the City. To the extent permitted by Arizona law, the City hereby covenants to indemnify and save County harmless from any liabilities for injuries or damages to persons or property arising out of the City's or its officers', agents', employees', and invitees of this Drainage Easement granted herein.

6. Drainage Easements for Fort Tuthill Well #2.

a. Location. The exact location of the Drainage Easement for Fort Tuthill Well #2 is to be determined. The City shall submit to the County a proposed Drainage Easement Area Exhibit prior to construction to be approved by County. Upon approval of the Drainage Easement Area,

the City shall prepare a Legal Description and Exhibit to be recorded and attached to this document. The City shall be responsible for design and construction of all improvements required for the Drainage Easement including but not limited to culverts, swales, headwalls, road crossings and reconstruction. The Drainage Easement shall not create drainage issues or unduly impact Park use.

b. Grant. The County hereby grants to the City, its successors and assigns, a permanent Drainage Easement in such area needed for future Well #2. This easement includes the right of vehicular and pedestrian ingress and egress across adjacent property owned or controlled by the County where reasonably required to gain access to the Drainage Easement Area. This Drainage Easement is granted on a non-exclusive basis to the City and the City shall have the right to use the easement for public utility services associated with City approved drainage appurtenances. This Drainage Easement includes the right to remove, alter or maintain vegetation, improvements, or obstructions within the limits of the easement that conflict with the legitimate use of this Drainage Easement. The City shall use its reasonable efforts to coordinate with the County to avoid the disruption of natural resources. Upon completion of any removal, alteration or maintenance of the utility improvements, the City or assigns, shall have the obligation to restore the physical attributes of the Drainage Easement Area disturbed by any removal, alteration or maintenance to as near the pre-disturbance condition, or County approved condition, as the physical characteristics of the installed utility permit. The County shall be responsible for the maintenance of the Utility Easement Area surface and associated surface maintenance costs after the restoration of the area by the City. To the extent permitted by Arizona law, the City hereby covenants to indemnify and save County harmless from any liabilities for injuries or damages to persons or property arising out of the City's or its officers', agents', employees', and invitees of this Drainage Easement granted herein.

7. Easements for Existing Water Mains. The County hereby grants additional permanent Utility Easements to the City for the existing water mains that currently are on the Park property shown in Exhibit "G" and "G-1" (the "Park Utility Easement Area"). The parties will work in good faith to update the easements to meet current City standards, which require a 20' width for one line, and 26' width for two lines in the same easement area

8. Construction of Laterals on the Park: Upon the City's construction of the Water Pipelines, the City shall construct eight (8) laterals with hydrants within the Park as generally illustrated on the schematic attached hereto as Exhibit H, the exact location of the laterals shall be identified with particularity following the final design by Shephard Wesnitzer Inc. (the "Engineer") and mutual agreement of the City and County and shall constitute, and the County hereby grants to the City, an additional easement upon, across and under the surface of the Park in the location of the laterals, for the construction, installation, operation, maintenance, repair and/or replacement of such laterals. Any dispute between the City and County as to the design or location of the laterals and hydrants, should the City and County be unable to reach a mutual decision, shall be decided under the mediation process described in Section 6(e)(i) below. The laterals shall not exceed 30 feet in length. The three (3) closest hydrants to the horse racing track may be used by the County for dust control purposes at the Park and the City shall install water meters on such hydrants after the County requests the meters through the Customer Service Area of the City and pays the designated deposit charges and other one-time fees, unless waived by the City Council by ordinance. The County shall pay all water costs and usage fees at the prevailing "out of City" rates

and fees for the usage. In no event shall the County resell any water provided by the City in accordance with the terms of this Agreement. (Construction is partially complete).

9. Temporary Construction Easement (Fort Tuthill Well #1): The County hereby grants to the City a temporary construction easement to allow for access roads, construction of the Well, Facilities and bore pit. The temporary construction easement shall be three (3) times the permitted width of the Utility Easement Area. (Construction of Fort Tuthill Well #1 was completed July 7, 2010).

10. Temporary Construction Easement (Fort Tuthill Well #2): The County hereby grants to the City a temporary construction easement to allow for access roads, construction of the Well, Facilities and bore pit. The temporary construction easement shall be three (3) times the permitted width of the Utility Easement Area.

11. Pump House #1 Sound Abatement: If the City installs a pump house or similar facility on City owned property located adjacent to the Park, the City shall also install commercially reasonable and customarily available sound abatement materials and/or equipment concurrently with the construction of the pump house. If installed, the City, at the City's cost, will conduct a background sound assessment at the proposed site(s) to establish a baseline sound level. Sound from any improvement(s) shall be mitigated so as not to exceed baseline levels by more than 5 decibels. The noises will be measured from within a 25 foot radius of the proposed improvement(s). (Pump House #1 was completed July 7, 2010 and baseline sound level has been established).

12. Pump House #2 Sound Abatement. If the City installs a pump house or similar facility on County property located within the Park, the City shall also install commercially reasonable and customarily available sound abatement materials and/or equipment concurrently with the construction of the pump house. If installed, the City, at the City's cost, will conduct a background sound assessment at the proposed site(s) to establish a baseline sound level. Sound from any improvement(s) shall be mitigated so as not to exceed baseline levels by more than 5 decibels. The noises will be measured from within a 25 foot radius of the proposed improvement(s). (Pump House #2 has not yet been constructed).

13. Water Related Costs. In 2009 the City waived (1) the amount of \$6,500.00 corresponding to "in-City" water rates charged by the City to the County for the past three years, and (2) the County's unpaid capacity charge associated with upsizing the existing water meter at the Park from 4" to 6" in the amount of \$26,030.50.

The County is responsible to pay all water related costs and fees associated with the County's water usage at the Park in the same manner and subject to the same rates as other "out of City" users.

II. CONSTRUCTION PHASES

The Water Pipelines, Sewer Pipelines and related Facilities shall be constructed in three phases, which are defined as follows:

Phase I shall consist of the construction of the Water Pipelines and related Facilities from the Well under I-17 and connect to the City's existing facilities at the Pulliam Airport. All costs associated with Phase I, including overhead, shall be paid by the City. (Phase I was completed July 7, 2010.)

Phase II shall consist of the construction of the Water Pipelines and related Facilities and Sewer Pipelines from the pumphouse to the Fort Tuthill Park boundary as defined by the plans dated September 2, 2009. Any general overhead and management costs for Phase II shall be shared equally between the County and the City. (Phase II was completed December 16, 2010.)

Phase III shall consist of the construction of Sewer Pipeline from the current terminus in Fort Tuthill Park to the connection point within the the City of Flagstaff, as proposed in Exhibit C-2 and shown in the final construction plans for City of Flagstaff Project No. EPCK2015005.

III. PHASE III SEWER PIPELINE PROJECT

1. Phase III Design. The County at its expense shall contract with the Engineer and complete the design of the Phase III Water Pipeline and Sewer Pipeline, except the County may enter into a separate recapture agreement with the City to recapture a portion of the design costs per City Code.

2. Phase III Sewer Pipeline Easements.

a. Offsite Permanent Easements for Sewer Pipeline (from the current terminus in Fort Tuthill Park to the connection point within the City of Flagstaff as proposed in Exhibit C-2 and shown in the final construction plans for City of Flagstaff Project No. EPCK2015005). The County hereby grants to the City, its successors and assigns, permanent easements to operate, maintain, alter, repair and/or replace the Sewer Pipelines and any related facilities upon, across and under the surface of such lands that may be necessary or proper pertaining to the connection to and collection through the existing sewer system, together with such vehicular and pedestrian ingress and egress access to and from the Sewer Pipeline Easement Area and other land of the County located adjacent to the Sewer Pipeline Easement Area. The County has recorded the permanent easements, as depicted in the map and with the recording numbers listed in the attached Exhibit "I".

b. Conveyance of Permanent Easements. The County will convey permanent utility easements listed in Exhibit "I" to the City for maintaining the water and sewer pipelines after completion and final acceptance of the Project by the City.

c. Temporary Construction Easements. The County will acquire and will pay for all temporary construction easements for the Project. In the event the County is unable to obtain temporary construction easements for any portions of the Project, it may elect to proceed with

construction within the boundaries of the Utility Easement Area. The temporary construction easements acquired are shown in Exhibit "I".

3. Phase III Bidding and Contract.

a. Bidding. The County will coordinate and administer the bidding process for the Construction of Phase III per Title 34, Arizona Revised Statutes. The bid documents will include a Schedule A for alternate upsized pipelines for sewer and water for future service area needs, and a Schedule B for minimum sized pipelines for sewer and water for County development needs. The contractor shall be required to submit balanced bids. The City will participate in the pre-bid meeting. The City will also participate jointly with the County in the evaluation of the bidders. The County Board of Supervisors will award the contract to the lowest responsible and responsive bidder for Schedule A.

b. Project Management. The County will be the Project Manager and will administer and conduct all construction management, including administration of the construction contract. All field orders will be submitted to the County, reviewed by the City, and approved by the County. All change orders will be submitted to both the City and the County. The City and County each will have inspectors present at the Project.

c. Contractor Invoices. The contractor will submit all invoices to the County. Invoices will separately state what charges are for the sewer portion of the Project, what charges are for the water portion of the Project, and what charges, if any, are shared for both sewer and water. The County will provide copies of all invoices to the City upon receipt from the contractor. The County will review and approve payments under the County administered contract. The County will remit an accounting of the approved payments to the City.

4. Phase III Final Acceptance.

a. Transfer. After final acceptance, the Sewer Pipelines and related facilities are owned solely by the City and the County disclaims any interest or right thereto.

b. Payment. After final acceptance and the County's connection to the City sewer system, the County shall pay in one installment all sewer capacity charges associated with the County's sewer usage at the Park in the same manner and subject to the same rates as other "out of City" users. The estimated amount is \$147,667 under the current adopted rates.

5. Phase III Reimbursement.

a. City Reimbursement for Sewer Upsizing (from 8" up to 18"). The City will reimburse the County for all costs associated with the construction of the utility line upsizing from Ft. Tuthill to the existing City sewer collection system, as shown in the City construction plans EPCK2015005.

b. Entire Project Cost. Reimbursement is to include the difference in the *entire* project cost between upsized Schedule A and base Schedule B including all the construction materials, labor, services, taxes and fees required to complete the project. County will provide a final

accounting of all project design and construction costs, including but not limited to all contract invoices, inspection and permitting fees.

c. Overhead. Any general overhead and management costs for Phase III shall be paid for solely by the County, a portion of which may be recaptured under the recapture agreement.

d. Payment. The City will pay its upsizing reimbursement costs to the County in one installment promptly following final acceptance of the Project.

6. Phase III County Recapture of Sewerline Project Costs from future developments connecting to the sewer main. The County is eligible to enter into a recapture agreement with the City per City of Flagstaff Engineering Code Section 13-09-005-0001, as may be amended. The City Council at a public meeting will consider amending the code to allow a recapture period of up to 20 years.

7. Future Water or Sewer Service Connections for County. The City will allow additional water and sewer connections at Fort Tuthill Park for the County use to the extent capacity allows at the time and upon payment of then current applicable water and sewer capacity fees. The City Council by ordinance may elect to waive water and sewer and capacity fees.

8. Luke Air Force Base Recreational Center. The Luke Air Force Base Recreational Center located adjacent to the Park (the "Luke Recreational Center") shall not be included in the County's sewer or water account, but shall have a separate and distinct water and sewer utility account. (This was completed December 16, 2010).

IV. GENERAL PROVISIONS

1. Use of Easements. The City and the County shall each reasonably cooperate with the other in order to coordinate construction, installation, maintenance and repair activities upon the Well Easement Area, the Water Pipeline Easement Area and the Sewer Pipeline Easement Area and all other easements granted herein so as not to unreasonably interfere with or disrupt the activities performed from time to time at the Park.

2. Authorization. The parties to this Agreement represent and warrant that the persons executing this Agreement on their behalves have full authority to bind the respective parties.

3. Phase I and II Temporary Easements. As of the Effective Date of this Agreement, the Temporary Easements for Phase I and II and the parties' respective obligations and liabilities thereunder are hereby terminated and of no further force or effect.

4. Cancellation. This Agreement is subject to the cancellation provisions of Arizona Revised Statutes § 38-511.

5. Dispute Resolution.

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

Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org. with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

b. Litigation and Attorneys' Fees. Except as otherwise agreed by the parties, any litigation brought by any party against any other party to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party or parties in the action will be entitled to its costs and expenses including reasonable attorneys' fees and court costs from the non-prevailing party or parties.

6. Liability and Indemnification.

a. The City shall defend against and be responsible for any and all damages arising now and in the future from the activities of the City, its agents, employees and contractors, in the exercise of its rights under the Agreement on the Well Easement Area, the Water Pipeline Easement Area and Sewer Pipeline Easement Area and shall repair such damage, or in lieu thereof and at the option of the County, make a mutually agreeable settlement with the County for such damages. The City hereby covenants and agrees to indemnify, defend and hold the County harmless for, from and against any and all claims, demands, costs, actions, suits, liabilities, losses and expenses, of whatever kind and nature whatsoever (collectively, the "Claims") that may arise or result from any act, action or omission of the City in connection with the activities of the City, its employees, agents, contractors and invitees as contemplated under this Agreement.

b. The County shall defend against and be responsible for any and all damages arising now and in the future from the activities of the County, its agents, employees and contractors, in the exercise of its rights under the Agreement on the Well Easement Area, the Water Pipeline Easement Area and Sewer Pipeline Easement Area and shall repair such damage, or in lieu thereof and at the option of the City, make a mutually agreeable settlement with the City for such damages. The County hereby covenants and agrees to indemnify, defend and hold the City harmless for, from and against any and all Claims that may arise or result from any act, action or omission of the County in connection with the activities of the County, its employees, agents, contractors and invitees as contemplated under this Agreement.

7. Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The following document shall remain legally binding: the Sewer, Water and Reclaimed Water Pipeline Easement, recorded on November 5, 2009 in Coconino Recorder's Office instrument no. 3543878.

8. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona and shall be deemed made and entered into in Coconino County.

9. Modification. No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto.

10. Run with Land. All of the covenants set forth herein constitute covenants that run with the land, and those covenants and all conditions set forth herein shall inure to the benefit of and shall be binding upon the authorized successors in interest of each of the parties hereto.

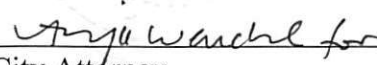
IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first set forth above.

CITY OF FLAGSTAFF, an Arizona municipal corporation


By: 
GREG CLIFTON, CITY MANAGER

Attest:

City Clerk

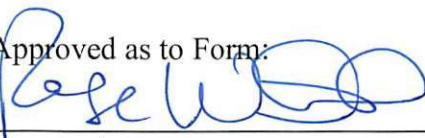
Approved as to Form:

City Attorney

COCONINO COUNTY, a political subdivision of the State of Arizona

By: 
Chair

Attest:

Clerk of the Board

Approved as to Form:

County Attorney

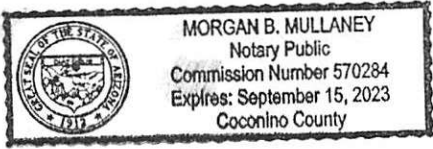
STATE OF ARIZONA)
) ss.
County of Coconino)

The foregoing instrument was acknowledged before me on MAY 4TH, 2020, by GREG CLIFTON, the CITY MANAGER of the City of Flagstaff, an Arizona municipal corporation, acting for and on behalf thereof.

Morgan B. Mullaney
Notary Public

My Commission Expires:

SEPTEMBER 15TH 2023.



STATE OF ARIZONA)
) ss.
County of Coconino)

The foregoing instrument was acknowledged before me on March 24, 2020, by Kena Fowler, the Chair of Coconino County, a political subdivision of the State of Arizona, acting for and on behalf thereof.

Valerie Webber
Notary Public

My Commission Expires:

8-6-2022

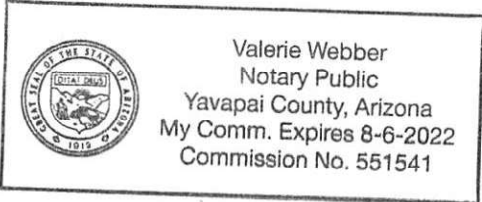


EXHIBIT "A"
DESCRIPTION OF WELL EASEMENT AREA

LOCATED IN THE northeast one-quarter of Section 6, Township 20 North, Range 7 East of the Gila and Salt River Meridian (NE/4 of Sec. 6, T20N, R7E, G&SRM), Coconino County, Arizona;

LYING WITHIN Parcel No. 2 as described in Instrument 3080890 per the Coconino County Recorder's Office;

AND BEING a square parcel of land more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at the northeast corner of the NE/4 of Section 6 and also the Closing Corner for Sections 5 and 6 which point is marked by an aluminum cap marked "NES RLS 14671", thence South 0 degrees 39 minutes 19 seconds East along the east line of the NE/4 Section 6 a distance of 2659.61 feet to the quarter corner between Section 5 and Section 6 as marked by a City of Flagstaff aluminum cap;

THENCE South 0 degrees 39 minutes 14 seconds East along the east line of the SE/4 Section 6 a distance of 78.00 feet to a point;

THENCE South 89 degrees 33 minutes 30 seconds West a distance of 93.50 feet to a point;

THENCE North 67 degrees 56 minutes 30 seconds West a distance of 620.00 feet to a point;

THENCE South 89 degrees 33 minutes 30 seconds West a distance of 166.00 feet to the TRUE POINT OF BEGINNING of this easement description.

THENCE South 28 degrees 26 minutes 30 seconds East a distance of 54.00 feet to a point;

Continue...

...continued.

THENCE South 61 degrees 33 minutes 30 seconds West a distance of 200.00 feet to a point;

THENCE N 28 degrees 26 minutes 30 seconds West a distance of 200.00 feet to a point;

THENCE North 61 degrees 33 minutes 30 seconds East a distance of 200.00 feet to a point;

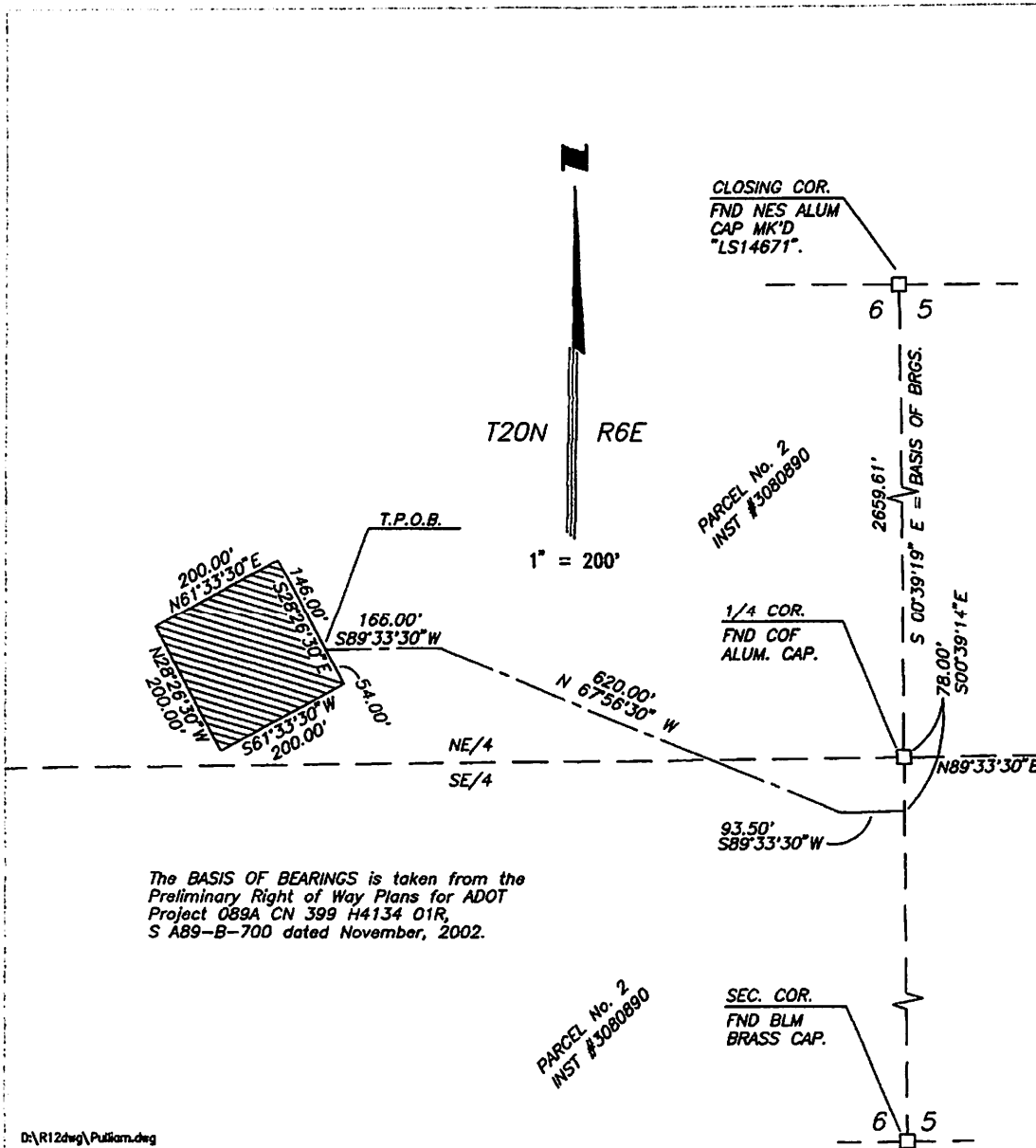
THENCE South 28 degrees 26 minutes 30 seconds East a distance of 146.00 feet to the TRUE POINT OF BEGINNING of this easement description.

The Easement, as described above, contains 40,000 square feet of land and is depicted graphically in EXHIBIT "A-1" attached and made a part hereof by this reference.

PREPARED BY:

Aztech Design, Inc.
PO Box 494
Flagstaff, Arizona 86002
fn c:\mary\coftuthill.doc





The BASIS OF BEARINGS is taken from the Preliminary Right of Way Plans for ADOT Project 089A CN 399 H4134 01R, S A89-B-700 dated November, 2002.

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	aztech design, inc. CIVIL ENGINEERING DESIGN, LAND SURVEYING P.O. BOX 494 FLAGSTAFF, ARIZ. 86002 (520) 774-4409
	Des. _____ Dwn. _____ Chk. _____

EXHIBIT A-2 Egress/Ingress Access to Well Easement Locations

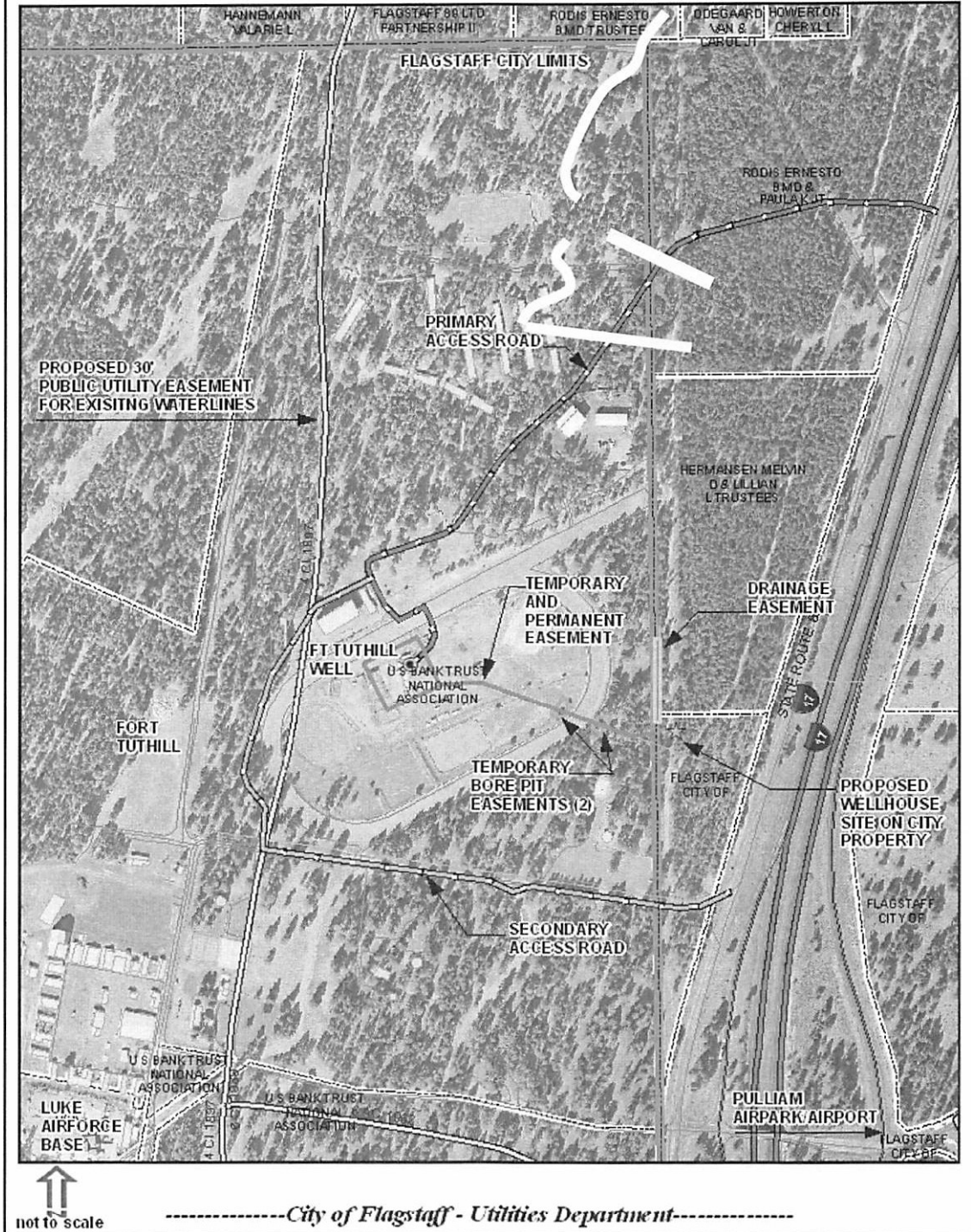


EXHIBIT "B"
DESCRIPTION OF UTILITY EASEMENT AREA

LOCATED IN THE northeast one-quarter and the southeast one-quarter of Section 6, Township 20 North, Range 7 East of the Gila and Salt River Meridian (NE/4 and SE/4 of Sec. 6, T20N, R7E, G&SRM), Coconino County, Arizona;

LYING WITHIN Parcel No. 2 as described in Instrument 3080890 per the Coconino County Recorder's Office;

AND BEING A STRIP OF LAND twenty (20) feet in width encompassing fourteen (14) feet on the left (southerly side) and six (6) feet on the right (northerly side) of the line between the TRUE POINT OF BEGINNING and the TERMINUS POINT described herein.

COMMENCING FOR REFERENCE at the northeast corner of the NE/4 of Section 6 and also the Closing Corner for Sections 5 and 6 which point is marked by an aluminum cap marked "NES RLS 14671", thence South 0 degrees 39 minutes 19 seconds East along the east line of the NE/4 Section 6 a distance of 2659.61 feet to the quarter corner between Section 5 and Section 6 as marked by a City of Flagstaff aluminum cap;

THENCE South 0 degrees 39 minutes 14 seconds East along the east line of the SE/4 Section 6 a distance of 78.00 feet to the TRUE POINT OF BEGINNING of this easement description. The easement is twenty (20) feet in width encompassing fourteen (14) feet on the left (southerly side) and six (6) feet on the right (northerly side) of the following described line:

THENCE South 89 degrees 33 minutes 30 seconds West a distance of 93.50 feet to a point;

THENCE North 67 degrees 56 minutes 30 seconds West a distance of 620.00 feet to a point;

Continue...

...continued.

THENCE South 89 degrees 33 minutes 30 seconds West a distance of 260.00 feet to a point;

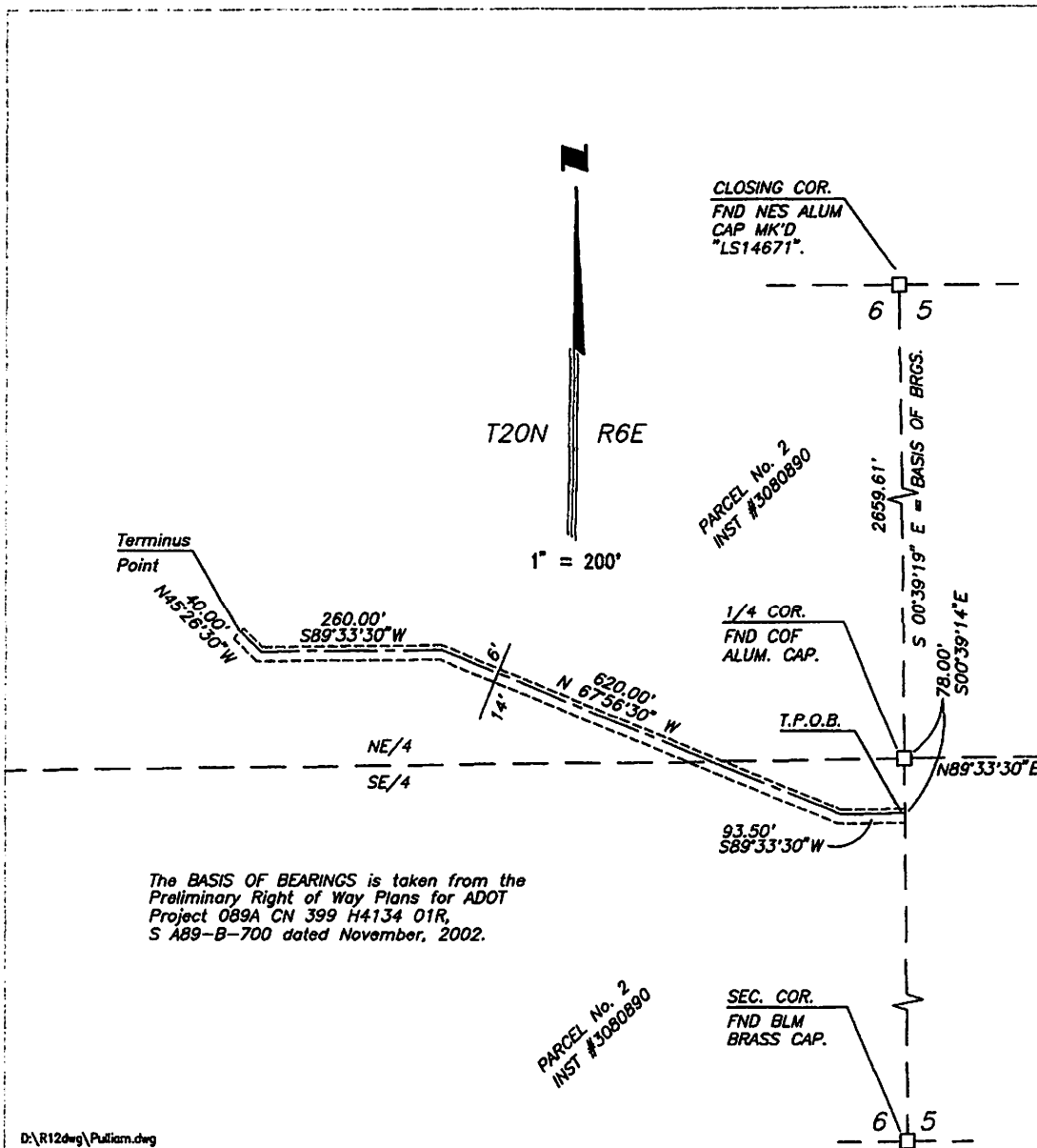
THENCE North 45 degrees 26 minutes 30 seconds West a distance of 40.00 feet to the TERMINUS POINT of this easement description.

The Easement, as described above, contains 19,870 square feet of land and is depicted graphically in EXHIBIT "B-1" attached and made a part hereof by this reference.

PREPARED BY:

Aztech Design, Inc.
PO Box 494
Flagstaff, Arizona 86002
fn c:\mary\coftuthill.doc





The BASIS OF BEARINGS is taken from the Preliminary Right of Way Plans for ADOT Project 089A CN 399 H4134 01R, S AB9-B-700 dated November, 2002.

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	<p style="text-align: center;">aztech design, inc. CIVIL ENGINEERING DESIGN, LAND SURVEYING P.O. BOX 494 FLAGSTAFF, ARIZ. 86002 (520) 774-4409</p>
Des. _____ Dwn. _____ Chk. _____	EXHIBIT "B-1"

EXHIBIT C-1 FORT TUTHILL PROPOSED WATER EXTENSION PHASING

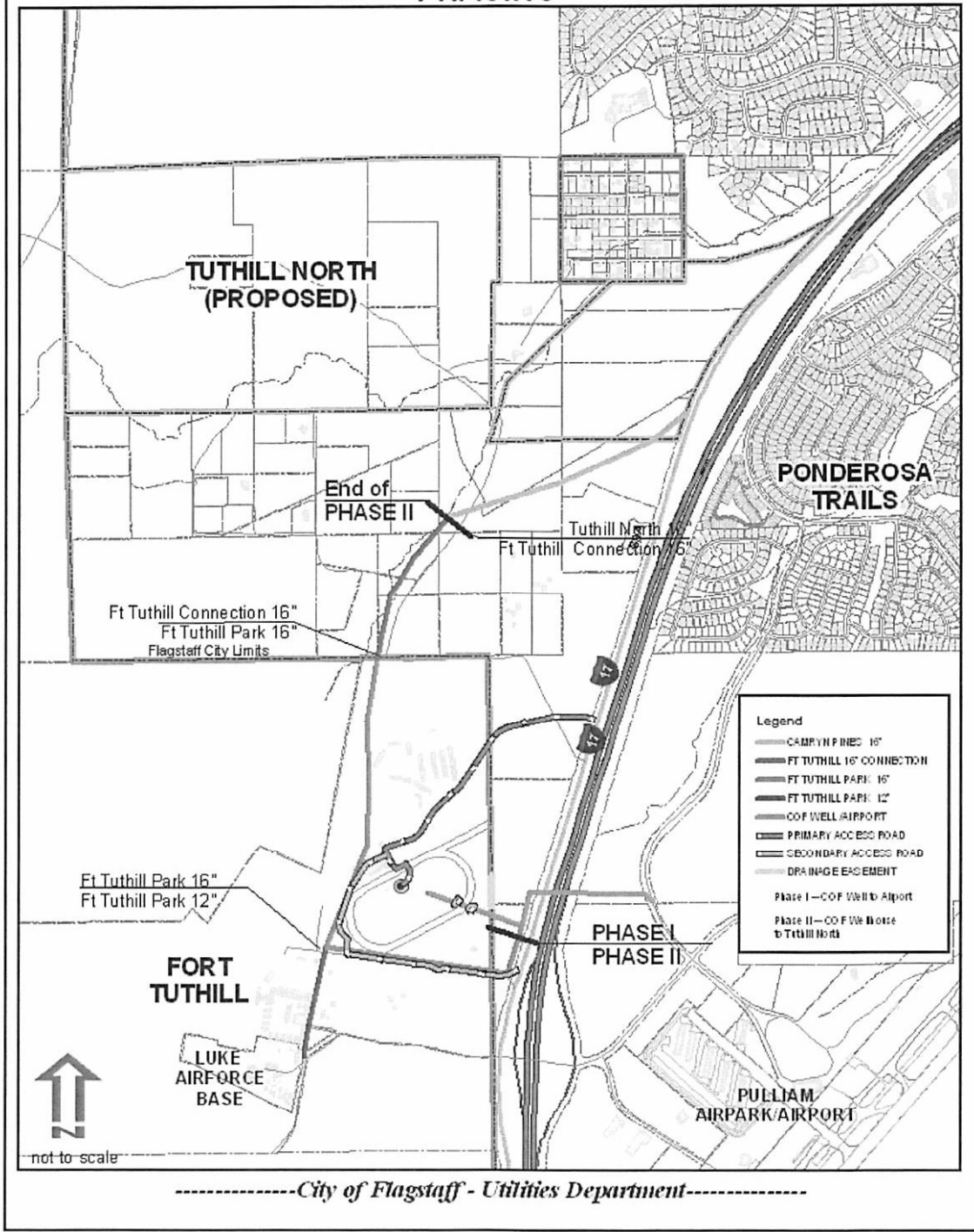
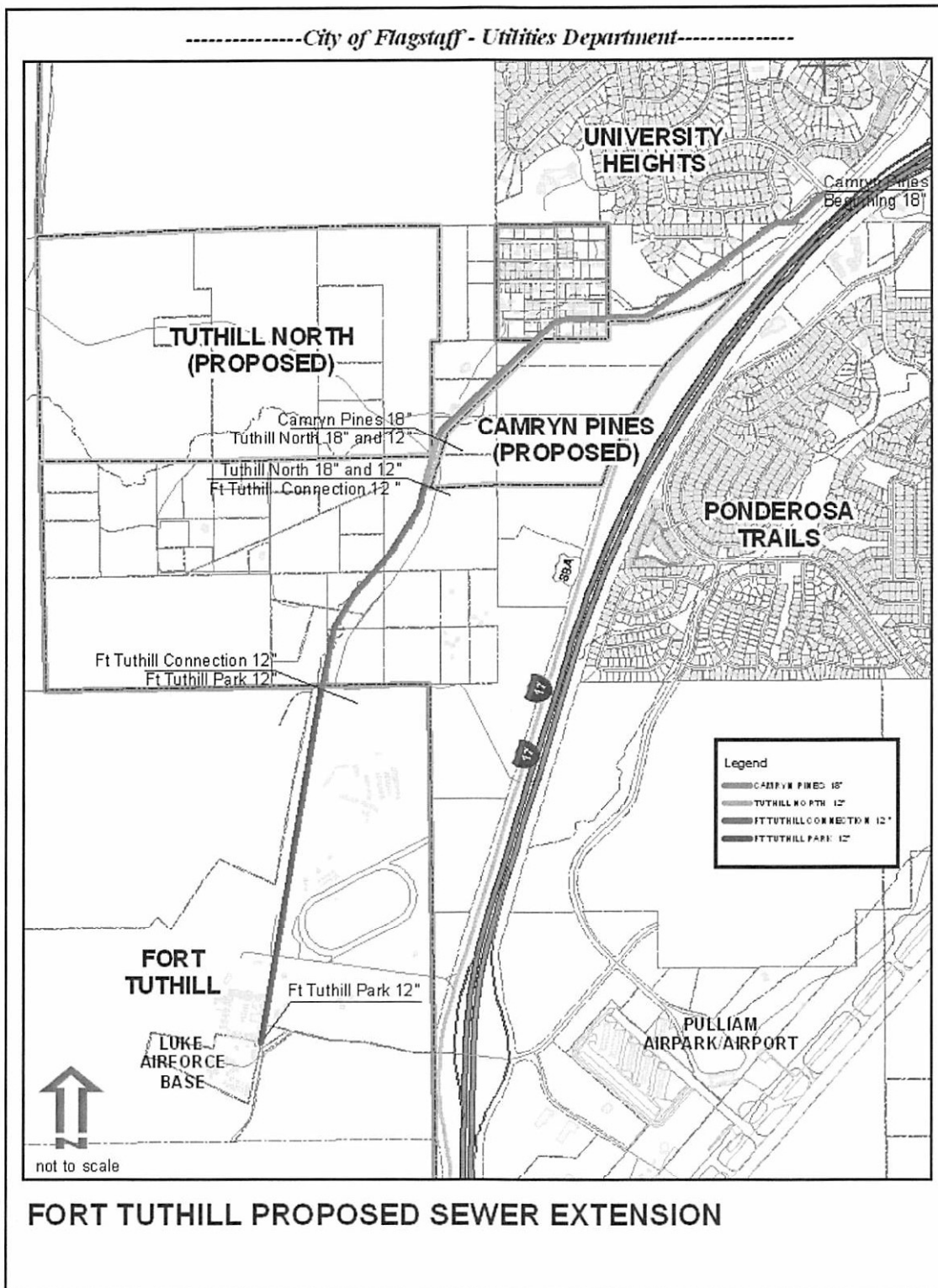


EXHIBIT "C-2"

SEWER PIPELINE EXTENSION



EXHIBITS D AND E. RESERVED.

EXHIBIT "F"
DESCRIPTION OF DRAINAGE EASEMENT AREA

LOCATED IN THE northeast one-quarter and the southeast one-quarter of Section 6, Township 20 North, Range 7 East of the Gila and Salt River Meridian (NE/4 and SE/4 of Sec. 6, T20N, R7E, G&SRM), Coconino County, Arizona;

LYING WITHIN Parcel No. 2 as described in Instrument 3080890 per the Coconino County Recorder's Office;

AND BEING A STRIP OF LAND twenty (20) feet in width more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at the northeast corner of the NE/4 of Section 6 and also the Closing Corner for Sections 5 and 6 which point is marked by an aluminum cap marked "NES RLS 14671", thence South 0 degrees 39 minutes 19 seconds East along the east line of the NE/4 Section 6 a distance of 2659.61 feet to the quarter corner between Section 5 and Section 6 as marked by a City of Flagstaff aluminum cap, which point is the TRUE POINT OF BEGINNING of this easement description;

THENCE South 0 degrees 39 minutes 14 seconds East along the east line of the SE/4 Section 6 a distance of 30.00 feet to a point;

THENCE South 89 degrees 20 minutes 41 seconds West a distance of 20.00 feet to a point;

THENCE North 0 degrees 39 minutes 19 seconds West a distance of 200.00 feet to a point;

THENCE North 89 degrees 20 minutes 41 seconds East a distance of 20.00 feet to a point on the east line of the NE/4 Section 6;

THENCE South 0 degrees 39 minutes 19 seconds East along the east line of the NE/4 Section 6 a distance of 170.00 feet to the TRUE POINT OF BEGINNING of this easement description.

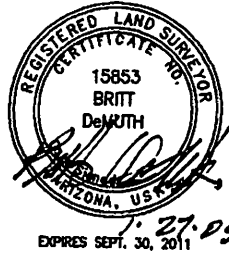
Continue...

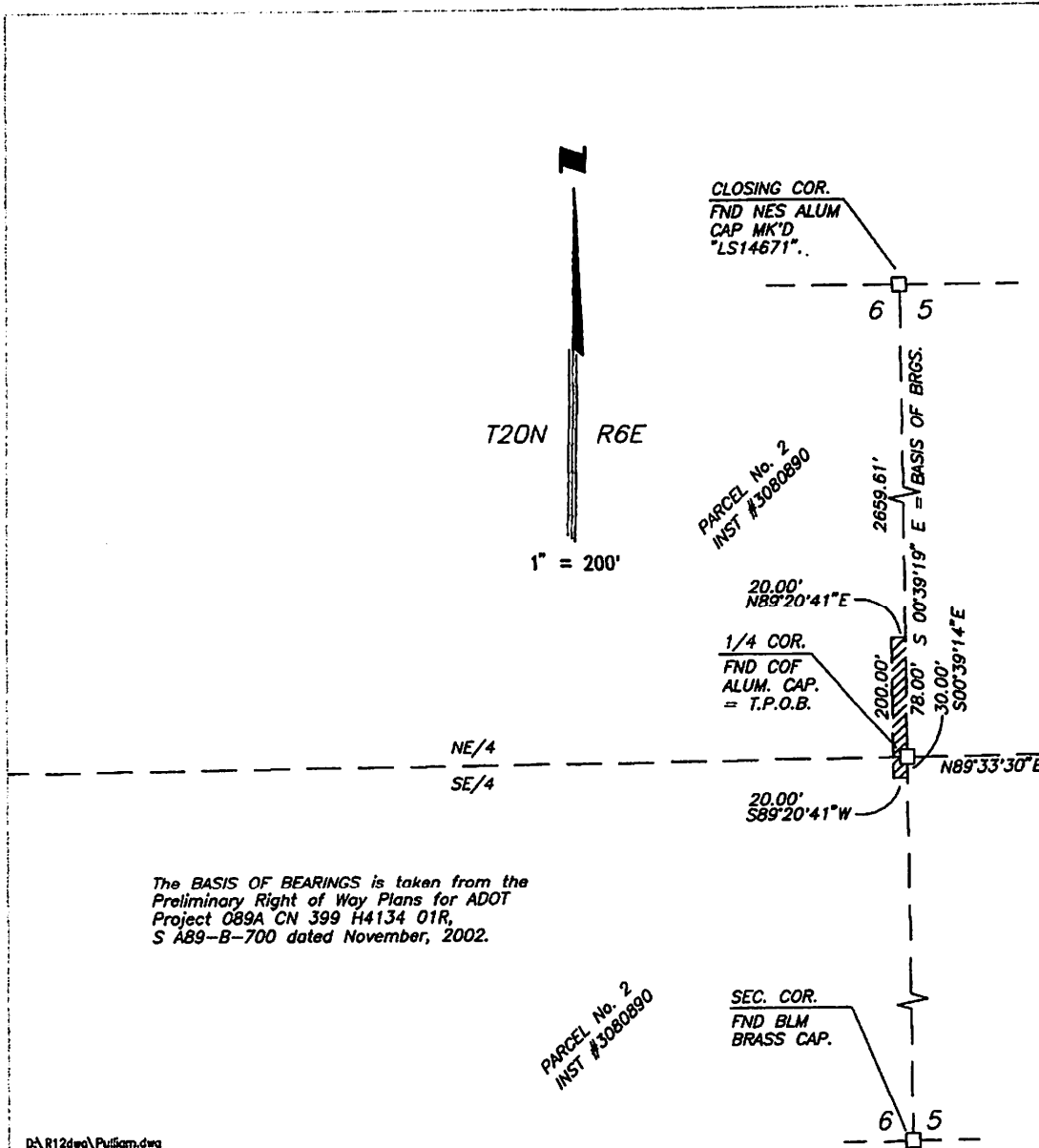
...continued.

The Easement, as described above, contains 4,000 square feet of land and is depicted graphically in EXHIBIT "F-1" attached and made a part hereof by this reference.

PREPARED BY:

Aztech Design, Inc.
PO Box 494
Flagstaff, Arizona 86002
fn c:\mary\coftuthill.doc





The BASIS OF BEARINGS is taken from the Preliminary Right of Way Plans for ADOT Project 089A CN 399 H4134 01R, S A89-B-700 dated November, 2002.

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	aztech design, inc. CIVIL ENGINEERING DESIGN, LAND SURVEYING P.O. BOX 494 FLAGSTAFF, ARIZ. 86002 (520) 774-4409
	Des. _____ Dwn. _____ Chk. _____

EXHIBIT "G"
DESCRIPTION OF A BLANKET EASEMENT
FOR EXISTING CITY OF FLAGSTAFF WATER MAINS

LOCATED IN THE northeast one-quarter and the southeast one-quarter of Section 6, Township 20 North, Range 7 East of the Gila and Salt River Meridian (NE/4 and SE/4 of Sec. 6, T20N, R7E, G&SRM), Coconino County, Arizona;

OVER PARCEL No. 2, Parcel No. 3 and Parcel No. 4 as described in Instrument 3080890 per the Coconino County Recorder's Office.

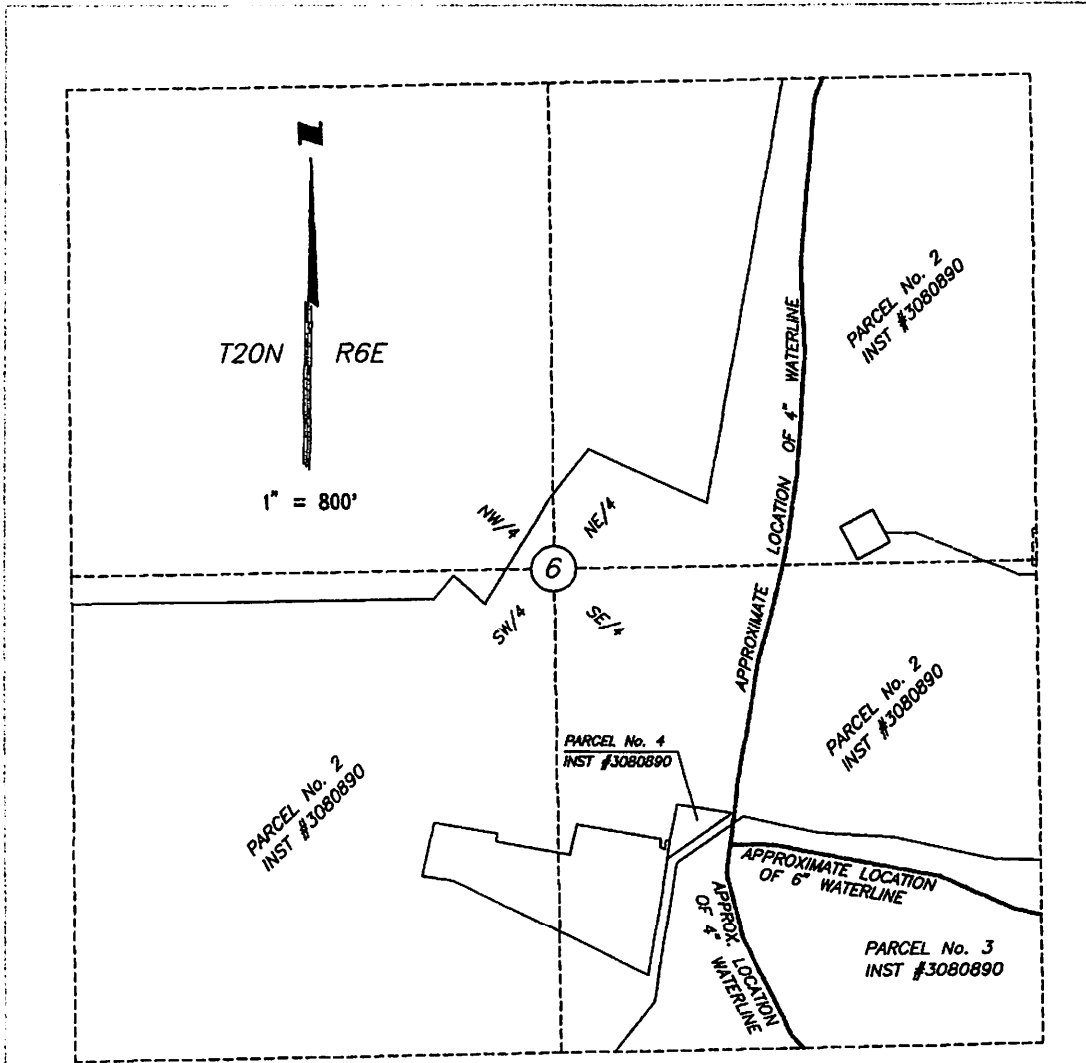
AND LIMITED TO all those areas within ten (10) feet of the existing 4" and 6" diameter waterlines shown in their approximate locations per EXHIBIT "G-1" attached and made a part hereof by this reference.

PREPARED BY:

Aztech Design, Inc.
PO Box 494
Flagstaff, Arizona 86002
fn c:\mary\coftuthill.doc



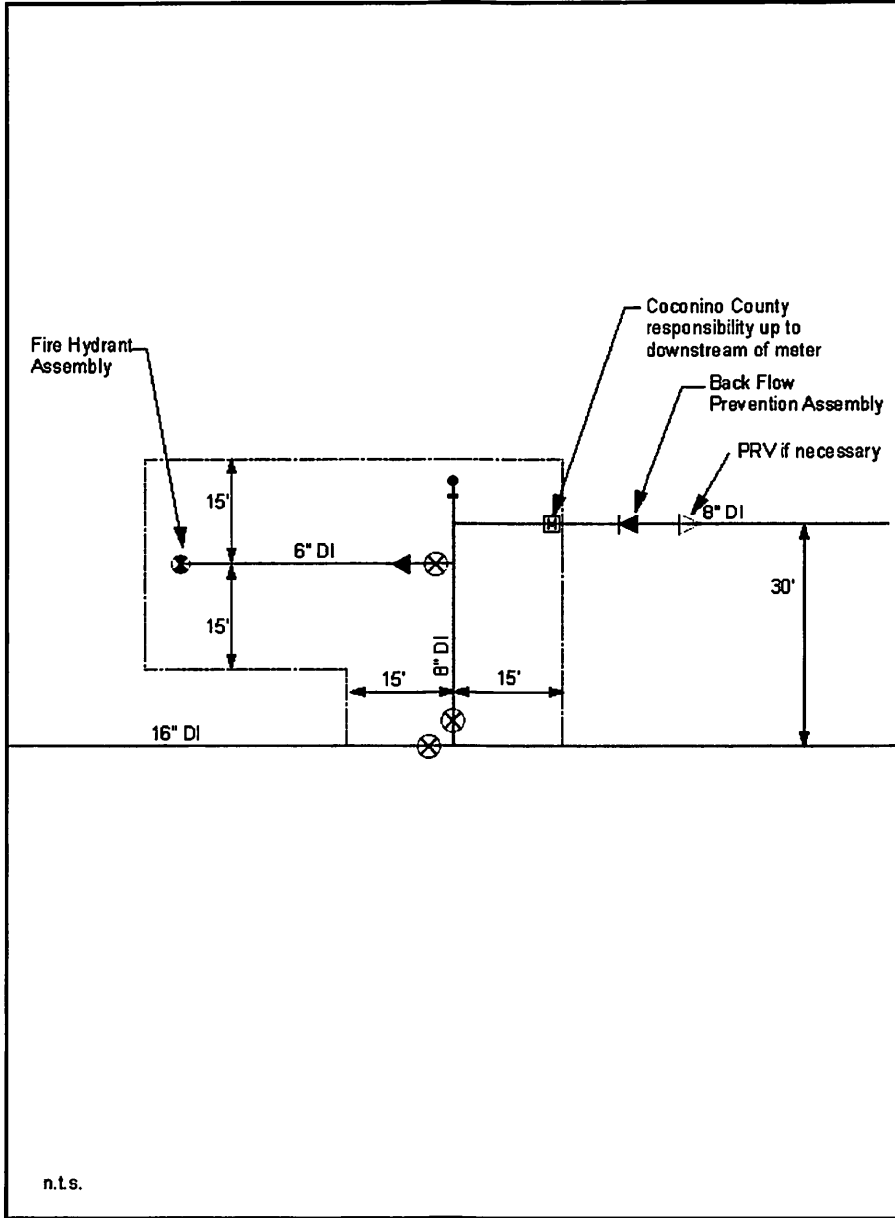
EXPIRES SEPT. 30, 2011



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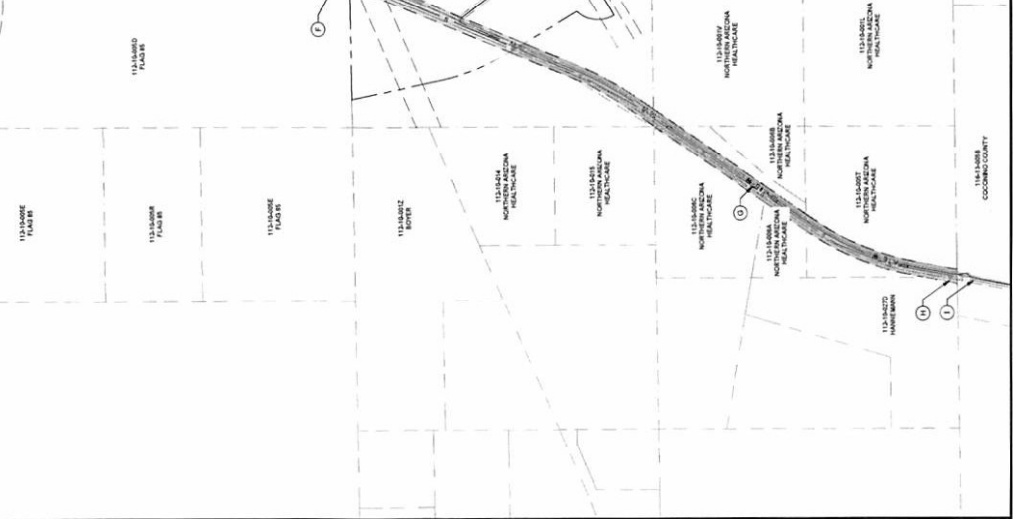
	aztech design, inc. CIVIL ENGINEERING DESIGN, LAND SURVEYING P.O. BOX 494 FLAGSTAFF, ARIZ. 86002 (520) 774-4409
	Des. _____ Dwn. _____ Chk. _____

EXHIBIT H Typical Hydrant/Meter Stub Out Easement



-----City of Flagstaff - Utilities Department-----

ITEM	DESCRIPTION	LOCATION
A	20' PUE & 40' TCE	REZNICK PROPERTY (APN # - 112-05-0015 & 112-47-003) 112-05-103A
B	30' PUE	MT. DELL ROAD & FOUNTAINHEAD PROPERTY (APN# - 112-05-103A)
C	SEWER SERVICE (10' TCE)	MT. DELL RESIDENTS (APN# - 112-11-001, 112-11-002, 112-11-003A, 112-11-002, 112-11-006, 112-11-007A, 112-11-008, 112-11-009, 112-11-010, 112-11-011, 112-11-012, 112-11-013, 112-11-014, 112-11-015, 112-11-017, 112-11-018A)
D	20' PUE	PALMER AVENUE
E	20' PUE & 40' TCE	REZNICK PROPERTY (APN # - 112-11-009)
F	30' PUE & 60' TCE	REZNICK PROPERTY (APN # - 112-11-009)
G	30' PUE & 60' TCE	NORTHERN ARIZONA HEALTHCARE PROPERTY (APN# - 112-10-001L, 112-10-001V, 112-10-001F, 112-10-001T, 112-10-006A, 112-10-006B, 112-10-006C, 112-10-015)
H	20' PUE & 20' TCE	HANDMANN PROPERTY (APN# - 11-10-027D)
I	30' PUE	COCONINO COUNTY PROPERTY (APN# - 118-13-009B)



APN	OWNER	PUE RECORDING #	TCE RECORDING #
118-13-009B	COCONINO COUNTY	3519405	BY PUE AGREEMENT
112-13-005B	COCONINO COUNTY	3543878	BY PUE AGREEMENT
112-13-005B	COCONINO COUNTY	3543882	BY PUE AGREEMENT
112-10-027D	HANDMANN, VALERIE, L	3720465	3865829
112-10-005A	NORTHERN ARIZONA HEALTHCARE	3705271	3865943
112-10-006A	NORTHERN ARIZONA HEALTHCARE	3705270	3865943
112-10-001V	NORTHERN ARIZONA HEALTHCARE	3705269	3865943
112-10-032	NORTHERN ARIZONA HEALTHCARE	3705268	3865943
ALL MAH PARCELS	NORTHERN ARIZONA HEALTHCARE	3705288	N/A
112-05-001G (NOW EASEMENT)	FOUNTAINHEAD, LLC	3802558	BY FRANCHISE AGREEMENT, IN ROAD ROW
112-10-031, 112-10-033	FOUNTAINHEAD, LLC	3802559	3865927, 3865926
112-05-001K, 112-05-130A	FOUNTAINHEAD, LLC	3802560	3865925, 3865926
112-10-012B	FOUNTAINHEAD, LLC	3805451	3865924
112-11-009	REZNICK NW FALY TR C/U THE ALCOVE TRUST DTD 11-29-04 (SPOKE MELANE)	3776095	NOTARIZED
112-05-0015	REZNICK NW FALY TR C/U THE ALCOVE TRUST DTD 11-29-04 (SPOKE MELANE)	3776094	NOTARIZED
112-47-033	REZNICK NW FALY TR C/U THE ALCOVE TRUST DTD 11-29-04 (SPOKE MELANE)	3776094	NOTARIZED
PALMER AVENUE ROW	COCONINO COUNTY	BY FRANCHISE AGREEMENT, IN ROAD ROW	BY FRANCHISE AGREEMENT, IN ROAD ROW
112-11-015	MT. DELL WATER COMPANY	N/A	3865939
112-11-012C	TAK COMMERCIAL REAL ESTATE, LLC	N/A	3865932
112-11-002	BURDAL, SUSAN A.	N/A	3865942
112-11-005	GARRO, STEVE L & DENISE	N/A	3865930
112-11-001	JACAR PROPERTIES, LLC	N/A	3865933
112-11-002B	JACAR PROPERTIES, LLC	N/A	3865931
112-11-006	MANO, THOMAS V.	N/A	3865999
112-11-014C	ENDRES, VICTORIA L'YNN	N/A	3865934
112-11-016A	REZNICK, PETER & ZAIRA	N/A	3865935
112-11-007A	SCHWIDT, DAVID L.	N/A	3865936
112-11-014B	GIFFORD, TIM	N/A	3865937
112-11-003A	FULZ, ARMANDO & ALEXANDRIA	N/A	3865938
112-11-017	REZNICK, PETER & ZAIRA	N/A	3865940
112-11-009B	BUZZARD, BRIAN & RACHEL	N/A	3865941

