

LAND RESTORATION AGREEMENT
between
ARIZONA PUBLIC SERVICE COMPANY
and the
CITY OF FLAGSTAFF

This Land Restoration Agreement (the “Agreement”) is made this _____ day of _____, 2021, by and between the City of Flagstaff (the “City”), an Arizona municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, AZ 86001, and Arizona Public Service Company, an Arizona public service corporation (“APS”), collectively referred to as the “Parties”.

RECITALS

- A. The City is the owner of property located at 2100 N. Gemini Drive, Flagstaff, AZ 86001, Assessor Parcel Number 109-02-001S, located on the McMillan Mesa Natural Area, legally designated as open space (“the Property”).
- B. The Property is subject to requirements and policies outlined in City guiding documents (Legally Designated Open Space Management Plan, Flagstaff Area Open Spaces and Greenways Plan, Flagstaff Regional Plan 2030, Proposition 413).
- C. In 2016 City voters through Proposition 413, an ordinance setting aside, preserving, and designating specific City-owned property, including the Property, to be used as open space for passive park purposes. This requires the City to protect the ecological and cultural integrity of the site.
- D. In 2008 City granted to APS a Utility Easement for public utilities, ingress and egress to its Elden Substation (“Substation”), recorded in the official records of Coconino County on August 28, 2008 at document No. 3498165 attached hereto as Exhibit A (“the Easement”).
- E. APS desires to improve access to the Substation to accommodate large-scale vehicles. The location of a control cabinet, constructed within the Easement, prevents access to the Substation by large-scale vehicles. APS desires to modify the boundaries of the Easement to accommodate both the existing control cabinet as well as large-scale vehicles
- F. The City is agreeable to modifying the boundaries of the Easement, which will result in a net reduction of the total Easement area, in consideration for restoration of open space areas on McMillan Mesa, and is authorized to enter into this Agreement under Article I, Section 3, of the Flagstaff City Charter.

WHEREFORE, the parties agree as follows:

1. **Restoration of Land.** APS at its own expense shall satisfactorily complete the land restoration services described in the scope of work prepared by the Open Space Program attached hereto as Exhibit B; adhere to the Seeding Restoration Guidelines provided by the Open Space Program attached hereto as Exhibit C; and install a gate with sign indicating “Authorized Vehicles Only” at the Gemini Drive Access point as depicted in the attached Exhibit E (collectively “the Services”). In the alternative, at City’s option, APS will reimburse City the actual costs of the Services completed by City. The schedule

for completion of the Services will be mutually agreed upon in writing by the City Open Space Specialist and APS.

2. Indemnification

APS shall indemnify, defend, save and hold harmless, to the extent allowed by Law, the City, its officers, officials, agents and employees from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) including but not limited to claims for personal injury (including death) or property damage caused by the acts, errors, omissions, or negligence of APS or any of APS's directors, officers, agents and employees.

3. Notices

All notices or other communications under this Agreement shall be in writing and shall be deemed to be delivered on the date of delivery if delivered in person or on the date of receipt indicated on the return receipt if delivered by U.S. Mail, certified or registered, return receipt requested, postage prepaid and addressed as follows:

If to City: City Real Estate Manager
 City of Flagstaff
 211 W. Aspen Avenue
 Flagstaff, Arizona 86001

If to Grantee: Arizona Public Service Company
 Land Services Department
 P.O. Box 53933 Station 3286
 Phoenix, AZ 85072-3999

or to such other address as a party may provide to the other by written notice.

4. Governing Law, Jurisdiction and Forum

This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. The Parties agree that the courts of Arizona shall have exclusive jurisdiction and that Coconino County shall be the proper venue.

5. Relationship of the Parties

Nothing contained in this Agreement shall be construed as creating the relationship of principal or agent or of partnership or joint venture.

6. Cancellation

This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

7. Compliance with Laws and Regulations

APS shall obey all laws, ordinances, regulations, and rules of the federal, state, county, and municipal governments that may be applicable to performance of the Services.

In witness whereof, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date(s) set forth below.

City of Flagstaff, Grantor

**Arizona Public Service Company,
Grantee**

Paul Deasy, Mayor

Arizona Public Service Company

Dated:_____

Dated:_____

Attest:

City Clerk

Dated:_____

Approved as to form:

City Attorney

Dated:_____

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Exhibit "A"
The Easement

**THIS EASEMENT IS BEING RE-RECORDED
TO CORRECT A SCRIVENERS ERROR IN
PARAGRAPH 4**

**"DOCKET 1030" IS HERBY CORRECTED TO
READ "DOCKET 1039"**

When recorded, please return to:
APS
Mail Station 3016
P O Box 53933
Phoenix, AZ. 85037-3933
SW1121N R7E
BJH

UTILITY EASEMENT

CITY OF FLAGSTAFF, a Municipal Corporation, (hereinafter called "Grantor"), for and in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, (hereinafter called "Grantee"), and to its successors and assigns, an easement for ingress and egress and public utility purposes 30.00 feet in width, upon, over, under, through and across the lands hereinafter described, to use for ingress and egress and public utility purposes and for all other purposes connected therewith.

The premises through and across which this Easement is granted are situated in the County of Coconino, State of Arizona, and described as:

That parcel of land owned by the City of Flagstaff, lying within the Southwest Quarter of Section 11, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Arizona, also referred to as a portion of Coconino County Parcel No. 109-02-001L on August 21, 2008. Said 30 feet wide Ingress and Egress/PUE Easement being more particularly delineated on Exhibit "A" attached hereto and made a part of.

The City of Flagstaff granted to Arizona Public Service Company an access easement to its substation as set forth in Docket 1030 Pages 344 & 345, Records of Coconino County, Arizona. Pursuant to the terms of that Easement and Ordinance No. 1377 dated June 4, 1985, that easement is hereby terminated. The former easement, approved by the Flagstaff City Council, provided that the City would grant a substitute easement to Arizona Public Service Company to provide access to the substation in the event that the former easement was terminated. This Easement, therefore, replaces the former easement.

Grantor shall not erect or construct, or permit to be erected or constructed any building or other structure, plant any trees or drill any well, within the limits of said Easement. The Grantor shall not grant any other easement, which is inconsistent or in conflict with the use and rights granted to the Grantee herein. Grantee shall have the right to trim, cut, and clear away trees and brush; whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

Grantor shall have the right and privilege to use the easement to the extent such use is not inconsistent with the Grantee's use thereof. In the event the Grantee permanently abandons the use of said easement, the Grantee shall record with the county Recorder, an instrument abandoning the rights herein granted.

CITY OF FLAGSTAFF

By: [Signature]

Title: Mayor

STATE OF ARIZONA

} ss.

County of Coconino

This instrument was acknowledged before me this 27th day of August, 2008 by Sara Presler, Mayor IN WITNESS WHEREOF I hereunto set my hand and official seal.

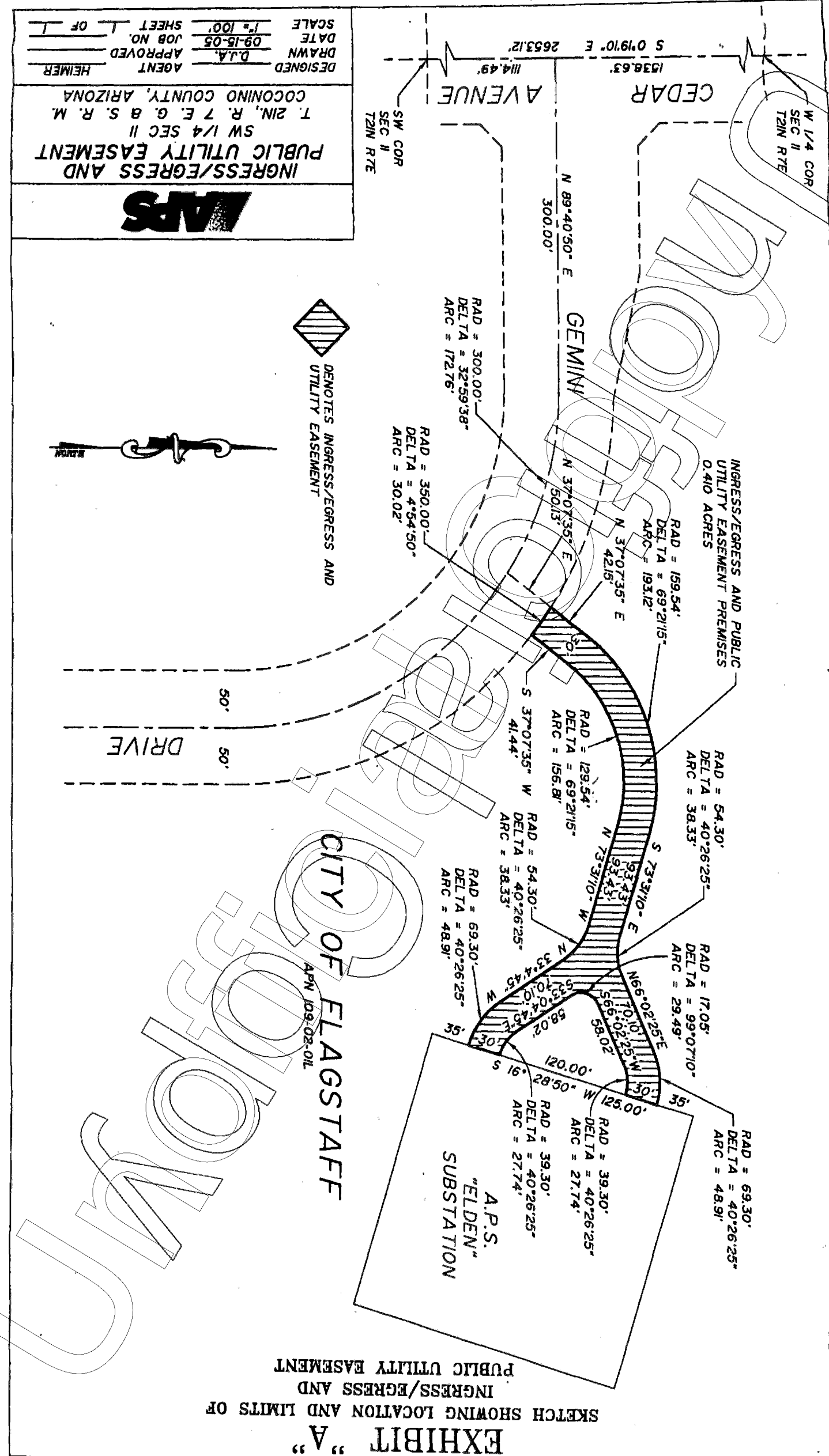
My Commission Expires:

4/24/2012



Laura Matthews
Notary Public

EXHIBIT "A"
 SKETCH SHOWING LOCATION AND LIMITS OF
 INGRESS/EGRESS AND
 PUBLIC UTILITY EASEMENT



DESIGNED D.J.A.
 DRAWN D.J.A.
 DATE 09-18-05
 SCALE 1" = 100'
 SHEET 1 OF 1
 AGENT HEIMER
 APPROVED

INGRESS/EGRESS AND
 PUBLIC UTILITY EASEMENT
 SW 1/4 SEC II
 T. 21N., R. 7 E., B. S. R. M.
 COCONINO COUNTY, ARIZONA



 DENOTES INGRESS/EGRESS AND
 UTILITY EASEMENT

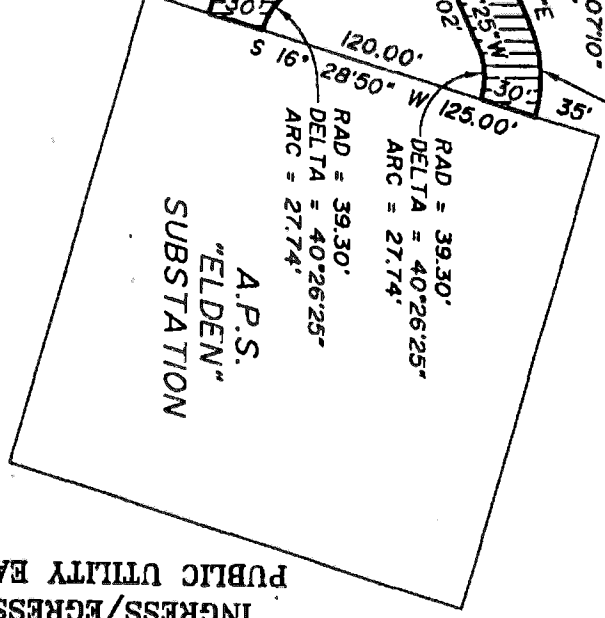


Exhibit "B"

Project Definition			Scope of Work
Client and Project Information			
Name of Client/Organization City of Flagstaff. Open Space Program		Name of Project McMillan Mesa Invasive Plant Mitigation and Restoration	
Name of Contact Person Robert Wallace		Project Location McMillan Mesa Natural Area is located at 2100 N. Gemini Drive, Flagstaff, AZ 86001, Assessor Parcel Number 109-02-001S (see attached map – Exhibit A).	Project No. OMWS-2021
Contact's Mailing Address City of Flagstaff Parks, Recreation, and Open Space 211 West Aspen Ave.		City Flagstaff	State Arizona
City Flagstaff	State Arizona	Postal Code 86001	E-mail Address of Contact Person Robert.wallace@flagataffaz.gov
Telephone Number: 928-213-2154			
Requesting a Quote of Services from:			
<p>Project Description: This project encompasses site rehabilitation, invasive plant treatment for two years prior to seeding, and reseedling with native vegetation for approximately 0.75 acres identified in exhibit A. Revegetation work will be completed according to Flagstaff City Code Engineering Standards (Title 13, Chapter 17, https://www.codepublishing.com/AZ/Flagstaff/) with the additions that are identified in the attached document, "Restoration Guidelines - Elden Substation."</p> <p>YEAR 1 (2021): Rehabilitation</p> <ul style="list-style-type: none"> • Remove gravel and road base from ~ 0.24 acres down to the level of the topsoil. • Recontour disturbed areas by grading to the approximate original contour of the ground. <p>Maintenance</p> <ul style="list-style-type: none"> • Treat Class A and Class B species, and Puncturevine (<i>Tribulus terrestris</i>) in Class C on the most recent 2020 Arizona State Noxious Weed List (link provided in Restoration Guidelines - Elden Substation attachment) for approximately 0.75 acres identified in exhibit A. The herbicide treatment will consist of at least one treatment, timed to be the most effective. <p>YEAR 2 (2022): Maintenance</p> <ul style="list-style-type: none"> • Treat Class A and Class B species, and Puncturevine (<i>Tribulus terrestris</i>) in Class C on the most recent 2020 Arizona State Noxious Weed List for approximately 0.75 acres identified in exhibit A. The herbicide treatment will consist of at least one treatment, timed to be the most effective. 			

YEAR 3 (2023):

Rehabilitation

- Prepare seedbed for the identified area to ensure adequate permeability, and the creation of some depressions/topography to hold seed and water.

Seeding and Mulching

- Sow seed via broadcast seeding and lightly burying seed. Sowing of native seeds shall take place at the appropriate time to promote survival. The best time of year is considered late October – early November for the Flagstaff area. Considering this, work shall be completed as soon as feasible.
- Seed mix should adhere to the outline provided in the Restoration Guidelines - Elden Substation.
- Seed shall be planted in all disturbed areas. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS) per acre, at a rate of 25 pure live seeds per linear foot. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested, and the viability testing of seed shall be done in accordance with State law(s) and within three months prior to purchase. Commercial seed shall be either certified or registered seed.
- Apply mulch to seeded area ~ 0.75 acres.
- Control erosion, sediment, and construction site debris/wastes on the project site by installing stormwater control measures (i.e., rock trackout pad, sediment wattles, silt fence, etc.) where appropriate.
- Rake out tracks/signs of construction to reduce visibility at all points.
- Provide a monitoring and maintenance plan approved by the Open Space Program for determining the seed survival rate and associated mitigation steps.

All project work needs to be completed in a manner that minimizes impacts to property and vegetation.

Timeline, Start of Project:

Start Date for Project:

Spring 2021 (~May-July)

Timeline, Completion of Project:

Completion Date for Project:

All work needs to be completed and billed by December 2023.

Additional Requirements and /or Conditions:

Please feel free to reach out with questions.

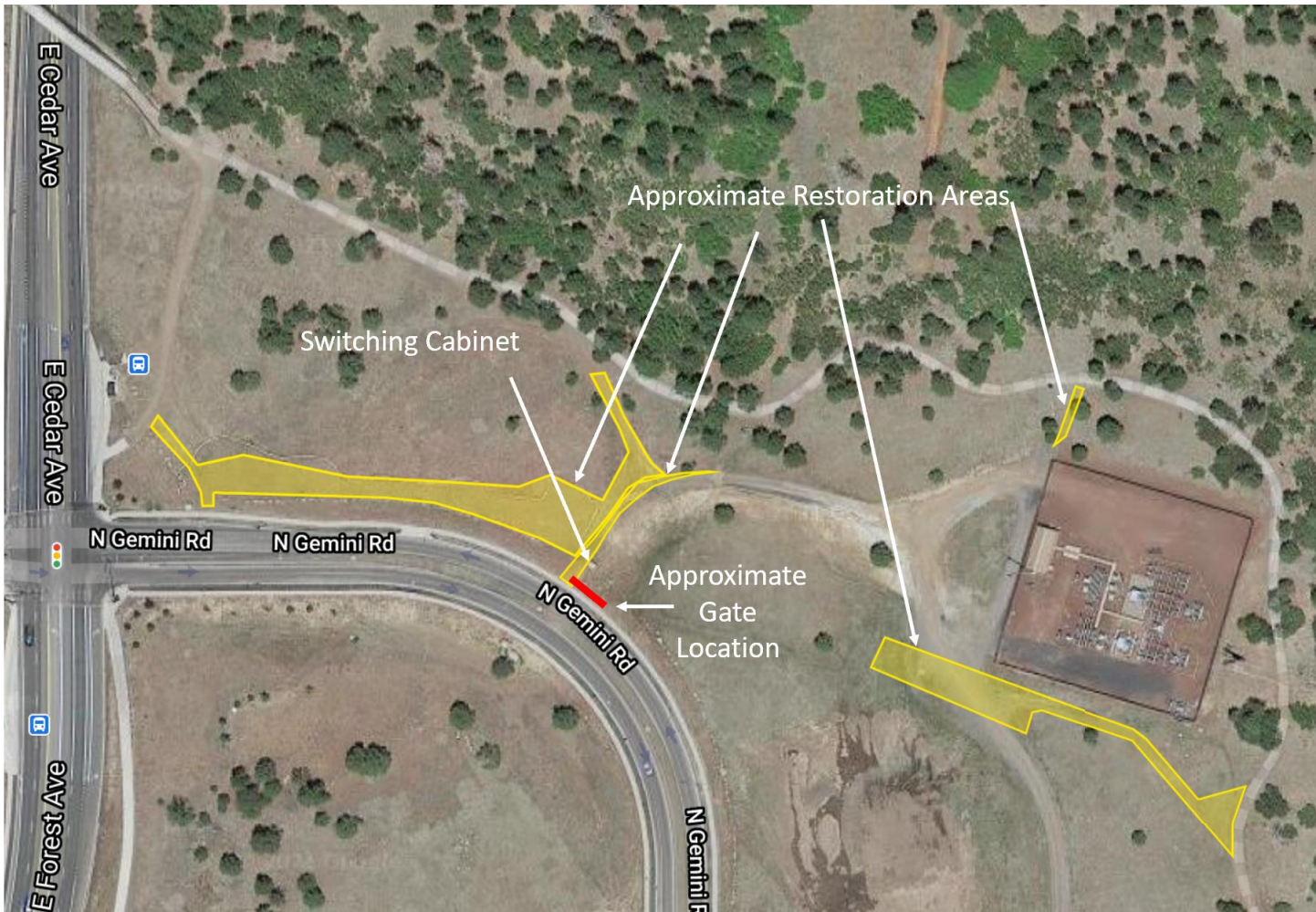
How to be Considered:

Please submit a Quote of Services that outlines the project work to be completed within the requirements, your availability, qualifications, and a cost estimate. This needs to be submitted to the Open Space Program, preferably via e-mail (Robert.wallace@Flagstaffaz.gov) within two weeks (May ____, 2021 COB).

Selection Process and Notification:

The Quote of Service will be reviewed including the project work outlined, your availability, qualifications, and the cost estimate. The Open Space Program may follow up this review with specific questions that pertain to the work project completion, your experience, your ability to complete the work, and your familiarity and comfort level of completing work in the proposed area.

You will be notified regarding your quote submission via e-mail.



Map/Exhibit A: McMillan Mesa restoration areas and vicinity map.

Exhibit "C"

Seeding Restoration Guidelines

Complete revegetation work according to Flagstaff City Code Engineering Standards (Title 13, Chapter 17), <https://www.codepublishing.com/AZ/Flagstaff/> with the following changes:

IMPACT PREVENTION

- Provide tree resource protection on the City Property. Work conducted shall include preventing physical injury to trunk and crown, root cutting, soil compaction, and smothering roots by adding soil. Temporary snow fencing shall be placed around each tree within the corridor and within 10 feet of the work area. Snow fencing shall be set approximately 6 inches from the trunk for each inch of trunk diameter. Snow fenced areas around trees shall be kept clear of building material, waste, and excess soil. No digging, trenching or other disturbance shall occur in the snow fenced zones.
- During project implementation, ensure exclusion of weed seed from entering the site on vehicles, in fill, on tools, etc.
- Notify the City immediately of any changes or plans that could affect the City Property, to include the Open Space Program (Robert.wallace@flagstaffaz.gov).

REHABILITATION

- Recontour disturbed areas by grading to restore the site to approximately the original contour of the ground.
- Uniformly spread topsoil over all the disturbed area. Spreading shall not be done when the ground or topsoil is frozen or wet. The work shall consist of seedbed preparation (surface ground has been tilled and then smoothed to break up large clods; also, areas that have been compacted by heavy materials or other operations should be ripped to a depth of at least 6 inches to ensure adequate permeability), create some depressions/topography to hold seed and water, sowing seed via broadcast seeding and lightly bury seed with some type of raking action, proper compaction of the seedbed, and covering seeding area with mulch or erosion control blankets
- Rake out tracks/signs of construction to reduce visibility at all points.
- Control erosion in accordance with Flagstaff City Code.
- Control erosion, sediment, and construction site debris/wastes on the project site by installing stormwater control measures (i.e., rock trackout pad, sediment wattles, silt fence, etc.) where appropriate.

SEED MIX/MULCH

- The type of mulch shall meet one of the following requirements:
 - (a) Straw used for mulching shall be from oats, wheat, rye, or other approved grain crops and free from noxious weeds or other objectionable material.
 - (b) Hay shall be of approved herbaceous mowings, free from noxious weeds or other objectionable material.
 - (c) Erosion control blankets/matting free from noxious weeds or other objectionable material and biodegradable and safe for sensitive areas.
- Seed shall be planted in all disturbed areas with the seed mixture(s) listed below. The seed mixture(s) shall be planted in the amounts specified in pounds of pure live seed (PLS) per acre, at a rate of 25 pure live seeds per linear foot. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested, and the viability testing of seed shall be done in accordance with State law(s) and within three months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container

shall be tagged in accordance with State law(s).

- Seedbed preparation (surface ground has been tilled and then smoothed to break up large clods; also, areas that have been compacted by heavy materials or other operations should be ripped to a depth of at least 6 inches to ensure adequate permeability), sowing seed via drilling or broadcast seeding and lightly bury seed with some type of raking action (*hydroseeding shall not be used*), proper compaction of the seedbed, and covering seeding area with an erosion control blankets.
- Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area (smaller/heavier seeds tend to drop to the bottom of the drill and are planted first). Appropriate measures to ensure this does not occur shall occur. Where drilling is not possible or inappropriate, seed shall be broadcast, and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by a 70% success rate or higher. Evaluation of growth will not be made before completion of the growing season after seeding.

Seed mix shall consist of:

Common Name	Species Name	lbs PLS/acre
Sideoats grama	Bouteloua curtipendula	2.9
Blue Grama	Bouteloua gracilis	1.1
Little Bluestem	Schizachyrium scoparium	1.7
Bottlebrush Squirreltail	Elymus elymoides	3.6
Arizona Fescue	Festuca arizonica	1.2
Prairie junegrass	Koeleria macrantha	0.5
Western wheatgrass	Pascopyrum smithii	4.3
Muttongrass	Poa fendleriana	0.7

- Sowing native seeds shall take place at the appropriate time to promote survival. The best time of year is considered late October – early November for the Flagstaff area. Considering this, work shall be completed as soon as feasible.
- Seeding shall be repeated if a satisfactory stand is not obtained as determined a 70% survival rate after the previous year’s growing season.
- The contractor will provide a monitoring and maintenance plan approved by the Open Space Program for determining the seed survival rate and associated mitigation steps.

MAINTENANCE

- Provide invasive plant mitigation for two years prior to seeding, at the appropriate time of year to prevent seed dispersal targeting Scotch Thistle, Bull Thistle, Yellow Star Thistle, and Diffuse Knapweed. It typically takes about three years for grass plants to mature and fill the space, during which time, keeping weeds from being established in the disturbed area is critical.
- Remove all temporary snow fencing placed around trees within the corridor and around the work area. Snow fencing shall be set approximately 6 inches from the trunk for each inch of trunk diameter.
- Once seed cover has been established, remove all non-biodegradable stormwater control measures (i.e., rock trackout pad, sediment wattles, silt fence, etc.).

Exhibit "D"
Approximate Gate Location

