**REGULAR COUNCIL MEETING**
**TUESDAY**
**APRIL 6, 2021**

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

# ATTENTION

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

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

## PUBLIC COMMENT PROTOCOL

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

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

**Public comments may be submitted to publiccomment@flagstaffaz.gov**

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

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

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

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

**If you wish to email Mayor and Council directly you may do so at council@flagstaffaz.gov.**

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# AGENDA

**1. CALL TO ORDER**

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

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

## 2. ROLL CALL

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

| | |
|---|---|
| MAYOR DEASY | |
| VICE MAYOR DAGGETT | COUNCILMEMBER SALAS |
| COUNCILMEMBER ASLAN | COUNCILMEMBER SHIMONI |
| COUNCILMEMBER MCCARTHY | COUNCILMEMBER SWEET |

## 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

**MISSION STATEMENT**

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

## 4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

**A.** **Consideration and Approval of Minutes:** City Council Regular Meeting of February 2, 2021; Work Session of February 9, 2021; Regular Meeting of March 2, 2021; Executive Session of March 9, 2021; and Executive Session of March 23, 2021.

**STAFF RECOMMENDED ACTION:**

Approve the minutes of the City Council Regular Meeting of February 2, 2021; Work Session of February 9, 2021; Regular Meeting of March 2, 2021; Executive Session of March 9, 2021; and Executive Session of March 23, 2021.

## 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.** **Proclamation:** National Service Recognition Day

**B.** **Proclamation:** Sexual Assault Awareness Day

## 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:** Open Spaces Commission.

**STAFF RECOMMENDED ACTION:**

Make one appointment to a term expiring April 2024.

## 8. LIQUOR LICENSE PUBLIC HEARINGS

**A.** **Consideration and Action on Liquor License Application:** Amy S. Nations, "Hampton Inn & Suites", 990 N. Country Club Drive, Series 07 (Beer and Wine Bar), New Application.

**STAFF RECOMMENDED ACTION:**

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

The City Council has the option to:
1) Forward the application to the State with a recommendation for approval;
2) Forward the application to the State with no recommendation; or
3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

## 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.*

**A.** **Consideration and Approval of Contract:** Multiple Job Order Contracting Services Contracts for upcoming projects at Pulliam Airport under $1,000,000.00 that are Federal Aviation Administration (FAA) CARES Act funded.

**STAFF RECOMMENDED ACTION:**

1. Approve award of Job Order Contracting Services Contracts to six contractors representing two discipline areas.
    - Horizontal Construction: Combs Construction Company, Inc., Fann Contracting, Inc., J. Banicki Construction, Inc.
    - Vertical Construction: FCI Constructors, Inc., Loven Contracting, Inc., Wespac Construction, Inc.
2. Authorize the City Manager to execute the necessary documents.

**B.** **Consideration and Approval of Contract:** With Advanced Chemical Transport, Inc., d/b/a ACTenviro, for Hazardous Waste Removal and Disposition in an amount not to exceed $200,000.00.

**STAFF RECOMMENDED ACTION:**

1. Approve the Contract with Advanced Chemical Transport Inc., d/b/a ACTenviro, on a time and materials basis for an amount not to exceed $200,000.00; and
2. Authorize City Manager to execute the necessary documents.

**C.** **Consideration and Approval of Cooperative Purchase Contract:** Purchase of two (2) 2021 Chevrolet Silverado 1500 4WD Double Cab 147" work trucks from Courtesy Chevrolet in the amount of $60,161.50.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase of two 2022 Chevrolet Silverado 1500 4WD Double Cab 147" work trucks from Courtesy Chevrolet through a State of Arizona cooperative purchasing contract #ADSP017-166120 in the amount of $60,161.50; and
2. Authorize the City Manager to execute the necessary documents.

**D.** **Consideration and Approval of Contract:** Purchase Itron Encoder Receiver Transmitters (ERT) Endpoints and related parts and supplies from Mountain States Pipe and Supply, Co. through a Sole Source purchase contract in the amount not to exceed $200,000.

**STAFF RECOMMENDED ACTION:**

1. Approve the sole source purchase contract with Mountain States Pipe and Supply, Co. to purchase Itron Encoder Receiver Transmitters (ERTs) and any related parts not to exceed $200,000; and
2. Authorize the City Manager to execute the necessary documents.

**E.** **Consideration and Approval of Grant Agreement:** Acceptance of the Governor's Office of Highway Safety Proposition 207 Grant Award for Equipment.

**STAFF RECOMMENDED ACTION:**

Approve the application to the Flagstaff Police Department from the Governor's Office of Highway Safety for grant funds in the amount of $94,216.70. There is no city match of funds required.

**F.** **Consideration and Approval:** Surface Transportation Reauthorization Project Authorization Request

**STAFF RECOMMENDED ACTION:**

Approve the project request letter seeking authorization for the Lone Tree Corridor project within the upcoming surface transportation reauthorization legislation.

**10.** **ROUTINE ITEMS**

**A.** **Consideration and Approval of Off-Track Wagering Facility Permit:** J&J Equine Enterprises, LLC, dba Arizona Downs, located at Dirty Birdies Sports Bar & Grill, 2285 E. Butler Avenue.

**STAFF RECOMMENDED ACTION:**

Approve the New Off-Track Wagering Permit for J&J Equine Enterprises, LLC, dba Arizona Downs.

**B.** **Consideration and Approval of Contract:** Cooperative Purchase Contract with Governmentjobs.com, Inc., a California Corporation, DBA NEOGOV to provide three software modules. 1. Insight/Online Hiring Center provides a comprehensive employment application and recruitment process technology solution; 2. NEOGOV PERFORM provides a comprehensive employee performance evaluation technology solution, and 3. NEOGOV LEARN provides a comprehensive online training and development technology solution. The contract has a maximum total cost not to exceed $236,125.

**STAFF RECOMMENDED ACTION:**

1. Approve the Cooperative Purchase Contract for NEOGOV Human Resource software package with Governmentjobs.com, Inc., DBA NEOGOV for a fee not to exceed an amount of $236,125 utilizing a cooperative contract through the Pascua Yaqui Tribe Tucson, Arizona; and
2. Authorize the City Manager to execute the necessary documents.

**C.** **Consideration and Possible Adoption**: City Council Rules of Procedure

**STAFF RECOMMENDED ACTION:**

Approve the City Council Rules of Procedure dated April 6, 2021.

**D.** **Consideration and Approval:** Section 8 Security Deposit Assistance Program - a loan program to assist voucher holders to overcome the barrier of high-security deposits.

**STAFF RECOMMENDED ACTION:**

Approve Section 8 Security Deposit Assistance Program and authorize staff to make non-substantive administrative amendments as necessary

## 11. PUBLIC HEARING ITEMS

**A.** **Consideration and Adoption of Ordinance No. 2021-06:** An Ordinance of the City Council of the City of Flagstaff, amending the Flagstaff Zoning Map to rezone approximately 11 acres of real property generally located at 151 West High Country Trail, APNs 112-05-001W and 112-05-011 from the Estate Residential (ER) zone to the Medium Density Residential (MR) zone with conditions, providing for severability, authority for clerical corrections, and establishing an effective date.

**STAFF RECOMMENDED ACTION:**

Staff recommended that the Planning and Zoning Commission forward the Direct to Ordinance Zoning Map Amendment request to the City Council with a recommendation for approval, in accordance with the findings presented in the attached report.

The Planning & Zoning Commission disagreed with staff's recommendation and instead recommends that the City Council, in accordance with the findings, deny the requested Direct to Ordinance Zoning Map Amendment for Aura Flagstaff (PZ-20-00008-01).

Should the Council decide to deny the requested Zoning Map Amendment:

At the April 6, 2021 Council Meeting:
1) Hold the Public Hearing
2) Approve a motion to deny the application for Zoning Map Amendment

Should the Council decide to approve the requested Zoning Map Amendment:

At the April 6, 2021 Council Meeting:
1) Hold the Public Hearing
2) Read Ordinance No. 2021-06 by title only for the first time
3) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)

At the April 20, 2021 Council Meeting:
4) Read Ordinance No. 2021-06 by title only for the final time
5) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)

6) Adopt Ordinance No. 2021-06

**12. REGULAR AGENDA**

**A. Consideration and Adoption of Ordinance No. 2021-08 and Resolution No. 2021-13:** An ordinance amending the interceptors types, capacity, location, and maintenance for the regulation of fats, oils, and grease coming into Flagstaff's water reclamation plants; and a resolution adopting the Fats, Oil, and Grease Manual.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:
1) Read Ordinance No. 2021-08 by title only for the first time
2) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)
3) Read Resolution No. 2021-13 by title only
4) City Clerk reads Resolution No. 2021-13 by title only (if approved above)
At the April 20, 2021 Council Meeting:
5) Read Ordinance No. 2021-06 by title only for the final time
6) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)
7) Adopt Ordinance No. 2021-06
8) Adopt Resolution No. 2021-13

**B. Consideration and Adoption of Ordinance No. 2021-07:** An ordinance amending Flagstaff City Code Section 7-02-001-0042 regulating scavenger waste, grease haulers and scavenger waste permits.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:
1) Read Ordinance No. 2021-07X by title only for the first time
2) City Clerk reads Ordinance No. 2021-07 by title only (if approved above)
At the April 20, 2021 Council Meeting:
3) Read Ordinance No. 2021-07 by title only for the final time
4) City Clerk reads Ordinance No. 2021-07 by title only (if approved above)
5) Adopt Ordinance No.2021-07

**C. Consideration and Adoption of Ordinance No. 2021-10 and Resolution No. 2021-14:** An ordinance amending multiple portions Chapter 7-02 with respect to local limits for significant industrial users of the water reclamation system, and a resolution amending the Enforcement Response Plan.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:
1) Read Ordinance No. 2021-10 by title only for the first time
2) City Clerk reads Ordinance No. 2021-10 by title only (if approved above)
3) Read Resolution No. 2021-14 by title only
4) City Clerk reads Resolution No. 2021-14 by title only (if approved above)
At the April 20, 2021 Council Meeting:
5) Read Ordinance No. 2021-10 by title only for the final time
6) City Clerk reads Ordinance No. 2021-10 by title only (if approved above)
7) Adopt Ordinance No. 2021-10
8) Adopt Resolution No. 2021-14

**D.** **Consideration and Adoption of Ordinance No. 2021-09:** An ordinance amending Section 7-03-001-0015 related to City Water Systems Cross Connection Control

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:
1) Read Ordinance No. 2021-09 by title only for the first time
2) City Clerk reads Ordinance No. 2021-09 by title only (if approved above)
At the April 20, 2021 Council Meeting:
3) Read Ordinance No. 2021-09 by title only for the final time
4) City Clerk reads Ordinance No. 2021-09 by title only (if approved above)
5) Adopt Ordinance No. 2021-09

**E.** **Consideration and Adoption of Ordinance No. 2021-11:** An Ordinance of the City of Flagstaff amending easements on McMillan Mesa with Arizona Public Service Company (APS) and US West Wireless LLC, and approving an agreement for remediation services with APS, with conditions, providing for severability, authority for clerical corrections, and establishing an effective date; and **Consideration and Approval of Land Restoration Agreement** with APS for restoration of lands affected by easement boundary changes.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:
1) Read Ordinance No. 2021-11 by title only for the first time
2) City Clerk reads Ordinance No. 2021-11 by title only (if approved above)
At the April 20, 2021 Council Meeting:
3) Read Ordinance No. 2021-11 by title only for the final time
4) City Clerk reads Ordinance No. 2021-11 by title only (if approved above)
5) Adopt Ordinance No. 2021-11
6) Approve the Land Restoration Agreement with APS to restore lands affected by the easement boundary changes.

## 13. COUNCIL LIAISON REPORTS

## 14. 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 Salas to place on a future agenda a discussion about strengthening existing City programs related to business services by creating a Business One-Stop Shop (BOSS) including, but not limited to, a Business One-Stop Shop (BOSS) online portal and a Business One-Stop Shop (BOSS) service desk at the City Hall for business resources and services from start-ups to business expansions.

**B.** **Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Salas to place on a future agenda a discussion about bolstering economic development by creating and funding a robust Workforce Development Program to expand and strengthen current workforce development efforts by the City

## 15. CITY MANAGER REPORT

**A.** **City Manager Report**

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

**17. ADJOURNMENT**

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____, at _____ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this _____ day of _____, 2021.

_____
Stacy Saltzburg, MMC, City Clerk

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, City Clerk |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval of Minutes:** City Council Regular Meeting of February 2, 2021; Work Session of February 9, 2021; Regular Meeting of March 2, 2021; Executive Session of March 9, 2021; and Executive Session of March 23, 2021.

**STAFF RECOMMENDED ACTION:**

Approve the minutes of the City Council Regular Meeting of February 2, 2021; Work Session of February 9, 2021; Regular Meeting of March 2, 2021; Executive Session of March 9, 2021; and Executive Session of March 23, 2021.

**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.

**Financial Impact:**

None

**Policy Impact:**

None

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

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

**Previous Council Decision on This:**

None

**Attachments:**
02.02.2021.CCRM
02.09.2021.CCWS
03.02.2021.CCRM
03.09.2021.CCSMES
03.23.2021.CCSMES

CITY COUNCIL REGULAR MEETING
TUESDAY, FEBRUARY 2, 2021
STAFF CONFERENCE ROOM
211 WEST ASPEN
3:00 P.M.

# MINUTES

## 1. CALL TO ORDER

Mayor Deasy called the meeting of the Flagstaff City Council held February 2, 2021, to order at 3:01 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 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 DEASY (virtually)
VICE MAYOR DAGGETT (virtually)
COUNCILMEMBER ASLAN (virtually)
COUNCILMEMBER MCCARTHY (virtually)
COUNCILMEMBER SALAS (virtually)
COUNCILMEMBER SHIMONI (virtually)
COUNCILMEMBER SWEET (virtually)

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

## 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

The Council and audience recited the pledge of allegiance and Councilmember Shimoni 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. 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.*

Written comments were submitted by Enoque Junior and Victoria Niedzielski with concerns regarding housing affordability.

## 5. 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:** Commission on Inclusion and Adaptive Living

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Austin Aslan to appoint Monica Attridge to a term expiring March 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Jim McCarthy to appoint James Martinez to a term expiring March 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Paul Deasy to appoint Sakenya McDonald to a term expiring March 2023.

**Vote:** 7 - 0 - Unanimously

**Moved by** Vice Mayor Becky Daggett, **seconded by** Mayor Paul Deasy to appoint Alexander Davenport to a term expiring March 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Jim McCarthy to appoint James Hasapis to a term expiring March 2022.

**Vote:** 7 - 0 - Unanimously

**Moved by** Councilmember Adam Shimoni, **seconded by** Mayor Paul Deasy to appoint Andrea Thomas to a term expiring March 2022.

**Vote:** 7 - 0 - Unanimously

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

Mr. Solomon stated that he received a question concerning postponement of commission appointments and he wanted to let the Council know that they always have the option to postpone appointments until there is a greater applicant pool.

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Jim McCarthy to postpone the Planning and Zoning Commission appointments until a time when more applications have been received.

Vice Mayor Daggett stated that in reading over the applications, she believes both applicants could be considered.

Councilmember Aslan indicated that the Planning and Zoning Commission is a bit different than other commissions and he felt that waiting for more applications would ensure that the Council had a better representation of the population to choose from.

Councilmember Shimoni and Councilmember Salas indicated that they are comfortable moving forward with appointments now.

Mayor Deasy suggested that the Council revisit the appointments in two months.

**Moved by** Councilmember Austin Aslan, **seconded by** Mayor Paul Deasy amended his motion to postpone the Planning and Zoning Commission appointments for two months.

**Vote:** 6 - 1

NAY: Councilmember Regina Salas

**Original Motion**

**Vote:** 6 - 1

NAY: Councilmember Regina Salas

**6.** **CONSENT ITEMS**

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

**Moved by** Vice Mayor Becky Daggett, **seconded by** Councilmember Adam Shimoni to approve the Consent Agenda as presented.

**Vote:** 7 - 0 - Unanimously

**A.** **Consideration and Approval of Cooperative Contract**: Purchase of Library Computer Replacements from Dell, Inc. in the amount of $73,141.57.

1. Approve the purchase of servers, public access computers, and staff computers for the Library District in support of the annual hardware replacement cycle from Dell, Inc. through a State of Arizona Cooperative Purchase Agreement, (#ADSPO16-098163) for a total dollar amount $73,141.57; and

2. Authorize the City Manager to execute the necessary documents.

**7. ROUTINE ITEMS**

**A. Consideration and Approval of Contract:** Award C and E Paving & Grading, LLC, the Construction Manager at Risk (CMAR) Design Phase Services Agreement for the Street Maintenance Program years 2021, 2022 and 2023.

Streets Section Director Scott Overton indicated that the contract is for the design component of the project. The actual overlay and chip seal programs will be developed over the next few months, when that program is ready to deliver, they will come back to Council for the consideration of the construction contract.

**Moved by** Councilmember Regina Salas, **seconded by** Mayor Paul Deasy to award C and E Paving & Grading, LLC the Construction Manager at Risk (CMAR) Design Services Agreement an amount not to exceed $135,391.00; and authorize the City Manager to execute any necessary documents.

**Vote:** 7 - 0 - Unanimously

**B. Consideration and Approval of Contract:** Lone Tree Overpass Project - Award of Design-Build Services Agreement for Phase I of the project development to Ames Construction.

Engineering and Capital Project Manager Christine Cameron provided a PowerPoint presentation that covered the following:

LONE TREE OVERPASS
AGENDA
LONE TREE OVERPASS AND CORRIDOR IMPROVEMENTS VICINITY MAP
DESIGN-BUILD TEAM
DESIGN SCOPE
PROJECT FUNDING
SCHEDULE

The following individuals addressed Council in support of the project:

- Deb Harris
- Joe Galli

The following comments were received:

- There was a promise made that the community would be involved in all aspects of the planning.
- Please be sure to involve the community at the beginning phases.
- Excited about seeing the project through to completion.
- Staff has done a great job in getting this project moving forward.

Councilmember McCarthy asked if there would be bicycle lanes on both sides of the street. Ms. Cameron explained that it is unknown at this time but is something that will be vetted out during the design process.

Councilmember Shimoni asked about FUTS trails on both sides to which Ms. Cameron stated there is only the west side planned at this time. Councilmember Shimoni noted that he would like to see FUTS on both sides so there are safe bicycle options. Councilmember Shimoni also asked if there are bus travel routes planned for the area. Ms. Cameron stated that it is a

high priority and they will be engaging with Mountain Line on their operational needs.

Councilmember Aslan expressed support for the prioritization of bike and pedestrian access. The Fourth Street bridge is a great example of that prioritization and it would be great to incorporate the same elements into this project.

**Moved by** Councilmember Jim McCarthy, **seconded by** Vice Mayor Becky Daggett to award the Design-Build Services Agreement to Ames Construction of Phoenix, Arizona in an amount not to exceed $2,476,338.27 with a 905 calendar-day contract period; and authorize the City Manager to execute any necessary documents.

**Vote:** 7 - 0 - Unanimously

## 8. PUBLIC HEARING ITEMS

**A.** **Consideration and Adoption of Ordinance No. 2021-01:** An Ordinance of the City Council of the City of Flagstaff, amending the Flagstaff Zoning Map to rezone approximately 23.08 acres of real property generally located at 2701 S Woody Mountain Road, a portion of APN 112-01-019 from the Rural Residential (RR) zone to the Medium Density Residential (MR) zone with conditions, providing for severability, authority for clerical corrections, and establishing an effective date.

Mayor Deasy opened the public hearing.

Planning Director Tiffany Antol provided a PowerPoint presentation that covered the following:

SKY COTTAGES
SKY COTTAGES CONCEPT PLAN
OVERALL SITE PLAN
PROPOSED BUILDING ELEVATIONS
CONCEPT RESOURCE PROTECTION PLAN
PED & BIKE CIRCULATION SYSTEM
PARKING CALCULATIONS

Traffic Engineer Jeff Bauman continued the presentation.

TRANSPORTATION IMPACT ANALYSIS (TIA)
PURPOSE OF A TRANSPORTATION IMPACT ANALYSIS
TIA FOR SKY COTTAGES
SKY COTTAGES RIGHT OF WAY (ROW)

Ms. Antol continued the presentation.

WATER SEWER IMPACT ANALYSIS (WSIA)
STORMWATER ANALYSIS
ZONING MAP AMENDMENT FINDINGS

Comprehensive Planning Manager Sara Dechter continued the presentation.

FINDING #1

Ms. Antol concluded staff's portion of the presentation.

FINDING #2

FINDING #3
DRAFT DEVELOPMENT AGREEMENT CONTENTS
CITIZEN PARTICIPATION PLAN
STAFF RECOMMENDATION

Councilmember McCarthy asked if Woody Mountain Road would be two or four lanes. Ms. Antol stated that it will be a five lane arterial connection in the future.

Councilmember McCarthy asked why the Planning and Zoning Commission asked for removal of condition five. Ms. Dechter stated that there was concern about no road or vehicle access to the north.

Walter Crutchfield, Developer, addressed Council and provided a PowerPoint presentation that covered the following:

SKY COTTAGES AT TIMBER SKY

Salman Ahmad with Mosaic continued the presentation.

VISION
TIMBER SKY – ADORA, PRELIMINARY SKETCHES
MOSAIC
MOSAIC BY THE NUMBERS
MOSAIC TECHNOLOGY
MANDALAY
BUILDING BETTER TOGETHER
BUILDING FOR A FUTURE STATE

Lindsay Schube with Gammage and Burnham continued the presentation.

SPEAKER INTRODUCTIONS
REZONE: CONCEPT PLAN V. DIRECT ORDINANCE
CONTEXT MAP
PROPOSED REZONE
PROJECT OVERVIEW
PUBLIC CIVIC AND OPEN SPACE
BUNGALOW COURTS
COTTAGES
EXTENSION OF PEDESTRIAN, BICYCLE, AND FUTS NETWORK
COMMITMENT TO CONSTRUCTION SUSTAINABILITY
COMMITMENT TO LONG-TERM SUSTAINABILITY
PROFESSIONAL PROPERTY MANAGEMENT
TRAFFIC CONTRIBUTION AND MITIGATION
COMMUNITY BENEFITS AND SENSITIVE DESIGN CONSIDERATIONS
CONCLUSION

Vice Mayor Daggett asked for the definition of affordable housing in the context of the project and the length of time that is guaranteed for affordability. Ms. Antol stated that it is a Class 1 which serves up to 80% AMI and it is for a 30-year term.

Vice Mayor Daggett asked about the electric vehicle rental program and if there was any kind of guarantee on the continued availability of the vehicles. Alex Pollack with Mosaic explained that they are working with a third party for the project and the firm is a business that is predominately providing vehicles to multi-family properties around the country. The

maintenance of the vehicles would be required of the vendor and they would be held accountable for providing the terms of the contract. Vice Mayor Daggett asked the length of time for that contract. Ms. Schube stated that they have committed to three years as part of the Development Agreement, but they hope that the program continues far beyond that.

Councilmember Salas asked the timeline for construction. Mr. Crutchfield stated that they want to deliver as fast as they can but the process of site plan approval and building design takes time. He is hopeful for a ground breaking within the next 12 months.

Councilmember Sweet thanked Mr. Crutchfield for his commitment to long term sustainability for the project and she expressed her desire to see more solar units in the project.

Councilmember Shimoni expressed concern about the connectivity issue to the north and stated that it is important to provide as many options as possible for people to ride their bikes. He indicated a desire to see more units provided at 100 – 120% AMI.

Mr. Crutchfield acknowledged the concern about the connectivity to the north but indicated that the concern is more about cars cutting through the development from neighboring communities and creating traffic concerns. He indicated that additional units at a lower price point is difficult due to the overall cost for development. He cannot commit to more than what the code requires but is hopeful to make a difference in the community with regard to housing.

Mayor Deasy thanked Mr. Crutchfield for his commitment to housing and climate action. He also expressed a desire to see more solar units within the project.

A break was held from 6:08 p.m. through 6:23 p.m.

Kate Morley, on behalf of Mountain Line addressed Council regarding the proposal to extend transit services to the development. Mountain Line proposed a partnership with Vintage where Mountain Line would pay 55% of the cost and the remaining 45% would be paid by Vintage in exchange for free service to the residents for the term of the agreement. This proposal was not included in the Development Agreement.

The following individuals addressed Council in support of the development:

- Tyler Denham
- W.L. Gore
- Cecily Maniaci
- Jason Rohr
- Clay McCauslin

The following comments were received:

- The rezone would allow the development of 200 units within walking and biking distance of the Kiltie Lane manufacturing cluster, which is ideal for workforce housing.
- There are no historical preservation priorities or building height priorities to compete with the development.
- Approval of this rezone will honor the Council’s commitment to affordable housing.
- If not approved there will still be development but with single family homes which is environmentally damaging.
- There is not enough housing to meet the demand.
- This development would help in workplace stability and give a boost to the community.
- Housing must be available to those who keep the community thriving.
- The developer has a consistent pattern of solving problems and bringing good

developments to Flagstaff.
- Businesses are struggling to find and keep employees due to the lack of quality affordable housing.

Written comments in support of the development were submitted by Enoque Junior, Clinton Whiting, Mark Love, David Grogg

Councilmember McCarthy expressed concern about the water retention recreational area that will be a lawn which will take a lot of water to maintain; he asked for consideration of some other type of surface treatment. Mr. Crutchfield indicated that they are currently researching options and will bring something back to staff for consideration.

Vice Mayor Daggett asked about the proposal from Mountain Line. Ms. Schube explained that the contribution is significant, and it would increase the rent costs. She committed to continue working with Mountain Line but the ask is not attainable at this time.

Councilmember Salas indicated that she is impressed with the development and she believes that the development meets the required findings for approval.

There being no further comments, Mayor Deasy closed the public hearing.

**Moved by** Councilmember Regina Salas, **seconded by** Councilmember Jim McCarthy to read Ordinance No. 2021-01 by title only for the first time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF ZONING MAP TO REZONE APPROXIMATELY 23.08 ACRES OF REAL PROPERTY GENERALLY LOCATED AT 2701 S WOODY MOUNTAIN ROAD, A PORTION OF APN 112-01-019 FROM THE RURAL RESIDENTIAL (RR) ZONE TO THE MEDIUM DENSITY RESIDENTIAL (MR) ZONE WITH CONDITIONS; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

## 9. REGULAR AGENDA

**A. Consideration and Adoption of Resolution No. 2021-06:** A Resolution of the Flagstaff City Council, approving an amendment to the Intergovernmental Agreement between Coconino County and the City of Flagstaff for Courthouse Bailiff Services

Court Administrator Jessica Cortes introduced the item and provided a brief description.

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Paul Deasy to read Resolution No. 2021-06 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY AND THE CITY OF FLAGSTAFF FOR COURTHOUSE BAILIFF SERVICES*

**Moved by** Councilmember Jim McCarthy, **seconded by** Mayor Paul Deasy to adopt Resolution No. 2021-05.

**Vote:** 7 - 0 - Unanimously

## 10. DISCUSSION ITEMS

### A. Discussion and Possible Direction Regarding City Council Rules of Procedure

POSTPONED TO A LATER MEETING

### B. Discussion and Direction Regarding HB2392

Management Analyst Sarah Langley provided a description of HB2392: AHCCCS; Graduate Medical Education.

Mr. Clifton offered that while the bill does not fall directly within the legislative priorities that Council just adopted, staff knows that these types of inquires will come up and that staff will endeavor to get them before Council for discussion. He stated that the next step with this matter will be for Council to provide direction for staff to draft a letter of support and send it out and it can be brought back to Council for ratification.

Vice Mayor Daggett expressed appreciation for bringing the item forward. She indicated that she would like to see Council support the bill as it will bring money into Flagstaff for medical training and staff.

Council expressed their support for sending a letter in support of HB2392.

### C. Section 17 Discussion with Lowell Observatory

Ms. Langley introduced Dr. Lowell Putnam and Jeff Hall from Lowell Observatory who provided a PowerPoint presentation that covered the following:

LOWELL OBSERVATORY SECTION 17 AND ASTRONOMY DISCOVERY CENTER
SECTION 17
BOUNDARY MAP
ASTRONOMY DISCOVERY CENTER: VISION
ASTRONOMY DISCOVERY CENTER: LOCATION

The City's Federal Lobbyist Bob Holmes continued the presentation.

SECTION 17 BILL

Mr. Hall concluded the presentation.

SECTION 17 INQUIRIES
COMMUNICATION AND OUTREACH
NEXT STEPS

The following individuals addressed Council with concerns about the development of Section 17:

- Karen Enyedy
- Alicyn Gitlin
- Marilyn Weissman
- Diane Hope

- Michele James

The following comments were received:

- Section 17 should remain in its natural state.
- The Conveyance Act requires preservation and development would be in direct conflict.
- Do not want to see the environment destroyed.
- There needs to be an inclusive process for the future of the land.
- There will be traffic impacts to the area with any type of development.
- Potential development affects the community and the community deserves to weigh in on any plans.
- The open space needs to be preserved.
- The area is an important corridor for wildlife.
- There is an important link with FUTS and the Observatory Mesa Trail and that should not be disturbed.
- There are better places for development.
- Happy to hear about a Master Plan.
- The land is a community asset and the public needs to have input on the bill language to ensure that asset is protected.
- Secondary access would impact the neighborhood and open space areas.

Written comments in support of a cooperative community process were submitted by:

- Nat White
- Eric Whiteman
- Robert Breunig
- Chris Jocks

Mr. Holmes stated that the desire is to be a community partner with everyone. He explained that Section 17 is not Forest Service land but rather private property with federal encumbrances. The Forest Service does not want the land and should it revert back to the federal government it is likely to be auctioned off and could ultimately be developed.

Dr Putnam indicated that the Forest Service has fully supported giving full clear title to Lowell Observatory. It is not a requirement for Lowell to preserve the natural space, but they will do everything they can to preserve it. They too like the open space and the dark skies, and it is in their best interest to make it work for their purpose and mission.

Councilmember Aslan asked about the need for secondary access. Ms. Antol stated that staff is working with the Observatory on secondary access which would require a traffic impact analysis. There are difficult access issues and concerns about safety access.

Councilmember Aslan stated that he is excited about the direction Lowell is taking and the vision. The concern comes when the current decision makers are no longer at the table. The solution is about communication and education and assurance that there will not be any drastic changes to what is ultimately agreed upon.

Dr. Putnam explained that even with the changes in the language of the bill, the Observatory could not develop any of the land without coming back to the City. He agreed that a plan should be developed with input from the community before going forward with any development. The challenge is that the language in the bill lacks clarity which is what is causing the problem.

Councilmember McCarthy indicated that the Discovery Center makes a lot of sense for the area and it also makes sense for an emergency access road be put in. The other proposals do not fit within the scope of observatory purpose. He does not want to take out the reversionary

clause.

Councilmember Shimoni indicated that the community is struggling with the definition of observatory purpose. He is supportive of working toward a public/private partnership and the development of master plans for the observatory. He sees the connection to other ventures as a way to generate revenue help the workforce. It could be a win-win situation if it does not damage our dark skies and our natural habitat. He was supportive of a letter in support.

Dr. Putnam indicated that they would not want to do anything that would threaten the dark skies because by doing so it would ruin the experience of their visitors. That does limit the type of development they could do on the land.

Councilmember Sweet stated that she would like to see more public outreach to ensure that the community feels heard and have input on the plans.

Vice Mayor Daggett asked about the zoning on the property. Current Planning Manager Alaxandra Pucciarelli stated that the east side of the existing campus is zoned public facility and some areas are zoned rural residential with a resource protection overlay that covers steep slopes, flood plains, and trees.

Vice Mayor Daggett suggested an opportunity to purchase some of the land for open space. She asked Dr. Putnam if they would be open to that. He indicated that they would but there is the concern that a clear title could not be transferred due to the reversionary clause. That is the overall challenge with anything that they might want to do. They are committed to working with the community.

Councilmember Salas indicated that she was supportive of continued learning and listening tours with the community to continue vetting with the public.

Mayor Deasy stated that he would support taking away the reversionary clause. He believes that the concerns from the community come from wanting to be involved in a public process. He stated that he would like to see the specific language in the bill before he puts his support behind the definition of observatory purpose. He encouraged Lowell to include the community in the development of their master plans.

A break was held from 8:39 p.m. through 8:50 p.m.

**D. Flagstaff Shelter Services Update**

Flagstaff Shelter Service Executive Director Ross Schafer Altenbaugh addressed Council and provided an update on Flagstaff Shelter Services (FSS) operations and the COVID-19 response Ms. Altenbaugh covered the following points:

- FSS is the largest emergency shelter in Northern Arizona.
- People are accepted at the shelter regardless of mental health, race, sobriety, faith, gender, or criminal record.
- Prior to COVID, FSS served about 200 people per day with emergency shelter and access to healthcare services in partnership with North Country Healthcare, The Guidance Center, Native Amercians for Community Action, and Southwest Behavioral Health.
- Laundry and shower services are provided and meals are provided in partnership with Flagstaff Family Food Center.
- 50% of the Coconino County Front Door coordinated program is provided in partnership

with Catholic Charities
    - The Front Door Program is the area of coordinated entry for people experiencing homelessness.
    - It provides access to prevention support for people who are about to lose their housing.
    - On average they are able to permanently house at least two households per week. Although, this has been impacted by COVID.
- Prior to COVID, FSS employed 20 staff members, that number has increased to over 60 employees since COVID hit.
- FSS serves individuals and families, 20% are veterans, 54% are indigenous, and over 90% of the people that identify as female have had experience with domestic or sexual violence in their background.
- By mid-March 2020, they were struggling to find ways to protect the lives of those who cannot socially distance in a congregate setting.
    - FSS did not close and they did not turn anyone away.
    - By April, they started to move the most vulnerable and the sickest to hotels.
- In partnership with North Country Healthcare, they began testing and found an increase in positive cases for those who were at the shelter. It was decided that everyone in the shelter be moved to individual hotel rooms.
- Since April, the hotel operation has been fully occupied with over 200 people and families per night, most of which were part of the original move.
    - Hotel operations are extremely expensive but very effective.
    - For months there have been zero positive cases in the hotels.
- Based on the extreme cost they are unable to offer hotels to new individuals, but they are not turning anyone away from the Huntington facility.
- Currently, FSS is housing approximately 100 people per day at the Huntington facility.
    - All are required to wear a mask and socially distance.
- In October, the shelter partnered with Coconino County and took over the management of the COVID positive hotel.
- Consistent testing is happening at all locations.
- Acknowledged the community concerns that have come forward in the past week about access to the shelter among unsheltered relatives.
    - FSS mission is to provide emergency shelter services to anyone.
    - She emphasized that she personally believes what people share with her about being denied service at the shelter.
    - She and the agency believe that this is not okay, and these experiences are not in line with the mission of FSS.
    - They want to do the work to repair this and repair past harms.
    - If anyone has concerns please call us or email her personally.
    - If you meet someone who says they cannot go to FSS, please call us, they want to know the situation and dig in to find out why something happened and to find a solution.
- While the shelter is not prepared to work with people who communicate with emotional or physical violence towards staff or clients, they want to work with people who want to work toward a solution and work to find a way to get them back into the shelter.

The following individuals addressed Council with regard to FSS:

- Flo Spyrow
- Heather Marcy
- Anne Newland
- Matt Eckhoff
- Cristy Zeller
- Anthony Garcia
- Julie Pastrick

- Rebecca Allender
- Kim Musselman
- Lori Poloni-Staudinger
- Daryl Marks

The following comments were received:

- FSS provides a critical service to the community.
- If FSS had not moved swiftly into action, things would have been much worse for people who are experiencing homelessness.
- FSS continues to be transparent and open to partnership.
- Thank you to the City of Flagstaff for the continued support of FSS.
- Working with FSS has been one of the most rewarding experiences.
- It is time for thoughtful development of a funding approach to create an accountable community of health.
- Housing is health.
- Much respect to FSS and the work they are doing.
- FSS has grown from a seasonal shelter to a year-round facility.
- FSS helps as many as possible and that means they do not create barriers to accessing shelter.
- FSS deserves serious attention and continued support by the Council.
- The connection to a variety of services that FSS provides through Front Door is essential to housing people permanently.
- FSS continues to work hard to partner with community agencies especially during COVID to provide shelter and services to everyone who needs it.
- Don’t lose site of the ultimate goal to end homelessness.
- Seek out opportunities to learn more about FSS operations and services they provide.
- The partnerships that have been forged by FSS have benefited the community.
- Without FSS more people in our community would be dead today.
- The employees and volunteers of FSS are totally selfless and their outcomes are priceless.
- Many are afraid to go to the shelter because they are afraid of sexual assault, COVID risks, or racism.
- The mission of FSS is failing.
- Many indigenous are unsheltered because of colonization and systemic racism.
- There are a lot of things that we can do as a community to improve.
- It is time to face the criticism, not be defensive or shut down conversations.
- The hotel housing of COVID positive people has been vital to reducing community transmission.
- There is not any one solution to the issues that face the community.
- The conversations that pushed for sheltering in hotels needs to continue.
- The policing and colonialism practices continue to perpetuate the historical trauma our relatives carry with them.
- We all must be open minded and listen to the voices that need to be heard.

Written comments expressing support of FSS were submitted by the following individuals:

- Alicia Yaeger-Booth
- Amber Meyer
- Ann Hoffman
- Anne Dowling
- Bhavna Prema
- Darlene Burden
- DeAnn M. Engelthaler
- Eric Wolverton

- Erika Rodriguez-Escobar
- Erin Moore
- Heather Marcy
- Camie Rasband
- Sandi Flores
- Helen Hemmer
- Jessi Hans
- Karen Plager
- Kelli Donley Williams
- Kelly Eckhoff
- Mark Stover
- Matt Ziegler
- Matthew Kaplinski
- Melissa Murlless
- Paula Monthofer
- Shaleen Seward
- Silina Martinez
- Paige Smyth

Written comments expressing concerns about FSS were submitted by the following individuals:

- Michael Caulkins
- Rebecca Ellerbroek
- Summer White
- Deirdre Conroy
- Sarah-Grace Crocco
- Zachary Kennedy

Vice Mayor Daggett asked if North Country is testing every day. Ms. Altenbaugh stated that there is a mobile unit multiple times per week and testing is provided to anyone who is exhibiting symptoms. Preventative testing is being done every 10 to 14 days.

Vice Mayor asked if those who test positive are going to a hotel or the shelter. Ms. Altenbaugh explained that in partnership with the county, the people who test positive go directly to the COVID positive hotel where they are asked to quarantine for 14 days or until they get a negative test or are symptom free. FSS provides staff at all the locations to provide the assistance that is needed.

Vice Mayor Daggett thanked FSS for responding so quickly and taking charge to make sure that their clients and the community are safe. She stated that she appreciates the openness and that FSS and Ms. Altenbaugh personally acknowledge and believe the testimonies of those who have expressed distrust with the shelter. There is a lot of work that Flagstaff as a whole has to do around issues of racism, it is a much larger issue that needs serious attention. She stated that it is apparent that everyone on staff at FSS care that people in the community are taken care of and that they want to find solutions to these challenges.

Mayor Deasy asked how many COVID positive unsheltered are there and where they are being quarantined. Ms. Altenbaugh stated that the number changes because people are in different places within the 14-day quarantine period. The COVID positive hotel stays full with about 18 rooms, so anywhere between 15 and 20 people each day. She indicated that she cannot share the location of the hotels due to confidentiality related to domestic violence.

Mayor Deasy stated that he had offered the shelter access to wastewater testing and that offer still stands should there be a desire to move forward with that.

Mayor Deasy also stated that there continues to be public relation issues popping up and things continue to escalate. He asked what will be done differently to reduce the conflict. Ms. Altenbaugh stated that the escalation of the past week is something that they have not experienced before. Having honest conversations about FSS policies and procedures is something that they have been working extremely hard on and trying to figure out where the issues lie in how FSS contributes to and perpetuates harm to people. She indicated that it is an issue happening among homeless services nationally and FSS is working directly with community partners to figure it out, but it is not enough. Even one person who thinks they are being denied shelter is not okay. She and the Board are there to listen, and they are committed to finding ways to bring the issues to light and repair them. They know they do not get it right all the time, but they are doing good work. If there is even one person who does not feel comfortable coming in, they must do better.

Mayor Deasy indicated that the strategy needed is to speak to the lower class, to speak to those who use the shelter. This has escalated out of hand and last week the Council had 35 emails and 25 phone calls, including a death threat on his Chief of Staff and a brick being thrown at his house. Those emails and calls were expressing dissatisfaction with the treatment of the homeless population. The calls were solely negative toward the shelter. The feelings are real, and people feel discriminated against. If you cannot think of a way to change the communication tactics, that is a problem. People feel desperate and powerless, and he does not blame them for the incidents over the last week. He is more concerned about giving a voice to the people who caused this rather than those who experienced it.

Ms. Altenbaugh stated that is unfortunate that he believes that she is trying to sell people on FSS services. A communication strategy is not what they are after, they are after authentic work that solves problems and it is not about solving what other people think is happening. Death threats and bricks being thrown are not in direct correlation with what FSS is doing wrong, violence does not have a place in the conversation. The purpose of FSS is to serve the people who need it most.

Mayor Deasy indicated that the issue is lack of communication strategies and the inability to control the narrative. He asked how communication with the people who do not feel welcome at the shelter will be done differently so people do not feel the need to act out like they have. They need to figure out a way to de-escalate and control the conversation.

Ms. Altenbaugh asked for the emails that were sent to Council. She wants to hear the truth from and about the people who are not being served. She does not want to talk about communications strategies, she wants to help these people personally. It is important to have the information and understand what is happening in order to repair the harm.

Councilmember Shimoni stated that FSS and their volunteers are doing incredible work in the community. FSS has saved lives during this pandemic and for that he is grateful. This is not to say that everything is perfect, the work requires building ongoing relationships and repairing past harms, and FSS has committed to do everything they can to do that. There will always be unconscious bias in whatever work we do; lets widen the view and look through a systems lens. The issues run deep and are way bigger than anyone here. People feel discriminated against in the city every day and we as a community have a lot of work to do to fix that. He suggested looking into the RARE assessment that was created by NAU that trains people who are on the ground, engaging people in the community and have gained respect from the unsheltered population.

Vice Mayor expressed anger with how the meeting has progressed and offered apology to Ms. Altenbaugh for the way she was spoken to. She stated that Council needs to

demonstrate leadership, hold partners accountable, and accept criticism and she is not looking to be a part of a Council that perpetuates an us versus them mentality. We need to recommit to be a part of a solution and build community rather than tear it down.

Councilmember Sweet stated that she cannot imagine how difficult it must be to run a shelter and have to pivot operations during this pandemic. The continual work this must be taking is immense. It is clear we all have work to do and tonight is the first step to opening honest communication.

Councilmember McCarthy indicated that things are not perfect but he get the strong sense you Ms. Altenbaugh is trying to make them perfect. Your great work is heartfelt. Keep up the great work and continue to try for perfection.

Mayor Deasy addressed Councilmember Shimoni asking if he did an interview with Ms. Altenbaugh in his official capacity as Councilmember to which Councilmember Shimoni replied yes. Mayor Deasy stated that the Facebook video was deleted and asked why.

Councilmember Shimoni stated that it was not deleted because what was shared was exposing or because he was afraid of getting information into the community. He indicated that he was not expecting the response that he got which included numerous abusive and inappropriate comments that he struggled to read in real time during the discussion. He should have been better prepared and had someone who could help him facilitate the comments. When it was all said and done and he was able to read the comments, he realized he made a big mistake in allowing the comments to continue. He should have stopped the meeting and addressed the comments. The comments were very abusive and made allegations that were extremely inappropriate. He decided to delete the video because it did more harm than good.

Mayor Deasy asked Mr. Solomon to explain this in terms of public record. Mr. Sterling stated that his response would contain legal advice and would need to be discussed in Executive Session.

Mayor Deasy stated that the Facebook page is a public forum and therefore a public record. He asked Councilmember Shimoni if the video was kept. Councilmember Shimoni stated that the system that the City uses to archive all social media accounts for the City, archived the video which could be retrieved if needed for a public record request.

Mayor Deasy stated that deleting comments and deleting posts is the problem, and people feel ignored and unheard. Shutting down peoples' voices because we don't like them, or they are being mean should not be done. This behavior is disturbing, and it does not help anyone. Please do not do that again, it is a matter of transparency.

Councilmember Shimoni offered that he has never deleted a comment or banned anyone from his accounts and suggested that he and the Mayor share the same values when it comes to open communication. This is the first time that he had ever deleted a post and it was because it was over the top, border line defamation, and it was inappropriate. He expressed embarrassment and takes full responsibility for his lack of leadership and lack of facilitation of the event.

Councilmember Aslan stated he thinks that it is astonishing that the Mayor suggested in a public meeting that a criminal act at his home has a direct relationship to a local nonprofit and their communication strategy. Mayor Deasy stated that he felt that the communication issue was a huge issue before now and logically it seems that is what they were talking about.

**Moved by** Councilmember Austin Aslan, **seconded by** Councilmember Regina Salas to recess into Executive Session for legal advice.

**Vote:** 7 - 0 - Unanimously

Council recessed into Executive Session at 10:15 p.m. and reconvened into Regular Session at 10:35 p.m.

Councilmember McCarthy stated that he attended the Facebook video meeting and Councilmember Shimoni handled it as best as he could; there were so many comments that were inappropriate, full of expletives, and abusive. He also noted that there were many things said in the chat that were false. He apologized to Ms. Altenbaugh for being accused of being responsible for threats of violence and acts of violence that have no connection to her.

Mayor Deasy apologized to those who feel so powerless and unheard that they have to take such desperate measures to be heard. There has been no discussion from anyone who is homeless, and he would like to have a discussion about policy options to address certain issues within the community including service delivery to our unsheltered. He would like more dedicated funding and he is very uncomfortable with allocating more funding to FSS because of the issues discussed. He would like to invite a broader audience to speak rather than just one individual to tell the contrasting stories.

Councilmember Shimoni stated that he engages with the unsheltered population and when he hears these issues he calls Ms. Altenbaugh directly. She has assisted him in helping countless people. When they are made aware of issues they investigate, respond, and fix the issue. The shelter is very open to feedback and to us reaching out directly.

Mayor Deasy stated that he really wants to help the unsheltered and the discussion tonight has been a heated one. He again offered the wastewater testing services to the shelter.

Ms. Solomon stated that now that the item concluded and it is after 9:30 p.m. the Council would need to vote to continue the agenda as per the Rules of Procedure.

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Austin Aslan to adjourn the meeting immediately.

**Vote:** 7 - 0 - Unanimously

## 11. COUNCIL LIAISON REPORTS

## 12. 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 Salas to place on a future agenda a discussion about a citywide comprehensive cost recovery policy.

POSTPONED TO A LATER MEETING DATE

## 13. CITY MANAGER REPORT

**A. City Manager Report**

**i. Public Works Snow Operations**

POSTPONED TO A LATER MEETING DATE

**14. COVID-19 UPDATES**

POSTPONED TO A LATER MEETING DATE

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

**16. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held February 2, 2021, adjourned 10:42 p.m.

_____
MAYOR

ATTEST:

_____
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 February 2, 2021. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 6th day of April, 2021.

_____
CITY CLERK

CITY COUNCIL WORK SESSION
TUESDAY, FEBRUARY 9, 2021
STAFF CONFERENCE ROOM
211 WEST ASPEN
3:00 P.M.

# MINUTES

## 1. Call to Order

Mayor Deasy called the Work Session of February 9, 2021, to order at 3:02 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 DEASY (virtually) | |
| VICE MAYOR DAGGETT (virtually) | |
| COUNCILMEMBER ASLAN (virtually) | |
| COUNCILMEMBER MCCARTHY (virtually) | |
| COUNCILMEMBER SALAS (virtually) | |
| COUNCILMEMBER SHIMONI (virtually) | |
| COUNCILMEMBER SWEET (virtually) | |

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

Mayor Deasy offered an apology to the City, the City Council, and to Flagstaff Shelter Services Executive Director Ross Altenbaugh.

**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.*

Sustainability Specialist Jenny Neimann addressed Council providing information on the upcoming Climate Emergency open houses. She also provided a brief demonstration of the Climate Emergency website.

**5. Review of Draft Agenda for the February 16, 2021 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.*

Mr. Clifton provided a reminder regarding the purpose of the Draft Agenda and the ability for Council to provide feedback or ask questions in advance of the next Regular Meeting.

**6. Discussion and Possible Direction Regarding City Council Rules of Procedure**

City Clerk Stacy Saltzburg provided a PowerPoint presentation that covered the following:

CITY COUNCIL RULES OF PROCEDURE
PROPOSED CHANGES
3.01 REGULAR MEETINGS
MODIFICATION OF COUNCIL BREAK
MODIFICATION OF MEETING TIMES
5.01 REGULAR MEETING AGENDA
5.02 WORK SESSION AGENDA
7.03 DECORUM AND ORDER
9.02 PUBLIC HEARINGS
11.07 LOBBYING MEETINGS AND TRIPS
OTHER CONSIDERATIONS

After discussion, the Council gave direction to make the following modifications to the City Council Rules of Procedure:

- Change Rule 3.01 to allow the option to hold the August meeting on the fourth Tuesday.
- Change the Regular Meeting times to 3:00 p.m. and 5:00 p.m.
- Add Rule 5.02 to set the Work Session Agenda.
- Incorporate the staff recommended changes regarding public speakers in Rules 7.03, 9.01, 9.02.
- Add Rule 11.07 regarding Meetings with State and Federal Delegation and Lobbying Trips

Council also provided direction to Mr. Solomon to research and develop additional language for Rules 7.01 and 8.01 regarding decorum of the Mayor and Council and provide options for Council should there be any concerns that arise during a meeting.

Austin Kerr submitted a written comment regarding the Council Rules of Procedure.

A break was held from 4:45 p.m. through 4:55 p.m.

**7. Overview of your Police and Fire Divisions**

Police Chief Dan Musselman provided a PowerPoint presentation that covered the following:

FLAGSTAFF POLICE DEPARTMENT
MISSION STATEMENT
OVERVIEW OF DIVISION

Deputy Chief Scott Mansfield continued the presentation.

OPERATIONS

Deputy Chief Frank Higgins continued the presentation.

SUPPORT SERVICES

Chief Musselman concluded the Police Department portion of the presentation.

ORGANIZATIONAL CHART
A LOOK AT FY21
DIVISION ACCOMPLISHMENTS
2021 INITIATIVES

Vice Mayor Daggett asked about the Homeless Community Liaison position. Chief Musselman explained that rather than a single person, it is provided more as a homeless liaison squad, provided through the Special Enforcement squad. The members of the squad are crisis intervention trained on identifying and responding to people who may be suffering substance abuse, traumatic brain injuries, mental illness and the like. They have also partnered with Catholic Charities to help transport people to the shelter and assist with these calls.

Vice Mayor Daggett asked if there has been any consideration of utilizing communication staff in the field due to their extensive training in de-escalation and intervention. Chief Musselman acknowledged that it is an interesting consideration but the Department is struggling with a 20% staffing deficit so it would be something that could be investigated further in the future.

Fire Chief Mark Gaillard continued the presentation.

FIRE DEPARTMENT
MISSION VISION VALUES
DEPARTMENT DATA
RESPONSE AREA
ORGANIZATIONAL CHART

Deputy Fire Chief Jerry Bills continued.

COMMUNITY RISK REDUCTION-CRR
CRR/WILDLAND FIRE
CRR/FIRE PREVENTION
CRR/EMERGENCY MANAGEMENT

Deputy Fire Chief Patrick Staskey continued.

OPERATIONS-OPS
OPERATIONS/FIRE
OPERATIONS/EMS

Deputy Fire Chief Mark Wilson concluded the presentation.

ADMIN-SUPPORT SERVICES
FY 21 BUDGET INFORMATION
2021 INITIATIVES
YEAR TO YEAR TRENDS
FIREFIGHTER FTE VS. CALL VOLUME
SUMMARY OF IMPACTS TO FLAG FIRE
CAPITAL EXPENDITURES
FLEET NEEDS WITHIN FFD
OTHER CAPITAL NEEDS WITHIN FFD
SUMMARY OF FFD

**8. Affordable Housing Overview and Project Update**

Housing Director Sarah Darr provided a PowerPoint presentation that covered the following:

HOUSING OVERVIEW 2021
OUTLINE FOR TONIGHT
HOUSING SPEAK
AFFORDABLE HOUSING 101
WHAT IS “AFFORDABLE HOUSING”?
IT’S ALL RELATIVE
WHY IS AFFORDABLE HOUSING IMPORTANT?
BUT ISN’T ALL HOUSING AFFORDABLE IF YOU MAKE ENOUGH MONEY?
BASIC HOUSING CONTINUUM
PROGRAM INCOME LIMITS
TWEEN CHALLENGE
WHY ARE MOST EFFORTS FOCUSED ON LOW-INCOME HOUSEHOLDS?
A FEW ITEMS TO REMEMBER
YES, BUT HOW?
RENTAL HOUSING

Housing Manager Justyna Costa continued the presentation.

OWNERSHIP HOUSING
PERMANENT AFFORDABILITY PROGRAM GOALS
PERMANENT AFFORDABILITY TOOLS

Ms. Darr continued the presentation.

TAX CREDIT 101
LOW INCOME HOUSING TAX CREDITS (LIHTC)
WHAT ABOUT OTHER FUNDING SOURCES?

Affordable Housing Advancement Project Manager Leah Bloom continued the presentation.

PROJECT UPDATES
HOUSING EMERGENCY RES. 2020-66
HOUSING PLAN PUBLIC PARTICIPATION

Councilmember McCarthy asked if there will be efforts to look at the zoning code and other City regulations to encourage developers to build housing without reducing the quality of housing. Ms. Costa stated that there will be a working group specific to zoning and land use and a working group specific to rewriting the Affordable Housing Incentive Policy.

Community Development Director Dan Folke added that in addition to the Housing Plan, staff will be doing a listening tour to evaluate how the development process impacts the cost of development and look for opportunities build efficiencies within the process.

Ms. Darr continued the presentation.

PUBLIC HOUSING SUMMARY
DECLARATION OF TRUST
SILER HOMES
BRANNEN HOMES
THE FUTURE OF PUBLIC HOUSING
RENTAL ASSISTANCE DEMONSTRATION
MORE RAD INFO
OK…..BUT HOW?
OTHER FUNDING SOURCES
…WHAT DOES ALL THIS NOT MEAN?
WHY WOULD ANYONE “GO RAD” OR “REPOSITION”?
WHAT’S WORKING IN OUR FAVOR?
HOW DO WE GET FROM HERE TO THERE?
HOUSING BOND 2022
TIMELINE 2020
ATTAINABLE HOUSING BOND RECOMMENDATIONS
EMERGENCY HOUSING RECOMMENDATIONS - $10 MILLION
RENTAL HOUSING RECOMMENDATIONS - $10 MILLION
WORKFORCE HOUSING – HOMEOWNERSHIP - $10 MILLION
HOUSING COMMISSION BOND RECOMMENDATIONS
SEEKING DIRECTION

Vice Mayor Daggett stated that she is very interested in a Housing Bond and she looks forward to the Housing Commission bringing the matter back to Council for consideration.

Mayor Deasy agreed and asked that the Climate Action and Adaptation Plan and Climate Emergency Goals be included in the proposal.

Councilmember McCarthy indicated that a bond would be asking homeowners to subsidize housing for others. He is more inclined to support rehabilitating the existing housing stock and the reusable funds like the down payment assistance fund that are revolving. He is supportive of having the Housing Commission revisit and bring back specific recommendations and how the funds would be spent.

Councilmembers Shimoni, Sweet, and Aslan also expressed support for the Housing Commission to revisit the issue and bring back recommendations.

Ms. Darr concluded the presentation.

MORE COMING ATTRACTIONS!

Harlan Grossman addressed Council asking for them to consider all options available to expand affordable housing.

A break was held from 8:05 p.m. through 8:20 p.m.

**9. Acquisition of real property in the general area of 703 Blackbird Roost for affordable housing**

Mr. Solomon stated that there is no staff presentation but wanted to let the Council know that there may be additional legal advice in the future.

Tony Cullum addressed Council on behalf of the property owner at 703 Blackbird Roost. He stated that they have begun a development process and working with City staff on the zoning and required plans. He explained that the developer is willing to discuss a partnership with the City or possible sale or trade of the land should there be any interest.

**10. Case No. PZ-21-00019 Zoning Code Text Amendment - 2021: Affordable Housing Modified Development Standards**

Zoning Code Manager Dan Symer provided a PowerPoint presentation that covered the following:

CASE NO. PZ-21-00019 ZONING CODE TEXT AMENDMENT – 2021: AFFORDABLE HOUSING MODIFIED DEVELOPMENT STANDARDS
REASON FOR THE PROPOSED ZONING CODE TEXT AMENDMENT
PROPOSED ZONING CODE AMENDMENT
REQUIRED FINDINGS
POTENTIAL TIMING
QUESTIONS TO CONSIDER

Tyler Denham addressed Council urging them to edit the proposed amendment to allow density increases so as to improve overall affordability and increase the number of families that can take advantage of the developments.

After a brief discussion Council indicated their support of the recommendations. Mr. Symer stated that he will be back before Council in a few weeks for formal action.

**11. State/Federal Legislative Updates**

**i. SB1431 (Flood control districts; Advisory board)**

Management Analyst Sarah Langley briefly reviewed SB1431.

**Moved by** Councilmember Adam Shimoni, **seconded by** Councilmember Jim McCarthy to recess into Executive Session for legal advice.

**Vote:** 7 - 0 - Unanimously

The Council recessed into Executive Session at 8:53 p.m. and reconvened the Work Session at 9:21 p.m.

Council indicated that they were in support of SB1431 and directed staff to advocate that support on behalf of the City.

**12. Public Participation**

None

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

Mr. Clifton stated that the legislative update that was just provided is indicative of the practice going forward. He indicated that if there are things that come up that you would like to discuss please bring them to our attention.

Vice Mayor Daggett expressed appreciation for Mayor Deasy's apology. She encouraged the Council to focus on all the challenges before them and that she is optimistic about the Council moving forward.

Councilmember McCarthy reported that the MetroPlan met that week and elected him to be the Chair and County Supervisor Patrice Horstman to be the Vice Chair. He thanked Councilmember Salas for her willingness to be the MetroPlan representative to Rural Transportation Advisory Committee. Councilmember McCarthy also expressed a desire to have an unbiased public process regarding the Lowell Observatory property before Congress starts drafting bill.

Councilmember Salas acknowledged and thanked Mayor Deasy for his apology. She shared some recent experience with Flagstaff Shelter Services and encouraged the Council to redirect their energy toward working together and seeing understanding from each other. She also requested a FAIR item to have the Council consider a Code of Conduct and Ethics Standards to govern Mayor and Council.

Councilmember Shimoni echoed Councilmember Salas' comments and stated that the Council needs to recommit to be a Council that is based on integrity and mutual respect. He thanked Mayor Deasy for his apology and suggested that he post a public apology. He suggested another Council Retreat to reconnect as a group. Councilmember Shimoni stated that there was a Town Hall recently on alternative responses and also suggested that people take a look at the live stream he did with Solar United Leaders. Lastly, Councilmember Shimoni requested a FAIR item to discuss a possible increase in the Mayor and Council salaries.

Councilmember Sweet thanked Councilmember Salas for her statement and she also extended an apology to Ms. Altenbaugh. She thanked Mayor Deasy for his apology and stated that it is important that the Council set the standard for professionalism and respect as they focus on policy and moving the City forward.

Mayor Deasy stated that he recognizes that his apology must be followed up by action and he is committed to doing that and moving forward toward meaningful change. He announced that he was appointed to the Arizona League of Cities and Towns Executive Committee and looks forward to that appointment. He also requested a FAIR item to discuss putting forth legislation that makes it illegal to fabricate a 911 report based on someone's race, ethnicity, religious affiliation, gender or sexual orientation. Lastly he expressed a desire to have a discussion

about Land Value Tax and any process needed to convert parts of the City's property tax into this type of model.

**14. Adjournment**

The Flagstaff City Council Work Session of February 9, 2021, adjourned at 9:47 p.m.

_____
MAYOR

ATTEST:

_____
CITY CLERK

CITY COUNCIL REGULAR MEETING
TUESDAY, MARCH 2, 2021
STAFF CONFERENCE ROOM
211 WEST ASPEN
3:00 P.M.

# MINUTES

## 1. CALL TO ORDER

Mayor Deasy called the meeting of the Flagstaff City Council held March 2, 2021, to order at 3:02 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 DEASY (virtually)
VICE MAYOR DAGGETT (virtually)
COUNCILMEMBER ASLAN (virtually)
COUNCILMEMBER MCCARTHY (virtually)
COUNCILMEMBER SALAS (virtually)
COUNCILMEMBER SHIMONI (virtually)
COUNCILMEMBER SWEET (virtually)

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

## 3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

The Council and audience recited the pledge of allegiance and Councilmember Shimoni 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. 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.*

John Viktora addressed Council and expressed grievances about Mayor Deasy's recent apology. He also thanked a number of staff and Councilmembers.

Written comment cards were submitted by Brendan Trachsel and Danielle McGruer.

## 5. PROCLAMATIONS AND RECOGNITIONS

### A. Covid-19 Memorial Day

Mayor Deasy read the Covid-19 Memorial Day proclamation.

### B. Colorectal Cancer Awareness Month

Mayor Deasy read the Colorectal Cancer Awareness Month proclamation.

### C. National Social Worker Month

Mayor Deasy read the National Social Worker Month proclamation.

## 6. CONSENT ITEMS

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

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Miranda Sweet to approve the Consent Agenda as presented.

**Vote:** 7 - 0 - Unanimously

**A.** **Consideration and Approval of a Cooperative Purchase Contract:** To purchase one (1) 2020 Weiler Paver P385B PVR Asphalt Paver from Caterpillar, Inc through a cooperative purchase contract with the City of Tucson Procurement Department #161534-01 in the amount of $193,085.00 plus sales tax $17,185.00 for a total of $210,270.00.

Approve the equipment purchase for one (1) 2020 Weiler Paver P385B PVR Asphalt Paver from Caterpillar, Inc in the amount of $193,085.00, plus applicable taxes, for a total of $210,270.00 through cooperative purchase contract #161534. Authorize the City Manager to execute the necessary documents.

**B.** **Consideration and Approval of Cooperative Contract**: Purchase of new self-contained breathing equipment from Municipal Emergency Services, Inc. with the Assistance to Firefighters grant funds along with other City funding in the total amount of $680,981.73.

1. Approve the purchase of new Self Contained Breathing Apparatuses (SCBAs) for the Flagstaff Fire Department from Municipal Emergency Services, Inc. (MES) through a Sourcewell Cooperative Purchasing Contract (#032620) for a total dollar amount of $680,981.73.
    - Funded $469,090.91 by federal grant EMW-2019-FG-02915
    - Required matching funds of $46,909.09 from the City
    - $164,981.73 covered by other City funds
2. Authorize the City Manager to execute the necessary documents.

**C.** **Consideration and Approval of the Construction Contract:** with Mountain High Excavating, LLC for the West Flag Improvements - David & Hutcheson Project in the amount of $2,573,961.01.

1. Approve the Construction Contract with Mountain High Excavating, LLC. in the amount of $2,573,961.01, which includes a $122,000.00 Contract Allowance, with a contract duration of 235-calendar days; and
2. Approve Administrative Change Order Authority to the City Manager in the amount of $245,196.00 (10% of the Contract Amount, less the Contract Allowance); and
3. Authorize the City Manager to execute the necessary documents.

Mayor Deasy asked if there was a way to incorporate conduit into the project. IT Manager Paul Santana explained that the focus for conduit and fiber is on main arterial routes rather than specific neighborhoods. City Engineer Rick Barrett added that the cost to include conduit is quite low but it would change the overall scope of work and timeline for the project.

Councilmember McCarthy suggested that the addition of conduit be considered for future projects. It will also be important to factor in what it will take for homeowners to tie into the system once it is there.

Vice Mayor Daggett stated that the project should go forward as planned but agreed that the questions and considerations are good and should continue with future projects.

**D.** **Consideration and Approval of the Construction Contract:** with Mountain High Excavating, LLC for the West Flag Improvements - Canyon Terrace Project in the amount of $1,030,031.00.

1. Approve the Construction Contract with Mountain High Excavating, LLC. in the amount of $1,030,031.00, which includes a $71,000.00 Contract Allowance, with a contract duration of 235-calendar days; and
2. Approve Administrative Change Order Authority to the City Manager in the amount of $95,903.00 (10% of the Contract Amount, less the Contract Allowance); and
3. Authorize the City Manager to execute the necessary documents.

## 7. ROUTINE ITEMS

**A.** **Consideration and Approval of Preliminary Plat:** Request from TLC PC Golf, LLC, for Preliminary Plat approval for Club Cabin Condominiums 2 at the Estates at Pine Canyon Unit 1—a three-unit residential condominium subdivision on 10.88 acres at 3000 S. Clubhouse Circle.

Planning Development Manager Genevieve Pearthree provided a PowerPoint presentation that covered the following:

CLUB CABIN CONDOMINIUMS 2 AT THE ESTATES AT PINE CANYON UNIT 1 SUBDIVISION
REQUEST OVERVIEW
VICINITY MAP
BACKGROUND
CLUB CABINS 2 PRELIMINARY PLAT
PLAT UNIT AIRSPACE OWNERSHIP
REQUIRED FINDING #1: ZONING CODE (TITLE 10)
REQUIRED FINDING #2: ENGINEERING STANDARDS (TITLE 13)
REQUIRED FINDING #3: SUBDIVISIONS STANDARDS (TITLE 11)
FINDINGS AND RECOMMENDATION

**Moved by** Councilmember Adam Shimoni, **seconded by** Councilmember Jim McCarthy to approve the Preliminary Plat.

**Vote:** 7 - 0 - Unanimously

**B.** **Consideration and Adoption of Ordinance No. 2021-02:** An ordinance of the Flagstaff City Council amending the Employee Handbook of Regulations, as established by Flagstaff City Code, Chapter 1-14, Personnel System, Section 1-14-001-0001, Personnel System Adopted.

**Moved by** Councilmember Adam Shimoni, **seconded by** Vice Mayor Becky Daggett to read Ordinance No. 2021-02 by title only for the final time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE EMPLOYEE HANDBOOK OF REGULATIONS RELATING TO COMPENSATION AND PROMOTION, AS ESTABLISHED BY CITY CODE, CHAPTER 1-14, PERSONNEL SYSTEM, SECTION 1-14-001-0001, PERSONNEL SYSTEM ADOPTED; PROVIDING FOR PENALTIES; REPEAL OF CONFLICTING ORDINANCES; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy approve Ordinance No. 2021-02.

**Vote:** 7 - 0 - Unanimously

**C.** **Consideration of Audited Financial Reports**: Year ending June 30, 2020

Finance Manager Brandi Suda addressed Council stating that the City is required to perform an annual financial audit as well as a single audit due to receiving federal grants in excess of $750,000. Both audits went very well and there were no errors or material misstatements made.

Management Services Director Rick Tadder thanked the Audit Committee for their work.

Vice Mayor Daggett made note that the City has received the GFOA Award for Financial Excellence and Reporting for the past 25 years.

**Moved by** Mayor Paul Deasy, **seconded by** Vice Mayor Becky Daggett to approve the FY 2019-2020 Comprehensive Annual Financial Report and the FY 2019-2020 Single Audit Report.

**Vote:** 7 - 0 - Unanimously

## 8. PUBLIC HEARING ITEMS

**A.** **Consideration and Adoption of Ordinance No. 2021-04:** An ordinance of the City Council of the City of Flagstaff amending the Flagstaff Zoning Map to rezone approximately .82 acres of real property generally located at 922 E Route 66 by adding a Landmarks Overlay District designation to the historic sign only, within an existing Highway Commercial District zoning classification

Mayor Deasy opened the public hearing.

Comprehensive Planning Manager Sara Dechter introduced Heritage Preservation Officer Mark Reavis who provided a PowerPoint Presentation that covered the following:

WHISPERING WINDS MOTEL LANDMARK OVERLAY ZONING MAP AMENDMENT
LANDING ZONING OVERLAY
HERITAGE PRESERVATION PROGRAM 10-30.30.010 “PURPOSE”
INDIVIDUAL SIGNS OF HISTORIC OR CULTURAL SIGNIFICANCE
WHY IS A LANDMARK OVERLAY REQUIRED FOR AN “INDIVIDUAL SIGNS OF HISTORIC OR CULTURAL SIGNIFICANCE
DIRECT TO ORDINANCE ZONING MAP AMENDMENT FOR HISTORIC OVERLAY
WHISPERING WINDS’ SIGN LOCATION
LAND USE
CONDITION
WHISPERING WINDS HISTORIC SIGN GRANT
WHISPERING WINDS MOTEL SIGN
HP INCENTIVE GRANT
HPC REVIEW AND RECOMMENDATION
PREVIOUS HPC DECISION & UPDATE REQUIRED
FINDING #1
FINDING #2
FINDING #3
ADDITIONAL HPC FINDINGS
HPC RECOMMENDATION
STAFF RECOMMENDED ACTION
P&Z RECOMMENDATION

Councilmember McCarthy stated that he had initial reservations about the request because the City had worked so hard to remove the signs and billboards from along Route 66 and the sign would not conform with the new sign code. He indicated that after he met with staff and discussed the historical nature and preservation aspects he is now supportive of the sign.

Councilmember Salas stated that this year is the 95th year of historic Route 66.

There being no public comment, Mayor Deasy closed the public hearing.

**Moved by** Councilmember Regina Salas, **seconded by** Vice Mayor Becky Daggett to read Ordinance No. 2021-04 by title only for the first time.

**Vote:** 7 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF ZONING MAP TO REZONE APPROXIMATELY 0.82 ACRES OF REAL PROPERTY GENERALLY LOCATED AT 922 E ROUTE 66 BY ADDING A LANDMARKS OVERLAY DISTRICT DESIGNATION ("LO") TO THE EXISTING HIGHWAY COMMERCIAL DISTRICT ("HC") ZONING CLASSIFICATION; PROVIDING FOR SEVERABILITY, CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

## 9. REGULAR AGENDA

**A.** **Consideration and Adoption of Resolution No. 2021-09:** A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement between the Coconino County Community College District and the City of Flagstaff to share fire training and education resources.

Deputy Fire Chief Mark Wilson addressed Council stating that the IGA is a continuation of an ongoing agreement with Coconino Community College for shared fire training and education resources. It is an agreement that provides mutual benefits for both agencies.

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Miranda Sweet to read Resolution No. 2021-09 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COCONINO COUNTY COMMUNITY COLLEGE DISTRICT AND THE CITY OF FLAGSTAFF FOR SHARING OF RESOURCES*

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Jim McCarthy to adopt Resolution No. 2021-09.

**Vote:** 7 - 0 - Unanimously

**B.** **Consideration and Adoption of Resolution No. 2021-10:** A resolution of the Flagstaff City Council, approving Amendment No. 1 to an Intergovernmental Agreement, #19-0007325 and Resolution 2019-51 (IGA) between the State of Arizona, Department of Transportation (ADOT), and the City of Flagstaff (City) to include the replacement of Portland Cement Concrete Pavement (PCCP) within ADOT's Bridge Replacement Project.

Engineering and Capital Improvements Project Manager Trevor Henry provided a PowerPoint presentation that covered the following:

AMENDMENT NO. 1 TO ADOT/CITY IGA
CONTEXT MAP
VICINITY MAP
RESOLUTION 2019-51
RESOLUTION 2021-10

**Moved by** Councilmember Austin Aslan, **seconded by** Vice Mayor Becky Daggett to read Resolution No. 2021-10 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AMENDMENT NO. 1 TO INTERGOVERNMENTAL AGREEMENT 19-0007325-I, PREVIOUSLY APPROVED THROUGH RESOLUTION 2019-51, BETWEEN THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, AND THE CITY OF FLAGSTAFF TO INCLUDE THE REPLACEMENT OF PORTLAND CEMENT CONCRETE PAVEMENT WITHIN THE ARIZONA DEPARTMENT OF TRANSPORTATION'S BRIDGE REPLACEMENT PROJECT*

**Moved by** Vice Mayor Becky Daggett, **seconded by** Mayor Paul Deasy to adopt Resolution No. 2021-10.

**Vote:** 7 - 0 - Unanimously

A break was held from 4:22 p.m. through 4:35 p.m.

**C.** **Consideration and Adoption of Ordinance No. 2021-03:** An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title 6, Police Regulations, by adopting a new Chapter 6-10, Regulation of Recreational Marijuana.

Deputy City Attorney Kevin Fincel provided a PowerPoint presentation that covered the following:

RECREATIONAL MARIJUANA
OBJECTIVES
HISTORY
KEY PROVISIONS
ENFORCEMENT ISSUES
PRIOR COUNCIL DIRECTION
PROPOSED ORDINANCE

Bernice Carver addressed Council urging them to take a step back and look at what other cities and counties are doing with restricting the High THC Marijuana Establishments, Testing Facilities, and Delivery in the community.

A written comment card in support of the ordinance was submitted by Tanner Glenn.

Councilmember Shimoni asked about the fee schedule. Senior Assistant City Attorney Marianne Sullivan and City Prosecutor Brent Harris explained that the courts have the discretion to set the penalty which could be a fine, community service, or something else.

Vice Mayor Daggett asked what a testing facility is and if they could be considered a place of manufacture of goods to be sold. Zoning Code Manager Dan Symer stated that under state law the testing facilities are limited to those who test for THC and two other chemical components. They also test for harmful contaminants. They cannot manufacture, sell, or grow marijuana.

Mayor Deasy stated that he is concerned with the monopolization of recreational marijuana in Arizona. He asked if it would be possible to only provide licenses to retailers who do not have a license in another Arizona city. Mr. Fincel stated that localities may prohibit or limit the number of permits. He would have to do further research to determine if Flagstaff could add a provision that would only permit licenses to applicants that do not have another establishment.

Councilmember Aslan stated that he is concerned about the pace at which the City is inviting marijuana into the community. Mayor Deasy's suggestion may be a way to limit the number of licenses coming in. The voters have spoken but he believes that there needs to be a measured and metered approach at the front end.

Mr. Fincel suggested that if Council wants to look further into the idea of limiting who can obtain a license that they go back to the original ordinance and limit to dual licenses only. Staff can then come back with proposed amendments once more information is gathered.

Mayor Deasy stated that another idea would be to wait for the social equity licenses to be issued from the State. He asked for clarification on what a social equity license is. Mr. Fincel stated that there is not a lot of information at this point on social equity licenses, but it does allow for 26 additional licenses to be issued state-wide. These licenses would exceed the states cap for recreational locations.

Council was supportive of permitting dual licenses only and then consider amendments once more information is available.

**Moved by** Councilmember Austin Aslan, **seconded by** Vice Mayor Becky Daggett to read Ordinance No. 2021-03 by title only for the first time as amended to limit recreational marijuana establishments to dual licensees.

**Vote:** 6 - 1

NAY: Councilmember Regina Salas

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 6, POLICE REGULATIONS, BY ADOPTING A NEW CHAPTER 6-10, REGULATION OF RECREATIONAL MARIJUANA; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

## 10. COUNCIL LIAISON REPORTS

Vice Mayor Daggett reported that the Housing Commission is getting ready to take public comment on a ten-year plan. They have subcommittees working on various topics and they are collecting contact information from people who want to be kept apprised of the process along the way.

Councilmember Aslan reported that the Sustainability Commission met and considered and awarded grant applications. He indicated that they will be coming to Council later in March to discuss the implementation of the Climate Action and Adaptation Plan.

Councilmember McCarthy reported that the MetroPlan Board would be meeting tomorrow.

Councilmember Salas reported that at the Tourism Commission meeting it was reported that there was a 12.6% increase in hotel occupancy between 2020 and 2021 which is due in part to the back to back snowstorms in January. She also reported that she attended the Parks and Recreation Commission meeting and they have gone through the proposed fiscal year 2021-2022 budget for the Parks and Recreation department and they have started reviewing the exiting master plan. The commission will be bringing recommendations to the Council in the future.

Councilmember Salas also reported that she attended the ECONA Advisory Board meeting where Senator Mark Kelly was the guest speaker. He outlined his priorities and she was able to bring attention to the City's legislative priority of affordable attainable housing.

Councilmember Shimoni reported that the Indigenous Commission met last week; it was a very introductory meeting and he looks forward to keeping the Council up to date on their progress. He also reported that the 911 Diversion group met recently; there are only a small amount of calls being diverted but it is good work that is being done.

Councilmember Sweet reported that she attended her first NACOG and Water Commission meetings and will provide more details in upcoming meetings.

## 11. 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 Salas to place on a future agenda a discussion to consider a Code of Conduct and Ethics Standards to govern Mayor and Council.

John Viktora addressed Council in support of establishing a Code of Conduct and Ethics Standards.

Councilmember Salas stated that a Code of Conduct can help facilitate collaboration and provide a solid foundation for Council. She indicated that there are Codes of Conduct and Ethics Policies for different areas in the organization and many other cities and towns have policies in place that can be built upon and personalized for Flagstaff.

Council was supportive of moving the item forward for future discussion.

**B.** **Future Agenda Item Request (F.A.I.R.):** A request by Mayor Deasy to place on a future agenda a discussion to consider legislation that makes it illegal to fabricate a 911 report based on someone's race, ethnicity, religious affiliation, gender or sexual orientation

The Council discussed the challenges in establishing intent in the filing of a false police report based on certain characteristics. They also discussed the challenges related to enforcement; it was also mentioned that it is already illegal to file a false police report.

The Council felt that the issue was bigger than the specific request and that a broader discussion is needed. Mayor Deasy agreed and indicated that he will bring forward another FAIR item in the future for a broader discussion.

There was not support to move the item forward.

## 12. CITY MANAGER REPORT

### A. City Manager Report

Mayor Deasy encouraged the public to take a look at the report as it is filled with great information.

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

Councilmember Sweet stated that there have been recent letters to the editor and she has received some questions from the public about how Council is moving forward from recent events at the dais. She stated that she thinks some communication from Council as a whole could be beneficial for the community. She has drafted a letter to the editor and has asked Mr. Clifton to circulate the letter to Council for their consideration. She is hopeful that there can be an agreement to send the letter as a collective body.

Councilmember Shimoni asked that a discussion about port-a-johns and sanitation stations be included with the next conversation on COVID to see if there are ways to address the needs of the unsheltered population.

Councilmember Shimoni announced that the Text to 911 system is live and it is a great resource for the community. He also offered appreciation to the firefighting team that helped with the incident on Mount Elden as well as to Officer Rogers who responded to a call where an infant was not breathing; he provided CPR and the baby is doing well now.

Councilmember Salas reported that March is International Women's Month and March 8, 2021 is International Women's Day.

Vice Mayor Daggett reported that the County has opened up vaccinations to people aged 55 and older. She encouraged everyone who qualifies for 1a or 1b to schedule their appointments.

Mayor Deasy thanked the Council for a productive and efficient meeting.

**14. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held March 2, 2021, adjourned at 6:35 p.m.

_____
MAYOR

ATTEST:

_____
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 March 2, 2021. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 6th day of April, 2021.

_____
CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)
TUESDAY, MARCH 9, 2021
STAFF CONFERENCE ROOM - SECOND FLOOR
FLAGSTAFF CITY HALL
211 WEST ASPEN AVENUE
1:00 P.M.

**1. Call to Order**

Mayor Deasy called the Special Meeting (Executive Session) to order at 1:01 p.m.

**2. ROLL CALL**

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

PRESENT: ABSENT:

MAYOR DEASY (virtually)
VICE MAYOR DAGGETT (virtually)
COUNCILMEMBER ASLAN (virtually)
COUNCILMEMBER MCCARTHY (virtually)
COUNCILMEMBER SALAS (virtually)
COUNCILMEMBER SHIMONI (virtually)
COUNCILMEMBER SWEET (virtually)

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

**3. Recess into Executive Session**

**Moved by** Councilmember Jim McCarthy, **seconded by** Councilmember Regina Salas to recess into Executive Session.

**Vote:** 7 - 0 - Unanimously

**4. Executive Session:**

**A.** Discussion or consultation for legal advice with the attorney or attorneys of the public body; and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to A.R.S. §38-431.03(A)(3) and(4), respectively.

**i.** Legal advice regarding development agreement for the Aura Development

**5. Adjournment**

The Special Meeting (Executive Session) of the Flagstaff City Council held March 9, 2021, reconvened into Open Session at 2:39 p.m. at which time the meeting adjourned.

_____
MAYOR

ATTEST:

_____
CITY CLERK

SPECIAL MEETING (EXECUTIVE SESSION)
TUESDAY, MARCH 23, 2021
STAFF CONFERENCE ROOM - SECOND FLOOR
FLAGSTAFF CITY HALL
211 WEST ASPEN AVENUE
1:00 P.M.

**1. Call to Order**

Mayor Deasy called the Special Meeting (Executive Session) to order at 1:01 p.m.

**2. ROLL CALL**

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

PRESENT: ABSENT:

MAYOR DEASY (virtually)
VICE MAYOR DAGGETT (virtually)
COUNCILMEMBER ASLAN (virtually)
COUNCILMEMBER MCCARTHY (virtually)
COUNCILMEMBER SALAS (virtually)
COUNCILMEMBER SHIMONI (virtually)
COUNCILMEMBER SWEET (virtually)

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

**3. Recess into Executive Session**

**Moved by** Mayor Paul Deasy, **seconded by** Councilmember Miranda Sweet to recess into Executive Session.

**Vote:** 7 - 0 - Unanimously

**4. Executive Session:**

**A.** Discussion or consultation for legal advice with the attorney or attorneys of the public body; discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation; and discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, pursuant to A.R.S. §38-431.03(A)(3), (4), and (7), respectively.

**i.** Switzer Canyon Phase IV - Out of City Water Services Policy

**ii.** City Property Lease – Joel Montalvo

**5. Adjournment**

The Special Meeting (Executive Session) of the Flagstaff City Council held March 23, 2021, reconvened into Open Session at 2:23 p.m. at which time the meeting adjourned.

_____
MAYOR

ATTEST:

_____
CITY CLERK

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Fobar, Deputy City Clerk |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration of Appointments:** Open Spaces Commission.

**STAFF RECOMMENDED ACTION:**

Make one appointment to a term expiring April 2024.

**Executive Summary:**

The Open Spaces Commission consists of seven regular members all of whom shall be appointed by the City Council, except for designee from the Planning and Zoning Commission. The commission serves as an advisory body on the acquisition, management, use, restoration, enhancement, protection, and conservation of open space land. There is currently one seat available due to a term expiration. It is important to fill vacancies on Boards and Commissions quickly so as 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:

Bruce Applin (new applicant)
James Foulks (new applicant)
Wm Michael Wilson (current commissioner)

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 Shimoni.

**Financial Impact:**

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

**Policy Impact:**

None.

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

- Foster community pride & civic engagement by increasing opportunities for public involvement, in line with best practices & legal requirements
- Enhance community involvement, education & regional partnerships to strengthen the level of public trust

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

None.

**Options and Alternatives:**

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

2) Postpone 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:** Open Space Commission Authority

# CHAPTER 2-20
# OPEN SPACES COMMISSION

SECTIONS:


2-20-001-0001 CREATION OF THE COMMISSION:
2-20-001-0002 TERMS OF OFFICE:
2-20-001-0003 DUTIES:
2-20-001-0004 OPEN SPACES LONG RANGE MANAGEMENT PLAN COMPONENTS:
2-20-001-0005 MEETINGS; ATTENDANCE:


## 2-20-001-0001 CREATION OF THE COMMISSION:

There is hereby created an advisory body to be called the "Open Spaces Commission" ("Commission") consisting of the following seven (7) regular members all of whom shall be appointed by the City Council, except for designee from the Planning and Zoning Commission: one (1) member from the Planning and Zoning Commission; and six (6) public at-large members. All Commission members shall be voting members. A Chairperson shall be selected by a majority vote of those members at a meeting called for that purpose. (Ord. No. 2007-08, Amended, 02/06/2007; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016)

## 2-20-001-0002 TERMS OF OFFICE:

Appointments from the Planning and Zoning Commission and the Parks and Recreation Commission to the Open Spaces Commission 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 two members for three year (3) terms, two members for two (2) year terms, and two members for one (1) year terms. After the initial appointment all terms thereafter will be three (3) year terms.

## 2-20-001-0003 DUTIES:

A. It shall be the Commission’s duty to advise the City Council on acquisition, preservation, and alternatives for open space land management.

B. The duties of the Commission shall also include, but not be limited to: Reviewing and advising the City Council on the development of an Open Spaces Long Range Management Plan and policies to provide broad, long-term direction for planning and decision making for the lands designated as Urban Open Space Management Area in

the Urban Open Spaces Plan of the Flagstaff Area Regional Land Use and Transportation Plan.

C. Advising and assisting the Mayor and City Council on ways to educate and involve the community on the value, protection, and stewardship of open space lands.

D. Advising and assisting the Mayor and City Council on ways to work collaboratively with other governmental entities, organizations, and departments to advance and ensure the implementation of the Open Spaces Long Range Management Plan and the Flagstaff Area Regional Land Use and Transportation Plan.

E. Advising and assisting the Mayor and City Council regarding regional open space issues as well as to any regional open spaces coalition that may be formed in the future relative to lands designated as open space in the Greater Flagstaff Area Open Spaces and Greenways Plan.

F. Obtaining public input and participation in various programs such as environmental education and interpretation on the use, operation, and management of open space and providing information concerning the goals, projects, and operations of the open space program.

**2-20-001-0004 OPEN SPACES LONG RANGE MANAGEMENT PLAN COMPONENTS:**

A. The components of the Open Spaces Long Range Management Plan shall include, but not be limited to:

1. Program goals, management decision-making processes, and implementation techniques for resource preservation.

2. Policies to provide the framework for more issue- or site-specific planning and implementation.

3. Criteria for the acquisition of lands that are consistent with open space goals and policies set forth in the Open Spaces Long Range Management Plan.

4. Plans for the management of the open spaces to achieve the goals of the Open Spaces Long Range Management Plan using such studies and data as property inventories, the nature and significance of the natural and cultural resources, plant and animal species ecosystems, existing uses and conditions, and interactions and connections between natural areas and between developed and undeveloped areas.

5. Developing, identifying, and recommending the use of various methods, such as intergovernmental agreements, rights-of-way for access, and grants, to assure protection of critical open space lands.

6. Policies to monitor, maintain, enhance, and restore, where necessary, natural and cultural resources, uses, accesses, trails, and facilities.

7. Public participation, education, and interpretive programs.

**2-20-001-0005 MEETINGS; ATTENDANCE:**

The Commission shall meet on a quarterly basis, at a minimum, at such times, dates and locations as determined by the members, except that the chairperson may call a special meeting with not less than twenty-four (24) hours' notice. All other rules or procedures shall be established by the members so long as the rules are consistent with state law, including the Open Meetings Law, the City Charter and this chapter.

A quorum shall consist of four (4) voting members of the Commission.

A regular Commission member who is absent for three (3) consecutive regular meetings may be removed from the Commission by a vote of the City Council. (Ord. 2003-03, Enacted, 02/04/03; Ord. 2007-08, Amended 02/06/2007; Ord. 2016-30, Amended, 07/05/2016)

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Fobar, Deputy City Clerk |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Action on Liquor License Application:** Amy S. Nations, "Hampton Inn & Suites", 990 N. Country Club Drive, Series 07 (Beer and Wine Bar), New Application.

**STAFF RECOMMENDED ACTION:**

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

The City Council has the option to:
1) Forward the application to the State with a recommendation for approval;
2) Forward the application to the State with no recommendation; or
3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

**Executive Summary:**

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. A Series 07 beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A Series 07 license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Hampton Inn & Suites is an existing business in Flagstaff and plans to serve beer and wine at a small bar in the lobby for consumption at the bar or in the guest's room. If approved, it will be the 22nd active series 07 license in Flagstaff.

The property has been posted as required, and the Police and Community Development divisions have reviewed the application with no concerns noted. To view surrounding liquor licenses, please visit the Active Liquor Licenses Map.

**Financial Impact:**

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

**Policy Impact:**

Not applicable.

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

Liquor licenses are a regulatory action and there is no Council goal that applies.

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

Not applicable.

**Key Considerations:**

Because the application is for a new application, consideration may be given to both the applicant's personal qualifications as well as the location.

The deadline for issuing a recommendation on this application is April 9, 2021.

**Community Benefits and Considerations:**

This business will contribute to the tax base of the community. We are not aware of any other relevant considerations.

**Community Involvement:**

The application was properly posted on March 16, 2021. No written protests have been received to date.

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**Attachments:**

Letter to Applicant
Hearing Procedures
Series 07 Description
Hampton Inn - PD Memo
Hampton Inn - Zoning Memo
Hampton Inn - Map

# City of Flagstaff

**OFFICE OF THE CITY CLERK**

3/17/2021

Amy S. Nations
PO Box 2502
Chandler, AZ 85244

Dear Ms. Nations:

Your application for a new Series 07 Liquor License for Hampton Inn & Suites located at 990 N. Country Club Drive, Flagstaff, AZ was posted on March 16, 2021. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, April 6, 2021 which is currently scheduled to begin at 3:00 p.m.**

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

The twenty-day posting period for your liquor license application is set to expire on April 5, 2021 and the application may be removed from the premises at that time.

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

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

Sincerely,

*Stacy M. Fobar*

Stacy M. Fobar
Deputy City Clerk

Enclosures

# City of Flagstaff

**Liquor License Application**
**Hearing Procedures**

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.

2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.

3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.

4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.

5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.

6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.

7. The presiding officer will then close the public hearing.

8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

**R19-1-702. Determining Whether to Grant a License for a Certain Location**

A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;

2. Number and types of licenses within one mile of the proposed premises;

3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;

4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;

5. Residential and commercial population density within one mile of the proposed premises;

6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;

7. Effect on vehicular traffic within one mile of the proposed premises;

8. Compatibility of the proposed business with other activity within one mile of the proposed premises;

9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;

10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;

11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and

12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

B. This Section is authorized by A.R.S. § 4-201(I).

## License Types: Series 07 Beer and Wine Bar License

Transferable (From person to person and/or location to location within the same county only)
On & off-sale retail privileges
Note: Terms in **BOLD CAPITALS** are defined in the glossary.

PURPOSE:
Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

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

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar.

Bar, beer and wine bar and restaurant licensees must pay an annual surcharge of $20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

FLAGSTAFF POLICE DEPARTMENT
911 SAWMILL RD • FLAGSTAFF, ARIZONA 86001• (928) 779-3646
ADMIN FAX (928)213-3372
TDD 1-800-842-4681

Chief of Police
Dan Musselman

**MEMORANDUM**

**Memo #21-21**

**TO:** **Chief Dan Musselman**

**FROM:** **Sgt. Ryan Turley**

**DATE:** **March 17th 2021**

**RE:** **LIQUOR LICENSE APPLICATION – SERIES 7- FOR "Hampton Inn"**

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On March 17th, 2021, I initiated an investigation into an application for a series 7 (Beer and Wine Bar) liquor license filed by Amy Nations (Agent), Ashwin Patel (Controlling Person), Manojkumar Bhakta (Controlling Person), Ajit Patel (Controlling Person), Anant Patel (Controlling Person), Raman Patel (Controlling Person) and Nilesh Bhakta (Controlling Person). This is a new license application, and the application number is 138900. It is for the Hampton Inn and Suites which is located at 990 N. Country Club Drive.

I conducted a query through local systems and public access on all applicants and discovered no derogatory records. I found evidence that Amy Nations has taken the mandatory liquor law training. I conducted a search for any current and previous liquor licenses or violations by these individuals and none were discovered. This business is not located within 300 feet of a school or church.

I made contact with Amy Nations over the phone, and she confirmed that she would be attending the council meeting on April 6th. There will be a small bar for service and an option for buying alcohol to be brought into a guests room.

# Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Tiffany Antol, Planning Director

Date: March 9, 2021

Re: Application for Liquor License #138900
990 N. Country Club Dr., Flagstaff, Arizona 86004
Assessor's Parcel Number 113-29-008
Amy S. Nations on behalf of Hampton Inn & Suites

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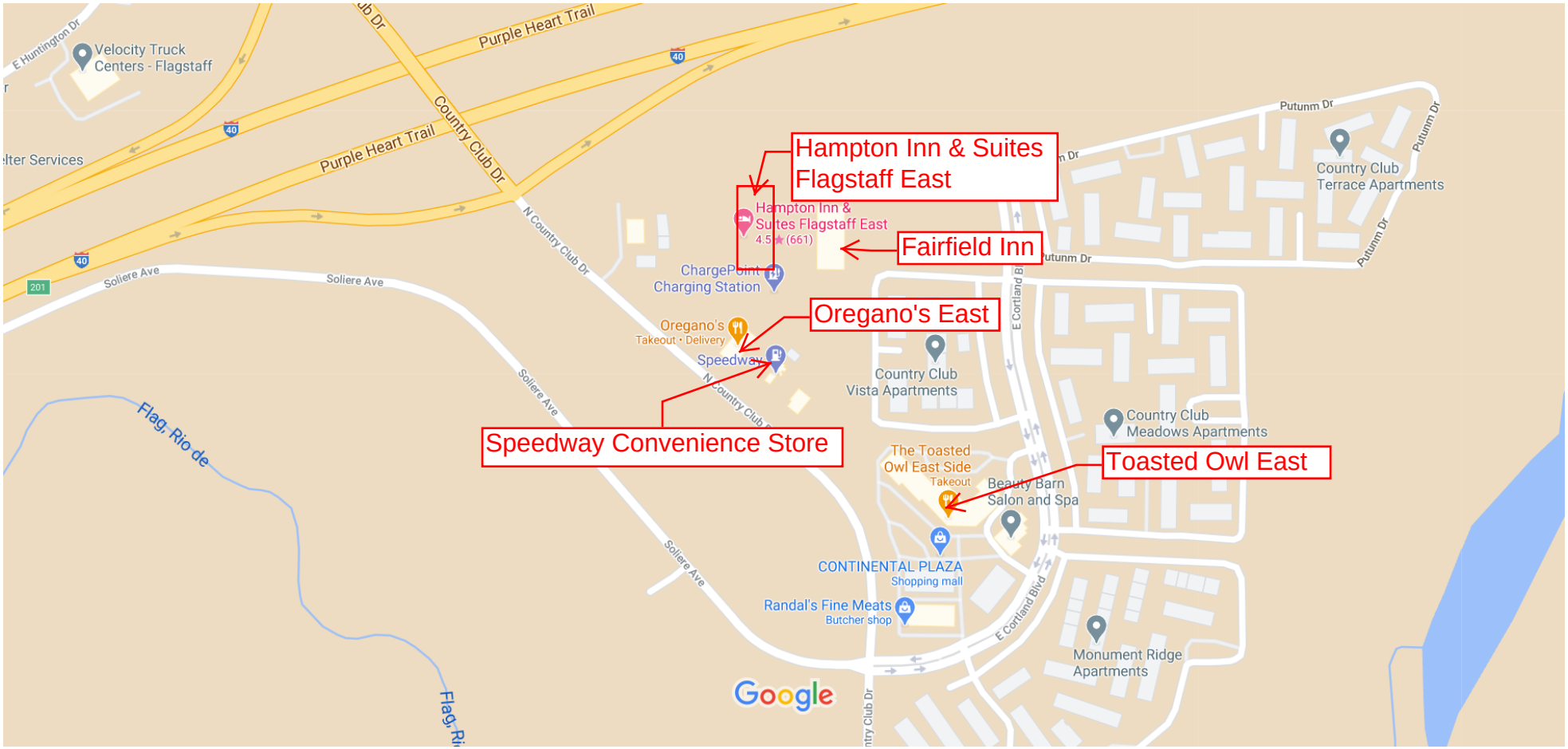
This application is a request for a new Series 7 Beer & Wine liquor license by Amy S. Nations on behalf of Hampton Inn & Suites. This business is located within the Highway Commercial district. This district does allow for this use.

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

Google Maps




Map data ©2021 Google 200 ft

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Adam Miele, Senior Project Manager |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval of Contract:** Multiple Job Order Contracting Services Contracts for upcoming projects at Pulliam Airport under $1,000,000.00 that are Federal Aviation Administration (FAA) CARES Act funded.

**STAFF RECOMMENDED ACTION:**

1. Approve award of Job Order Contracting Services Contracts to six contractors representing two discipline areas.
    - Horizontal Construction: Combs Construction Company, Inc., Fann Contracting, Inc., J. Banicki Construction, Inc.
    - Vertical Construction: FCI Constructors, Inc., Loven Contracting, Inc., Wespac Construction, Inc.
2. Authorize the City Manager to execute the necessary documents.

**Executive Summary:**

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

**Financial Impact:**

Costs will be expended from the CARES Act funding already approved by the FAA. Awarding multiple contracts based on specific areas of qualifications and experience on an as needed basis will result in increased efficiency.

**Policy Impact:**

No impact.

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

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

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

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

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

Yes, the initial award of the FAA CARES Act grant.

**Options and Alternatives:**

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

**Background/History:**

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

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

Purchasing utilized the Request for Statement of Qualifications (RSOQ) solicitation method in determining the most qualified and experienced contractors participating in JOC Services. The RSOQ rendered 22 Statement of Qualifications (SOQ) from interested contractors across both disciplines advertised, consisting of thirteen Horizontal Construction SOQs and nine Vertical Construction SOQs. An evaluation committee comprised of six members, including one local registered contractor, evaluated all responses in the following evaluation criteria:

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

After completing the evaluation process, the evaluation committee identified the three top firms in the discipline of Horizontal Construction and the three top firms in the discipline of Vertical Construction.

The Evaluation Criteria and Basis for Award section of the RSOQ solicitation document notified applicants that awards may be made to one or up to three firms in the Horizontal and Vertical Construction disciplines.

Scoring summary results are attached.

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

**Key Considerations:**

Job Order Contracting Services will allow the City to react more quickly to repair and make enhancements and/or additions to, facilities as well as other infrastructure including, but not limited to, roadways and FUTS trails. Specifically these JOC services will be for work at the Flagstaff Pulliam Airport.

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

The JOC Services Contracts will:

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

**Expanded Financial Considerations:**

Increased efficiency in project delivery will render project and staff time savings that will then be utilized on other additional projects. City staff will analyze all cost proposals received for each job to assess reasonableness and budgetary limitations then move forward and initiate a JOC Construction Contract with the chosen firm to perform the work.

**Community Benefits and Considerations:**

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

**Community Involvement:**

N/A

**Expanded Options and Alternatives:**
None

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**Attachments:** Airport JOC Scoring Summary
Airport JOC Services Contract
Airport JOC Construction Contract

**CITY OF FLAGSTAFF**
**Airport JOC Services**
**EVALUATION SUMMARY**
RSOQ #2021-51

**Horizontal Construction**

| C&E Paving | Capital Imp. | Caruso | Combs | EMC | FCI | Fann | HDS | J. Banicki | KCS | RTR | Rummel | Sunland |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 611 | 496 | 524 | 633<br>1196* | 639<br>1159* | 604 | 695 | 456 | 660 | 589 | 487 | 634<br>1140* | 592 |

***Third place firms (Combs, EMC and Rummel) from the written evaluations were interviewed to determine the third Horizontal Construction JOC contract recommendation due to their very close scores. This process allowed these three firms each up to an additional 100 points for their interview scores which was then added to their written evaluation scores. The top number is their written scores and the bottom, larger number is their combined written and interview scores totals.***

**Vertical Construction**

| Core | Caruso | FCI | HDS | KCS | Loven | SDB | Wespac | Willmeng |
|---|---|---|---|---|---|---|---|---|
| 580 | 521 | 612 | 460 | 600 | 649 | 571 | 624 | 583 |

***Interviews were deemed not necessary for the Vertical Construction firms due to the final written scores.***

**PROFESSIONAL SERVICE CONTRACT**
**FOR**
**JOB ORDER PROFESSIONAL CONTRACTING SERVICES:**
**[DISCIPLINE]**
**Contract No.: 2021-51**

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

**RECITALS**

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

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

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

## 1. SERVICES TO BE PERFORMED BY FIRM

Firm agrees to perform the following services:

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

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

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

## 2. COMPENSATION OF FIRM

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

## 3. RIGHTS AND OBLIGATIONS OF FIRM

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

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

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

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

## 4. NOTICE PROVISIONS

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

| To the Owner's Authorized Representative | To Firm: |
|---|---|
| Matthew Luhman, CPP, CPPB | Firm 's representative's name, title |
| Purchasing Manager | Firm 's name, e.g. name of corporation |
| City of Flagstaff | Address Line 1 |
| 211 W. Aspen | Address Line 2 |
| Flagstaff, Arizona 86001 | City, State Zip Code |

## 5. INDEMNIFICATION

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

## 6. INSURANCE

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

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

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

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

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

| | |
|---|---|
| Combined Single Limit Per Accident for Bodily Injury and Property Damage | $1,000,000 |

6.1.3. Workers' Compensation and Employer's Liability

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

6.1.4. Professional Liability $1,000,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 7. DEFAULT AND TERMINATION

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

7.1.1 Any material misrepresentation made by Firm to the Owner;

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

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

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

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

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

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

7.1.2.6 Unsatisfactory performance as judged by the Contract Administrator;

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

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

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

**7.2** **Remedies**.

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

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

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

7.2.1.3 The right to monetary damages;

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

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

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

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

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

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

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

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

## 8. GENERAL PROVISIONS

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

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

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

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

**8.5 Successors and Assigns**. No right or interest in the Contract shall be assigned by Firm without prior written permission of the Owner, and no delegation of any duty of Firm shall be made without prior written permission of the Owner. The Owner shall not unreasonably withhold approval and shall notify Firm

of the Owner's position within fifteen (15) days of receipt of written notice by Firm. This Contract shall extend to and be binding upon the Firm, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Firm shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Firm shall sell its assets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 9. SPECIAL TERMS AND CONDITIONS

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

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

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

**9.4 Rights and Obligations of Firm**

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

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

9.4.1.2 Date each event shall start and its duration.

9.4.1.3 Critical relationship of events.

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

9.4.1.5 The schedule shall be updated periodically as necessary.

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

**9.5 Maintenance of Documents.** Firm shall deliver to the Owner copies of reports, specifications and drawings prepared under the terms of this Contract. If drawings are prepared, the Owner will be provided with a set of full-size reproducibles. Originals of design and study notes, calculations, correspondence and similar material will be filed by the Firm and made available to the Owner on Request. Copies will be furnished to the Owner by the Firm at cost. Except as otherwise provided herein, documents prepared under the terms of this Contract will not be used by the Owner on other projects or extensions to this project except with the written agreement of the Firm.

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

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

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

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

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

**9.8** **General Responsibilities and Obligations of Firm.** The Firm is employed to render a professional service only, and any payments made to him are compensation solely for such services as he may render and recommendations he may make in carrying out the work. The Firm shall follow the practice of the profession to make findings, opinion, factual presentations, and to offer professional advice and recommendations. To the fullest extent permitted by law, the Firm shall defend, indemnify and hold harmless the City of Flagstaff, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Firm, its employees, agents, or any tier of subcontractors in the performance of this Contract. The Firm’s duty to defend, hold harmless and indemnify the City of Flagstaff, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Firm or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Firm may be legally liable.

9.8.1 The amount and type of insurance coverage requirements set forth herein (Section, 7.

Insurance) will in no way be construed as limiting the scope of the indemnity in this paragraph.

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

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

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

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

The City of Flagstaff is also a member of S.A.V.E. (Strategic Alliance for Volume Expenditures), which consists of numerous municipalities, counties, universities, colleges, schools and other Arizona State agencies. These cooperatives are achieved through Intergovernmental Agreements (IGA) in accordance with provisions allowed by A.R.S. §11-952 and §41-2632. The IGAs permit purchases of material, equipment and services from Vendors at the prices, terms and conditions contained in contracts originated between any and all of these agencies and the Vendor(s) contract, as awarded.

## 10. DURATION

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

## 11. FORCE MAJEURE

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

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

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

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

| **City of Flagstaff** | **Firm** |
|---|---|
| City Manager | **FIRM'S NAME AND REPRESENTATIVE TITLE** |
| Attest: | |
| City Clerk | |
| Approved as to form: | |
| City Attorney | Date of Execution:_____ |

**EXHIBIT A**

**SCOPE OF SERVICES**

# HORIZONTAL CONSTRUCTION

**SERVICES TO BE PERFORMED BY FIRM**

Firm agrees to perform any or all (but not limited to) the following services which will be specifically enumerated on individual JOC Construction Contracts and Purchase Orders as amendments to this contract**:**

- Roadway Grading, Paving and Patching
- Water, Sewer and drainage
- Curbs and Sidewalks
- Excavating
- Repairs
- Striping
- Concrete work
- Sign placement
- Electrical & Lighting
- Landscaping
- Demolition

# VERTICAL CONSTRUCTION

**SERVICES TO BE PERFORMED BY FIRM**

Firm agrees to perform any or all (but not limited to) of the following services which will be specifically enumerated in individual JOC Construction Contracts and Purchase Orders as amendments to this contract**:**

Services will pertain to all City of Flagstaff owned facilities and property, including any substructure needs for performing required services.

- New Construction
- Facility Alterations
- Facility Renovations
- Facility Rehabilitation
- Facility Furniture, Fixtures, and Equipment (FFE)
- Facility Expansion
- Demolition

**JOB ORDER CONTRACT**

**City of Flagstaff, Arizona**
**and**

_____

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

**RECITALS**

A. Owner desires to obtain Job Order Contracting (JOC) for **[Construction Type]** construction services ("Services"); and

B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

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

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

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

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

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

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

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

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

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

3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials as identified and in conjunction with the Cost Estimation in **Exhibit B**;

3.2 The City Engineer shall have the right to determine the final amount due to Contractor;

3.3 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;

3.4 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;

3.5 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

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

**5. Performance of Work.** All work covered by this Contract shall be done in accordance with the latest and best accepted practices of the trades involved. The Contractor shall use only

skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

**6. Acceptance of Work; Non-Waiver.** No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials, which are not strictly in accordance with the Contract.

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

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

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

**10. Material Storage.** During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at his or her own expense. The Contractor shall at all times keep the premises reasonably free from debris and in a condition, which will not increase fire hazards. Upon completion of the work, the Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials and supplies belonging to the Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of any temporary construction yard, material storage area or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit A, Section 107.2.1.)

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

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

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

**13. Notices.** Many notices or demands required to be given, pursuant to the terms of this Contract, may be given to the other Party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other

address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested at the address set forth below ***and*** to legal counsel for the party to whom the notice is being given.

**If to Owner:**
Matthew Luhman, CPP, CPPB
Purchasing Manager
211 West Aspen Avenue
Flagstaff, AZ 86001

**If to Contractor:**

**14. Contract Violations.** In the event of any of the provisions of this Contract are violated by the Contractor or by any of Contractor's subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract (the "Notice to Terminate"). The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner's notice of termination, the Owner may complete the work at the expense of the Contractor, and the Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work. If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances and plants as may be on the worksite site and necessary for completion of the work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| **Owner, City of Flagstaff** | **Contractor** |
|---|---|
| Kevin Burke, City Manager | Signature |
| Attest: | Printed Name |
| City Clerk | |
| Approved as to form: | |
| City Attorney | |

**CITY OF FLAGSTAFF, ARIZONA**
**PAYMENT BOND**

**PROJECT NAME:**
**PROJECT NUMBER:** **PRICE PROPOSAL NUMBER:**

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

KNOW ALL MEN BY THESE PRESENTS:

That, _____

(Hereinafter called the Principal), as Principal, and, _____

_____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ ("Surety"), as Surety, are held and firmly bound unto the City of Flagstaff, Arizona ("Obligee"), in the amount of _____

_____Dollars ($_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated this _____ day of_____, 20__, to the City of Flagstaff, which Contract is hereb

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

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

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

Witness our hands this _____ day of _____ 20___.

| | |
|---|---|
| Principal (Seal) | Surety (Seal) |
| By: | By: |
| Agency of Record | Agency Address |

**CITY OF FLAGSTAFF, ARIZONA**
**PERFORMANCE BOND**

**PROJECT NAME:**
**PROJECT NUMBER:** **PRICE PROPOSAL NUMBER:**

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

KNOW ALL MEN BY THESE PRESENTS:

That, _____

(hereinafter called the Principal), as Principal, and, _____

_____, a corporation organized and existing under the laws of the State of _____

_____, with its principal office in the City of _____

("Surety"), as Surety, are held and firmly bound unto the City of Flagstaff, Arizona ("Obligee"), in the amount of _____Dollars ($_____

_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

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

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

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in

accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length in this Contract.

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

Witness our hands this _____ day of _____20____.

| | |
|---|---|
| _____ | _____ |
| Principal (Seal) | Surety (Seal) |
| By: _____ | By: _____ |
| _____ | _____ |
| Agency of Record | Agency Address |

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Jeff Ely, Landfill Manager |
| **Co-Submitter:** | Joshua Roubik |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval of Contract:** With Advanced Chemical Transport, Inc., d/b/a ACTenviro, for Hazardous Waste Removal and Disposition in an amount not to exceed $200,000.00.

**STAFF RECOMMENDED ACTION:**

1. Approve the Contract with Advanced Chemical Transport Inc., d/b/a ACTenviro, on a time and materials basis for an amount not to exceed $200,000.00; and
2. Authorize City Manager to execute the necessary documents.

**Executive Summary:**

The Hazardous Products Center (HPC) is a permanent facility dedicated to accepting and properly disposing of household hazardous waste (HHW) generated by residents and qualifying businesses of Flagstaff and Coconino County. To continue to provide this service, an "on call" service agreement must be in place for the timely removal and disposition of hazardous waste from the HPC.

**Financial Impact:**

Costs associated with this contract are budgeted for $200,000 in the miscellaneous services account for the HPC in the Solid Waste Fund and will be expended on a time and material basis per Exhibit A of the Contract.

**Policy Impact:**

There are no policy impacts associated with the hazardous waste removal and disposition Contract.

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

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

Environmental and Natural Resources, actively manage and protect all environmental and natural resources.

- The HPC ensures the proper storage, treatment, disposal, or reuse of HHW within the City of Flagstaff and Coconino County. This prevents hazardous waste from entering the landfill and allows for reuse or recycling of HHW.

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

Yes, previous hazardous waste removal and disposition contracts have been approved by City Council in 2010 and 2016. The current contract expires April 16, 2021.

**Options and Alternatives:**

Option A - Approve the Contract with Advanced Chemical Transportation, Inc., d/b/a ACTenviro, for hazardous waste removal and disposition. This will provide the City of Flagstaff HPC an on-call contract for the removal of hazardous waste from the facility.

Option B - Reject the Contract with Advanced Chemical Transportation, Inc., d/b/a ACTenviro, for hazardous waste removal and disposition. This option would leave the HPC with no contract for the removal of hazardous waste and would require City Staff to re-propose for the services.

**Background/History:**

The HPC provides a service to the residents and qualifying businesses of Flagstaff and Coconino County by providing them with a permanent facility to drop off and safely dispose of their hazardous waste.

The HPC also assists City of Flagstaff facilities with disposal of hazardous waste generated through their operations. These wastes are disposed of using safe, cost-effective, environmentally sound disposal methods that comply with all federal, state and local environmental regulations.

A formal solicitation was conducted through a Request for Proposals (RFP).

On January 28, 2021, the City posted a RFP to the City's PlanetBids electronic bidding platform, and advertised it in the Arizona Daily Sun on January 31 and February 7, 2021. On February 22, 2021, the City received five Proposals. A six-person evaluation committee was formed consisting of six City staff. Upon completion of the evaluation process, Advanced Chemical Transportation, Inc., d/b/a ACTenviro, was the highest scoring firm and deemed most qualified to perform the work.

| Contractor | Score |
|---|---|
| Advanced Chemical Transportation, Inc. | 537 |
| Clean Harbors | 512 |
| Veolia ES Tech. Solutions, LLC | 434 |
| Kary Environmental Services | 386 |
| Heritage Environmental Services | 237 |

**Expanded Financial Considerations:**

By addressing the areas covered under this Contract, the HPC and City facilities will reduce the environmental impact of their operations, support the goals and operations of the Cinder Lake Landfill, and reduce the City of Flagstaff liability through safe, timely and cost-effective disposal of hazardous wastes.

**Community Involvement:**

Not applicable due to the presence and handling of hazardous waste.

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**Attachments:** Contract
Contract - Exhibit A

# City of Flagstaff

## CONTRACT FOR PURCHASE OF SERVICES

Contract No. 2021-04

This Contract is entered into this _____ day of _____, 2021 by and between the City of Flagstaff, a political subdivision of the State or Arizona ("City"), and Advanced Chemical Transportation, Inc., d/b/a ACTenviro, a California S Corporation, ("Contractor").

WHEREAS, the City of Flagstaff desires to receive, and Contractor is able to provide services;

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

1. Scope of Work: Contractor shall provide the services generally described as follows:

**Hazardous Waste Disposal**

and as more specifically described in the scope of work attached hereto as *Exhibit A.*

2. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor not to exceed two-hundred thousand dollars and zero cents ($200,000.00) as described in *Exhibit A.* Any price adjustment must be approved in writing and approved by the parties. The City Manager or his designee (the Purchasing Director) may approve an adjustment if the Contract price is less than $50,000; otherwise City Council approval is required.

3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as *Exhibit B* are hereby incorporated in this Contractor by reference and shall apply to performance of this Contract, except to the extent modified in *Exhibit A.*

4. Insurance: Contractor shall meet insurance requirements of the City, set forth in *Exhibit C.*

5. Contract Term: The Contract term is for a period of two (2) years, commencing on _____, 2021 and continuing through _____, 2023 with the option for three (3) one-year extensions. Scope of work should be completed within two years of contract signature date.

6. Notice: Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Emily Markel
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
emarkel@flagstaffaz.gov

To Contractor:

Advanced Chemical Transport, Inc., d/b/a ACTenviro
Phoenix, Arizona Branch
6212 S. 75th Ave., #4
Laveen, AZ 85339
dabrams@ACTEnviro.com

With a copy to:
Joshua Roubik
Landfill Environmental Program Specialist
City of Flagstaff
211 W. Aspen Ave
Flagstaff, AZ 86001
Joshua.Roubik@flagstaffaz.gov

With a copy to:

7. Authority: Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR

_____

Print name:_____

Title:_____

CITY OF FLAGSTAFF

_____

Print name:_____

Title:_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney's Office
Notice to Proceed issued:_____, 2021

**EXHIBIT A**

**SCOPE OF WORK**

(Awarded Proposal Fee Schedule)

**EXHIBIT B**

**CITY OF FLAGSTAFF**

# STANDARD TERMS AND CONDITIONS

## IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.

2. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.

3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.

4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and the City reserves the right to contract with others for materials or services.

5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

## MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.

7. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials, and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.

8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.

9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to City upon City's acceptance of the materials.

10. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

11. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.

12. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.

13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.

14. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.

15. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.

16. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

## PAYMENT

17. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.

18. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

19. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

    Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.

21. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.

22. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.

23. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.

24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

**SERVICES**

25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.

26. **CONTROL:** Contractor shall be responsible for the control of the work.

27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.

28. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.

29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.

30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

31. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

## INSPECTION, RECORDS, ADMINISTRATION

**32. RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.

**33. RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.

**34. PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.

**35. CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

## INDEMNIFICATION, INSURANCE

**36. GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City's Specific Terms and Conditions.

**37. INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker's compensation.

**38. INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

## CONTRACT CHANGES

**39. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.

**40. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.

41. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.

42. **SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.

43. **NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.

44. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.

45. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**EMPLOYEES AND SUBCONTRACTORS**

46. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.

47. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.

48. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.

49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration

Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

## DEFAULT AND TERMINATION

**50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.

**51. CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.

**52. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.

**53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.

**54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.

**55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.

**56. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.

57. **PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.

58. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.

59. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

**MISCELLANEOUS**

60. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.

61. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent Notice may be sent by email as a secondary form of notice.

62. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

63. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.

64. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.

65. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys fees, costs, professional fees and expenses.

66. **FORCE MAJUERE:** There may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of this Contract.

    There will be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the events described above, and the City will pay no additional costs incurred as a result of such events.

    The parties agree to act in good faith to extend the Contract completion date without any penalty to the Contractor and that the extension will be in an amount of time equal to any temporary delay.

This term supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

## EXHIBIT C

## INSURANCE REQUIREMENTS

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.

2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.

3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

   Contractor shall provide coverage at least as broad and with limits not less than those stated below.

   a. Commercial General Liability - Occurrence Form

| | |
|---|---|
| General Aggregate | $2,000,000 |
| Products/Completed Operations | $1,000,000 |
| Each Occurrence | $1,000,000 |

   b. Umbrella Coverage $2,000,000

   c. Automobile Liability – Any Automobile or Owned, Hired and Non-owned Vehicles Combined Single Limit Per Accident for Bodily Injury & Property Damage $1,000,000

   d. Workers' Compensation and Employer's Liability

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

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.

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

   a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.

   b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.

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

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

   e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

   f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.

6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

   Attention: Emily Markel, Senior Procurement Specialist
   Contract No. 2021-04
   Purchasing Department
   City of Flagstaff,
   211 W. Aspen Avenue
   Flagstaff, Arizona 86001.

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

8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.

9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.

10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

# CITY OF FLAGSTAFF
# REQUEST FOR PROPOSALS

# SOLICITATION NO. 2021-04
# HAZARDOUS WASTE REMOVAL AND DISPOSITION

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

PREPARED FOR REVIEW BY:
SENIOR PROCUREMENT SPECIALIST:
EMILY MARKEL
EMARKEL@FLAGSTAFFAZ.GOV

FEBRUARY 22, 2021

PREPARED AND SUBMITTED BY:
ADVANCED CHEMICAL TRANSPORT, INC.
PHOENIX, ARIZONA BRANCH
6212 S. 75TH AVE., #4
LAVEEN, AZ 85339
TEL: 602-842-9160
FAX: 602-842-9161

February 22, 2021

City of Flagstaff
Purchasing Division
211 West Aspen Ave.
Flagstaff, Arizona 86001
Attention: Emily Markel, Senior Procurement Specialist
emarkel@flagstaffaz.gov

**ACTenviro - Phoenix Branch**
**6212 S. 75th Ave., #4**
**Laveen, AZ 85339**
**Tel: (602) 842-9160**
**Fax: (602) 842-9161**
**24 Hr. Hotline: 1-888-785-7225**
**www.actenviro.com**

***Re: Request for Proposal (RFP) No. 2021-04 Hazardous Waste Removal and Disposition***

Dear Ms. Emily Markel,

It is with excitement that Advanced Chemical Transport, Inc. (dba ACTenviro) presents our support services submittal to the City of Flagstaff in response to the highly anticipated RFP #2021-04 entitled ***Hazardous Waste Removal and Disposition*.**

Throughout our proposal – you will find ACTenviro's experience, qualifications, and work plan for meeting, if not exceeding, the City's program goals.

For over twenty (20) years ACT has provided exemplary environmental waste solutions to our Customers of similar size, scope, and scale being sought by the City, ranging from City and County residents to small and medium sized businesses, large corporations, and municipalities alike operating in the West.

ACTenviro will support the City's program from our Phoenix Branch and will ensure the City has access to any additional support needed from our surrounding 10-day branch offices.

**ACTenviro (Main Service Branch Serving the City of Flagstaff)**
**6212 S. 75th Ave., #4**
**Laveen, AZ 85339**
**Main: (602) 842-9160**
**Fax: (602) 842-9161**

We appreciate the opportunity to submit our proposal to the City of Flagstaff. If you have questions or require further information, please contact me at your convenience. We look forward to earning your business.

Shawn Ball, Vice President
(949) 607-6379 Mobile
SBall@actenviro.com

cc: Diane Abrams, Account Manager (602) 525-5641 DAbrams@actenviro.com
Frank Sanchez, Branch Manager (480) 297-3224 FSanchez@actenviro.com

*The undersigned certifies that all statements in the Proposal are true and correct; and that any materially false statement contained in this proposal shall entitle the City of Flagstaff to pursue any and all remedies authorized by law and/or declare any contract made as a result thereof, to be void.*

# Volume I TECHNICAL PROPOSAL


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**Appendix F - Safety Program (*proACTive*)**
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CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001


Emily Markel, Sr. Procurement Specialist
PH: (928) 213-2276

# ATTACHMENT B – FEE SCHEDULE

***Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated**

| Materials | UNIT | ESTIMATED NUMBER OF CONTAINERS PER YEAR | UNIT PRICE | Disposal/Treatment/ Recycling Method | Disposal/Treatment/ Recycling Facility and Location | Facility EPA ID # |
|---|---|---|---|---|---|---|
| 1) Flammable Liquids | 55 | 25 | $109 | Bulk / Fuel Blend | Rineco Chemical, Ind. Benton, AR | ARD 981 057 870 |
| 2) Flammable Solids, N.O.S. | 5/16/30/55 | U/U/U/U | $73/ $73/ $147/ $194 | Loose pack/ Fuel Blend | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 3) Paint/Paint Related Materials (alkyld paints, adhesives, tars, resins, epoxies, glues…) | CYB | 32 | $437 | Loose Pack / Fuel Blend | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 4) Waste Paint Related Material/Debris | 55 | U | $182 | Bulk / Fuel Blend | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 5) Latex Paint Sludge/Waste Latex Paint | 55 | U | $131 | Bulk / Solidification/Landfill | US Ecology, Beatty, NV | NVT 330 010 000 |
| 6) Absorbent with oil | 5/55 | U/U | $63 / $106 | Landfill | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 7) Petroleum Contaminated Soil (PCS) | 5/16/30/55 | U/U/U/U | $63/ $71/ $96/ $106 | Landfill | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 8) Petroleum Sludge/Debris | 2/5/16/30 | U/U/U/U | $57/ $57/ $65/ $100 | Solidification/Landfill | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 9) Grease | 5/16/30 | U/U/U | $54 / $72 / $97 | Waste to Energy | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 10) Toxic/Flamm Liquids | 5/16/30/55 | 5/U/U/32 | $112/ $112/ $233/ $304 | Incineration | ACTreatment, Albuquerque, NM | NMD 002 208 627 |

## ATTACHMENT B – FEE SCHEDULE (Cont'd.)

*Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated

| Materials | UNIT | ESTIMATED NUMBER OF CONTAINERS PER YEAR | UNIT PRICE | Disposal/Treatment/ Recycling Method | Disposal/Treatment/ Recycling Facility and Location | Facility EPA ID # |
|---|---|---|---|---|---|---|
| 11) Toxic Solids | CYB | 10 | $623 | Loose Pack / Incineration | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 12) Non-Regulated Liquids - Bulk | 55 | 28 | $131 | Solidification / Landfill | US Ecology, Beatty, NV | NVT 330 010 000 |
| 13) Non-Regulated Solids | 5/16/30/55 | U/U/U/U | $55/ $55/ $115/ $145 | Waste to Energy | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 14) Printing Ink Toner | 5/16/30/55 | U/3/3/U | $55/ $55/ $115/ $145 | Waste to Energy | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 15) Corrosive Liquids, N.O.S- Inorganic and Organic | 5/16/30/55 | 10/4/10/15 | $106/ $106/ $219/ $286 | Neutralization | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 16) Corrosive Solids | 5/16/30 | U/U/U | $106/ $106/ $219/ $286 | Neutralization | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 17) Oxidizing Liquids, N.O.S. | 5/16/30/55 | U/U/U/U | $159/ $159/ $332/ $436 | Deactivation | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 18) Oxidizing Solids - | 5/16/30 | U/U/U | $157 /$157 / $339 | Deactivation | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 19) Aerosols | CYB | 6 | $548 | Fuel Blend | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 20) Flammable Gas- Propane and/or Butane/Isobutane | 30/55 | 1/4 | $225 / $300 | Recycle | ACT Central Valley, Merced, CA | CAL 000 336 454 |

## ATTACHMENT B – FEE SCHEDULE (Cont'd.)

*Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated

| Materials | UNIT | ESTIMATED NUMBER OF CONTAINERS PER YEAR | UNIT PRICE | Disposal/Treatment/ Recycling Method | Disposal/Treatment/ Recycling Facility and Location | Facility EPA ID # |
|---|---|---|---|---|---|---|
| 21) Butane Lighters | 2/5 | U/U | $176 / $176 | Incineration | Veolia ES Technical Solutions, Henderson, CO | COD 980 591 184 |
| 22) MAPP GAS | 5 | 2 | $150 | Reclamation | Veolia ES Technical Solutions, Henderson, CO | COD 980 591 184 |
| 23) Flammable and Non-Flammable Gases, N.O.S. | Sm./Med. /Lg. cylinders/ | U/U/U/4 | $312 / $418 / $653 | Incineration | Veolia ES Technical Solutions, Henderson, CO | COD 980 591 184 |
| 24) Elemental Mercury | 5 | 3 | $60/Lb - $200 min | Recycling | Lighting Resources, Phoenix AZ Greenwod, IN | IN0 000 351-387 |
| 25) 1.5 volt Alkaline and Insulated 6/7.5/9/45 volt Alkaline Batteries | 5/30/55 | 75/U/U | $0.70 / lb - $50.00 min | Recycling | Battery Solutions, Mesa, AZ | AZR 000 519 256 |
| 26) Ballasts, PCB | 55 | 2 | $1.30/ lb - $50.00 min | Recycle/Incineration | Lighting Resources, Phoenix AZ | AZD 983 469 594 |
| 27) Ballasts, Non-PCB | 55 | 2 | $0.20/ lb - $50.00 min | Recycle/Landfill | Lighting Resources, Phoenix AZ | AZD 983 469 594 |
| 28) Lithium Primary Batteries | 2/5/30/55 | 18/U/U/2 | $4.50/lb | Recycling | Battery Solutions, Mesa, AZ | AZR 000 519 256 |
| 29) Water Reactive Solids, N.O.S. | 5 | U | $265 | Reactive Lab Pack -Incineration | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 30) RCRA Empty Drums | 16/30/55 | U/U/U | $10 / $20 / $30 | Recyle | Container Buyers, Phoenix, AZ | None - Recylcer |

## ATTACHMENT B – FEE SCHEDULE (Cont'd.)

*Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated

| Materials | UNIT | ESTIMATED NUMBER OF CONTAINERS PER YEAR | UNIT PRICE | Disposal/Treatment/ Recycling Method | Disposal/Treatment/ Recycling Facility and Location | Facility EPA ID # |
|---|---|---|---|---|---|---|
| 31) Biodiesel by-product waste | 5/16/30/55 | U/U/U/U | $56/ $63/ $86/ $109 | Bulk / Fuel Blend | Rineco Chemical, Ind. Benton, AR | ARD 981 057 870 |
| 32) Spent cooking oil | 5/16/30/55 | U/U/U/U | $56/ $63/ $86/ $109 | Bulk / Fuel Blend | Rineco Chemical, Ind. Benton, AR | ARD 981 057 870 |
| 33) Lab Packs for Corrosives, Toxics and Oxidizers, Solids and | 5/16/30/55 | 10/5/10/15 | $78/ $155/ $241/ $342 | Non Reactive Lab Pack-Incineration | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 34) Lab Packs for Self-Heating Solids, Inorganic and Organic | 5/16 | U/U | $241 / $481 | Reactive Lab Pack -Incineration | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| 35) Lab Packs for Organic Peroxide-type D and Hydrogen Peroxide- | 5/16 | U/U | $241 / $481 | Reactive Lab Pack -Incineration | ACTreatment, Albuquerque, NM | NMD 002 208 627 |

**Added Line Items**

| | | | | | | |
|---|---|---|---|---|---|---|
| Mercury Containing Articles | 5 | 3 | Mercurury containing Articles $10/ Ea $200 / | Recycling | Lighting Resources, Phoenix AZ | AZD 983 469 594 |
| Lithium Ion Batteries | 2/5/30/55 | 18/U/U/2 | Li Ion $2.50/lb | Recycling | Battery Solutions, Mesa, AZ | AZR 000 519 256 |
| Latex Paint Sludge/Waste Latex Paint | 55 | U | $233 | Waste to Energy | ACTreatment, Albuquerque, NM | NMD 002 208 627 |
| Non-Regulated Liquids - Bulk | 55 | 28 | $233 | Waste to Energy | ACTreatment, Albuquerque, NM | NMD 002 208 627 |

# RFP #2021-04
# STORAGE CONTAINERS/SECONDARY CONTAINMENT AND OTHER SUPPLIES

As an option for the City, Contractors may provide costs for the following storage containers secondary containment and supplies for use by hazardous waste. The City will determine the amount of containers to be shipped to the HPC facility. The City may place orders for supplies at anytime during the term of the contract. The City of Flagstaff reserves the right to purchase storage containers/secondary containment and supplies from other sources.

| MATERIALS | | COST/UNIT | COST |
|---|---|---|---|
| **Storage Containers/Secondary Containment:** | | | |
| (a) | C.Y.Gaylord Box with cap lid & pallet | each | $89.00 |
| (b) | 85/95-gallon, poly, overpack | each | $288.00 |
| (c) | 85-gallon, drum, metal overpack | each | $180.00 |
| (d) | 55-gallon drum, metal, Tight Head/Open | each | $62.00 |
| (e) | 55-gallon drum, poly, Tight Head/Open | each | $62.00 |
| (f) | 30-gallon drum, metal, Tight Head/Open | each | $60.00 |
| (g) | 30-gallon drum, poly, Tight Head/Open | each | $62.00 |
| (h) | 20-gallon drum, metal, Tight Head/Open | each | $72.00 |
| (i) | 20-gallon drum, poly, Tight Head/Open | each | $60.00 |
| (j) | 16-gallon drum, metal, Tight Head/Open | each | $70.00 |
| (k) | 16-gallon drum, poly, Tight Head/Open | each | $55.00 |
| (l) | 5-gallon pail with lid, poly | each | $16.00 |
| (m) | 5-gallon pail with lid, metal | each | $20.00 |

| | | |
|---|---|---|
| **Expendable Materials:** | | |
| (a) Poly drum liners | each | $2.00 |
| (b) Vermiculite | bag | $33.00 |
| (c) Labels and Manifests | each | $N/C |
| (d) Other | Contractor to attach a detail sheet | |
| **Testing:** | | |
| (a) Finger Print Analysis of Unknowns | each | $25.00 |
| (b) Onsite "Hazcatting" | each | $50.00 / kit per day |
| (c) Cylinder Analysis | each | $case by case |
| (d) Other | Contractor to attach a detail sheet | |

## Fee Schedule #2

To the City of Flagstaff:

The undersigned Vendor hereby offers and agrees to furnish materials and/or services in compliance with the, Solicitation, including the Addenda, and as escribed in this offer made to the City.

| Personal Req | Cost/Hr | Total |
|---|---|---|
| **Chemist** | $65.00 | $65.00 |
| **Technician** | $40.00 | $40.00 |
| **Driver** | $45.00 | $45.00 |
| **Other/Misc.** | $ 0.00 | $ 0.00 |

PERSONNEL COST SUB TOTAL $ 150.00

TRANSPORTATION CHARGE $ 550.00

OTHER APPLICABLE CHARGES $ N/A

(Please provide specific descriptions/details)

TOTAL LABOR COSTS & OTHER CHARGES $ 700.00

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Emily Markel, Senior Procurement Specialist

**Co-Submitter:** Sarah Darr

**Co-Submitter:** Adriana Fisher

**Date:** 03/29/2021

**Meeting Date:** 04/06/2021

---

**TITLE:**

**Consideration and Approval of Cooperative Purchase Contract:** Purchase of two (2) 2021 Chevrolet Silverado 1500 4WD Double Cab 147" work trucks from Courtesy Chevrolet in the amount of $60,161.50.

**STAFF RECOMMENDED ACTION:**

1. Approve the equipment purchase of two 2022 Chevrolet Silverado 1500 4WD Double Cab 147" work trucks from Courtesy Chevrolet through a State of Arizona cooperative purchasing contract #ADSP017-166120 in the amount of $60,161.50; and
2. Authorize the City Manager to execute the necessary documents.

**Executive Summary:**

The Housing Authority is responsible for the operation of 265 public housing units. The trucks will be used by Housing Authority maintenance staff to perform regular maintenance and upkeep of these housing units and grounds. The two new trucks will replace three pick-up trucks (1983 Chevrolet, 1984 Dodge, and 1994 Chevrolet S-10) which are being retired due to their age and expense to maintain, and safety issues.

**Financial Impact:**

There is no general fund impact. This purchase is budgeted in the fiscal year 2020-2021 budget and is funded with Housing and Urban Development public housing operating funds.

**Policy Impact:**

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

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

Safe and Healthy Community
Robust Resilient Economy
Livable Community

**Regional Plan**

Goal NH.1. Foster and maintain healthy and diverse urban, suburban, and rural neighborhoods in

the Flagstaff region.

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

N/A

**Options and Alternatives:**

1. Approve the equipment purchase for two (2) 2022 Chevrolet Silverado 1500 4WD Double Cab 147" work trucks from Courtesy Chevrolet through a cooperative purchase contract #ADSP017-166120 in the amount of $60,161.50;
2. Direct staff to re-evaluate the procurement and return with alternatives; or
3. Do not approve the purchase.

**Background/History:**

Maintenance and upkeep of public housing units is one of the basic responsibilities of the Housing Authority. Typical activities the trucks will be utilized for include snow removal, hauling heavy materials, tools and equipment to applicable work sites, taking miscellaneous refuse/material to the landfill, and moving workers to work sites. This purchase will ensure staff is able to continue providing a high level of customer service. Electric trucks were considered but found not to have the load capacity needed to perform these tasks. By maintaining the housing units and grounds in good condition, public housing neighborhoods are kept safe and healthy and contribute to the livability of our community. Well-maintained public housing also supports a robust and resilient local economy by providing affordable housing to low income workers.

Procurement is through the use of a State of Arizona cooperative purchasing contract (#ADSP017-166120) with Courtesy Chevrolet.

**Key Considerations:**

The purchase of these trucks is critical for the regular operation of the Housing Authority. The vehicles being replaced have passed the end of their useful life and are no longer economical or safe to operate.

**Expanded Financial Considerations:**

There is no general fund impact. This purchase is included in the fiscal year 2020-2021 budget and is fully funded by HUD.

**Community Benefits and Considerations:**

The purchase will allow the Housing Authority to pursue regular maintenance activities in a safer and more economical manner, thereby contributing to the livability of the public housing units and neighborhoods, thus promoting a safe and healthy community and contributing to a robust, resilient economy.

---

**Attachments:** COF copperative contract
Exhibit A of COF contract
Exhibit B of COF contract
Exhibit B State Contract

**COOPERATIVE PURCHASE CONTRACT**
Contract No. 2021-92

This Cooperative Purchase Contract is made and entered into this _____ day of _____, 20_____by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and Courtesy Chevrolet, a state of Arizona Corporation ("Contractor").

necessary

RECITALS:

A. The Contractor is a fully authorized dealer of Chevrolet products;

B. Contractor holds a Contract No. # ADSP017-166120 with the State of Arizona Procurement Department, Public Sector to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and

C. Contractor is a dealer as described in the Agency Contract; and

D. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

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 and or services, as specified in the Purchase Order(s) and/or Scope of Work submitted by the City in accordance with the Agency Contract. General description of materials and or services being purchased:

**TWO (2) CHEVROLET TRUCKS**

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Purchase Order(s) submitted to Contractor or *Exhibit A*, **Scope of Work**, attached hereto and incorporated by reference.

3. Payment: Payment to the Contractor for the materials and or services provided for sixty-thousand, one hundred and sixty-one dollars and fifty cents **($60,161.50) including other fees and taxes**; 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 are set forth in *Exhibit B* attached hereto and incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract, including, specifically changes in price for the materials.

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 and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.

7. Renewal: This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

Courtesy Chevrolet:

By:_____

Title:_____

CITY OF FLAGSTAFF

By:_____

Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

**EXHIBIT A**
**SCOPE OF WORK**

**Quote from Courtesy Chevrolet** (attached)

**EXHIBIT B**
**AGENCY CONTRACT**

**Arizona State Contract # DSP017 - 166120** (attached)

COURTESY CHEVROLET

3/10/2021

**STATE OF ARIZONA**
**VEHICLE QUOTE**
**STATE CONTRACT # ADSP017-166120**

| | | |
|---|---|---|
| **VEHICLE** | **2022 CHEVROLET SILVERADO 1500 DBL CAB WT 4X4 6.5' BED PER ATTACHED SPECT** | **$** 27,615.40 |
| | **DELIVERY TO FLAGSTAFF** | **$** 125.00 |

| | |
|---|---|
| **TOTAL** | **$** 27,740.40 |
| **SALES TAX** | $ 2,335.35 |
| **TIRE TAX** | $ 5.00 |
| **GRAND TOTAL** | $ 30,080.75 |

ORDERED UNIT
150-180 DAYS ARO

Vehicle: [Fleet] 2021 Chevrolet Silverado 1500 (CK10753) 4WD Double Cab 147" Work Truck ( Complete )

## Selected Model and Options

### MODEL

| CODE | MODEL | Invoice | MSRP |
|---|---|---|---|
| CK10753 | 2021 Chevrolet Silverado 1500 4WD Double Cab 147" Work Truck | $34,692.10 | $36,100.00 |

### COLORS

| CODE | DESCRIPTION |
|---|---|
| GAZ | Summit White |

### OPTIONS

| CODE | DESCRIPTION | Invoice | MSRP |
|---|---|---|---|
| ---- | Option/package discount (Requires (LV3) 4.3L EcoTec3 V6 engine, (L3B) 2.7L Turbo engine or (PEB) WT Value Package.) *DISCOUNT* | ($1,820.00) | ($2,000.00) |
| 1WT | Work Truck Preferred Equipment Group includes standard equipment | $0.00 | $0.00 |
| 5H1 | Key equipment, two additional keys for single key system. Provides two additional spare keys for a total of (4). (Keys will be cut but not programmed) NOTE: programming of keys is at customer's expense. Programming keys is not a warranty expense. (Requires (SAF) spare tire lock. Not available with SEO (5Z4) spare wheel, carrier and lock delete.) | $40.95 | $45.00 |
| AE7 | Seats, front 40/20/40 split-bench with covered armrest storage (STD) | $0.00 | $0.00 |
| AQQ | Remote Keyless Entry, with 2 transmitters (Included and only available with (PCV) WT Convenience Package or (ZLQ) WT Fleet Convenience Package.) | Inc. | Inc. |
| CTT | Hitch Guidance dynamic single line to aid in trailer alignment for hitching (Included and only available with (Z82) Trailering Package.) | Inc. | Inc. |
| DLF | Mirrors, outside heated power-adjustable (Included and only available with (PCV) WT Convenience Package or (ZLQ) WT Fleet Convenience Package. When (PQA) WT Safety Package is ordered, includes (DP6) high gloss Black mirror caps.) | Inc. | Inc. |
| FE9 | Emissions, Federal requirements | $0.00 | $0.00 |
| G80 | Auto-locking rear differential (Included with (Z71) Z71 Off-Road Package.) | $359.45 | $395.00 |
| GAZ | Summit White | $0.00 | $0.00 |
| GU6 | Rear axle, 3.42 ratio | $0.00 | $0.00 |
| H1T | Jet Black, Cloth seat trim | $0.00 | $0.00 |
| IOR | Audio system, Chevrolet Infotainment 3 system 7" diagonal color touchscreen, AM/FM stereo. Additional features for compatible phones include: Bluetooth audio streaming for 2 active devices, voice command pass-through to phone, wired Apple CarPlay and Android Auto capable. (STD) | $0.00 | $0.00 |

This document contains information considered Confidential between GM and its Clients uniquely. The information provided is not intended for public disclosure. Prices, specifications, and availability are subject to change without notice, and do not include certain fees, taxes and charges that may be required by law or vary by manufacturer or region. Performance figures are guidelines only, and actual performance may vary. Photos may not represent actual vehicles or exact configurations. Content based on report preparer's input is subject to the accuracy of the input provided.
Data Version: 13254. Data Updated: Mar 10, 2021 1:03:00 AM PST.

Vehicle: [Fleet] 2021 Chevrolet Silverado 1500 (CK10753) 4WD Double Cab 147" Work Truck ( Complete )

## OPTIONS

| CODE | DESCRIPTION | Invoice | MSRP |
|---|---|---|---|
| JL1 | Trailer brake controller, integrated (Requires (Z82) Trailering Package. On Regular Cab models requires (PCV) WT Convenience Package, (ZLQ) WT Fleet Convenience Package or (PEB) WT Value Package.) | $250.25 | $275.00 |
| K34 | Cruise control, electronic with set and resume speed, steering wheel-mounted (Included with (PCV) WT Convenience Package, (ZLQ) WT Fleet Convenience Package or (RGE) Safety Confidence Package.) | Inc. | Inc. |
| LV3 | Engine, 4.3L EcoTec3 V6 with Active Fuel Management, (285 hp [212 kW] @ 5300 rpm, 305 lb-ft of torque [413 Nm] @ 3900 rpm) (STD) *GROSS* | $0.00 | $0.00 |
| MYC | Transmission, 6-speed automatic, electronically controlled with overdrive and tow/haul mode. Includes Cruise Grade Braking and Powertrain Grade Braking (STD) | $0.00 | $0.00 |
| NZZ | Skid Plates (Included with (BAQ) Work Truck Package, (Z71) Z71 Off-Road Package or (VYU) Snow Plow Prep Package.) | $136.50 | $150.00 |
| QBN | Tires, 255/70R17 all-season, blackwall (STD) | $0.00 | $0.00 |
| QBR | Tire, spare 255/70R17 all-season, blackwall (STD) (Included with (QBN) 255/70R17 all-season, blackwall tires.) | $0.00 | $0.00 |
| QT5 | Tailgate, gate function manual with EZ Lift includes power lock and release (Included and only available with (PCV) WT Convenience Package or (ZLQ) WT Fleet Convenience Package.) | Inc. | Inc. |
| R9Y | Fleet Free Maintenance Credit. This option code provides a credit in lieu of the free oil changes, tire rotations and inspections for one maintenance service during 1st year of ownership. The invoice will detail the applicable credit. The customer will be responsible for all oil change, tire rotations and inspections costs for this vehicle. (Requires one of the following Fleet or Government order types: FBC, FBN, FCA, FCN, FEF, FLS, FNR or FRC. Not available with FDR order type.) *CREDIT* | ($40.95) | ($45.00) |
| RD6 | Wheels, 17" x 8" (43.2 cm x 20.3 cm) Ultra Silver painted steel (STD) | $0.00 | $0.00 |
| Z82 | Trailering Package includes trailer hitch, 7-pin and 4-pin connectors and (CTT) Hitch Guidance (Included with (PEB) WT Value Package.) | $359.45 | $395.00 |
| ZLQ | WT Fleet Convenience Package includes (AQQ) Remote Keyless Entry, (QT5) EZ Lift power lock and release tailgate, (K34) cruise control and (DLF) power mirrors (When ordered with (PQA) WT Safety Package, (DLF) power mirrors include (UKC) Lane Change Alert with Side Blind Zone Alert and (DP6) high-gloss mirror caps. | $632.45 | $695.00 |
| | **Options Total** | **($81.90)** | **($90.00)** |

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Data Version: 13254. Data Updated: Mar 10, 2021 1:03:00 AM PST.

**Douglas A. Ducey**
**Governor**

**Craig C. Brown**
**Director**

# ARIZONA DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE

100 NORTH FIFTEENTH AVENUE • SUITE 201
PHOENIX, ARIZONA 85007

(602) 542-5511

Sent via e-mail to: jpfeffer@courtesychev.com

March 31, 2017

Joe Pfeffer, Fleet Manager
Courtesy Chevrolet
1233 E Camelback
Phoenix, AZ 85014

Subject: RFP ADSPO17-00006397, Vehicles, New Purchases
Notice of Solicitation Results (Quote #000043951)

Dear Offeror:

Thank you for submitting a response to Request for Proposal Solicitation No ADSPO17-00006397, Vehicles, New Purchases. I am pleased to inform you that your company's offer has been selected for award. The initial contract term shall begin on **04/01/2017** and terminate on **03/31/2018**.

The procurement file for this solicitation, including evaluation documents and resultant contracts, are now available for public viewing via the State's e-Procurement system, ProcureAZ. Your contract number is ADSPO17-166120. Please reference this number on all quotes given under this contract. Attached you will find the updated Offer and Acceptance with your contract number noted, please sign and return this form to me along with a completed pricing excel document for all 2017 vehicles available for purchase under this contract. We will set up an award meeting to go through the terms of your contract at a later date.

In accordance with Special Term and Conditions of the contract and prior to beginning work under the contract, your company is required to submit a Certificate of Insurance to the State Procurement Office. The certificate of insurance shall indicate that your company is in compliance with insurance requirements contained in the contract. If you have not already submitted your insurance documents, please submit your certificate of insurance to me no later than **04/07/2017**.

You are cautioned not to begin any work under the contract until the Procurement Officer assigned to your contract has issued a written notice to proceed.

If you have any questions regarding your company's contract, please feel free to contact me at Lori.Noyes@azdoa.gov or 602-542-7144. Thank you for your response and for your continued interest in doing business with the State of Arizona.

Sincerely,

Lori Noyes
Statewide Procurement Manager

cc: Procurement File

| | | |
|---|---|---|
| | **Request for Proposal**<br>Solicitation No.<br>**ADSPO17-00006397**<br>Description:<br>**Vehicles, New Purchases** | Arizona Department of Administration<br>**State Procurement Office**<br>100 N 15th Ave., Suite 201<br>Phoenix, AZ 85007 |

Attachment 1

# Offer and Acceptance Form

**SUBMISSION OF OFFER:** Undersigned hereby offers and agrees to provide Vehicles, New Purchases to the State of Arizona in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

| | |
|---|---|
| x Courtesy Chevrolet | |
| Offeror company name | Signature of person authorized to sign Offer — Initials |
| x 1233 E Camelback | x Joe Pfeffer |
| Address | Printed name and title |
| x Phoenix, AZ 85014 | x Fleet Manager |
| City \| State \| ZIP | Contact name and title |
| x 86-0123463 | x jpfeffer@courtesychev.com x 602-604-3040 |
| Federal tax identifier (EIN or SSN) | Email Address — Phone Number |

**CERTIFICATION:** By signature in the above, Offeror certifies that it:

1. 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;
2. 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;
3. complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
4. 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, and which was dated below. 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:** ADSPO17-166120 | **The effective date of the Contract is:** |
| Lori Noyes, Procurement Officer | 3.31.17<br>Contract awarded date |

# Offer and Acceptance

Contract No: ADSP014-063243

Description: Statewide Medium and Heavy Duty Cab and Chassis

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

## OFFER

**TO THE STATE OF ARIZONA:**

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

Courtesy Chevrolet
Company Name

1233 E Camelback Road
Address

Phoenix | AZ | 85014
City | State | Zip

jpfeffer@courtesychev.com
Contact Email Address

Signature of Person Authorized to Sign Offer

Joe Pfeffer
Printed Name

Fleet Manager
Title

Phone: 602-604-3043

Fax: 602-264-9230

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror 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 shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization ☐ IS/ ☑ IS NOT a small business with less than 100 employees or has gross revenues of $4 million or less.

## ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No. ADSP014-063243.

The effective date of the Contract shall be: JANUARY 15, 2014.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contact release document or written notice to proceed.

**State of Arizona**
**Awarded this** 9 **day of** JANUARY **20** 14

Procurement Officer

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**The following documents are not contained physically in this document, but are included by reference and available online in ProcureAZ:**

Special and Uniform Instructions to Offerors ADSPO14-00003602

All Solicitation Attachments

Pricing (all pricing is contained within the line items in ProcureAZ AND in an attached spreadsheet in ProcureAZ Attachments)

Contractor's Final Proposal Documents (Submitted in response to solicitation ADSPO14-00003602 and included by reference, attached in ProcureAZ)

Solicitation ADSPO14-00003602 as amended, including all attachments and exhibits

## 1. INTRODUCTION/BACKGROUND

1.1. Pursuant to A.R.S. 41-2501, The Arizona Department of Administration, State Procurement Office (The State) is seeking to establish statewide contract(s) for Medium and Heavy Duty Cab and Chassis necessary to support all State Agencies, Boards and Commissions and participating Cooperative Members (collectively hereinafter referred to as Eligible Agencies). The Special Terms and Conditions provide a more detailed definition of Eligible Agencies. A list of all State Agencies and Cooperative Members may be found on the State Procurement Office's Website. The State intends to award a contract(s) to qualified vendors in accordance with the terms, conditions and provisions set forth herein.

1.2. The awarded contract(s) shall replace existing contracts for Medium and Heavy Duty Cab and Chassis. The State desires to enter into a contract(s) with reliable and capable vendors who can; manage multiple agency accounts and delivery points located throughout the State, provide an effective ordering method for contract specific items, has sufficient statewide delivery capabilities, and offers a full, comprehensive line of Medium and Heavy Duty Cab and Chassis. This contract(s) will be used on an as needed basis; the State makes no guarantee as to actual spend under any resultant contract.

## 2. GENERAL CONDITIONS AND REQUIREMENTS

2.1. 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.

2.2. 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.

2.3. The Contractor shall supply a quote sheet within seven (7) calendar days after receiving request from the eligible agency. See Exhibit 1 for quote sheet example. 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.

2.4. 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 with in 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.

## 3. 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 V, Price and Specification Spreadsheet. Eligible Agencies throughout the State will have varying needs. 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.

## 4. 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.

## 5. WARRANTY

5.1. 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. The warranty terms shall be stated on Attachment II, where indicated.

5.2. Contractors are encouraged to provide the State additional warranty packages that exceed the minimum requirements. Additional warranty information shall be included on Attachment II.

## 6. CAB AND CHASSIS EQUIPMENT REQUIREMENTS

6.1. **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.

6.2. **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.

6.3. **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, less delivery fuel
- 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

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

6.5. **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.

6.6. **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.

6.7. **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
- Cloth seats
- Rear view mirrors on driver and passenger doors

- Standard tint glass, if available

**7. TRAINING MATERIALS AND DIAGNOSTIC TOOLS**

7.1. 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 according to the description provided in Attachment I.

7.2. **Shop Manuals** – Shop manuals shall be provided by electronic, web based and/or hard copy to a requesting eligible agency. If hard copy is available, any costs and ordering mechanisms, such as order forms, shall be indicated on Attachment I.

7.3. **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 I.

**8. EXECUTIVE ORDER 2006-13**

8.1. Executive Order 2006-13 shall apply to all State agencies, boards and commissions.

8.2. Contractors shall offer all Cab and Chassis that meet the requirements of Executive Order page 3, paragraph E. and/or meet low GHG emission standards. Vehicles that "meet low-GHG emission standards" are vehicles from the EPA Green Vehicle Guide at http://www.epa.gov/greenvehicles/Index.do;jsessionid=8230dfdfdadb59257e15 that have a Greenhouse Gas Score of 8 or higher, or vehicles that operate on propane, liquefied natural gas (LNG), or compressed natural gas (CNG).

**9. MANUFACTURER'S CERTIFICATION**

The Contractor shall submit a current and complete Manufacturer's Certification form (Attachment IV), 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 form(s) 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.

## 1. CONTRACT

1.1 Contract. The contract between the State of Arizona and the Contractor shall consist of the solicitation as amended, any requests for clarifications, the offer submitted by the Contractor including any Final Proposal Revisions, and their responses to any requests for clarifications. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the solicitation as amended shall govern. However, the State reserves the right to clarify any contractual requirement in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the solicitation as amended or the Contractor's proposal. In all other matters not affected by the written clarification, if any, the solicitation shall govern.

1.1.1 The State's primary contact for this solicitation and resultant contracts shall be the Procurement Officer assigned to the contract and listed in ProcureAZ.

1.2 Contract Term. The contract term shall commence upon award and will continue for one (1) year unless canceled, terminated or extended as otherwise provided herein.

1.3 Contract Extension. The initial contract term is subject to additional successive one-year periods or portions thereof with a maximum aggregate contract term including all extensions not to exceed five (5) years.

1.4 Contract Type**.** The contract is a firm fixed-price, Percent (%) discount from MSRP.

1.5 Amendments. Any change in the Contract, including but not limited to the Statement of Work described herein, whether by modification or supplementation, must be accomplished by a formal contract amendment or change order approved by and between the duly authorized representatives of the Contractor and the Arizona State Procurement Office. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment to the contract.

1.6 Contract Changes. The State reserves the right to modify this contract as circumstances may require without penalty to fulfill the needs of the State. The Contractor shall be notified prior to any changes in the contract and shall be accomplished by a contact amendment.

1.7 Eligible Agencies. This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit organizations may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632. The contractor may not restrict or compel the use of this contract by an eligible agency.

1.8 Estimated Quantities**.** The State makes no guarantee or commitment of any kind is made concerning the quantity or monetary value of activity actually initiated and completed.

1.9 Non-Exclusive Contract. This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary.

1.10 Compliance with Applicable 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.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contactor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Statement of Work.

1.11 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from

others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

1.12 Acceptance. Determination of the acceptability of goods and services shall be made by the sole judgment of the State. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship and successfully performing all required Tasks. Nonconformance to any of the stated acceptance and performance criteria of both services and or products as required shall result in a delay for payment. Payment shall not be made until nonconformance to the criteria is corrected as determined by the State.

1.13 Cancellation. The State reserves the right to cancel the whole or any part of the contract if, at any time during the performance of the Contract, Contractor initiates or is party to actions including, but shall not limited to;

1.13.1 Providing personnel that do not meet the requirements of the contract or attempting to impose on the State, personnel of unacceptable quality,

1.13.2 Failure to provide the State with acceptable proof of compliance with prescribed insurance required

1.13.3 Failure in a material way to correct services not in conformance with the Contract or Purchase Orders;

1.13.4 Repeated failure to comply with the requirements of the Contract;

1.13.5 Material disregard of or failure to comply with any applicable Federal, State or Local law, regulation or ordinance

1.13.6 Failure, neglect, or refusal to proceed with the performance of the Contract in a prompt, safe and diligent manner;

1.13.7 Failure to promptly pay all monies due to subcontractors, vendors, or others for materials and services in connection with the Work; and

1.13.8 Attempting to assign this Contract without obtaining the State's prior consent.

1.14 Contract Personnel.

1.14.1 It is essential that the Contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor shall provide mentally alert, physically fit and qualified individuals to ensure contracted services progress in a safe, orderly and timely manner.

1.14.2 During the course of the contract, the State reserves the right to require the contractor to remove from the project contractor employees found unacceptable by the State. The State may require that the Contractor remove from the Contract employees who endanger persons or property or whose continued employment under this Contract is inconsistent with the interests of the State.

1.15 Licenses. The contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the contractor in performance under this contract.

1.16 Appropriation of Funds. Every payment obligation of the Eligible Agency under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Agency at the end of the period for which funds are available. No liability shall accrue to the Agency or the State of Arizona in the event this provision is exercised, and neither the Agency nor the State shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

## 2. USAGE REPORTS

2.1 Contractors shall submit a Quarterly Report documenting all contract sales. The proper Usage Report Forms may be found on the State Procurement Office's web site http://spo.az.gov/Contractor_Resources/Admin_Fee/. Any alternate Quarterly Usage Report format shall be approved by the Procurement Officer. If there are no contract sales during a quarter, a Quarterly Usage Report indicating "no contract sales" shall be submitted to satisfy this requirement.

2.2 Contractors shall submit the Quarterly Usage Report to the State Procurement Office no later than the last day of the month following the end of each calendar quarter. Usage Reports shall be submitted to the following address:

Arizona Department of Administration
State Procurement Office
Attention: "Statewide Contract Usage Report"
100 N. 15th Avenue, Suite 201
Phoenix, AZ 85007

2.3 The submission schedule for Usage Reports shall be as follows:

| | |
|---|---|
| July through September (FY Q1) | Due October 31 |
| October through December (FY Q2) | Due January 31 |
| January through March (FY Q3) | Due April 30 |
| April through June (FY Q4) | Due July 31 |

2.4 Contractor's failure to remit accurate quarterly usage reports in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

2.5 Annual Itemized Spend Report. The contractor shall furnish the State an annual report delineating the acquisition activity under the contract. This report shall be submitted electronically and in a format approved by the State. At a minimum, it shall disclose all purchased items, unit cost, and quantity, as well as, individual purchasing Agency, for all sales transacted within the year. The volume sales report shall be submitted annually 30 days before the end of the contract term.

## 3. CANCELLATION FOR POSSESSION OF WEAPONS ON STATE PROPERTY

This contract may be cancelled if contractor or any subcontractors or others in the employ or under the supervision of the contractor or subcontractors is found to be in possession of weapons. Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on State property pursuant to A.R.S. §13-3102. Such property includes State owned or leased office building, yards, parking lots, construction sites or state owned vehicles. Further, if the contractor or any subcontractors or others in the employ or under the supervision of the contractors or subcontractors are asked by an State official to leave the State property and fail to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, 'Criminal trespass in the third degree; classification.'

## 4. CONTRABAND

4.1 Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

4.2 DEFINITION - A.R.S. ¦ 13-2501: Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, non-prescription medication, etc.)

4.3 PROMOTING PRISON CONTRABAND - A.R.S. ¦ 13-2505:

4.3.1 A person, not otherwise authorized by law, commits promoting prison contraband:

A. By knowingly taking contraband into a correctional facility or the grounds of such a facility; or

B. By knowingly conveying contraband to any person confined in a correctional facility; or

C. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.

4.3.2 Promoting prison contraband is a Class 5 felony.

**5. CURRENT MODELS**

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 solicitation.

**6. DEALERSHIP, PARTICIPATING SERVICE AND DELIVERY LOCATIONS**

6.1 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:

6.1.1 The dealer or outlet name

6.1.2 Location (physical address)

6.1.3 Telephone/fax numbers and email information

6.1.4 Key personnel at that location

6.2 Approval shall be in the form of a bilateral change order in ProcureAZ, and shall become effective on the date the change order is the 'Sent' status.

**7. DELIVERY (MINIMUM)**

7.1 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 space provided on Attachment I.

7.2 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.

7.3 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.

7.4 The following documents shall be provided upon delivery of the vehicles(s):

7.4.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement

7.4.2 Warranty Document

7.4.3 Manufacturers unaltered invoice

7.4.4 The retail price label must be affixed to the window of all vehicles delivered

7.4.5 Delayed warranty/in-service start request form (if requested by ordering entity)

**8. EQUIPMENT INSPECTION**

8.1 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.

8.2 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 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.

**9. EXCISE TAX EXEMPTION**

The State of Arizona and its political subdivisions are exempt from federal excise tax in the case of sales of articles to state agencies or political subdivision for use in the exercise of essential government functions. It is agreed that where articles purchased tax-free under the exemption are used for purposes other than in the exercise of essential functions, or are sold to employees or others, the user shall report such facts to the vendor.

**10. FINANCIAL SOUNDNESS**

10.1 The State Procurement Office (SPO) must be notified in writing of any substantial change in the Contractor's financial condition during the term of the Contract. Failure to notify SPO of such a substantial change in financial condition will be sufficient grounds for terminating the Contract.

10.2 The State may request the Contractor and any of the Contractor's Subcontractors to provide a certified Statement of Financial Capability or the company's most current financial Statement which has been audited by their outside auditing firm.

**11. IN-SERVICE NOTIFICATION**

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.

**12. INDEMNIFICATION CLAUSE**

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its 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 judgment 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 Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

*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.*

**13. INSURANCE REQUIREMENTS:**

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.

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

**1. Commercial General Liability – Occurrence Form**
Policy shall include bodily injury, property damage, personal and advertising 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
- Blanket Contractual Liability – Written and Oral $1,000,000
- Fire Legal Liability $ 50,000
- Each Occurrence $1,000,000

**a.** The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

**b.** Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its 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

**a.** The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named 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 or borrowed by the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

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

**c.** Policy shall contain a severability of interest provision.

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

| | |
|---|---|
| • Workers' Compensation | Statutory |
| • Employers' Liability | |
| Each Accident | $ 500,000 |
| Disease – Each Employee | $ 500,000 |
| Disease – Policy Limit | $1,000,000 |

**a.** Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its 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: Separately, EACH contractor or subcontractors exempt under A.R.S. § 23-901, and when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

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

**1.** The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance 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.** Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

**C.** **NOTICE OF CANCELLATION**: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **the Department** and shall be sent by certified mail, return receipt requested.

**D.** **ACCEPTABILITY OF INSURERS**: Contractors insurance shall be placed with companies duly 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 or duly authorized to transact Workers' Compensation insurance in the State of Arizona. 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.

**E.** **VERIFICATION OF COVERAGE**: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **the Department**. 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 copies of all insurance policies required by this Contract at any time.

**F.** **SUBCONTRACTORS**: Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

**G.** **APPROVAL**: Any modification or variation from the *insurance requirements* in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.

**H.** **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.

**14. INVOICE – BILLING**

14.1 All billing notices or invoices shall be sent to the eligible agency whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the following information:

14.1.1 Both the contract number and contract release/purchase order number

14.1.2 Name and address of the contractor

14.1.3 The contractor's remittance address

14.1.4 Contractor's representative to contact concerning billing questions

14.1.5 Contractual payment terms

14.1.6 Applicable taxes

**15. LOBBYING**

The Contractor shall not engage in lobbying activities, as defined in 40 CFR part 34 and ARS §41-1231, et seq., using monies awarded under this Contract. Upon award of this Contract, the Contractor shall disclose all lobbying activities to the State to the extent they are an actual or potential conflict of interest or where such activities would create an appearance of impropriety. The Contractor shall implement and maintain adequate controls to assure that monies awarded under this Contract shall not be used for lobbying. All proposed Subcontractors shall be subject to the same lobbying provisions stated above. The Contractor must include anti-lobbying provisions in all Contracts with Subcontractors.

**16. OPTIONAL EQUIPMENT**

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

**17. ORDERING**

17.1 Purchase Order Sufficiency. This contract was awarded in accordance with the Arizona Procurement Code and all transactions and procedures required by the code for competitive source selection have been met. A contract release order/purchase order, initiated in accordance with the requirements contained herein, that cites the correct Arizona contract number is the only document required for an Eligible Agency to order and the contractor to deliver the material and /or service. No additional memberships or agreements shall be permitted to use this contract. The contractor may use application type forms but shall only be used to set up accounts.

17.2 Non Contract Items. Any attempt to knowingly represent any material and/or service not specifically awarded, as being under contract with the State of Arizona is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

17.3 Ordering Support. The Contractor shall provide and maintain applicable toll-free telephone numbers, facsimile numbers, and at least one (1) electronic ordering system (such as e-mail or web based) for Customer usage. Failure to maintain this service may be cause for cancellation of the contract.

17.4 Order Guides. Contractor shall be responsible for furnishing a copy of the manufacturers order guide, at no charge, upon request by an eligible agency.

17.5 Minimum Orders. No minimum dollar or item count shall be allowed on orders from Eligible Agencies.

17.6 Order Acknowledgement. Contractor shall acknowledge receipt of all Orders. See Specifications Section 2.4 of this document for specific contract requirements.

**18. OUTRIGHT PURCHASE**

The Contractor shall be authorized to sell vehicles on an outright purchase basis only. No financing or installment payments are a port of this agreement. Title shall transfer to the eligible agency at the time of acceptance, or when the vehicle(s) is accepted at the eligible agency's site.

**19. PANDEMIC CONTRACTUAL PERFORMANCE**

19.1. The Contractor shall have a plan that illustrates how the contractor shall perform up to contractual standards in the event of a pandemic. The state may require a copy of the plan at any time prior or post award of a contract. At a minimum, the pandemic performance plan shall include:

- Key succession and performance planning if there is a sudden significant decrease in contractor's workforce;
- Alternative methods to ensure there are products in the supply chain; and
- An up to date list of company contacts and organizational chart.

19.2. In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this contract impossible or impracticable, the State shall have the following rights:

- After the official declaration of a pandemic, the State may temporarily void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms;
- The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the director as per § 41-2537 of the Arizona Procurement Code; and
- Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, the State, at its sole discretion may reinstate the temporarily voided contract(s).

19.3. The State, at any time, may request to see a copy of the written plan from the contractor. The contactor shall produce the written plan within 72 hours of the request.

**20. PRICING**

20.1. 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.

20.2. **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.

20.3. **Delivery.** Delivery costs for each county outside the county in which the dealer is located shall be indicated on Attachment I. There shall be no delivery charges for vehicles delivered within the county in which the Contractor is located.

20.4. **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.

20.5. Pricing for any additional products or services shall be in accordance with the information provided in Attachment I (Supplemental Pricing Information), Attachment V (Pricing and Specifications Spreadsheet) and line items in ProcureAZ.

20.6. **Price Adjustment**. A fully documented request for a price increase shall be based on the annual OEM model year change.

20.6.1. The State reserves the right to review a request for price increase due to model year change at any time during the term of the contract. The written request from the Contractor shall provide justification for the increase. If requested at any other time other than contract renewal, the request shall include written documentation for the manufacturer stating the availability of the new model year vehicles.

20.6.2. All written requests for price adjustments made by the Contractor shall be initiated thirty (30) days in advance of any desired price increase to allow the State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.

20.6.3. All price adjustments will be implemented by a formal contract change order. The State shall determine whether the requested price increase or an alternate option is in the best interest of the State.

20.7. **Price Reductions**. Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made to other customers. The state at its own discretion may accept a price reduction. The price reduction request shall be in writing and include the following;

- Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
- Documentation showing that the published cost reductions have been offered to other distributors.
- Sales promotions requests shall include difference in pricing, begin and end date of promotion along with the products covered.

20.8. **Sales Promotions.** In addition to decreasing contract pricing in accordance with the provision entitled Price Reduction, the Contractor may conduct sales promotions involving specific products or groups of products specified herein for specified time periods. If electing to exercise this provision, the Contractor shall submit:

20.8.1. A formal request that identifies the affected contract product or product groups

20.8.2. The promotional price vs. the existing contract price

20.8.3. The start and end date of the sales promotion

Approval shall be in the form of a contract amendment. Pricing shall be available to all eligible agencies through the dates specified in the request. Upon approval the Contractor shall provide conspicuous notice of the promotion.

**21. PRODUCTS**

21.1. Product Removal. The contractor shall not cancel or remove products without prior approval of the State. The contractor shall provide an equal or acceptable replacement approved by State if available.

21.2. Product Discontinuance. In the event that a product or groups of products are discontinued by a manufacturer, written notice shall be submitted to the State within 5 business days of notification from manufacturer. The State at its sole discretion may allow the Contractor to provide replacements for the discontinued product(s) or allow the deletion of such products from the contract. Approval shall be in the form of a contract amendment or change order and shall become effective upon execution of the amendment or change order, unless otherwise stated. Upon approval by the

State, the Contractor shall make available all electronic and hard catalog/price list updates to all eligible at no additional cost to the State. The request may be submitted at any time during the contract period and shall be supplemented with the following information. Failure to supply any of the following information with the request may result in the State not considering the request.

- A formal announcement or documentation from the manufacturer stating that the product(s) have been discontinued.
- Documentation describing any replacement product providing clear evidence that the replacement product(s) meets or exceeds the specifications of the discontinued product(s) while remaining in the same product group(s) as the discontinued item, and;
- Documentation confirming that the price for the replacement product(s) is equivalent or less than the discontinued item.

21.3. New Products. The State, at its sole discretion, reserves the right to include additional products or product categories that are within the Specifications and in the best interest of the State. The request may be submitted at any time during the contract period and shall be supplemented with the information below. Approval(s) shall be in the form of a contract amendment or change order and shall become effective on the date specified in the amendment or change order. Upon approval by the State, the contractor shall make available all catalog/price list updates to all eligible agencies at no additional cost to the State. Pricing shall be in line with current contract pricing. Contractor's request for new products shall include the following information;

21.3.1. A formal announcement from the manufacturer stating that the product(s) are new and were not available at the time of contract award.

21.3.2. Documentation from the manufacturer that cites the effected products by item number and description.

21.3.3. Documentation that provides clear evidence that the new products are those that are within an established contract group. NO OTHER PRODUCTS SHALL BE ALLOWED.

21.3.4. That States prices at which sales are currently or were last made to a significant number of any categories of buyers or buyers constituting the general buying public for the materials or services involved and that will be sold at the existing discount (percent %) from list price as existing products.

21.4. Warranty. All equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of 36 months 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.

21.5. Forced Substitutions. Forced substitutions shall not be allowed. The contractor shall obtain prior written approval from the Eligible Agency before any substitution may be made for an out of stock item.

21.6. Recall Notices. 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.**

**22. SUBCONTRACTS**

22.1. Subcontractor Approval. Supplemental to the Uniform Terms and Conditions, Section 5.2, Subcontracts, Contractor shall not enter into any Subcontract under this Contract, for the performance of services under this Contract, without the advance written approval of the Procurement Officer. The contractor shall submit a formal written request on company

letterhead and including an Attachment III, Proposed Subcontractors, or a document containing the information requested in Attachment III.

22.2. With the request, Contractor shall certify that all Subcontracts incorporate by reference the terms and conditions of this Contract. The issuance of subcontracts shall not relieve Contractor of any of its obligations under the Contract, including, among other things, the obligation to properly supervise and coordinate the work of subcontractors performing for the Contractor under this Contract. Nothing contained in any subcontract shall create a contractual relationship between any subcontractor and the State.

**23. TRAINING QUALITY ASSESSMENT**

If determined by the eligible agency that training was insufficient and did not meet all requirements of the contract, the Contractor must conduct additional training at the same location and at the Contractor's expense. Scheduling of any repeated classes shall be coordinated through the requesting eligible agency.

**24. VEHICLE DOCUMENTATION**

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.

**25. VEHICLE CONTRACTS PHASE I AND PHASE II (INCLUDING PURCHASES FROM STOCK)**

25.1. The State of Arizona shall continue to have two-phase contracts for vehicles. The intent of the two-phase contract is to allow eligible agencies vehicle contract coverage for a full 12-month period.

25.2. Phase I shall take effect upon award of this Invitation for Bid and shall expire on the factory cut-off date.

25.2.1. The Contractor shall notify the State of a contracted vehicle's Production Cut-off date in writing and received by the contract administrator no later than thirty (30) calendar days prior to the effective date of the Production Cut-off. In the event the Manufacturer should give less than thirty (30) calendar days' notice of a Production Cut-off to the Contractor, the Contractor shall notify by telephone, email or letter, the Contract Administrator no later than the next business day. When available, the Contractor agrees to immediately provide copies of the Manufacturer's notice of Production Cut-off to the Contract Administrator upon request.

**26. VEHICLE PRICING-PHASE II (PURCHASES FROM STOCK)**

26.1. Purchases from dealer's stock may occur at any time during the contract, including during Phase II, which shall be effective upon the expiration date of Phase I and shall expire upon the award of the succeeding year vehicle contract.

26.2. Eligible agencies have historically purchased many vehicles during the Phase II portion of the contract. It is imperative that bidders/contractors view this portion of the contract as a Contractual Requirement.

26.3. Vehicles in the Phase II/purchase from stock portion of the contract shall be priced as follows:

26.4. The Phase II, or purchase from stock, contract price for the vehicles shall be the dealers cost as shown on the manufacturer's invoice for the vehicle in question, less the manufacturer's bid assistance available for that model/power-train combination plus dealer margin for the applicable contract item number. Contractor shall provide a copy of manufacturer's invoice to the ordering eligible agency. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer. Failure to price in this manner may be cause for contract cancellation. **Transportation costs to transfer a vehicle from another dealer for a Phase II or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the ordering eligible agency.**

**27. FEDERAL TERMS**

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

27.1. **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 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.

27.2 **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. RoIling 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.

27.3 **CARGO PREFEREENCE 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 leading 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.

27.4 **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.

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.

27.5 **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.

27.6 **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.

27.7 **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 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.

27.8 **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.

27.9 **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.

27.10 **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 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.

27.11 **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.

27.12 **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.

27.13 **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.

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.

27.14 **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.

27.15 **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.

27.16 **STATE AND LOCAL LAW DISCLAIMER**

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.

**Version 9 (Revised 7-1-2013)**

## 1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2. *"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*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4. *"Contractor"* means any person who has a Contract with the State.

1.5. *"Days"* means calendar days unless otherwise specified.

1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7. *"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"* 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"* 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"* means the furnishing of labor, time or effort by a contractor or subcontractor 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.

1.11. *"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.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

## 2. 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 it's implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Contract 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. 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 non-compliance 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 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. 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 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. 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. **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 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. 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;

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 Applicable 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. 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.

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. Contract Termination**

9.1. Cancellation for Conflict of Interest. 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 Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **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. **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. **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.

## Quote Sheet
## State of Arizona Contract
## Medium and Heavy Duty Cab and Chassis

| | |
|---|---|
| DATE: | |
| CUSTOMER: | |
| State Contract Number: | ProcureAZ Line Item Number: |
| Vehicle Description: Make, Model, Vehicle Code, And Trim Level | |
| Base Vehicle Price | $ |
| Manufacturer Options Upgrades or Upfit/Modifications Requirements | |

| | |
|---|---|
| 1. | $ |
| 2. | $ |
| 3. | $ |
| 4. | $ |
| 5. | $ |
| 6. | $ |
| 7. | $ |
| 8. | $ |
| 9. | $ |
| 10. | $ |

| | |
|---|---|
| $ | **Subtotal (Including Destination and Options)** |
| $ | **Upfit/Modification Requirements** |
| $ | **SALES TAX** |
| $ | **TIRE TAX** |
| $ | **DELIVERY FEE** |
| $ | **TOTAL DELIVERED PRICE** |

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# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Mark Richardson, Operations Manager |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval of Contract:** Purchase Itron Encoder Receiver Transmitters (ERT) Endpoints and related parts and supplies from Mountain States Pipe and Supply, Co. through a Sole Source purchase contract in the amount not to exceed $200,000.

**STAFF RECOMMENDED ACTION:**

1. Approve the sole source purchase contract with Mountain States Pipe and Supply, Co. to purchase Itron Encoder Receiver Transmitters (ERTs) and any related parts not to exceed $200,000; and
2. Authorize the City Manager to execute the necessary documents.

**Executive Summary:**

Water Services utilizes the Itron ERT to transmit meter data to a collector used by the City's Meter Readers. The contract for purchasing Itron ERTs through a cooperative contract has expired and is no longer available. The new ERTs will be used as part of the Radio Read upgrade program which replaces old and out dated meters and ERTs every 10 to 12 years in addition to new meter sets for new construction projects. This sole source purchase contract will purchase approximately 2,300 endpoint units for installation over the next 12 months.

**Financial Impact:**

The Radio Read replacement Program is funded annually through the Water Services Operational Budget as well as through project funding.

Radio Read Meter Replacement 202-08-370-3170-0-4461 $267,076 Available FY 2020-21
Water & Sewer Parts 202-08-303-1055-0-4360 $5,445 Available FY 2020-21

**Policy Impact:**

No negative impact.

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

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

Sustainable Innovative Infrastructure - Deliver outstanding services to residents through a healthy well maintained infrastructure system
Environmental Stewardship - Promote, protect and enhance a healthy sustainable environment & its natural resources

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

Yes, April 16, 2019 Agenda Item 9E

**Options and Alternatives:**

- Approve as recommended by staff; or
- Reject the use of the Sole Source purchase contract and seek an alternative to the existing system of reading meters.

**Background/History:**

The City of Flagstaff has been utilizing the Itron Encoder Receiver Transmitters (ERTs) for many years. The Itron system reduces issues caused when different types or manufacturers of meters are used. The last contract for the ITRON ERT was executed in April of 2019 and prior to that was February 2012.

In 2018, Council approved the new meter contract with Core & Main for Neptune Mach10 ultrasonic meters. This was the first step in advancing the City's meter technologies. The ERT also needs to be replaced at the same time due to its limited battery life and the fact that it is a sealed unit.

Attached is a letter from the manufacturer, Itron Corporation, verifying that Mountain States Pipe and Supply, Co. is their only distributor for the state of Arizona making this a sole source procurement.

**Key Considerations:**

The City of Flagstaff chose the Itron system as its basic communication platform for all water meters and has been utilizing the system for many years.

**Expanded Financial Considerations:**

Water Services continually funds a meter replacement program whether in the operating budget or under the Capital program. Upgrading the older system to newer technology and batteries will allow the city to continue its path forward in developing an Automatic Meter Read system in the future.

**Community Benefits and Considerations:**

Upgrade the technology for a better more accurate meter data acquisition. The system allows for accurate meter readings that can help the customer be aware of their actual water usage and conserve the valuable resource.

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**Attachments:**

COF Contract
Mountain States Pipe and Supply Proposal
Exhibit A of COF Contract Price per unit
Itron 100W ERT
Itron Openway RIVA
RIVA 500 Encoder Receiver Transmitter

**CONTRACT FOR PURCHASE OF MATERIALS**
Contract No. 2021-61

This Contract is entered into this _____ day of _____, 2021 by and between the City of Flagstaff, a political subdivision of the State or Arizona ("City"), and Mountain States Pipe & Supply, Co, a Colorado S Corporation ("Contractor).

WHEREAS, the City of Flagstaff desires to receive, and Contractor is able to provide materials;

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

1. Scope of Work: Contractor shall provide the materials generally described as follows:

## OpenWay Riva Module Endpoints

and as more specifically described in the scope of work attached hereto as ***Exhibit A.***

2. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor not to exceed two-hundred thousand dollars and zero cents ($200,000.00) as described in Exhibit A. Any price adjustment must be approved in writing and approved by the parties. The City Manager or his designee (the Purchasing Director) may approve an adjustment if the Contract price is less than $50,000; otherwise City Council approval is required.

3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as ***Exhibit B*** shall apply to performance of this Contract, except to the extent modified in ***Exhibit A.***

4. Insurance: Contractor shall meet insurance requirements of the City, set forth in ***Exhibit C.***

5. Contract Term: The Contract term is for a period of three (3) years, commencing on _____, 2021 and continuing through _____, 2024 with the option for two (2) one-year extensions.

6. Notice: Any formal notice required under this Contract shall be in writing and sent by mail and email as follows:

To the City:
Emily Markel
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
emarkel@flagstaffaz.gov

To Contractor:
Paul Carroll
Sales
Mountain States Pipe & Supply
7765 Electronic Drive
Colorado Springs, CO 80922
pcarrol@flagstaffaz.gov

With a copy to:
Mark Richardson
Water Services Operations Manager
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
mrichardson@flagstaffaz.gov

With a copy to:

7. Authority: Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR

_____

Print name:_____

Title:_____

CITY OF FLAGSTAFF

_____

Print name:_____

Title:_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney's Office
Notice to Proceed issued:_____, 2021

**EXHIBIT A**

**SCOPE OF WORK**

(Mountain States Pipe & Supply, Co. proposal EST5396 with price per unit)

**EXHIBIT B**

**CITY OF FLAGSTAFF**

# STANDARD TERMS AND CONDITIONS

## IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.

2. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.

3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.

4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and the City reserves the right to contract with others for materials or services.

5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

## MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.

7. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials, and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.

8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.

9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to City upon City's acceptance of the materials.

10. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

**11. TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.

**12. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.

**13. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.

**14. SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.

**15. LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.

**16. CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

## PAYMENT

**17. INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.

**18. LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

**19. TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

**20. FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.

**21. FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.

**22. DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.

**23. AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.

**24. OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

**SERVICES**

**25. INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.

**26. CONTROL:** Contractor shall be responsible for the control of the work.

**27. WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.

**28. SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.

**29. QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.

**30. ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

**31. WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

## INSPECTION, RECORDS, ADMINISTRATION

**32. RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.

**33. RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.

**34. PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.

**35. CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

## INDEMNIFICATION, INSURANCE

**36. GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City's Specific Terms and Conditions.

**37. INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker's compensation.

**38. INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

## CONTRACT CHANGES

**39. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.

**40. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.

**41. AMENDMENTS:** This Contract may be amended by written agreement of the parties.

**42. SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.

**43. NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.

**44. ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.

**45. BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**EMPLOYEES AND SUBCONTRACTORS**

**46. SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.

**47. NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.

**48. DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.

**49. IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration

Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

## DEFAULT AND TERMINATION

**50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.

**51. CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.

**52. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.

**53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.

**54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.

**55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.

**56. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.

**57. PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.

**58. CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.

**59. CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

**MISCELLANEOUS**

**60. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.

**61. NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent Notice may be sent by email as a secondary form of notice.

**62. THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

**63. GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.

**64. FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.

**65. ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys fees, costs, professional fees and expenses.

**66. FORCE MAJUERE:** There may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of this Contract.

There will be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the events described above, and the City will pay no additional costs incurred as a result of such events.

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

## EXHIBIT C

## INSURANCE REQUIREMENTS

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.

2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.

3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

   Contractor shall provide coverage at least as broad and with limits not less than those stated below.

   a. Commercial General Liability - Occurrence Form

| | |
|---|---|
| General Aggregate | $2,000,000 |
| Products/Completed Operations | $1,000,000 |
| Each Occurrence | $1,000,000 |

   b. Umbrella Coverage $2,000,000

   c. Automobile Liability –
   Any Automobile or Owned, Hired
   and Non-owned Vehicles
   Combined Single Limit Per Accident
   for Bodily Injury & Property Damage $1,000,000

   d. Workers' Compensation and Employer's Liability

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

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.

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

   a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.

   b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.

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

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

   e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

   f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.

6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

   Attention: Emily Markel, Senior Procurement Specialist
   Contract No. 2021-61
   Purchasing Department
   City of Flagstaff,
   211 W. Aspen Avenue
   Flagstaff, Arizona 86001.

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

8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.

9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.

10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

# Proposal

**Mountain States Pipe and Supply Company**
7765 Electronic Drive
Colorado Springs, Colorado 80922
1-800-777-7173
Paul Mobile Phone: 719.351.4120
Paul email: pcarroll@msps.com

| | |
|---|---|
| Customer: | Mark A. Richardson<br>Operations Manager<br>City of Flagstaff<br>Water Services Division<br>928-213-2443<br>MRichardson@flagstaffaz.gov |

Date: Thursday, March 11, 2021

| Qty | Description | Cost Each | Extension |
|---|---|---|---|
| | Itron 500W OpenWay Riva Water Pit Module<br>No Programming and No Security Keys<br>Customer Part # V98600 | $79.00 | |
| | Itron ERT-1300-402 100W+ 2-Port Water Pit Module | $75.00 | |

*Freight: Billed at Actual Cost*
*Taxes not Included*

# Quotation

**MOUNTAIN STATES PIPE & SUPPLY**
**7765 Electronic Drive**
**Colorado Springs CO 80922**
**United States**
**(719) 634-5555**

| | |
|---|---|
| **Estimate #** | EST5396 |
| **Date** | 10/23/2020 |
| **Acct. No.** | 3182 |
| **Expires** | 11/22/2020 |
| **Entered By:** | Marc Brown |
| **Sales Rep** | Marc Brown |
| **Shipping Charges** | INCLUDED |
| **Terms** | NET 30 |
| **Quote Referernce** | |

**Bill To**
Patrick O'Connor
CITY OF FLAGSTAFF
211 WEST ASPEN
FLAGSTAFF AZ 86001-5399
United States

**Ship To**
Patrick O'Connor
CITY OF FLAGSTAFF
211 WEST ASPEN
FLAGSTAFF AZ 86001-5399
United States

| Line# | Item | Description | Qty | U/M | Price/ Ea | Amount |
|---|---|---|---|---|---|---|
| 1 | ERW-1601-001 | OpenWay Riva Water Pit Module Standard (No Programming or Security Keys Loaded) | 1,000 | EA | 79.00 | 79,000.00 |

| | |
|---|---|
| **Subtotal** | 79,000.00 |
| **Tax Total (AZ_COCONINO CO_FLAGSTAFF 8.951%)** | 7,071.29 |
| **Total** | $86,071.29 |

All items subject to prior sale. Pricing valid for 30 days from quotation date unless noted otherwise. Estimate is based on information provided by customer, and is not guaranteed for accuracy of quantity or type. All items FOB: Origin, Freight Pre-Pay and Add to Invoice unless noted otherwise.
All items subject to prior sale. Prices subject to change without notice.

# 100W

## Water Communication Module

The 100W ERT® communication module is the latest addition to Itron's portfolio of advanced metering devices for water utilities. Featuring a compact design, industry-leading battery life and technology designed to adapt and grow with your business, the 100W module can help you streamline your operations and maximize your resources today and into the future.

100W ERT modules are available in two housing designs, supporting both water pit and remote installations. The different 100W ERT modules are identified as follows:

- 100W is to be utilized with encoder registers in a pit environment
- 100WP for pulser registers in a pit environment
  - All new 100W ERT modules for pit applications will come standard with a red integral connector port to utilize the optional 100W Through-The-Lid (TTL) antenna
- 100W-R for encoder registers in remote applications
- 100WP-R for with pulser registers in remote applications

These modules offer advanced two-way meter data collection designed specifically for Itron collection systems using handheld, mobile, fixed network and combination hybrid solutions. 100W ERT modules differentiate themselves from other devices on the market by providing true two-way communications capabilities. Engineered from the ground up to leverage the benefits of ChoiceConnect™ collection systems, 100W ERT modules enable easy migration from mobile to fixed network operations as your business needs evolve. With Itron's complementary communications technology, fixed and mobile network systems can be deployed side-by-side in hybrid configurations to ensure maximum efficiency and reliability in both high and low-density meter populations.

100W

### Water Meter Compatibility

The 100W ERT module is compatible with industry-leading water meters from Itron—as well as those from all major manufacturers such as Badger, Elster AMCO, Hersey, Master Meter, Neptune and Sensus—enabling water utilities to consolidate all their water meters under a single reading system. Powered by proven, advanced lithium battery technology; the module is designed for 20 years of battery life in both fixed network and mobile modes.

### Data Logging

The 100W ERT module stores 40 days of hourly consumption information, which can be collected by the fixed network system to leverage real time data collection or can be read by mobile or handheld systems. This data is presented in four basic use cases:

- Any hourly reading within the last 40 days
- A set of 24 consecutive hourly readings
- A set of 40 daily readings
- A set of 40 days of hourly interval data are available even in mobile mode

### Superior Performance

The 100W ERT module utilizes 120 radio channels in Fixed Network and 50 radio channels in mobile and handheld modes, randomly selecting one channel for each data message. This multi-channel approach delivers higher read integrity over competing products by reducing the effect of interfering signals from other radio frequency (RF) signals in the area. The 100W ERT module will transmit the Fixed Network consumption messages at peak radiated power greater than 1 Watt.

### Reliability

100W ERT modules feature a circuit assembly and battery pack that are fully encapsulated within a specially-formulated potting material to completely protect internal components from water, contaminants, corrosion, rough handling and temperature cycling. With their straight forward, rugged design, 100W ERT modules use substantially fewer components than most competing products, resulting in greater reliability. The advanced, integrated antenna operates effectively in a wide range of meter box installations. The 100W ERT module offers peace of mind with a 20 year limited warranty.

### Lower Cost of Ownership

100W ERT module devices feature industry-leading battery life , ensuring your meter data collection investment achieves substantially better financial returns than competing products with batteries that typically last only ten or twelve years. When one considers the advancements in leak, reverse flow (absolute encoder version only) and tamper detection, 100W modules necessitate fewer field investigations and substantially lower expenditures for installation, meter reading, customer service and field service. And with a low battery alarm, these modules help utilities better plan and manage the replacement of units in the field.

### Leak Management

Water loss management is critical to any water utility's success. 100 Series modules can be paired with Itron's advanced acoustic Leak Sensor. The Leak Sensor collects and analyzes changes in pipe acoustics that indicate probable leaks in the distribution system environment to detect both new and pre-existing leaks automatically.  Leak Sensor technology, coupled with the module's internal customer-side leak detection algorithm and the option to use data from groups of 100W ERT modules (District Metering) provide the utility with a highly accurate picture of the overall health of the water distribution system.

### Leak Data

The 100 Series collects and stores the data from the Leak Sensor. The Leak Sensor samples the pipe conditions every 22.5 minutes or 64 times daily. The 100 Series stores the 8 quietest analyses daily and will hold 20 days worth of data. This data is picked up during normal meter reading operations and seamlessly transfers the data to our hosted web based solution (mlogonline).

100WR

## 100W ERT MODULE SPECIFICATIONS

### Functional

- Power Source: Two “A” cell lithium batteries warranted for 20 years
- Maximum meter register pulse frequency (pulse version only): 4 Hertz
- Operating temperature:
  - -40°C to +70°C for remote applications
  - -20°C to +60°C for pit applications
- Storage temperature: -40°C to + 75°C for maximum of 1,000 hours
- Humidity limits: 0 to 100% (submersible)
- Maximum register cable dimension: 300 feet with Itron-approved cable and splice connectors
- Meter compatibility: See Water Module Meter Compatibility Guide (PUB-0063-002)

### Transmission Parameters

- Data message:
  Multiple RF channel transmissions of meter register value, cut cable and or communication error tamper(s), reverse flow (encoder version only) and system leak status messages, as well as low battery indicator is transmitted every nine seconds in mobile mode. All this information and last 7 time synchronized consumption intervals is transmitted every five minutes along with a contingency SCM (Standard Consumption Message) every 60 seconds in fixed network mode
- Transmitter frequencies:
  - 908 - 924 MHz (Standard Power) in mobile mode
  - 903 – 926.8 MHz (High Power) in fixed network mode
- Operates in bubble-up mode and does not require a license from the Federal Communications Commission (FCC) or Industry Canada (IC)
  - FCC Part 15.247
  - Industry Canada RSS-210

### Approved Reading Devices for Collecting Datalogging Reads

- Network system: Itron Fixed Network 100 Collectors and Repeaters (CCU 100 and Repeater 100) which offer full two-way communication capability.
- Drive-by system:
  - MC3 with MV-RS v8.0 or higher and FCS with v2.2 or higher
  - MC Lite with MV-RS v8.1 or higher and FCS with v2.3 or higher
- Walk-by system:
  - FC300 with SRead handheld computers with MV-RS v8.1 or higher and FCS with v2.3 or higher
  - FC200SR (part number FC2-0005-004 or FC2-0006-004 will support datalogging) handheld computer with MV-RS v8.1 or higher and FCS with v2.3 or higher

### Approved Reading Applications

- Multi Vendor Reading System (MV-RS) v8.1 or higher or FCS v2.2 or higher software can read the 100W ERT module Standard Consumption Message (SCM) and Datalogging with the following reading devices: MC3 v3.3 or higher
- Multi Vendor Reading System (MV-RS) v8.2 or higher can read the 100W ERT module Standard Consumption Message (SCM) and Datalogging with the following reading devices: MC3 v3.3 or higher, FC300SR, FC200SR, and MCLite

### Approved Programming Devices

- FC200SR with Field Deployment Manager (FDM) version 1.1 or higher software
- FC300SR with Field Deployment Manager (FDM) version 1.1 or higher software
- 900 MHz Belt Clip Radio Field Deployment Manager (FDM) version 1.1 or higher software

The 100W encoder version does not require any programming—it automatically detects the register type within one hour of being connected. 100W ERT modules do not require a FCC license.

### Programmable Mode Options

- Mobile/Handheld Mode
  - This is the standard mode in which all 100W ERT modules will be shipped. This mode should be utilized when mobile or handheld meter reading will be the primary method of collecting the Standard Consumption Message (SCM) or datalogging reads.
  - The SCM will bubble-up in this mode every 9 sec. at standard power optimized for mobile read rate performance.
  - The battery life for this mode is 20 years
- Fixed Network (FN) Mode
  - This mode is to be utilized when fixed network will be the method of meter data collection
  - A high power Network Interval Message (NIM) will be transmitted every 5 minutes with a contingency SCM message transmitted every minute at standard power
  - FN mode can be programmed at the factory, during installation with an approved handheld device or through mobile application after initial installation and programming
  - The battery life for this mode is 20 years
- Hard-to-Read Mobile/Handheld Mode
  - This mode should only be used when communication modules are installed in difficult to read locations where standard mobile mode is not sufficient for satisfactory reading performance
  - This mode will bubble-up an SCM at 30 seconds with high power output to optimize performance of these unique applications
  - The battery life of this mode is greater than 10 years

- High Power Mobile Mode
  - This mode should be used when communication modules are installed in difficult to read environments where there is a high concentration of unfriendly RF and where standard mobile mode is not sufficient for satisfactory reading performance
  - This mode will bubble-up and SCM at 60 seconds with a higher power output to optimize performance of these unique applications
  - Battery life for this mode is 20 years

### 100W & 100WP Pit Dimensions

- Height: 4.5 inches
- Maximum diameter:
  - Lower: 3.90 inches
  - Upper: Approx. 1.70 inches
- Weight: Approx. 9.6 oz.
- Module cable length without integral connector: 5 feet and 20 inches (for register direct mounting)
- In-line connector register cables: 5 feet and 25 feet (ordered separately)
- Pit models can be installed up to 300 ft. from meter

### 100WR & 100WP-R Remote Dimensions

- Height: 4.5 inches
- Width: 5.05 inches
- Depth: 1.47 inches
- Weight: Approx. 9.6 oz.
- Module cable length 10 inches
- Remote models can be installed up to 300 ft. from meter

### Mounting Options

The 100W and 100WP models have a compact housing and features specifically designed for water pit mounting options

- Direct-mount for Badger, Elster and Hersey meters
- Rod-mount on a ½ inch diameter fiberglass or other non-metallic rods
- Shelf-mount for pit lid manufactures that contain recessed cavity on the underside of the pit lid
- Through-the-lid mounting with a pre-drilled 1.75 inch hole and up to 2.5-inch maximum lid thickness
- Direct-mount to any flat surface with screw kit

The 100W-R and 100WP-R models are designed for remote mounting applications

- Wall-mount for installation to the side of residence or building using screw kit
- Pipe-mount for installation on pipe sizes from ¾ inch up to 4 inch
- Direct-mount for Badger and Elster meters

### Regulatory and Standards

- FCC Part 15.247
- Industry Canada RSS-210

Itron

At Itron, we're dedicated to delivering end-to-end smart grid and smart distribution solutions to electric, gas and water utilities around the globe. Our company is the world's leading provider of smart metering, data collection and utility software systems, with over 8,000 utilities worldwide relying on our technology to optimize the delivery and use of energy and water.

To realize your smarter energy and water future, start here: **www.itron.com**

**CORPORATE HEADQUARTERS**

2111 N Molter Road
Liberty Lake, WA 99019
USA

**Phone:** 1.800.635.5461
**Fax:** 1.509.891.3355

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# OpenWay® Riva

**Next Generation IoT Solution**
for Smart Utilities and Cities

# Creating new business outcomes for today's challenges

Introducing OpenWay Riva, the next generation network and application IoT Solution for Smart Utilities and Cities. OpenWay Riva is a significant leap forward in technology built upon Itron's existing OpenWay Cisco IPv6 network. We have added a powerful distributed computing platform for accelerating innovation quickly and securely. Itron and our technology partners are working with global utilities and municipalities to develop and validate use cases that leverage these new capabilities to make real-time operational decisions at the edge of the network, enabling what we call the "active grid" or "active network". An active network drives measurable valuable business outcomes. A few of the outcomes the OpenWay Riva solution is delivering include:

## FOR ELECTRICITY

### Diversion Detection

With the OpenWay Riva solution, electric power diversion detection can now be based on real-time, continuous, and localized analysis of changes in electricity current flows and voltage levels in the distribution network to distinguish legitimate metered loads versus those from theft. Through the meter's ability to communicate directly with other meters at different levels of the network, and knowing exactly where they are located on the distribution system, the application identifies when current is drawn on the secondary of a transformer that did not go through a meter, greatly increasing the accuracy and timeliness of diversion detection.

### Detection of Unsafe Grid Conditions

High-impedance connections (HIC) or "hot spots" on the low-voltage distribution system represent a serious and ongoing safety risk, as well as causing customer voltage problems and utility energy losses. By continuously calculating and monitoring impedance throughout the lower voltage system, distributed intelligence changes the game for HIC detection. The OpenWay Riva high impedance application provides a practical and cost-effective solution for utilities to identify these losses, voltage anomalies and potential safety issues before they become a safety hazard or a costly liability.

### Transformer Load Management

Intelligence within each smart meter allows the load on individual distribution transformers to be analyzed continuously and managed locally in real time. OpenWay Riva meters communicate with each other locally and continually calculate the total load on the transformer and know when a transformer is approaching overload conditions, whether from the line side or customer side. When this occurs, a distributed analytic running on the meters determines whether to shut off controlled loads behind the transformer, turn on or increase local distributed generation behind the transformer, or take other actions to reduce loading below allowed levels.

## FOR WATER

### Water Leak Detection

Proactive leak detection is much more valuable to a utility and a consumer than finding out about leaks after they happen. The OpenWay Riva solution's leak detection application includes an acoustic leak sensor and analysis and presentment software designed to be permanently installed, enabling the utility to continuously monitor its entire distribution network. The leak sensor is powered by the OpenWay Riva water module and supplies acoustic samples to the module for storage and transmission through the network to leak detection software. The leak detection software enables the utility to identify and prioritize potential distribution leaks for maintenance, reducing water loss and enabling the utility to address leaks prior to them becoming costly main breaks.

### Remote Disconnect

Itron has certified two third-party remote disconnect valves to operate within the OpenWay Riva solution. With open standards allowing more flexible interoperability, additional vendor products will be available to water utilities. This advanced functionality enables utilities to remotely disconnect or limit water flow to an end customer. It reduces the need to roll a truck to perform this function, saving the utility a significant amount of money while enhancing the safety of field crews.

### Advanced Sensing

Itron's open ecosystem of partners will enable the deployment of a variety of additional sensors on the water distribution system to monitor pressure and water quality. In addition to continuous health monitoring of the system, advanced sensing data can be correlated with other data to enhance analysis, reporting, and prioritization of problem solving.

## FOR GAS

### Safety

The OpenWay Riva solution combines peer-to-peer communications and analysis of data throughout the gas distribution network to aid in pipeline safety. Utilities can pair methane sensors, seismic sensors, flood sensors and more with remote disconnect valves – enabling the utility to potentially alleviate dangerous situations and improve the safety of communities, employees and first responders.

### System Integrity

Itron's Partner Ecosystem brings together a network of people and companies driven to solve problems and innovate rapidly. This ecosystem enables many best in class providers to develop solutions for Itron's multi-purpose networks. New applications from other technology vendors are emerging to monitor pressure, temperature, pipeline stress via strain gauges, to perform pressure studies, and to hit check in dates for cathodic protection reports to aid in pipeline integrity management.

### Methane Sensing

The OpenWay Riva solution's methane sensing application helps keep utility personnel and customers safe by monitoring for changing levels of methane. Further, remote disconnect valves can be paired with the methane sensor to shut off gas service when elevated levels of methane are detected. By deploying methane sensors in highly-populated areas of a utility service territory such as hospitals, schools, amusement parks, shopping centers and sports venues, methane gas leaks can be identified more quickly and gas service automatically shut-off immediately—alleviating potentially dangerous situations before they arise.

## FOR SMART CITIES

### Connected Infrastructure

Foundational to a smart city is smart utility services where energy and water use is being monitored and proactively managed for waste reduction, conservation and sustainability goals.

Cities must be connected to realize the benefits and value of these programs. Being connected allows smart cities to leverage data and technology to drive real operational efficiencies and outcomes that matter to citizens and businesses.

Itron is a world leader in connecting infrastructure and managing data with nearly 200 million connected devices in cities throughout the globe.

Itron's next generation solution for smart cities is built upon its proven OpenWay IPv6 network. The OpenWay Riva solution connects Internet of Things devices through a powerful, fully standards-compliant distributed computing platform enabling endless possibilities for emerging city applications.

### Total Outcomes

Itron is taking it a step further beyond connecting infrastructures and managing data to delivering outcomes. Through distributed applications and cloud services, Itron can help solve problems for cities faced with challenges such as resource waste reduction, electric transportation, streetlight management, water conservation and management of renewable power. Itron cannot do all of this alone. Through an ecosystem of partners utilizing the interoperable platform developed by Itron, cities have access to new applications much faster than in the past.

Discover the Active Grid... when it comes to how we manage the delivery and use of energy and water, or how we run our cities, there's a lot of opportunity for improvement. Each year in the U.S. alone, hundreds of billions of dollars in energy and water are wasted, stolen or otherwise lost before reaching the end user.

As migration toward urban centers increases, cities are under increasing pressure to manage resources more effectively, and utilize new technology to make the urban landscape more livable, sustainable and economically vibrant. Today's challenges require a solution built for the Internet of Things world. Itron calls this the **Active Grid** or **Active Network** – both referring to the infrastructure being utilized by electric, water, and gas utilities and smart cities. The Active Grid leverages significant advancements in IoT technology, including distributed intelligence; software-defined communications; multi-application networks; cloud computing; data analytics; and a new generation of battery-powered edge devices and sensors to achieve new and better outcomes that were simply not possible just a few years ago.

These technologies come together in Itron's OpenWay Riva — an IoT solution that delivers new and differentiating value to enable smart utilities and cities. Utility smart metering may often provide the initial impetus for network infrastructure investment, but the benefit stream can be broadened significantly and at a manageable incremental cost with the right building blocks in place. The OpenWay Riva IoT solution was developed on four key tenets that, when applied together, redefine what is possible for the Active Grid.

## ONE MULTI-PURPOSE NETWORK, MANY APPLICATIONS

The OpenWay Riva solution provides utilities and cities with a unified, scalable, multi-purpose IoT network infrastructure. This means that once the network is deployed, it's easy and cost effective to expand the value of the network investment over time. This standards-based IPv6 multi-application network, jointly developed by Itron and Cisco, separates the network infrastructure from the devices and applications that run on it. This means that new devices and applications can be added easily to the network, just like a new laptop or a printer would be added to an enterprise-class IT network. It also provides standardized, robust security; state-of-the-art network management tools; and quality of service to dynamically prioritize network traffic based on application and business requirements for an IoT world — all while utilizing a common and existing IT skill set to keep operations simple and support costs under control.

As previously discussed, Itron is actively developing new distributed analytic applications for water, electricity, gas and smart city use cases. In the Active Grid smart metering is just one app running on the multi-purpose network.

## OPEN ECOSYSTEM OF APPLICATION INNOVATORS

Itron's networks have been architected to provide an open application, interoperable environment that enables third-parties to embed IoT communications into their devices, or to develop apps to run on the platform. Itron's Partner Ecosystem provides a common end-to-end engagement platform that includes hardware and software development kits to help solution providers enable their solutions to perform on Itron networks. This robust ecosystem of developers and applications means that utilties and cities are not reliant on a single vendor for product innovations. Itron is committed to helping a broad variety of device and sensor manufacturers work more easily together to bring new applications and greater value faster to market for our customers.

MULTI-PURPOSE NETWORK

ECOSYSTEM OF APPLICATION INNOVATORS

DISTRIBUTED INTELLIGENCE

ADAPTIVE COMMUNICATION TECHNOLOGIES

## DISTRIBUTED INTELLIGENCE OPTIMIZES DECISIONS

Having sensors and devices at the edge of the distribution network enables better data analysis and decision-making and control both at the device level, where it may be more appropriate, and at the back-office when timeliness may not be the most important factor. Operational actions that can be optimized vary from service to service depending on the type and timeliness required, say for instance, in the case of pipeline safety where real-time action is critical and can be achieved through distributed intelligence and local action in sensing devices. Proactive water leak detection may not be as critical to saving lives, but there is tremendous value in terms of conservation and economic losses that may make having distributed edge sensors in the water system crucial to a city or utility. Electrical applications discussed earlier, such as transformer load management performed at the device level through a distributed analytic in the device, can save money and time by knowing when the transformer is approaching overload situations and taking action to avoid this situation.

The OpenWay Riva technology delivers three groundbreaking distributed intelligence capabilities to optimize data analysis, decisions and control from the device level to the back-office, enabling real-time problem solving:

### Location Awareness

Meters and grid devices equipped with OpenWay Riva technology now know where they are on distribution networks in relation to other grid assets (other meters, sensors, etc.). This awareness is enabled by continuous monitoring and algorithmic interpretation of electrical characteristics relative to various grid devices within the network. Locational awareness opens up an entirely new frontier of edge applications while greatly improving the accuracy, resolution and timeliness of data and edge analytics.

### Multi-Protocol Support

The Linux computer and robust processing power in the OpenWay Riva communications module support multiple communication/ application protocols. This enables different types of grid devices to communicate and work together to solve problems. For instance, meters aren't limited to "speaking" just metering protocols anymore. Smart meters can also speak the language of other systems such as distribution automation, load control, EV chargers or solar inverters to enable localized, integrated action in response to changing conditions at the edge of the network.

### Unprecedented Processing Power

Think of what your smart phone can do today compared to early cell phones. Thanks to increasing affordability of processing power, Itron has embedded the computing equivalent of a smart phone or desktop computer in a meter or grid device at a price point that's competitive with other current offerings. With that kind of computing power to crunch high-resolution data and ample memory to develop unique applications at the edge, the possibilities are endless.

## ASSURED CONNECTIVITY WITH ADAPTIVE COMMUNICATIONS TECHNOLOGY

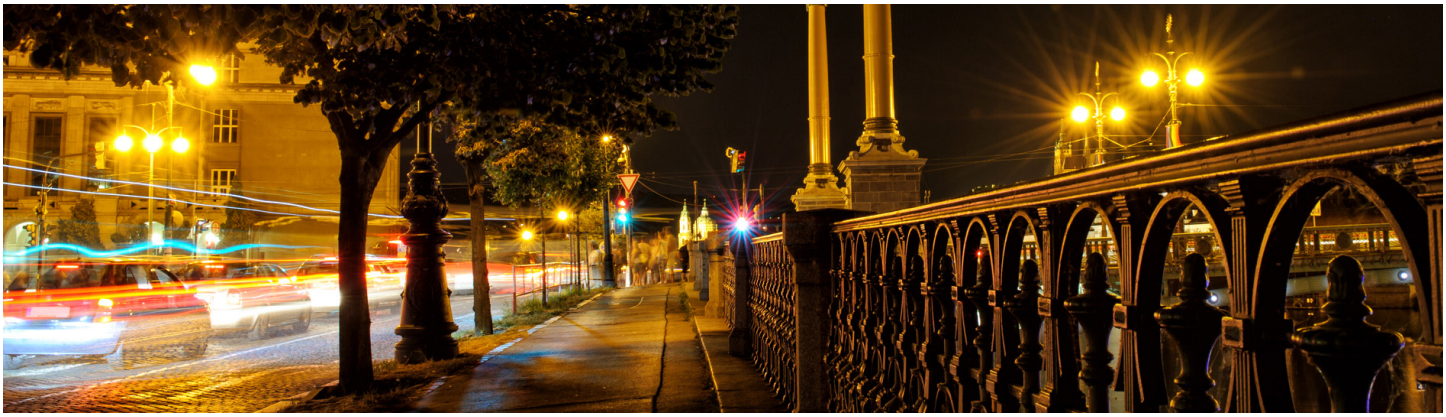
What if you could deploy a network that incorporates multiple communications technologies – RF mesh, Powerline Carrier and Wi-Fi – on the same chip or module? And no matter what, that device will always choose and utilize the most reliable and fastest communication path and most efficient modulation based on its location and distance from other devices, environmental operating conditions and the nature of the application or data. This would change everything. With the OpenWay Riva platform, this process of dynamic communication happens intelligently and continuously, at all levels of the network, for every link, every message and every device.

Adaptive communications, in combination with Cisco's network management tools and quality of service, deliver a new standard for network performance, reliability and cost of ownership.

### Adaptive Communications Technology

Flexible communications provides a single, unified communications network that is ideal for both dense and difficult urban environments as well as lower-density suburban and rural areas. Deployment of the network infrastructure becomes easier, faster and less costly, especially for the last 5 to 10 percent of the network, when the costly "hard- to-reach" areas and meters must be addressed. Through device level IPv6 peer to peer communication where every device has a unique IP address, every device is able to talk to each other individually or in groups which greatly enhances real-time analytics abilities to immediately solve operational issues.

Most importantly, the reliability and adaptability of the OpenWay Riva solution means that the network assures connectivity and performance with minimal infrastructure, resulting in a very attractive cost of ownership.



## A COMPLETE SOLUTION

The OpenWay Riva IoT solution for smart utilities and cities is the only solution available on the market that delivers valuable outcomes to business challenges utilizing distributed intelligence and adaptive communications technology.

The OpenWay Riva solution brings true interoperability for an open ecosystem of grid devices and network sensors over the Cisco IPv6 network – delivering the active grid for smart utilities and cities. Deploying a unified solution on one multi-purpose network provides well-defined points of interoperability between systems, and greatly simplifies and reduces integration costs and difficulties. So electricity, gas and water utilities and cities can focus on creating business value through outcomes that improve services and enhance the lives of customers and citizens.

## EQUIPPED FOR THE FUTURE

### The Takeaway is Clear

The OpenWay IoT solution for smart utilities and cities is the next generation platform designed to not only support smart metering requirements of today, but support a broad spectrum of applications across gas, water, and electric utilities and smart cities. The OpenWay Riva IoT solution is ready for whatever the future will bring.

Visit **itron.com/cisco** for case studies, videos and other ways to learn more about taking the next step in your AMI and IoT journey.

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# OpenWay® Riva 500W ERT® Module

The OpenWay Riva 500W ERT Module is the latest addition to Itron's portfolio of advanced metering devices for water utilities. OpenWay Riva 500W ERT Modules are IPv6 endpoints designed to operate on Itron's OpenWay Riva multi-purpose IoT solution. Featuring a compact design, industry-leading battery life, firmware download and technology designed to adapt and grow with your business, the OpenWay Riva 500W ERT Module can help you streamline your operations and maximize your resources today while also connecting to the Internet of Things.

## INTRODUCTION

OpenWay Riva modules offer advanced two-way communications designed specifically for Itron's OpenWay Riva solution as well as Itron's industry-leading ChoiceConnect solutions. OpenWay Riva 500W ERT Modules enable easy migration from mobile to network operations as your business needs evolve. The ability to perform firmware downloads over the network allows the utility to ensure they have the latest features available without having to visit each account. With Itron's complementary communications technology, network and mobile systems can be deployed side-by-side in hybrid configurations to ensure maximum efficiency and reliability in both high- and low-density meter populations.

OpenWay Riva 500W ERT Modules are available in two housing designs, supporting both water pit and remote installations. Both pit and remote modules support encoder and pulsar register types. One single endpoint will support both register types. Itron's auto sensing technology allows the OpenWay Riva endpoint to detect what register model it is attached to, removing the need to program the endpoint at installation. OpenWay Riva pit modules include an integral connector port and a telemetry port standard. A single pit SKU is compatible for both encoders and pulsers; and one remote SKU is compatible for both encoders and pulsers. The integral port allows for the use of Itron's Through-The-Lid antenna and the telemetry port enables the use of Itron's acoustic leak sensor, third-party remote disconnect valves.

## SPECIFICATIONS

## WATER METER COMPATIBILITY

The OpenWay Riva 500W ERT Module is compatible with water meters from all major manufacturers, including — Badger, Elster AMCO, Hersey, Master Meter, Neptune, Kamstrup and Sensus— enabling water utilities to consolidate all water meters under a single communications platform. Powered by proven, advanced lithium battery technology, the module is designed for 20 years of battery life in both fixed network and mobile modes.

## DATA LOGGING

The OpenWay Riva 500W ERT Module stores 160 days of hourly data when in network system mode. There are two modes available for collecting data:

### ChoiceConnect Mobile Mode

- Any hourly reading within the last 40 days
- A set of 24 consecutive hourly readings
- A set of 40 daily readings
- A set of 40 days of hourly interval data are available even in mobile mode

### OpenWay Riva Network Mode

- Any hourly reading within the last 160 days
- Any 15 minute interval within the last 40 days
- A set of 24 consecutive hourly readings
- A set of daily readings over 160 days
- A set of 160 days of hourly readings
- A set of 40 days of 15 minute interval readings
- Additional data logging options:

OpenWay Riva offers configurable intervals for data storage for any interval length evenly divisible into 60 minutes (1, 2, 3, 4, 5, 6, 10, 12, 15, 30, and 60 minutes) when operating in FN mode. Intervals are configurable and re-configurable via the OpenWay Riva network.

Throughout a normal day of operations, the 500W ERT Module collects and stores meter readings and waits for an interrogation request to arrive from the headend. The headend system is configured to request data from the module. The recommended configuration is to request eight hours of data, three times per day. This results in 24 hours of data each day from the endpoint. The system can also request all 24 hours of data once a day, or six hours of data four times a day. You can choose whichever configuration best matches your business process.

Data does not need to be requested in an overlapping fashion. This type of redundancy is unnecessary in the OpenWay Riva solution. For example, the headend doesn't need to request 24 hours of data, three times a day, where each request overlaps the previous request. The request/response process, also known as the interrogation process, is an acknowledged process. This means that the headend knows if the data was not received. It then triggers an automatic retry process that continues attempts to retrieve the missing data for a configurable time frame.

Additionally, as part of the full two-way communications network, the module supports other value-added capabilities including:

- on-demand reads
- real-time leak
- tamper and reverse flow flags
- remote disconnect capabilities
- time synchronized data
- meter right sizing functions
- exception reporting
- firmware upgrades

## SUPERIOR PERFORMANCE

The OpenWay Riva 500W ERT Module utilizes multiple radio channels. This multi-channel approach delivers higher read integrity over competing products by reducing the effect of interfering signals from other radio frequency (RF) signals in the area. The OpenWay Riva 500W ERT Module transmits the fixed network consumption messages at peak radiated power greater than one watt.

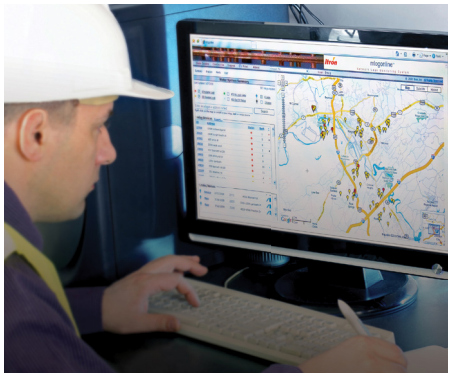
## RELIABILITY

OpenWay Riva 500W ERT Modules feature a circuit assembly and battery pack that are fully encapsulated within a specially formulated potting material to protect internal components from water, contaminants, corrosion, rough handling and temperature cycling.

With their straightforward, rugged design, OpenWay Riva 500W ERT Modules use significantly fewer components than most competing products, resulting in greater reliability. The advanced, integrated antenna operates effectively in a wide range of meter box installations. The OpenWay Riva 500W ERT Module offers peace of mind with a 20-year limited warranty.

## LOWER COST OF OWNERSHIP

OpenWay Riva 500W ERT Modules feature industry-leading battery life, ensuring your meter data collection investment achieves substantially better financial returns than competing meters with batteries that typically last only 10 to 12 years. When factoring the advancements in leak, reverse flow (absolute encoder version only) and tamper detection, OpenWay Riva 500W ERT Modules necessitate fewer field investigations and lower expenditures for customer and field service. OpenWay Riva 500W ERT Modules include a battery replacement alarm that helps utilities to plan and manage module replacements in the field.



## LEAK MANAGEMENT

Non-revenue water management is critical to any water utility's success. Modules can be paired with Itron's OpenWay Riva Leak Sensor which collects and analyzes changes in pipe acoustics. This data indicates probable leaks in the distribution system environment to detect both new and pre-existing leaks automatically. Leak sensor technology, coupled with the module's internal customer-side leak detection algorithm and the option to compare data from groups of OpenWay Riva 500W ERT Modules to the utility's production meters, provides the utility with a highly accurate picture of the overall health of the water distribution system.

### OpenWay Riva Leak Sensor

The OpenWay Riva 500W ERT Module collects and stores the data from the OpenWay Riva Leak Sensor. The OpenWay Riva Leak Sensor samples the pipe conditions during the quietest usage periods (usually at night). The recording period is adaptive and depends on the sound profile at each location making the sure the OpenWay Riva Leak Sensor is recording at the most optimum time to hear a leak. This sensor data is picked up during normal meter reading operations and seamlessly transfers the data to our hosted web-based solution. The OpenWay Riva Leak Sensor threshold can be adjusted to account for different environments where background noise may be high, and allows the utility to target specific-sized leaks.

The OpenWay Riva Leak Sensor is built to last 20 years in the harshest environments. It can be installed in the meter box on either the meter setter or coupler. Additionally, it can be installed on mains valves, placing the sensor closer to the critical non-revenue water leaks. These installation options make the OpenWay Riva Leak Sensor the most flexible solution on the market. The OpenWay Riva Leak Sensor comes with a market-leading 5-year warranty.

### Extended Meter Alarms

The OpenWay Riva 500W ERT Module relays the extended meter alarms provided by new solid state and electronic meters. These alarms include:

- Empty Pipe
- Temperature
- High Flow
- Meter Low Battery
- Meter Tampering
- Reverse Flow
- Zero Consumption

## OPENWAY RIVA 500W ERT MODULE SPECIFICATIONS

### Functional

- Power Source: Four "A" cell lithium batteries warranted for 20 years
- Maximum meter register pulse frequency (pulse version only): 4 Hertz
- Operating temperature:
  - -104°F to +158°F (-40°C to +70°C) for remote applications
  - -68°F to +140°F (-20°C to +60°C) for pit applications
- Storage temperature: -104°F to +158°F (-40°C to +70°C) for a maximum of 1,000 hours
- Humidity limits: 0 to 100% (submersible)
- Maximum register cable dimension: 300 feet with Itron-approved cable and splice connectors
- Meter compatibility: See Water Module Meter Compatibility Guide (PUB-0063-002)

## TRANSMISSION PARAMETERS

- Data message:
  - The OpenWay Riva 500W ERT Module is a Wisun compliant IPv6 device. Multiple RF channel transmissions of meter register value, cut cable, and/ or communication error tamper(s) reverse flow (encoder version only) and system leak status messages. A low battery indicator is transmitted every nine seconds in ChoiceConnect mobile mode.
- OpenWay Riva Network mode:
  - Four interrogation cycles per day, each collecting six hours of intervals and events data.
  - A Local Access Beacon message is sent every 60 seconds that allowing the user to gather contingency readings locally if needed.
- Transmitter frequencies:
  - 908 - 924 MHz (Standard Power) in ChoiceConnect mobile mode
  - 903 - 924 MHz (Low Power) in OpenWay Riva Fixed Network mode for Local Access Beacon
- Operates in ISM frequency band (does not require a licensed spectrum)

### Approved Mobile Systems and Devices when using Basic Security

- Multi-Vendor Reading System (MV-RS) v8.7.3 or later with the FC300SR, MCLite and MC3 with Mobile Collection software v3.8.1.1 (Note: MV-RS does not support the OpenWay Riva Leak Sensor)
- Field Collection System (FCS) v3.0 SP1 or later with the FC300SR, MCLite, and MC3 with Mobile Collection software v3.8.1.1
- Field Collection System (FCS) v4.0 or later with Itron Mobile v1.0 or later and the Itron Mobile Radio or MC3 Radio.

### Approved Mobile Systems and Devices when using Enhanced Security

- Field Collection System (FCS) v4.0.3 or later with Itron Mobile v1.0 or later and the Itron Mobile Radio or MC3 Radio or FC300SR, MCLite or MC3 with Mobile Collection software v3.8.1.1

## Compatible Communication Applications

The following software applications are approved IoT Reading Systems Cisco Connected Grid Routers (CGR's) offering full two-way communication capability:

- OpenWay Operations Center
- Collection Manager
- ISM
- Network Manager

## Programmable Mode Options

- ChoiceConnect Mobile Mode
  - Should be used when mobile or handheld meter reading is the method for collecting the Standard Consumption Message (SCM+) or data logging reads
  - The SCM+ bubbles up in this mode every 9 seconds at standard power optimized for mobile read rate performance
  - Supports a 20-year battery life
- OpenWay Riva Network Mode
  - Should be used when OpenWay Riva network is the method of meter data collection
  - A high power Network Interval Message (NIM) is typically transmitted up to four times per day
  - Can be programmed at the factory during installation with an approved handheld device or after initial installation via programming using a handheld device.
  - Supports a 20-year battery life
- ChoiceConnect Hard-to-Read Mobile Mode
  - Should only be used when communication modules are installed in difficult-to-read locations where standard mobile mode is not sufficient for satisfactory reading performance
  - Bubbles up an SCM+ at 30 seconds with high power output to optimize performance of unique applications
  - Supports a 10+ year battery life
- ChoiceConnect High Power Mobile Mode
  - This mode should be used when communication modules are installed in difficult-to-read environments where there is a high concentration of unfriendly RF and where standard ChoiceConnect mobile mode is not sufficient for satisfactory reading performance
  - Bubbles up an SCM+ at 60 seconds with a higher power output to optimize performance of these applications
  - Supports a 20-year battery life

## OpenWay Riva 500W ERT Module Pit Dimensions

- Height: 4.5 inches (11.4 centimeters)
- Maximum diameter:
  - Lower: 3.9 inches (9.9 centimeters)
  - Upper: Approximately 1.7 inches (4.3 centimeters)
- Weight: approximately 9.6 ounces (272.2 grams).
- In-line connector register cables: 5 feet and 25 feet (1.5 meters and 7.6 meters) - ordered separately
- Pit models can be installed up to 300 feet (91.4 meters) from a meter

## OpenWay Riva 500W ERT Module Remote Dimensions

- Height: 4.5 inches (11.4 centimeters)
- Width: 5.05 inches (12.8 centimeters)
- Depth: 3 inches (7.6 centimeters)
- Weight: Approximately 9.6 ounces (272.2 grams)
- Module cable length: 10 inches (25.4 centimeters)
- Remote models can be installed up to 300 feet (91.4 meters) from a meter

## Mounting Options

OpenWay Riva 500W ERT Modules are designed with compact housing and features meant to be highly compatible with the water pit mounting options. These features include the following:

- Rod-mount on a ½ inch (1.3 centimeter) diameter fiberglass or other non-metallic rods; requires a Remote Through the Lid Antenna
- Through-the-lid mounting with a pre-drilled 1.75 inch (4.4 centimeters) hole and up to 2.5 inch (6.4 centimeters) maximum lid thickness
- Direct-mount to any flat surface with screw kit
- Wall-mount for installation to the side of residence or building using screw kit
- Pipe-mount for installation on pipe sizes from ¾ inch to 4 inch (1.9 to 10.2 centimeters)

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# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Collin Seay, Police Lieutenant |
| **Co-Submitter:** | Stacey Brechler-Knaggs |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval of Grant Agreement:** Acceptance of the Governor's Office of Highway Safety Proposition 207 Grant Award for Equipment.

**STAFF RECOMMENDED ACTION:**

Approve the application to the Flagstaff Police Department from the Governor's Office of Highway Safety for grant funds in the amount of $94,216.70. There is no city match of funds required.

**Executive Summary:**

The Governor's Office of Highway Safety (GOHS) has allocated grant money to cities across Arizona after the passage of Proposition 207 which legalized recreational marijuana use, for those over 21, across the state. The goal of these funds is to assist the City of Flagstaff and other cities around the state to continue to keep our roadways safe with the passage of the new law. We are anticipating more impaired drivers on the roadway with the passage of Proposition 207, and our mission is to protect and preserve life and property of Flagstaff citizens through traffic enforcement and education.

We are looking to add two new motorcycles to our fleet for our traffic enforcement squad which will increase our presence and ability to detect and contact impaired drivers on the roadway. We are also looking to add ten in-car mounted radar units which will be able to assist our officers in detecting speeding drivers. Speed violations are one of the leading causes of collisions in Flagstaff and a strong National Highway Safety Traffic Administration (NHTSA) indicator of impaired driving.

Additionally, saliva-based drug testing technology has improved dramatically over the last few years, and we are requesting to add four state of the art Drager saliva drug testing devices to our inventory. These devices are utilized on the roadside to obtain an immediate drug panel from the impaired driver to strengthen our ability to detect and prosecute driving under the influence cases.

The purchase of this equipment will immediately be implemented to keep Flagstaff roadways safer which is in support of our mission and value statement to protect and preserve life. There will be zero city match requirement as this project is completely funded by GOHS. In 2020, the City of Flagstaff experienced 99 impaired driver related collisions. It is the police department's goal to partner with the community to reduce these annual statistics going forward.

**Financial Impact:**

The grant award to the city is for $94,216.70, and the grant covers all costs of the equipment. The two new motorcycles will replace older and outdated equipment that have a higher maintenance cost to the city. There will be no new costs to the city. This grant is budgeted as part of the upcoming FY 2021-22 budget.

**Policy Impact:**

Policy Impact: The approval of this grant will have no direct impact on any policies of the Flagstaff Police Department.

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

Connection to Council Goal, Regional Plan, CAAP, and/or Strategic Plan: Effective Governance - Regional Plan (2030) - Planning, Public Safety, Goal PF.3 Provide high-quality emergency response and public safety services.

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

Has There Been Previous Council Decision on This: No, this is a new grant initiative funded by GOHS to keep our roadways safer after the passage of Prop 207.

**Options and Alternatives:**

Options and Alternatives: Approve the acceptance of the grant or decline the acceptance of the grant.

**Background/History:**

Many jurisdictions that have already legalized marijuana have experienced an increased number of collisions and injury-related collisions from drug impaired drivers being on the roadway. These grant funds directly assist the Flagstaff Police Department with the equipment to detect impaired driving behavior, identify impaired drivers, and make our streets safer for all of our citizens.

**Key Considerations:**

This new technology and equipment will assist our officers with conducting more thorough driving under the influence investigations as well as provide them the equipment to detect motorists who are committing speed violations which endangers the members of our community.

**Expanded Financial Considerations:**

If approved the grant would allow for $94,216.70 to put toward state of the art equipment to make our roadways safer and reduce collisions and injury-related collisions due to speeding and impaired driving.

**Community Benefits and Considerations:**

Our officers will receive state of the art equipment to better meet the demands of the community and providing excellent customer service to our community.

**Community Involvement:**

Our goal is to provide education to our community through public safety announcements, educational events, and enforcement efforts as well as community policing efforts such as the impaired driving section of our in-house Citizen's Academy. Our community presence and community education will hopefully deter impaired drivers from getting behind the wheel of a vehicle.

**Expanded Options and Alternatives:**

This equipment will be used with already approved GOHS grants for impaired driving enforcement, youth alcohol enforcement, overall awareness about impaired driving, and community education.

---

**Attachments:** 207 Grant

DOUGLAS A. DUCEY
GOVERNOR

ALBERTO GUTIER
DIRECTOR
GOVERNOR'S HIGHWAY SAFETY REPRESENTATIVE

Chief Dan Musselman
Flagstaff Police Department
911 Sawmill Road
Flagstaff, Arizona 86001

**PROJECT REFERENCE:**
Contract Number: 2021-207-045
Total Estimated Costs: $94,216.70
Purpose of Project: Proposition 207 Funding
Materials and Supplies: 4 Draegers and accessories and 10 Radar Units and Capital Outlay Equipment: 2 Police Package Motorcycles

Dear Chief Musselman,

Attached is one copy of the referenced Proposition 207 Funding Contract for your review and signature. This is ***not*** an authorization to proceed with the project.

Please complete the following steps:

1. Review the entire contract as there have been **significant changes** throughout the contract;
2. GOHS requires one single-sided copy with an original signature.
3. Have your fiscal staff complete the Reimbursement Instructions (page 6);
4. As Agency Head, sign and date the signature page;
5. Return one completed and signed copy to the Governor's Office of Highway Safety, 1700 West Washington Street, Executive Tower, Suite 430, Phoenix, Arizona 85007.

Please ***do not*** incur any costs at this time as it would nullify the contract. Once the signed copy is received, I will approve and sign the contract as the GOHS Director/Governor's Highway Safety Representative and an original executed contract with authorization to proceed will be forwarded to you.

Sincerely,

Alberto Gutier, Director
Governor's Highway Safety Representative

2-9-2024
Date

Enclosures

Governor's Office of Highway Safety
ARIZONA
Douglas A. Ducey
Governor

# 2021 CONTRACT
# 207 FUND

| | |
|---|---|
| **AGENCY**<br>Flagstaff Police Department | **GOHS CONTRACT NUMBER**<br>2021-207-045 |
| **ADDRESS**<br>911 Sawmill Road, Flagstaff, Arizona 86001 | **PROGRAM AREA**<br>207 FUND |
| **AGENCY CONTACT**<br>Collin Seay | **PHONE**<br>928-856-9021 |
| **GOHS GRANT COORDINATOR**<br>Ellen Bourget | **PHONE**<br>602-255-3213 |

**PURPOSE OF PROJECT**
Proposition 207 Funds will support Materials and Supplies: 4 Draegers and accessories and 10 Radar Units and Capital Outlay Equipment: 2 Police Package Motorcycles

| **BUDGET COST CATEGORY** | | **Project Period CY 2021** |
|---|---|---|
| **1.** | **Personnel Services** | $0.00 |
| **2.** | **Employee Related Expenses (40%)** | $0.00 |
| **3.** | **Professional and Outside Services** | $0.00 |
| **4.** | **Travel In-State** | $0.00 |
| **5.** | **Travel Out-of-State** | $0.00 |
| **6.** | **Materials and Supplies** | $43,098.30 |
| **7.** | **Capital Outlay** | $51,118.40 |
| **TOTAL ESTIMATED COSTS** | | **$ 94,216.70** |

| | | |
|---|---|---|
| **CURRENT GRANT PERIOD** | **FROM:** 01-01-2021 | **TO:** 12-31-2021 |

**TOTAL 207 FUNDS OBLIGATED THIS CY: $94,216.70**

**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.**

**GOALS AND OBJECTIVES**:

The Agency will make expenditures, to meet the outlined Program Goals/Objectives:

(a) Reducing impaired driving, including conducting training programs and purchasing equipment for detecting testing and enforcing laws against driving, flying or boating while impaired.

(b) Equipment, training and personnel costs for dedicated traffic enforcement.

**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.

**SPECIFIC REQUIREMENTS:**

**PROFESSIONAL AND OUTSIDE SERVICES/PUBLIC INFORMATION/MEDIA –**

**Requirements for Professional and Outside Services:**

A copy of all Contracts for "Professional and Outside Services" must be submitted to the GOHS Director for written approval before execution.

**Requirements for Public Information and Education Materials:**

Prior to the printing and distribution of public information and education materials, a sample will be provided to the GOHS Director for review and written approval.

**Requirements for Paid Media:**

All paid media must be preapproved by the GOHS Director to ensure that consistent messages are sent statewide. Requests for paid media must include, at a minimum, scripts, description of target audience (to include methodology for identifying target audience), type of media to be utilized (electronic, print), campaign schedule, and budget. Additional information may be requested on a case-by-case basis.

**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:**

**IT IS REQUIRED THAT ALL LAW ENFORCEMENT AGENCIES MUST ENTER STATISTICAL AND ENFORCEMENT ACTIVITY INTO THE ON-LINE GOHS ENFORCEMENT REPORTING SYSTEM.**

**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 Calendar Year (December 31th)**. 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 State funds or termination of the Contract.

**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 delivered via email or mail with appropriate supporting documentation to the Governor's Office of Highway Safety. Final RCIs will not be accepted fifteen (15) days after the conclusion of each Calendar Year (December 31st). **Expenditures submitted after the expiration date may not be reimbursed and the Agency will accept financial responsibility.**

**PROJECT MONITORING:**

207 Fund grant project monitoring is used by the GOHS project coordinator 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.

**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 calendar year. If the Agency is unable to expend the funds in the time specified, the Agency will submit notification on the Agency's letterhead and submit via regular mail to the Director of the Governor's Office of Highway Safety. 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 submit the request via regular mail. All requests for modification must bear the signature of the Agency Head. **Failure to comply may result in cancellation of the Contract. Any unexpended funds remaining at the termination of the Contract shall be negotiated with the Director of the Governor's Office of Highway Safety.**

**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 Speeding in terms of money, criminal, and human consequences.**

**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.

## CERTIFICATIONS AND AGREEMENTS

This CONTRACT, is made and entered into by 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, 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

WHEREAS, AGENCY has submitted an application for Funds for 207 funds 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 State Statutes, Rules, and Regulations:

**I. Project Monitoring, Reports, and Inspections**

A. AGENCY agrees to fully cooperate with representatives of GOHS in monitoring the project, either on-site or by telephone, during the life of the Contract.

B. AGENCY will submit a Final Report on the Contract to include all financial, performance, and other reports required as a condition of the grant to GOHS within thirty (30) days of the completion of the Contract.

**II. Reimbursement of Eligible Expenses**

A. AGENCY's Project Administrator, 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 State funds have been claimed and reimbursement received, as may have been determined by a State 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 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 GOHS, or unless otherwise provided elsewhere in this Contract.

**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.

**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*.

**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.

**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: 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.

**REIMBURSEMENT INSTRUCTIONS**

1. **Agency Official preparing the Report of Costs Incurred:**

   Name: Stacey Brechler-Knaggs

   Title: Grants and Contracts Manger

   Telephone Number: 928-213-2227 Fax Number: _____

   E-mail Address: skanggs@flagstaffaz.gov

2. **Agency's Fiscal Contact:**

   Name: Glorice Thousand

   Title: Accountant

   Telephone Number: 928-213-2214 Fax Number: _____

   E-mail Address: gthousand@flagstaffaz.gov

   Federal Identification Number: 86-6000244

3. **Reimbursement information:**

   Warrant/Check to be made payable to:
   City of Flagstaff

   Warrant/Check to be mailed to:
   Flagstaff City Hall
   (Agency)
   211 West Aspen Avenue
   (Address)
   Flagstaff, AZ 86001
   (City, State, Zip Code)

**Signature of Agency Head:**

Dan Musselman, Chief of Police
Flagstaff Police Department

_____

_____
Date Telephone

**Signature of Secondary Official (If applicable)**

Greg Clifton
City Manager

_____

_____
Date Telephone

**AUTHORITY**

1. This Project is authorized by **A.R.S 36-2817** and regulations promulgated there under. The funds authorized for this Project have been appropriated and budgeted by the "Smart and Safe Arizona Act" The expenses are reimbursable under Proposition 207 passed into Arizona's Constitution November 30, 2020.

2. **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:** | Stacy Saltzburg, City Clerk |
| **Date:** | 03/31/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval:** Surface Transportation Reauthorization Project Authorization Request

**STAFF RECOMMENDED ACTION:**

Approve the project request letter seeking authorization for the Lone Tree Corridor project within the upcoming surface transportation reauthorization legislation.

**Executive Summary:**

During the March 30, 2021 Council meeting, the Council indicated their support of submitting the Lone Tree Corridor for project authorization within the upcoming surface transportation reauthorization legislation. The attached letter serves as an official request for project authorization.

**Financial Impact:**

**Policy Impact:**

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

**Previous Council Decision on This:**

**Attachments:** Surface Transportation Letter

CITY OF
FLAGSTAFF

FLAGSTAFF CITY COUNCIL
211 West Aspen Avenue, Flagstaff, Arizona 86001
Main Line: 928-213-2000
Website: https://www.flagstaff.az.gov

April 6, 2021

The Honorable Peter DeFazio
Chairman, House Transportation and Infrastructure Committee
2251 Rayburn House Office Building
Washington, DC 20

Dear Chairman DeFazio:

In alignment with Congressional efforts to replace the expiring Fixing America's Surface Transportation Act, the Flagstaff City Council would like to urge our congressional delegation to include a $46.9 million authorization for the Lone Tree Corridor project in Flagstaff within the upcoming surface transportation reauthorization bill.

The Lone Tree Corridor project works to establish a safer and more inclusive transportation system in Flagstaff by increasing important north-south arterial connectivity from JW Powell Boulevard to Sawmill Road. The project also benefits the community by filling gaps in pedestrian and bicycle systems, improving transit stops and shelters, installing conduit for fiber optic cable, adding medians for safety, adding lanes for capacity, and constructing new Interstate 40 bridges. Specific information about the project can be found below.

- The Lone Tree Corridor project is on both the State Transportation Improvement Program (STIP) and on the Metropolitan Transportation Improvement Program (TIP).
    - Projects 100578 (Lone Tree/ I-40), 101523 (Lone Tree Road Widening) and 101527 (Pedestrian-Bicycle-FUTS Projects) are listed on the STIP.
    - The Lone Tree/ I-40 project, the Lone Tree Road Widening project and the Pedestrian-Bicycle-FUTS Project are listed on the Flagstaff Metropolitan Planning Organization's TIP.
- A twenty percent local match for the Lone Tree Corridor project was approved by Flagstaff voters in 2018 as Proposition 419 and the City of Flagstaff has a dedicated 21-year funding stream with local match appropriation over $9.38 million in FY26.
- Letters of support for the Lone Tree Corridor project from Northern Arizona Intergovernmental Public Transportation Authority (Mountain Line), Northern Arizona University, Coconino County, Greater Flagstaff Chamber of Commerce, Arizona Department of Transportation, Coconino Community College, Flagstaff Unified School District, Metroplan and others have either been received or are forthcoming.

CITY OF
FLAGSTAFF

FLAGSTAFF CITY COUNCIL
211 West Aspen Avenue, Flagstaff, Arizona 86001
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- The local match portion of the Lone Tree Corridor project is funded by Proposition 419, which was approved during the 2018 election. Preparation for this proposition invovled approximately 60 public outreach meetings that included questions and answers. Most recently, the Flagstaff City Council and partner agencies, including Metroplan, have publicly discussed the Lone Tree Corridor project at Council and Board meetings in March of 2021.
- A comprehensive planning process has been and will continue to be followed. The project is in the 15% design stage and design work will continue.
- Preliminary environmental review of the Lone Tree Corridor project indicates that it will be eligible for a Categorical Exclusion among much of its length and will require an Environmental Assessment for the remainder.
- Federal funding has not been received previously for this project.

The Lone Tree Corridor project advances the goals of the surface transportation authorization legislation, including building a safer, more accessible transportation network that encourages multi-modal transportation while reducing carbon pollution. The Flagstaff City Council would greatly appreciate the Committee's support of a $46.9 million authorization for the Lone Tree Corridor project in Flagstaff.

Thank you for your advocacy,

cc: Congressman Tom O'Halleran
Congressman Greg Stanton
Senator Kyrsten Sinema
Senator Mark Kelly

**10. A.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Fobar, Deputy City Clerk |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval of Off-Track Wagering Facility Permit:** J&J Equine Enterprises, LLC, dba Arizona Downs, located at Dirty Birdies Sports Bar & Grill, 2285 E. Butler Avenue.

**STAFF RECOMMENDED ACTION:**

Approve the New Off-Track Wagering Permit for J&J Equine Enterprises, LLC, dba Arizona Downs.

**Executive Summary:**

An application has been received from J&J Equine Enterprises, LLC, dba Arizona Downs to permit off-track wagering at Dirty Birdies Sports Bar & Grill. Off-track wagering is the telecast of live audio and visual signals of live or simulcast horse, mule, or greyhound racing programs conducted at an authorized location by a racetrack permitted for the purpose of wagering. Arizona Downs is responsible for the operations of the wagering windows at the proposed location and only allows for horse race wagering.

Section 6-01-001-0012, Gambling, of the Flagstaff City Code, allows for off-track wagering when authorized by the Flagstaff City Council. The City Council may consider any information contained within the application. Dirty Birdies Sports Bar & Grill is an existing business in Flagstaff and Arizona Downs, who has had off-track wagering for many years, is moving their window to this location from The Museum Club. This is a a location transfer application. If approved, it will be the only off-track wagering facility in Flagstaff.

The process for off-track wagering applications starts at the local governing board and a letter of final vote is sent to the applicant and the location. The applicant then sends the letter of final vote to the Arizona Gaming Commission with their final application.

The Police Department and Community Development have reviewed the application with no concerns noted.

**Financial Impact:**

Not applicable.

**Policy Impact:**

Not applicable.

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

Off-Track Wagering Permits are a regulatory action and there is no Council goal that applies.

**Previous Council Decision on This:**

An approval for an Off-Track Wagering Facility Permit for J&J Equine Enterprises, LLC, dba Arizona Downs, located at The Museum Club was approved by Council on August 21, 2018.

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**Attachments:** AZ Downs - Application
AZ Downs - PD Memo
AZ Downs - Zoning Memo

**APPLICATION FOR A PERMIT TO ESTABLISH AN OFF-TRACK WAGERING FACILITY OR TO RENEW AN EXISTING PERMIT IN THE CITY OF FLAGSTAFF, ARIZONA**

Name of Applicant: J & J EQUINE ENTERPRISES, LLC, dba ARIZONA DOWNS

Mailing Address: 6239 N. 7TH ST., SUITE 200

City PHOENIX State AZ Zip 85014-1834

Telephone: 602-952-2633 E-mail: joejackson@jacoraz.com

1. For each owner or member of the Board of Directors who will have any part in the operation or management of the off-track facility, please set forth their names, dates of birth, social security numbers, sex, height, weight, and color of eyes and hair, along with a brief statement of their employment and/or business history. (Attach additional pages if needed.)

   David Auther is a partner in Arizona Downs.

   David Auther [redacted]

   Mr. Auther was a practicing attorney for 24 years, before starting with the Phoenix - based real estate development company, Jacor Partners. Jacor Partners headed the group which purchased Yavapai Downs out of the Federal Bankruptcy Court in 2018 and has refurbished the property, race track and clubhouse. Arizona Downs is preparing to open for its 2nd live-racing season, for the Summer of 2021, and is actively developing a statewide OTB network.

2. Please identify by name, date of birth, social security number, sex, height, weight, and color of hair and eyes each manager(s) and employee(s) who will have any part in the operation or management of the off-track facility. (Attach additional pages if needed.)

   Ann McGovern is the General Manager of Arizona Downs Horse Track.

   Ann McGovern - [redacted]

   Ms. McGovern has been in the horse racing business for more than 25 years and has held positions as Director of Operations at Remington Park, Vice President of Operations at Sam Houston Race Park and President and General Manager of Ruidoso Downs Race Track & Casino.

3. Please provide information on your Plan of Operation as follows: PLEASE SEE INSERT, FOR a. b. and c.

a. The amount of anticipated revenue earnings the off-track facility will generate and the amount of anticipated sales taxes to be paid to the City of Flagstaff.

Amount of anticipated total revenue earnings _____

Amount of anticipated sales taxes_____

b. The type of wagering to be offered and the hours during which pari-mutuel windows will be in operation.

| Type of Wagering | Hours of Operation |
|---|---|
| | |
| | |
| | |
| | |

c. A description of the security measures to be employed to protect the facility and the public including, but not limited to, prevention of unlawful gambling, consumption of alcoholic beverages by minors, and the interception of audio and visual signal transmissions of sales transactions and pari-mutuel output data. (Attach additional pages if needed.)

d. The location of the proposed off-track facility and all building plans and specifications available.

Dirty Birdies Sports Bar & Grill
2285 E. Butler Ave.
Flagstaff, AZ 86004
(See attached floor-plan for the facility locations within the restaurant.

e. Attach a copy of the proposed agreement(s) governing the operation of the off-track facility between the race track and the applicant.

**INSERT**

**3. Please provide information on your Plan of Operation as follows:**

**a. The amount of anticipated revenue earnings the off-track facility will generate and the amount of anticipated sales taxes to be paid to the City of Flagstaff.**

*Arizona Downs anticipates total pari-mutuel wagering activity of $100,000/month. Arizona Downs also anticipates incremental food and beverage sales at Dirty Birdies Sports Bar & Grill of $15,000/month.*

*At the current sales tax rate on eligible sales, Arizona Downs anticipates incremental sales tax revenue of approximately $1,835.00/month.*

**b. The type of wagering to be offered and the hours during which pari-mutuel windows will be in operation.**

*Any type of pari-mutuel wagering offered by the host horse race tracks conducting the live horse racing simulcast to the Arizona Downs OTB location at Dirty Birdies Sports Bar & Grill. Types of wagering shall include Win, Place, Show, Daily Double, Exacta, Quinella, Trifecta, Superfecta, Pick 3, Pick 4, Pick 5, and Pick 6.*

*Typical hours of operation will be 11am to 7pm, operating seven days per week. Starting time and the concluding time of OTB operations may vary, based on the quality of racing available on that day and to accommodate the business demands and preference of patrons.*

**c.**

**A description of the security measures to be employed to protect the facility and the public including, but not limited to, prevention of unlawful gambling, consumption of alcoholic beverages by minors, and the interception of audio and visual signal transmissions of sales transactions and pari-mutuel output data.(Attach additional pages if needed.**

*Basic security will be provided by Dirty Birdies Bar & Grill. During the operation of the off-track wagering facility, applicant will maintain order and exclude from the facility touts, illegal gambling devices, or conduct that is objectionable to the public or contrary to the best interest of racing. Dirty Birdies will generally enforce applicable City of Flagstaff laws & policies, as well as Management policies & procedures. No one under the age of 21 will be permitted to wager. Signage will be posted in both the official program & throughout the premises regarding Arizona law & age restrictions.*

*The OTB operation will install security cameras to monitor patrons & all cash handling procedures of the OTB wagering activities. Additional security personnel will be hired at operator's expense when business*

**INSERT (Cont.)**

*volume dictates that the increased personnel presence is in the best interest of the safety and security of patrons and the general public.*

*The audio and video signals are protected by encrypted, digital signals sent via satellite. Wagers are sent via modem-to-modem connection to ensure security. All employees affiliated with the OTB are given background checks and are licensed and fingerprinted by the Arizona Department of Racing. The site may be subject to announced and unannounced inspections from the Arizona Department of Racing and from Arizona Downs auditors.*

f. Attach a copy of the current State racing, wagering, or gaming permit which is required for the racetrack and/or off-track facility.

4. Provide information and/or documentation that demonstrates that the proposed off-track facility will be in compliance with all applicable zoning, building, and land use codes and regulations.

Dirty Birdies Bar & Grill, located at 2285 E. Butler Ave, Flagstaff, AZ is zoned for commercial use and currently holds a Class 6 Liquor License.

5. Provide information and/or documentation that demonstrates that the applicant is not delinquent in payment of any privilege license taxes, or use taxes owed to the City of Flagstaff.

Arizona Downs holds TPT #21268209. Arizona Downs may owe a TPT amount; we are currently waiting for further clarification from the Arizona Department of Racing to determine the exact amount.

## CERTIFICATION

I hereby certify, under penalty of perjury, that the foregoing information and other documentation provided with this Application are true and correct to the best of my knowledge and ability.

Dated this 16th day of March, 2021.

David C Cuthbertson
Name of Applicant

Arizona Downs LLC FKA J&J Equine Enterprises LLC
Name of Company, Partnership, or Corporation

## CERTIFICATE OF DISCLOSURE
## (PERMIT RENEWAL)

I, the undersigned applicant, hereby certify that (please initial and or provide information in each section where applicable):

---

☑ None of the off-track facility owners, managers, or employees, and, in the case of a corporation, its principal officers, directors, and principal shareholders have ever been convicted by a court of competent jurisdiction of any felony or any violation of law or regulation related to racing, wagering, or gaming in any jurisdiction.

☑ None of the off-track facility owners, managers, or employees, and, in the case of a corporation, its principal offices, directors, and principal shareholders, have ever been adjudicated, in any civil action or administration proceeding, to be responsible for violation of any law or regulation related to racing, wagering or gaming in any jurisdiction.

For any person or persons who have been convicted or held responsible or are subject to one or more of the statements above, the following information MUST be attached:

1. Full name and prior name(s) used
2. Full birth name
3. Present home address
4. Prior addresses for the immediately preceding 7-year period.
5. Date and location of birth
6. Social Security number.
7. The nature and description of each conviction or judicial or administrative action, date and location, the court and public agency involved and file or cause number of the case.

---

☑ No minor has been charged and convicted of unlawful gambling at the off-track facility during the past year.

☑ No minor has been charged and convicted of unlawful consumption of alcohol on the premises of the off-track facility or, with respect to multiple use facilities, anywhere on the premises of the multiple use facility during the past year.

For each minor who has been convicted of one or more of the crimes listed above, the following information MUST be attached:

1. Full name and prior name(s) of the minor, if known
2. The nature and description of each conviction, date, and location; the court involved and file or cause number of the case
3. What preventative measures, if any, the establishment has taken subsequent to the conviction to prevent occurrences of unlawful consumption or gambling by a minor.

---

☑ The State racing, wagering, or gaming permit for the racetrack or off-track facility has not been suspended or revoked during the past year or, in the event the permit was suspended or revoked, the permittee promptly notified the City Council in writing of the suspension or revocation.

For each suspension or revocation of the State racing, wagering, or gaming permit listed in this section, the following information MUST be attached:

1. The State racing, wagering, or gaming permit revoked or suspended.
2. The circumstances surrounding the suspension or revocation, including the grounds for suspension or revocation, the court and public agency involved, and file or cause number of the case.

---

☑ The information contained within this application is true and accurate and I have not made any false, incomplete, or misleading statements on or in connection with this application.

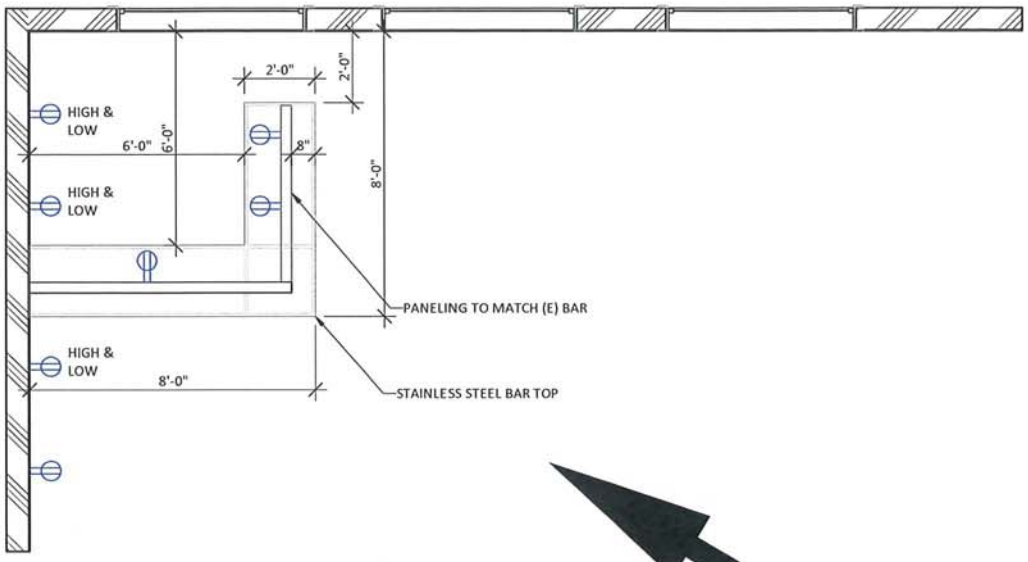
Under penalties of law, the undersigned applicant declares that he/she has examined this Certificate, including any attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Kimberly C. Cauthen
(Signature)

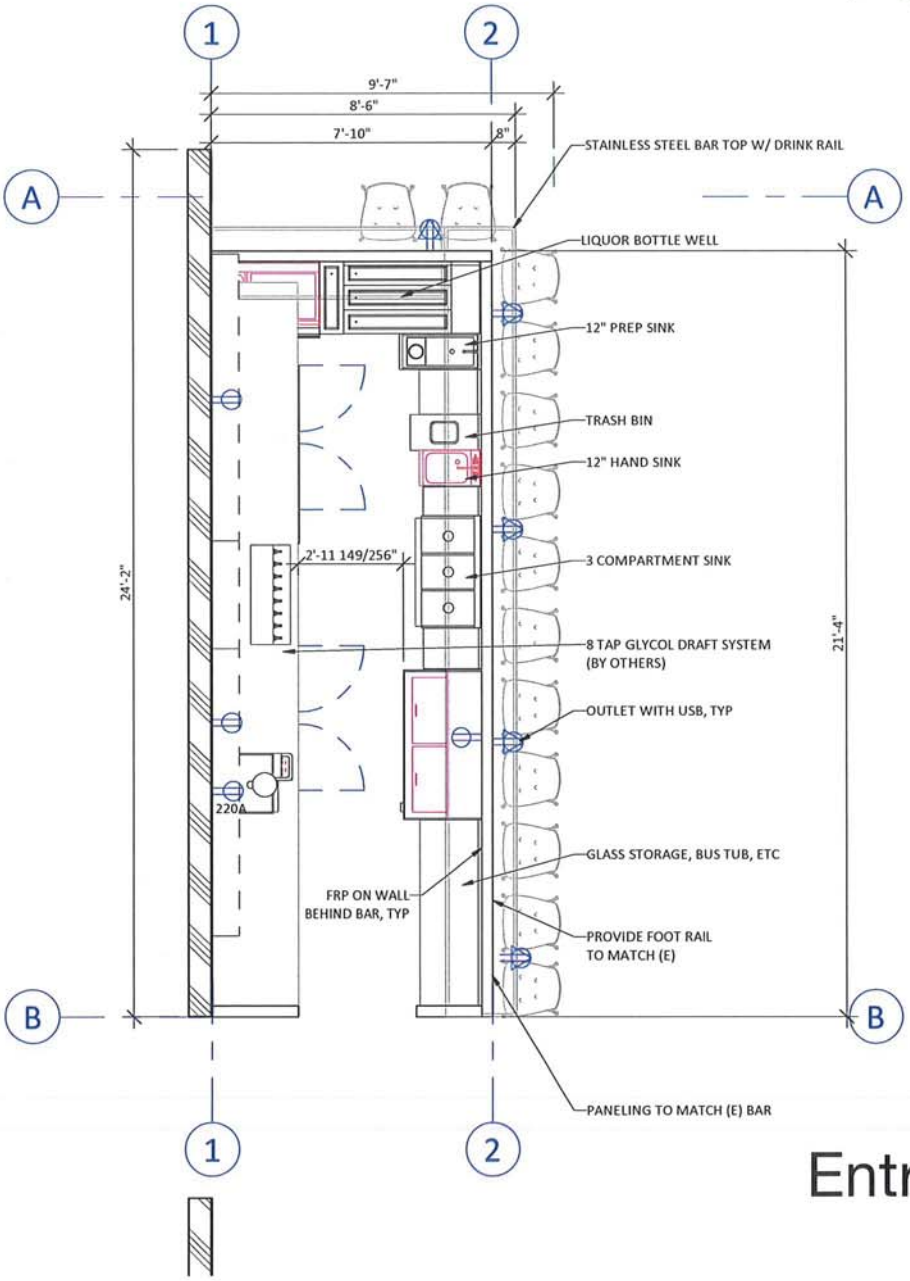
DATE 3/16/21

Partner Arizona Downs
(Title)

# Arizona Downs OTB at Dirty Birdies




SUBJECT




Entrance

**ARIZONA DOWNS**

**TELETRACK WAGERING and**

**SIMULCAST WAGERING FACILITY**

**AGREEMENT**

Date: March 16, 2021

Parties:

1. Arizona Downs, L.L.C., an Arizona Limited Liability Company, hereinafter referred to as "Track"

2. Alvin Patel Holdings LLC
hereinafter referred to as "Lessor"

Terms:

A. Date of Commencement: _____

B. Date of Termination: 18 months from Commencement of Operations

Premises: A portion of the facility known as Dirty Birdies Sports Bar & Grill at 2285 E Butler Ave Flagstaff AZ 86004 as more fully described in Exhibit A attached hereto.

This Agreement is made by and between Arizona Downs, L.L.C., an Arizona limited liability company (hereinafter sometimes referred to as "Track") and Lessor, as more fully described on the first page of this Agreement.

**WHEREAS,** Arizona Revised Statutes 5-111(A) permits the operation of additional wagering facilities (hereinafter sometimes referred as "Additional Wagering Facilities") for teletrack and simulcast wagering (hereinafter referred to as "teletrack wagering") on the races composing the racing program of Track; and Track and Lessor desire to establish an additional wagering facility pursuant to the provisions of A.R.S. 5-111(A) and to memorialize their various rights, duties and obligations by this Agreement; and

**WHEREAS,** Lessor is the owner of or leases from the owner that certain premises described on the first page of this Agreement (hereinafter sometimes referred to as "the Premises") of which the additional wagering facility is a part; and

**WHEREAS,** Track is the holder of a permit to conduct a horse racing meeting at Arizona Downs in the State of Arizona and desires its program to be transmitted to the additional wagering facility for teletrack wagering pursuant to the provisions of A.R.S. 5-111(A) as more fully set forth in Exhibit A attached hereto; and

**WHEREAS,** Track desires to lease that certain portion of the premises as more fully described in Exhibit "A" attached hereto and hereinafter referred to as the "Facility" on a non-exclusive basis for the purpose of conducting teletrack wagering.

**NOW THEREFORE,** it is agreed as follows:

## 1. Term and Premises

**(a) Term.** The term of this Agreement shall be for the period commencing as set forth on the first page of this Agreement or as soon thereafter as is practicable after receiving necessary approvals, permits and licenses pursuant to Section 3(a) and 12(d) of this Agreement, through the termination date and for such additional periods as the parties may from time to time agree in writing.

**(b) Premises.** Lessor, for and in consideration of the mutual covenants and agreements of the parties, hereby leases, on a non-exclusive basis, to Track and Track hereby leases from Lessor those portions of the facility referred to herein as the Additional Wagering Facility more fully described in Exhibit "A" attached hereto. The leased portion of the Premises is limited to the areas specifically designated and described as the leased area, which area shall also be known as the "Facility." The parties acknowledge that the Facility is occupied by Track on a non-exclusive basis and Lessor reserves to itself all other rights of use, occupation and entry of the Facility and the parties agree that all other rights except the right of non-exclusive occupancy and use as provided herein are reserved to Lessor.

2. **Duties and Responsibilities of Lessor.**

(a) **Additional Wagering Facility.** Lessor shall maintain the Premises of which the leased facility is a part, in a manner suitable for the operation of an additional wagering facility and shall open the facility to its members for purposes of teletrack wagering each day that a racing program conducted by Track is transmitted to the facility unless otherwise agreed to by Track and Lessor.

(b) **General Obligations of Lessor.** Lessor shall furnish or maintain or cause to be furnished or maintained, at the teletrack wagering facility, at no expense to Track:

(1) Reasonable physical protection at all times of the teletrack wagering system components installed or present on the Premises of Lessor which are owned by Track or leased by Track from third parties from loss, harm, damage or destruction by any cause whatsoever including, but not limited to, theft, removal, trespass, damage, interference by other person, vandalism or water damage. Such protection shall be afforded on a reasonable best efforts basis and shall, among other things, provide such protection from elements and fire extinguishing methods as are reasonably required to protect the same. Lessor further waives any claim or right of ownership, possession or lien against all components, equipment, trade fixtures, materials or supplies owned by Track or placed on or installed by Track in or upon the premises or facility. Lessor further agrees that all such components, equipment, trade fixtures, materials and supplies shall remain the property of Track, free of any claim of any kind whatsoever, regardless whether the same are fixed or attached thereto.

(2) Necessary electrical power, telephone cabling, outlets and voltage regulation for the proper normal and emergency operation of the teletrack wagering system equipment, including without limitation, a dedicated 20 amp circuit to the pari-mutuel wagering terminals for teletrack operations.

(3) Secure space for the storage and care of printer ribbons, ticket materials and other supplies of Track reasonably necessary for the conduct of teletrack wagering operations as well as secure areas for the storage of spare or additional pari-mutuel wagering machines.

(4) Lessor shall permit the officers, directors, employees, agents and authorized representatives of Track access to the teletrack wagering system located at the Premises at all reasonable times for the proper supervision, maintenance, repair or operation of the system and to permit removal by Track or its designated agents or contractors of the removable parts of the system when not required or necessary for teletrack wagering.

(5) With the exception of the pari-mutuel taxes referred to in Section 3(c) of this agreement, pay all taxes, impositions or assessments levied or imposed by any governmental agency whether state or local by reason of the Lease, occupation, use or operation of the teletrack wagering facility and the conduct of business therein including without limitation all ad valorem real or personal property taxes, special taxes, sales, gross receipts, use or transaction privilege taxes, city, county and state permit or license fees or other excise taxes or fees.

(c) **Gates and Admissions.** Lessor shall be responsible for and shall control the admission of its members to the teletrack wagering facility. The cost of labor, materials and supplies associated with maintaining the facility in a clean and orderly manner shall be the sole responsibility of Lessor. Lessor further agrees not to charge admission to the Teletrack Wagering Facility. Lessor shall be responsible for compliance with and enforcement of laws and regulations of the State of Arizona or any local governmental entity and shall, at all times, maintain safe, orderly Premises and shall be responsible for control of any interfering activities on or about the Premises.

(d) **Parking.** Lessor shall provide for parking space reasonably necessary to accommodate the anticipated patrons at the teletrack wagering facility. The cost of labor, materials and supplies associated with construction, maintenance and operation of parking facilities shall be the sole responsibility of Lessor. Lessor further agrees not to charge for parking at the teletrack wagering facility.

(e) **Food and Beverage.** Lessor shall maintain and establish appropriate food and beverage service at the teletrack wagering facility. The costs of labor, materials and supplies associated with construction, maintenance and operation of food and beverage service shall be the sole responsibility of Lessor. Lessor shall be solely responsible for compliance with all requirements imposed on the facility in connection with any required beverage or liquor licenses or permits.

(f) **Amenities and Facilities.** Lessor shall be responsible for providing and maintaining a first-class, clean, safe and habitable teletrack wagering facility suitable for member attendance and adequate facilities for members to permit handicapping and appropriate seating areas sufficient to accommodate all members. Appropriate facilities for handicapped member access shall also be provided. The facility shall not be used for any other purposes during the time teletrack wagering is being conducted. Lessor shall be entitled to all revenues from food and beverage services and all other commercial enterprises conducted by Lessor. The cost of labor, materials and supplies associated with construction, maintenance and operation of the facility, not associated with the pari-mutuel operations, shall be the sole responsibility of Lessor. Notwithstanding the Lessor's responsibilities in the previous sentence, the Track will provide design and construction services and equipment, pursuant to a design approved by Lessor, to furnish the Premises consistent with that approved design.

(g) **Security.** Lessor shall provide adequate security for the protection of the members and all employees, including such uniformed or plainclothes security personnel, if any, as shall be reasonably necessary and as required by the Arizona Department of Racing to protect the members and teletrack wagering facility from unlawful and improper acts or conduct. The cost of labor, materials and supplies associated with security of the teletrack wagering facility shall be the sole responsibility of Lessor. Lessor will not be responsible for cameras and surveillance equipment which will be provided by Track

(h) **Utilities.** Lessor shall provide such air conditioning, electrical service, water, heat, telephone service and light as are reasonably necessary to maintain a proper first-class

teletrack wagering facility for the comfort of the members and for the operation of the facility. The cost of such utility services shall be the sole responsibility of Lessor.

(i) **Maintenance.** Lessor shall be responsible for all repairs, maintenance and janitorial services necessary for the facility and all equipment therein, except the pari-mutuel and other equipment installed by Track. In the event Lessor shall fail or refuse to provide such repairs, maintenance and janitorial services in a first-class manner, Track shall be permitted to perform such repairs, maintenance and janitorial services at the expense of Lessor.

(j) **Price Lists.** Lessor shall furnish Track prior to the commencement of the Racing meeting, a price list setting forth the amounts to be charged to the members for food and beverage services and all other vended items.

(k) **Lessor Licensing.** Lessor agrees to obtain all necessary permits and licenses required by the Arizona Department of Racing and the local municipality including submitting to any background checks and fingerprinting within 10 days of the execution of this contract. Any costs associated with that licensing effort will be paid by Track.

3. **Duties and Responsibilities of Track.**

(a) **Permits and Licenses.** Track shall apply for and secure at its sole cost and expense all necessary approvals, licenses or permits required by the State of Arizona or any other governmental entity to conduct and operate a teletrack wagering operation under Arizona law

and shall maintain such approvals, licenses or permits in good standing at all times during the term of this Agreement, provided however, that Lessor shall be responsible and shall pay for all taxes, fees, impositions or assessments by all such governmental entities as provided in Paragraph 2(b)(5) of this Agreement.

(b) **Receiving and Display Equipment.** The cost of all labor, materials, supplies and services associated with the transmission reception or display of the audio-video signal to Lessor shall be the sole responsibility of Track. Track shall have the absolute right to remove any or all equipment, materials, supplies, fixtures owned by or installed in the teletrack wagering facility by Track during the term of this Agreement and/or for a reasonable period of time after the termination of this Agreement for any reason.

(c) **Pari-mutuel Operations.** Track shall employ and supervise such qualified pari-mutuel operations management and personnel together with such equipment as is reasonably necessary for the proper operation and management of the Teletrack wagering system given the reasonably anticipated attendance and pari-mutuel wagering handle at the Premises. The cost of all materials and supplies associated with the maintenance and operation of the pari-mutuel wagering equipment (mutual clerks) at the Premises shall be the sole responsibility of the Track. Track reserves the right to designate a managing agent, to supervise, operate and manage the pari-mutuel operations at the Teletrack wagering facility on behalf of track. Track shall notify Lessor, in writing, of the designation of such managing agent. Track shall be responsible and pay for all pari-mutuel taxes levied or assessed by the State of Arizona on pari-mutuel wagering conducted at the facility.

(d) **ATM Machine.** Lessor agrees to maintain a functional ATM machine at the parlor available for use by bettors during OTB operations. If Lessor fails to maintain an operational ATM, the Track may install an ATM at Track's expense and operated and managed by Track, at a location conveniently located near the teletrack wagering facility.

(e) **Signage.** Track and Lessor agree that Track may install signage to advertise the teletrack wagering facility at the premises. This signage may include signage on the adjacent street, signage on the outside of the premises and signage and promotional materials, including such items as photos, racing images and memorabilia, inside the premises. Lessor agrees to cooperate with Track in seeking any necessary approvals from the Landlord or the local municipality to approve the proposed signage.

(f) **Teletrack Equipment.** Lessor agrees to permit Track to install those pieces of equipment, at Track's expense, necessary to operate a teletrack wagering facility, including appropriate teletrack machines, furniture, wagering machines, surveillance camera equipment and a safe for money storage. In addition, Lessor agrees to permit Track to install those electronic devices on the exterior and interior of the Premises, necessary to bring the teletrack signal into the wagering facility, and to cooperate with Track in obtaining the approval of the landlord and the local municipality to bring the signal to the facility.

4. **Programs.** For the purposes of this Agreement, Track shall have the exclusive right to distribute and sell all forms, tip sheets or other written materials for handicapping the racing programs relating in any way to the teletrack wagering program.

5. **Lease Payments**. Track agrees to pay Lessor One Thousand Dollars ($1,000) per month as base rent. In addition, Track will pay to Lessor Two Hundred Fifty Dollars ($250) per month for each increment of Twenty-Five Thousand Dollars ($25,000) in gross handle in excess of One Hundred Thousand Dollars ($100,000). By way of example, if the gross handle is between One Hundred Fifty Thousand Dollars ($150,000) and One Hundred Seventy-Five Thousand Dollars ($175,000) in any particular month, then Track will pay Lessor One Thousand Dollars ($1,000) in base rent plus Five Hundred Dollars ($500) in additional rent. If the gross handle is between One Hundred Seventy-Five Thousand Dollars ($175,000) and Two Hundred Thousand Dollars ($200,000) for that calendar month, then the Track will pay One Thousand Dollars ($1,000) in base rent and Seven Hundred Fifty ($750) in additional rent for that month. If the gross handle for the month is greater than Two Hundred Thousand Dollars ($200,000), then the Track will pay One Thousand Dollars ($1,000) in base rent and One Thousand Dollars ($1,000) in additional rent for the month. Track shall pay the base rent on the first (1st) day of the month and Track shall pay the additional rent within seven (7) days after the end of that calendar month.

6. **Insurance.**

**(a) Track.** Track shall, on request, provide certificates of insurance for, and will maintain, at its expense, insurance coverage with companies having an A.M. Best rating of A, XIII or better as follows:

(1) All risks of physical damage coverage on its operations and facilities subject to normal exclusions;

(2) Workers' Compensation on Track's employees providing statutory benefits and an employer's liability limit of $100,000; and

(3) Comprehensive general liability coverage of not less than $1,000,000 combined single limit, which shall include extensions of coverage for products, complete operations, personal injury and specified contract coverage.

(4) In each and all such policies, save and except the Workers' Compensation policy, Lessor shall be an additional insured.

**(b) Lessor.** Lessor shall, on request, provide certificates of insurance for, and will maintain, at their expense, insurance coverage with insurance companies having an A.M. Best rating of A, XIII or better as follows:

(1) All risks of physical damage coverage on the facility, including the leased Premises, subject to normal exclusions;

(2) Workers' Compensation on Lessor's employees providing statutory benefits and an employer's liability limit of $100,000; and

(3) Comprehensive general liability coverage of not less than $1,000,000 combined single limit, which shall include extensions of coverage for products, complete operations, personal injury and blanket contract covering the entire facility.

(4) Liquor liability coverage of not less than $1 million combined single limit.

(5) Lessor shall also maintain an excess line of comprehensive general liability coverage in such amounts that Lessor and Track may deem appropriate.

(6) In each and all such policies, save and except the Workers' Compensation policy, Track shall be an additional insured.

7. **Interruption or Interference with Signal.** Track shall not be liable to Lessor, its agents or employees or third persons claiming through Lessor for any losses occasioned by interruption or loss of the audio-video or pari-mutuel signal or transmission, for whatever duration, except that Track shall save and hold Lessor harmless from and against any claims of members or third

parties relative to wagers made or claimed to be made and accepted through the pari-mutuel system. Any recovery of commission losses from the contractor or services supplier of Track, incurred as a result of interruption or loss of the audio-video or pari-mutuel signal or transmission, shall be for the sole benefit of Track.

8. **No Competing Teletrack Wagering.** The parties agree that because of the costs incurred by Track in establishing teletrack wagering and implementing this Agreement and the various factors affecting the patrons of pari-mutuel wagering involving horse racing that it shall be a material breach of this Agreement justifying the termination of this Agreement forthwith or the suspension of the audio-video signal to Lessor by Track for all or part of the remaining term of this Agreement in the sole discretion of Track in the event Lessor accepts an audio-video signal for pari-mutuel wagering purposes of any racing program which is not transmitted to Lessor by Track during the time period that Track transmits its signal to Lessor.

9. **Right to Lease.** Lessor represents and warrants that Lessor has the requisite power, authority and right to lease the facility to Track as provided for in this Agreement. In the event that Lessor is not the owner of the Premises of which the facility is a part and is the lessee under a valid lease of the premises, then Lessor shall secure and deliver to Track a consent and approval to sublease the facility as provided in this Agreement duly executed by an authorized agent or officer or the owner of the premises, as the case may be, in a manner and form acceptable to Track and Track's legal counsel, as a condition precedent to Track's obligation under this Agreement.

**10.** **Termination.** The Parties agree that Track shall at all times have the right to terminate this agreement, upon fifteen (15) days written notice to Lessor, or if both Parties agree, this Agreement may be terminated by giving (15) days written notice, provided that in the event of the condemnation or destruction of all or any part of the facility which renders the facility unsuitable or unusable in Track's sole opinion, or in the event Lessor shall fail to comply with any or all of the laws, rules or lawful orders of the Arizona Department of Racing and the Arizona Racing Commission or the State of Arizona or other governmental entity, then Track may, in Track's sole discretion, terminate this Agreement immediately upon written notice to Lessor and Track shall not be responsible for any costs, expenses or damages incurred by Lessor by reason of any such termination under this Paragraph. Lessor acknowledges and agrees that in the event of the sale or transfer of any interest in the business or of any license or permit required to operate the business located in the premises in which the teletrack wagering facility is located or any change in management or control are a violation of the rules of the Arizona Department of Racing and that all such transfers must be subject of a pre clearance of such transfer by the Department prior to the completion of such transfer or of the completion or execution of any agreement providing for such transfer or sale.

If Track shall cease to operate as a pari-mutuel facility, for any reason, it will end this agreement.

**11.** Sportsbook Wagering and Historic Racing. Lessor and Track agree that if Sportsbook Wagering and/or Historic Racing are approved in Arizona, then Lessor and Track agree to cooperate in the effort to permit Sportsbook Wagering and/or Historic Racing to be opened at the Premises. In that event, Lessor and Track agree to work together to modify the Premises and to

add those facilities necessary for Sportsbook Wagering and/or Historic Racing and to permit Track to operate the Sportsbook Wagering and/or Historic Racing facility consistent with Arizona law.

**12. Miscellaneous Provisions.**

**(a) Prohibition of Pari-mutuel Wagering.** If at any time during the term of this Agreement pari-mutual wagering on racing or teletrack wagering or the operation of the teletrack wagering facility contemplated by this Agreement is made, declared, or held to be illegal or prohibited by statute or decision of a court of last resort, which decision has become final, or by any competent public authority whose decision is final and not appealable, or in the event the teletrack race permit issued by the Arizona Department of Racing is canceled, revoked, not renewed or otherwise terminated for any reason, this Agreement shall thereupon be deemed terminated and the parties hereto shall be released from any and all further liability or obligation hereunder, provided however that such termination shall not relieve Track or Lessor from any obligation or liability that accrued under the terms of this Agreement prior to the date of such termination.

**(b) Third Party Liability.** This agreement is not intended to benefit any third party and no person or entity other than Track and Lessor shall have any right of action arising under any of the terms and provision of this agreement.

(1) **Track Liability.** Track shall assume responsibility for the defense of, and will indemnify and hold harmless Lessor, its directors, officers, shareholders, employees, representatives and agents from and against any losses, claims, damages, costs, suits, penalties, demands or liabilities, except claims of Lessor's employees for personal injuries arising in the scope of their employment, including reasonable legal counsel fees, occasioned by or arising out of, in whole or in part, any willful or negligent act or omission of Track or any of its officers, directors, contractors, subcontractors, agents, servants or employees, provided that prompt written notice of such claim or suit is given to Track by Lessor, and provided Track is given full control over all negotiations and litigation in connection therewith, including selection of counsel. Track shall not be responsible for settlements made or costs or expenses incurred without its prior written consent.

(2) **Lessor Liability.** Lessor will assume the responsibility for the defense of, and shall indemnify and hold harmless Track, its directors, officers, shareholders, employees, representatives and agents from and against any losses, claims, damages, costs, suits, penalties, demands or liabilities, except claims of Track's employees for personal injuries arising in the scope of their employment, including reasonable legal counsel fees, occasioned by or arising out of, in whole or in part, by any willful or negligent act or omission of Lessor or any of its officers, directors, contractors, subcontractors, agents, servants or employees, and for any and all expenses for injury to or death of any person or loss of or damage to property in or about the Premises or in or about the facility of which the premises is a part that arises out of or in connection with the use or occupancy of the facility, provided that prompt written notice of any such claim or suit shall be given to Lessor by Track and Lessor shall be given full control over

all negotiations and litigation in connection therewith including selection of counsel; and Lessor further agrees to indemnify and hold Track harmless from and against all claims, liabilities, losses, damages, fines, penalties or clean-up costs incurred in connection with either the removal or containment of any hazardous or toxic substance in or about the Premises or in or about the facility of which the premises is a part that arises out of or in connection with the use or occupancy of the facility, provided that prompt written notice of such claim or suit shall be given to Lessor by Track, and Lessor shall be given full control over all negotiations and litigation in connection therewith, including selection of counsel. Track shall not be responsible for settlements made or costs or expenses incurred without its prior written consent.

(c) **Independent Contractor.** Track and Lessor each agree that they are not joint ventures or partners and that their status as to one another is, for the purpose of this Agreement, independent contractors and that neither they nor any of their contractors, subcontractors, agents or employees shall, at any time, constitute agents or employees of the other. Neither Track nor Lessor are granted any rights or authority to assume or create any obligation or liability, express or implied, on behalf of each other or to bind each other in any manner or thing whatsoever.

(d) **Approval.** The parties agree that their obligations under this Agreement are subject to the approval of the local municipality and the Arizona Department of Racing and Arizona Racing Commission and that in the event the local municipality or the Arizona Department of Racing or the Arizona Racing Commission fails or refuses to approve this Agreement or to authorize Track to conduct teletrack wagering at the teletrack wagering facility contemplated in this Agreement, then this Agreement shall be terminated and neither party shall

be entitled to compensation for losses or damages arising out of or as a result of such termination.

(e) **Compliance with Law.** The parties agree that they will comply with any and all applicable laws, rules and regulations of the United States of America, the State of Arizona, the Rules of the Arizona Department of Racing and the Arizona Racing Commission, all agencies of the State of Arizona, including, without limitation, all applicable anti-discrimination, affirmative action, and conflict of interest provisions. During the term hereof, both Track and Lessor shall at all times be in good standing with the Arizona Department of Racing and the Arizona Racing commission.

(f) **Governing Law.** The laws of the State of Arizona and the applicable rules promulgated thereunder by the Arizona Department of Racing and Arizona Racing Commission shall govern as to the interpretation, validity and effect of this Agreement. No principle of conflict of laws shall make the substantive law of any other state or jurisdiction applicable hereto. In the event of any further amendments to the Arizona Revised Statues as they relate to Horse Racing or Pari-mutuel Wagering, or the Rules promulgated by the Arizona Department of Racing or the Arizona Racing Commission after the date hereof, the parties hereto agree to negotiate in good faith any necessary or advisable modifications to this Agreement.

(g) **Attorneys' Fees.** In the event suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of its cost of the suit and not as damages, reasonable attorneys' fees to be fixed by the Court.

**(h)** **Notices.** All notices required by provisions of this Agreement shall be in writing and sent, postage prepaid, by registered or certified mail, return receipt requested, personal delivery or via telefax.

In the case of Track to:

David Auther
Arizona Downs, L.L.C.
6239 N. 7th Street, Ste. 200
Phoenix, AZ 85014

With copies to:

In the case of Lessor to:

With copies to:

(i) **Entire Agreement.** This Agreement shall be deemed to include and incorporate the entire Agreement between the parties and may be amended, modified or superseded only by an instrument in writing signed by duly authorized officers of both parties.

(j) **Counterparts.** This Agreement may be executed by any number of counterparts, each of which may be deemed an original and all of which shall constitute a single document.

(k) **Titles and Captions.** Section titles, captions and numbers are provided for each section or subsection only as a matter of reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

13. **Authority.** The persons executing this Agreement on behalf of Track, by their respective signatures hereon, certify and represent that they are the duly authorized and empowered to execute this Agreement, and that this Agreement has been duly approved and they are authorized to effectuate and carry out this Agreement. The persons executing this Agreement on behalf of Lessor, in the event that Lessor is a sole proprietorship or is a partnership, by their respective signatures certify and represent that they are duly authorized to execute this Agreement on behalf of Lessor and, in the event that Lessor is a corporation, that they are the duly authorized and acting corporate officers of Lessor and that they are authorized and empowered by the Board of Directors, or Managing or General Partner, if a partnership or Limited Liability Company, of Lessor to execute this Agreement on behalf of said corporation and that this Agreement has been duly approved and they are authorized to obligate the corporation and to take such other and further action as may be necessary or appropriate to effectuate and carry out this Agreement.

14. **Severability.** In the event any provision of this contract shall be declared invalid or unenforceable, the remaining rights and obligations of Lessor and Track under this contract shall remain in full force and effect and shall be construed and enforced accordingly.

WHEREFORE, the parties hereto have set their hand the date first above written.

Alvin Patel Holdings LLC

By: Karan Patel By: Karan Patel

Its: Owner Its: _____

ARIZONA DOWNS, L.L.C.

By: David C Cuthbert

Its: Partner

TEMPORARY TELETRACK WAGERING PERMIT

STATE OF ARIZONA TO:

ARIZONA DOWNS, L.L.C. ("permittee)
FY2019, FY2020, FY2021
ANN MCGOVERN, GENERAL MANAGER

By virtue of the authority vested in the Arizona Racing Commission (Commission) pursuant to the provisions of Arizona Revised Statutes Title 5, Chapter 1, the Commission has issued a Temporary Teletrack Wagering Permit to conduct teletrack wagering concurrently with the Arizona Downs Racing Program. The Permittee shall conduct the teletrack wagering operation pursuant to Arizona Administrative Code, Title 19, Chapter 2, Articles 1 through 5, as they now exist or hereafter may be adopted or amended (the "Commission Rules"), and only according to the provisions of the Commission-approved Plan of Operations. Any change to the Plan of Operation will be allowed only when approved in writing by the Director of the Racing Division of the Arizona Department of Gaming. The permit shall remain in effect until the Arizona Racing Commission has made a final determination of your application for a Commercial Racing Permit for the FY2019, FY2020, and FY2021 racing seasons as set forth in the three-year commercial racing permit application submitted by Arizona Downs, L.L.C.

Teletracking is to be conducted under the following terms and conditions:

1. In all aspects, teletracking shall be conducted in accordance with the laws of the State of Arizona and the Commission Rules and any directive or policy issued by the Commission or the Director of the Division of Racing.

2. A separate application and plan of operation must be submitted for each facility in accordance with the Laws of the State of Arizona and the Commission Rules.

3. Number of races to be conducted daily shall be those races on the daily program of Yavapai Downs that have been approved by the Commission and those out-of-state simulcasts that have been approved by the Department.

4. The Permittee or additional facility operator shall maintain order and prevent bookmaking and other forms of illegal gambling from occurring on the premises. A Permittee shall not knowingly permit a person excluded from the track, either by the Permittee's own action or by order of the Department or Commission, to patronize the pari-mutuel system of wagering through an additional wagering facility. The Department shall give the Permittee a reasonable period of time, after direct notice, to remedy an alleged violation, if such violation is unintentional.

5. The mutuel department shall be under the supervision of the State Mutuel Supervisor, Auditor, Investigator, or other official designated by the Director.

6. It shall be the responsibility of the Permittee to provide the Department with copies of the insurance carried on the additional wagering facilities.

7. The insurance, deposit and performance bond associated with the temporary commercial racing permit issued to Arizona Downs, L.L.C. for racing at Arizona Downs are part of this permit.

8. The Permittee must provide a system capable of ensuring that money wagered on a particular race is included in the pari-mutuel pool of the racetrack conducting the race.

9. The Permittee must provide a system capable of ensuring those pari-mutuel machines at each additional facility lock upon the ringing of the off-bell or upon the closing of wagering for any reason.

**Approved: May 10, 2018,**

WITNESS THE ARIZONA RACING COMMISSION at Phoenix, Arizona, this 26 day of June, 2018.

BY ORDER OF THE COMMISSION
ARIZONA DEPT. OF GAMING/RACING DIVISION

RUDY CASILLAS, DIRECTOR

ACCEPTANCE

The foregoing permit is accepted as written and we further agree to abide by the terms and conditions contained herein.

ARIZONA DOWNS, L.L.C.

ANN MCGOVERN, GENERAL MANAGER

FLAGSTAFF POLICE DEPARTMENT
911 SAWMILL RD • FLAGSTAFF, ARIZONA 86001• (928) 779-3646
ADMIN FAX (928)213-3372
TDD 1-800-842-4681

Chief of Police
Dan Musselman

**MEMORANDUM**

**Memo #21-22**

**TO:** **Chief Dan Musselman**

**FROM:** **Sgt. Ryan Turley**

**DATE:** **March 17th 2021**

**RE:** **Application for Off Track Wagering Permit for Arizona Downs and Dirty Birdies**

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On March 17th, 2021, I initiated an investigation into an application for an off-track wagering permit submitted by David Auther on behalf of Arizona Downs. The site for the wagering window would be Dirty Birdies located at 2285 E. Butler Ave.

I contacted Steven Alvin, the owner of Dirty Birdies. He advised that there will be security in place to ensure that no underaged persons are gambling. The security measures are to include employees of Arizona Downs and video surveillance monitoring.

The waging area is staffed by members of Arizona Downs who have already completed background checks and training. These employees are to ensure that no one under 21 years of age make any bets.

David Auther is the applicant for Arizona Downs. David is registered with the State Racing Commission and has passed their background process. I conducted a local records query on Author and found no derogatory records. The betting hours would be 11am to 7pm.

I conducted a local records query on Dirty Birdies and found two reports where the business was a victim of criminal damage. I did not locate any liquor violations for Dirty Birdies.

Dirty Birdies will not receive a profit from Arizona Downs.

# Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Tiffany Antol, Planning Director

Date: March 18, 2021

Re: Application for an Off-Track Wagering Permit
2285 E. Butler Ave., Flagstaff, Arizona 86004
Assessor's Parcel Number 106-04-994W
Arizona Downs on behalf of Dirty Birdies

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This application is for the renewal of a Off-Track Wagering Permit on behalf of Dirty Birdies. This business is located within the Highway Commercial district. This district does allow for this use.

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

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Jeanie Gallagher, Human Resources Director

**Date:** 03/29/2021

**Meeting Date:** 04/06/2021

**TITLE:**

**Consideration and Approval of Contract:** Cooperative Purchase Contract with Governmentjobs.com, Inc., a California Corporation, DBA NEOGOV to provide three software modules. 1. Insight/Online Hiring Center provides a comprehensive employment application and recruitment process technology solution; 2. NEOGOV PERFORM provides a comprehensive employee performance evaluation technology solution, and 3. NEOGOV LEARN provides a comprehensive online training and development technology solution. The contract has a maximum total cost not to exceed $236,125.

**STAFF RECOMMENDED ACTION:**

1. Approve the Cooperative Purchase Contract for NEOGOV Human Resource software package with Governmentjobs.com, Inc., DBA NEOGOV for a fee not to exceed an amount of $236,125 utilizing a cooperative contract through the Pascua Yaqui Tribe Tucson, Arizona; and
2. Authorize the City Manager to execute the necessary documents.

**Executive Summary:**

More than 6,000 public sector and education organizations utilize NEOGOV to recruit, select, develop, and evaluate their workforce.

In fiscal year 2020 the City acquired and implemented the NEOGOV Insight module which allowed us to transition from a 100% paper-based application process to an electronic process. This system provides ease of access for individuals to apply for positions with the City, no longer requiring them to physically come to City Hall to do so. Applicants are able to monitor the status of their application, update it as needed, and easily express their interest in multiple positions. The software also provides a seamless and paperless process for hiring managers from their initial request to fill a position through reviewing their applicants and scheduling interviews. This product also provides multiple job advertising sites such as Government Jobs and many other resources.

In fiscal year 2021, Human Resources was requested to identify a better solution to replace the Halogen software that was utilized for employee performance evaluations. The NEOGOV PERFORM module was an ideal and affordable solution at about 50% of the cost of Halogen, and fully integrates with Insight which houses our job descriptions. NEOGOV PERFORM went live effective January 1, 2021. The PERFORM software offers a very robust solution to support performance and feedback, is very interactive between the employee and their supervisor, supports development plans and establishing and monitoring goals. Both the supervisor and the employee can journal their 1:1 discussion throughout the year.

We wish to implement the NEOGOV LEARN module as well. Again, there is huge benefit for a fully integrated product, and it is an amazing product. With our current budget the City has historically only

been able to offer a handful of training/development opportunities each year utilizing various vendors and an in-person format. COVID therefore, ground our training/development to a complete halt. By utilizing only half of our annual training budget we can offer City employees access to over 1400 courses within their current catalog, and it is growing all the time. This is for unlimited access. Our employees can self-enroll, courses can be assigned, and we are able to build curriculums for employees wishing to develop and/or promote and for new leaders. In addition, we will have unlimited ability to build and add our own training in the software providing a central location to access training. Finally, the system builds a transcript for each employee as they complete courses.

**Financial Impact:**

The term of the Contract and expense is spread across three years. The purchase will be funded by the total budget appropriation of $236,125 in account numbers 001-01-012-0020-1-4343 and 001-01-012-024-4263, from the budget lines items under Recruitment and Employee Training. The not to exceed amount is $236,125.

**Policy Impact:**

This request does not impact City policies.

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

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

Personnel: Attract and retain quality staff.

To support the Council Priority for High Performing Governance: Provide high quality customer service, increase efficiency and effectiveness, be an employer of choice through inclusive recruitment and by providing employees with the necessary tools, training, support and compensation.

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

No.

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**Attachments:** Cooperative Contract
Agency Contract
Agency Contract A

**COOPERATIVE PURCHASE CONTRACT**
Contract No. 2021-82

This Cooperative Purchase Contract is made and entered into this _____ day of _____, 20_____by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and Government Jobs.com, Inc., a California Corporation, DBA NEOGOV ("Contractor").

RECITALS:

A. Contractor has a contract with the Pascua Yaqui Tribe , Tucson, AZ to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and

B. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

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 and or services, as specified in the Purchase Order(s) submitted by the City in accordance with the Agency Contract. General description of materials and or services being purchased:

**APPLICANT TRACKING LICENSES**
**PERFORM LICENSES**
**LEARN SETUP TRAINGING AND LICENSES**

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Purchase Order(s) submitted to Contractor or *Exhibit A*, ***Scope of Work***, attached hereto and incorporated by reference.

3. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor a sum of two hundred thirty-six thousand one hundred twenty-four dollars and forty-one cents ($236,124.41). Any price adjustment must be approved by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) may approve an adjustment if the annual Contract price is less than $50,000; otherwise City Council approval is required.

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 are set forth in *Exhibit B* attached hereto and 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 and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.

7. Renewal: This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

CONTRACTOR:

By:_____

Title:_____

CITY OF FLAGSTAFF

By:_____

Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

**EXHIBIT A**
**SCOPE OF WORK**

# FEE SCHEDULE

| Crediting the remaining term | | | | | |
|---|---|---|---|---|---|
| **Product** | **Contract Dates** | **Current Amount** | **Early Termin** | **Amount** | **Credit** |
| Insight | 12/13/20 - 12/12/21 | $16,287.60 | 12/13/20 - 4/12/21 | $5,429.20 | -$10,858.40 |
| Governmentjobs.com | 12/13/20 - 12/12/21 | $2,336.25 | 12/13/20 - 4/12/21 | $778.75 | -$1,557.50 |
| Candidate Text Messaging | 12/13/20 - 12/12/21 | $813.75 | 12/13/20 - 4/12/21 | $271.25 | -$542.50 |
| Perform | 5/1/20 - 4/30/21 | $23,433.00 | 5/1/20 - 4/12/21 | $22,261.35 | -$1,171.65 |
| | | | | | -$14,130.05 |
| **Year one credit** | | | | | |
| New Hire Integration | 5/1/20 - 4/30/21 | -$1,500.00 | | | -$1,500.00 |
| Employee Integration | 5/1/20 - 4/30/21 | -$3,000.00 | | | -$3,000.00 |
| | | | | | -$4,500.00 |

| New Subscription terms | | | | | |
|---|---|---|---|---|---|
| **Product** | **Contract Dates** | **Year 1** | **Year 2** | **Year 3** | **Total** |
| Insight | 4/13/2021 - 4/12/2024 | $16,776.23 | $17,279.52 | $17,797.91 | $51,853.65 |
| Governmentjobs.com | 4/13/2021 - 4/12/2024 | $2,406.34 | $2,478.53 | $2,552.89 | $7,437.75 |
| Candidate Text Messaging | 4/13/2021 - 4/12/2024 | $838.16 | $863.30 | $889.20 | $2,590.67 |
| Perform | 4/13/2021 - 4/12/2024 | $24,135.99 | $24,860.07 | $25,605.87 | $74,601.93 |
| New Hire Integration | 4/13/2021 - 4/12/2024 | $1,500.00 | $1,591.35 | $1,639.09 | $4,730.44 |
| Employee Integration | 4/13/2021 - 4/12/2024 | $3,000.00 | $3,182.70 | $3,278.18 | $9,460.88 |
| Single Sign On - Prorate (Renew, $1,070) | 3/24/21 - 4/12/2021 | 58.68 | | | $58.68 |
| Single Sign On | 4/13/2021 - 4/12/2022 | $1,030.00 | $1,060.90 | $1,092.73 | $3,183.63 |
| Learn ($0 Months 1-6, 50% off Months 7-12) | Estimated 3/1/21 - 2/28/22 | $16,246.40 | $32,492.80 | $33,467.58 | $82,206.78 |
| Learn Setup & Training (One Time) | Due Net 30 of Signed Contract | $4,500.00 | | | |
| | | | | | $236,124.41 |

**EXHIBIT B**
**AGENCY CONTRACT**

NEOGOV Online Services Agreement
Schedule H; HRIS Terms and Conditions

Pascua Yaqui Tribe, Tucson, AZ – Fully Executed 11/05/2018

# NEOGOV ONLINE SERVICES AGREEMENT

**THIS ONLINE SERVICES AGREEMENT** and Order Form (collectively the "Agreement") is made and entered into as of the last date of execution of this Agreement ("the "Effective Date"), by and between **GovernmentJobs.com, Inc.**, a California corporation doing business as NEOGOV ("NEOGOV"), with offices at 300 Continental Blvd., Suite 565, El Segundo, California 90245, and **Pascua Yaqui Tribe,** a federally recognized Indian Tribe located in Arizona ("Customer").

**1. Provision of Online Services.**

(a) Services. Subject to the terms and conditions set forth herein, Customer hereby engages NEOGOV, and NEOGOV hereby agrees, to provide Customer with, and/or access to, the services (the "Services") described in this Agreement and in the order form attached hereto as Exhibit A (the "Order Form"). Customer hereby acknowledges and agrees that NEOGOV's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder.

(b) Change Orders. Either party may initiate a change to any part of the Order Form by delivering a written change order request to the other party. The receiving party shall notify the party making such request, in writing within ten (10) business days of such receiving party's receipt of such change order request, of such receiving party's acceptance or rejection of the proposed changes. If the receiving party fails to respond within such ten (10) business day period, such receiving party shall be deemed to have rejected such proposed changes. If the receiving party approves such change order, the parties shall agree on the estimate of time to complete the changes, associated costs, an impact analysis indicating ramifications or impacts to the overall project, a modification of any affected Fees, Services or deliverables, and any other relevant details related to such change order.

**2. Customer Responsibilities.** In connection with the performance of this Agreement and the provision of the Services, Customer shall be responsible for the following:

(a) Compliance with Laws. Customer shall be responsible for ensuring that Customer's use of the Services and the performance of Customer's other obligations hereunder comply with all applicable rules, regulations, laws, code and ordinances.

(b) Customer Data and Website. While NEOGOV is responsible for data integrity within the NEOGOV Servers, Customer shall be solely responsible for (i) the accuracy and completeness of all records, databases, data and information provided, submitted or uploaded by Customer or its authorized end users in connection with this Agreement or use of the Services, (ii) the content, quality, performance, and all other aspects of the goods or services and the information or other content contained in or provided through Customer's website, and (iii) making and keeping additional copies of all Customer Data. Except as set forth in Section 9, NEOGOV shall have no obligation to provide or make available to Customer, and Customer shall have no right to receive, a copy of the Customer Data or any associated data files in any format.

(c) Acceptable Use. Customer shall not: (i) provide system passwords or other log-in information for the Services to any third party except those specifically authorized to access the Services in this Agreement; (ii) share non-public NEOGOV system features or content with any third party; (iii) access the Services in order to build, assist, or facilitate the assembly of a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Services, or to copy any ideas, features, functions or graphics of the Services; (iv) reverse engineer, decompile, disassemble or otherwise attempt to discover or directly access the source code or any underlying ideas or algorithms of any portions of the Services or any underlying software or component thereof; or (v) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Services except as expressly permitted by this Agreement. In the event that NEOGOV suspects any breach of the requirements provided in this Section 2(c), including by way of users of Customer's system, NEOGOV may suspend Customer's access to the Services for the reasonable time required to confirm or deny suspicion, in addition to other lawful remedies as required.

(d) Unauthorized Access. Customer will take reasonable steps to prevent unauthorized access to the Services, including, without limitation, by protecting its passwords and other log-in information for the Services. Customer will notify NEOGOV immediately of any known or suspected unauthorized use of the Services or breach of its security and will use best efforts to stop any such breach.

(e) Customer Equipment. Other than the Services provided by NEOGOV, Customer is responsible for all other services, equipment and facilities (including, without limitation, all hardware, telecommunications equipment, connectivity, cabling and software) required to access the Services. Customer shall be responsible for procuring all licenses of third party software necessary for Customer's use of the Services.

**3. Maintenance and Support Services.**

(a) Maintenance. NEOGOV maintains NEOGOV's hardware/software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation, software delivery, and security for the Services. Preventive system maintenance is conducted by NEOGOV from time to time and is addressed in a variety of methods including scalable architecture and infrastructure, log checking, performance maintenance, and other preventative tasks. Customer is not responsible for NEOGOV system maintenance.

(b) Modification. NEOGOV may periodically modify the features, components and functionality of the Services. NEOGOV shall have no liability for, or any obligations to, investments in or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification of the Services provided by NEOGOV.

(c) Support. Phone support for the Services is available to Customer between the hours of 6:00AM and 6:00PM, Pacific Time, Monday through Friday, excluding NEOGOV holidays. Online support for the Services is available 24 hours a day, seven days a week. Both phone and online case receipts are confirmed immediately. The length of time for a resolution of any problem is fully dependent on the type of case (i.e., High/Medium/Low priority, question, enhancement request). High priority issues such as "system down" will be addressed immediately and resolved as soon as possible. All other issues are reviewed internally by NEOGOV, and then will be discussed and reviewed with Customer to identify priority and a resolution timeline.

(d) Updates and Upgrades. During the Term, NEOGOV will make all Updates and Upgrades to the Services accessible to Customer at no additional expense to Customer. Upgrades are automatic and available upon Customer's next login to the Services following an Update or Upgrade. NEOGOV shall have no obligation to provide, at no additional expense to Customer, major product enhancements and/or new features that NEOGOV markets separately to other customers for an additional fee; provided, that, NEOGOV may, in its sole discretion, elect to provide such enhancements or features to Customer on a case-by-case basis at no cost. NEOGOV shall have no liability for, or any obligations to, investments in or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to an Update or Upgrade. For the purposes hereof, (i) "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its third-party customers of the same module, excluding Upgrades, and (ii) "Upgrade" means any update of the Services or underlying NEOGOV software such as bug fixes, platform updates, and major product enhancements and/or new

features that NEOGOV makes commercially available and does not market separately to other customers on a custom, exclusive basis for a separate fee.

(e) Training. NEOGOV will provide Customer with access to the online training materials. All NEOGOV provided training materials will be provided online, unless otherwise set forth in the Order Form.

(f) Limitations. This Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly required to be provided by NEOGOV in this Agreement, including, but not limited to, training, data conversion, and program modification and enhancement.

**4. Ownership and Protection.**

(a) Customer Data. The Parties agree that as between NEOGOV and Customer, data or information received or uploaded by Customer, and retained by Customer on NEOGOV Servers, is the sole property of Customer, subject only to the rights of data subjects and the law (the "Customer Data"). NEOGOV shall acquire no rights in any Customer Data and process Customer Data only to provide the Services or as otherwise instructed by Customer, or as may be required or permitted by applicable law.

(b) NEOGOV Intellectual Property. As between NEOGOV and Customer, NEOGOV shall exclusively own all right, title and interest in and to all Services (including any Update or Upgrade thereto), NEOGOV's products, system, any software (including any source code or object code) or documentation related thereto, any trademarks, service marks, logos and other distinctive brand features of NEOGOV and all Proprietary Rights embodied therein (collectively, the "NEOGOV Intellectual Property").

(c) Grant to Use Certain Data. Customer agrees that NEOGOV may collect, disclose, and use quantitative and non-personal data derived from the use of NEOGOV Services for analysis, to provide Services to Customer, develop improvements to Services, benchmarking, analytics, marketing, job-seeker services, and internal business purposes for job-seeker and Customer benefit.

(d) Reservation of Rights. This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. Except as expressly set forth in Section 4(e), this Agreement does not grant Customer any licenses or other rights with respect to any of the NEOGOV Intellectual Property. All rights not expressly granted herein are reserved by NEOGOV.

(e) NEOGOV License Grant. NEOGOV's approved logos and trademarks (the "Approved Marks"), including the "powered by" logo, will appear on the "employment opportunities", "job description" and other NEOGOV hosted pages.

(f) Privacy. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data. Customer shall comply with all applicable laws and regulations relating to (i) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (ii) the use, collection, retention, storage, security, disclosure, transfer, disposal, and other processing of any Customer Data (including any personally identifiable information). Without limiting the generality of the foregoing, in using the Services or any other NEOGOV Intellectual Property, Customer will not disclose or provide to NEOGOV any personally identifiable information of any other person or entity.

**5. Representations, Warranties and Disclaimers.**

(a) Authority. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

(b) Service Performance Warranty. NEOGOV warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.

(c) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

(d) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

(e) **Compliance with Policies**. During this Agreement, Parties shall observe and comply with NEOGOV policies, including but not limited to Service Level Warranties, Malicious Traffic, Privacy, Incident Response, Retention, and Cookie Policies (the "Policies"), as from time to time may be amended and of which applicable provisions are incorporated herein by reference. Copies of Policies will be provided upon request. Customer shall be notified in the event material change to such Policies.

**6. Publicity**. Following the mutual execution and delivery of this Agreement, each party hereto may advertise, disclose and publish its relationship with the other party under this Agreement. NEOGOV may display Customer's name and logo in connection with such advertisement, disclosure and publishing.

**7. Nondisclosure**. Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data, in written, oral, electronic, magnetic, photographic and/or other forms, including, but not limited to (a) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified, (b) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret and (c) trade secrets (collectively, "Confidential Information"). In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, (x) without the express prior written consent of the other party (y) except as permitted or authorized herein or (z) except as required by law including the Public Records Act of the Customer's State, redistribute, market, publish, disclose or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the Term and for a period of three (3) years thereafter or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information

shall constitute a trade secret under applicable law. In association with NEOGOV's concern for the protection of trade secrets, Confidential Information, and fair market competition, Customer acknowledges all photos, "screen captures", videos, or related media of NEOGOV products, pages, and related documentation shall be approved by NEOGOV prior to any publicly accessible disclosure of such media.

**8. Liability Limitations.**

(a) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NEOGOV HAVE ANY LIABILITY TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CUSTOMER'S USE OF, OR INABILITY TO USE, THE SERVICES, UNDER ANY CIRCUMSTANCE, CAUSE OF ACTION OR THEORY OF LIABILITY, OR DUE TO ANY EVENT WHATSOEVER, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS STOPPAGE, EVEN IF NEOGOV KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**

(b) **WITHOUT LIMITATION OF SECTION 8(A), EXCEPT FOR DAMAGES ARISING OUT OF NEOGOV'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF NEOGOV FOR ANY AND ALL CLAIMS AGAINST NEOGOV UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO NEOGOV UNDER THIS AGREEMENT DURING THE INITIAL TERM. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.**

(c) Independent Allocations of Risk. Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. This allocation is reflected in the pricing offered by NEOGOV to Customer and is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Agreement, and each of these provisions will apply even if the warranties in this Agreement have failed of their essential purpose.

**9. Term and Termination.**

(a) Term. This Agreement shall commence on the Effective Date and remain in effect for the initial term set forth on the Order Form, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless a party delivers to the other party, at least ninety (90) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. In the case of professional services, if no end date is specified in the SOW, then the SOW shall expire upon completion of professional services or early termination as permitted by this Agreement.

(b) Termination. NEOGOV may suspend the Services or terminate this Agreement immediately in the event of any of the following: (A) Customer fails to pay any amount then due under this Agreement and such failure is not cured within five (5) days following NEOGOV's written notice thereof, (B) Customer is in material breach of this Agreement and such breach is not cured within thirty (30) days following NEOGOV's written notice thereof; or (C) the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation, or public policy. Customer may terminate this Agreement immediately if NEOGOV is in material breach of this Agreement and such breach is not cured within thirty (30) days following Customer's written notice thereof.

(c) Effect of Termination. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV Intellectual Property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts then due and unpaid to NEOGOV under this Agreement. In the event that Customer elects to receive Insight data files from the NEOGOV system, NEOGOV shall provide Customer with a dedicated flat data file in .CSV format or provide a proprietary and confidential delete of data. Such data files will be comprised of Customer's standard data contained in NEOGOV's Insight Enterprise (IN) system. NEOGOV retains the right to purge such data files from NEOGOV's systems without consent from, or notice to, the Customer after ninety (90) days after the date of expiration or termination of this Agreement.

(d) Survival. Sections 2, 4(a) through 4(d), 4(f), 5, 6, 7, 8, 9(c), 9(d), 12 and 13 shall survive the termination or expiration of this Agreement.

**10. Payments.**

(a) Payment Terms. Except as expressly set forth in the applicable Order Form or SOW, Customer will pay all Fees set forth in the Order Form or SOW in accordance with the following: (i) NEOGOV Fees are invoiced annually in advance and NEOGOV may invoice all Fees due under this Agreement in one invoice for each invoice period; (ii) invoices shall be delivered to the stated "Bill To" party on the Order Form (iii) Customer shall pay NEOGOV the applicable fees (collectively, the "***Fees***") within the applicable time periods as follows:

(A) Customer shall pay all annual recurring Fees (including for any NEOGOV Integrations) for the Initial Term within thirty (30) days of the date of Customer's execution and delivery of this Order Form;
(B) Customer shall pay all training Fees within thirty (30) days of the date of Customer's execution and delivery of this this Order Form;
(C) Customer shall pay all setup and implementation Fees within thirty (30) days of the date of Customer's execution and delivery of this Order Form;
(D) Any other Fees owed by Customer to NEOGOV pursuant to this Agreement shall be paid by Customer within thirty (30) days of Customer's receipt of NEOGOV's invoice therefor;
(E) Customer shall pay all annual recurring Fees (including for any NEOGOV Integrations) for any Renewal Term within thirty (30) days of Customer's receipt of NEOGOV's invoice therefor.

NEOGOV may, in its sole discretion, increase the Fees for any Renewal Term. NEOGOV shall provide Customer with written notice of any such Fee increase at least sixty (60) days prior to the commencement of such Renewal Term.

(b) Upon execution by Customer and NEOGOV, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in this Agreement, and the Term as set forth in the Order Form for NEOGOV subscriptions is a continuous and non-divisible commitment for the full duration of the Term regardless of any invoice schedule. Customer may withhold from payment any charge or amount disputed by Customer in good

faith pending resolution of such dispute, provided that Customer: (i) notifies NEOGOV of the dispute prior to the date such payment is due, specifying in such written notice (A) the amount in dispute, and (B) the reason for the dispute set out in sufficient detail to facilitate investigation by NEOGOV and resolution by the parties; (ii) makes timely payment of all undisputed charges and amounts; (iii) works diligently with NEOGOV to resolve the dispute promptly; and (iv) pays all amounts that are determined to be payable by resolution of the dispute (by adversarial proceedings, agreement or otherwise) within ten (10) days following such resolution.

(c) Undisputed Fees. In the event any undisputed amount due is not paid when due, the recipient shall pay to the other party late payment interest on all undisputed amounts past due from such due date therefore until paid in full at a rate equal to the lesser of: (i) one percent (1%) per month; or (ii) the maximum interest rate permitted by applicable law.

(d) Customer Purchase Orders. If Customer issues a purchase order, then it shall be for the full amount set forth in the applicable Order Form or SOW, and NEOGOV hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by Customer, and conditions assent solely based on the terms and conditions of this Agreement as offered by NEOGOV. Customer agrees that a failure to provide NEOGOV with a corresponding purchase order shall not relieve Customer of its obligations to provide payment to NEOGOV pursuant to this Section 10.

(e) Taxes. Customer will pay all taxes, duties and levies imposed by all federal, state and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption with ten (10) days of NEOGOV's request therefor.

**11. Force Majeure**. NEOGOV shall not be liable for any damages, costs, expenses or other consequences incurred by Customer or by any other person or entity as a result of delay in or inability to deliver any Services due to circumstances or events beyond NEOGOV's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, military action or usurped power; or (h) actions or failures to act on the part of a governmental authority.

**12. Piggyback Clause.** It is understood and agreed by Customer and NEOGOV that any governmental entity (the "New Entity") may purchase the services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section, Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obligated, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity which procured NEOGOV services using this Agreement. In the event this Agreement is terminated, the agreement between the New Entity and NEOGOV shall survive, subject to local procurement law.

**13. Miscellaneous**.

(a) Assignment. This Agreement may not be assigned by either party without the express written approval of the other party and any attempt at assignment in violation of this Section 13(a) shall be null and void.

(b) Entire Agreement; Amendment. This Agreement and the Order Form constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Customer's State, without giving effect to conflict of law rules.

(d) Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect and enforceable.

(e) Independent Contractor; Third Party Agreements. Customer is and shall be deemed to be an independent contractor of NEOGOV and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto, or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

(f) Cost of Requests. In the event NEOGOV is required to provide a data dump or respond to a subpoena, court order or other legal process for the production of documents and/ or testimony relative to this Agreement or Customer's use of the Services, Customer agrees to compensate NEOGOV at hourly rates for the time expended to provide a response, and to reimburse NEOGOV for any out-of-pocket costs incurred.

(g) Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Order Form and (ii) NEOGOV at the address set forth in the introductory paragraph hereof. Notice of change of address shall be given by written notice in the manner detailed in this Section 13(g).

(h) Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

(i) Attorneys' Fees. Should either party hereto initiate a legal or administrative action or proceeding (an "Action") to enforce any of the terms or conditions of this Agreement, the prevailing party shall be entitled to recover from the losing party all reasonable costs of the Action, including without limitation attorneys' fees and costs.

(j) Conflict. In the event of a conflict between the body of this Agreement and the Order Form, the terms of the body of this Agreement shall control.

(k) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

| **Customer:** | Pascua Yaqui Tribe | **GovernmentJobs.com. Inc. (dba "NEOGOV")** a California Corporation |
|---|---|---|
| Signature: | | Signature: |
| Print Name: | Robert Valencia | Print Name: John Closs |
| Title: | Chairman | Title: Controller |
| Date: | 10/31/18 | Date: 11/5/2018 |

## EXHIBIT A – ORDER FORM

| Customer & Customer Address: | Bill To (if different than Customer Address): |
|---|---|
| Pascua Yaqui Tribe (AZ) | **Andrew Esposito**<br>**Andrew.esposito@pascuayaqui-nsn.gov** |
| **Quote Date:8/16/18**<br>**Valid To:** Today plus 45 days | **Initial Term:** **12 Months from the date of execution of this Agreement.**<br>**Billing Frequency:** Annual |

Annual Recurring Fees

| Line | Description[1] | Initial Annual Recurring Fee[2] |
|---|---|---|
| 1. | Insight Enterprise Edition (IN) Subscription | $14,773.00 |
| 2. | GovernmentJobs.com Job Posting Subscription (GJC) | $770.00 |
| 3. | Perform (PE) Subscription | $24,375.00 |
| 4. | Onboard (ON) Subscription | $10,082.00 |
| 5. | Learn (LE) Subscription | N/A |
| 6. | NEOGOV Integrations Subscription | N/A |
| | Sub Total: | $50,000.00 |

Non-Recurring Fees

| Line | Description[1] | Non-Recurring Fees |
|---|---|---|
| NEOGOV Services | | |
| 6. | Insight (IN) | |
| | Setup and Implementation | Included |
| | Training | Included |
| 7. | Perform (PE) | |
| | Setup and Implementation | Included |
| | Training | Included |
| 8. | Onboard (ON) | |
| | Setup and Implementation | Included |
| | Training | Included |
| | Onboard form building as Professional Service | |
| 9. | Learn (LE) | |
| | Setup and Implementation | |
| | Training | |
| 10. | NEOGOV Integrations | |
| | Setup and Configuration | |
| | Sub Total: | |
| | **Order Total:** | $50,000.00 |

[1]Items designated as Not Applicable, N/A or NA on the Order Form are not included in the Services. Customer may request a quote for these items at their discretion throughout the Term.

[2] The annual recurring Fees for a Renewal Term are subject to increase pursuant to the Agreement.

1. Description of Services.

(a) Insight Enterprise (IN). Insight Enterprise (IN) is designed to address five major areas of human resource activities including recruitment, selection, applicant tracking, reporting and analysis, and HR automation. As described below, Insight Enterprise (IN) enables agencies to post class specifications online, post job announcements on Customer websites, accept online applications, conduct applicant tracking including EEO and other statistical analysis, create email/hardcopy applicant notices, complete item analysis, create/route/approve requisitions and hire actions online, and certify eligible lists electronically. A subscription to Insight Enterprise (IN) will include the following:

Recruitment:
- Online job application
- Configurable Career site
- Automatic online job interest cards
- Recruitment and examination planning

Selection:
- Configurable supplemental questions
- Define unique automatic scoring plans
- Test analysis and pass-point setting

Applicant Tracking:
- Email and hardcopy notifications
- EEO Data collection and reports
- Track applicants by step/hurdle
- Schedule written, oral, and other exams
- Candidate self-service portal for scheduling and application status

Career Pages:
- NEOGOV will provide the URLs for the Career Pages, which the Customer will use to advertise on their website. Customer will need to change the IP addresses for the following three Customer website links (NEOGOV will provide the new link addresses):
- Job openings
- Promotional job openings
- Transfer Job openings
- Class Specifications
- Job Interest Cards

Optional Integrations:
- Customer may export data from and to Insight Enterprise (IN) to integrate with other systems. Specifications regarding optional, for cost, NEOGOV integrations can be made available to Customer, including:
  - Configure New Hire Export Interface
  - Configure Position Control Import Interface
  - Class Spec Interface
  - Employee Integration
- As part of each such integration, NEOGOV shall:
  - Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings.
  - Provide Integration Worksheets and/or guides.
  - Score, rank, and refer applicants

Reporting and Analysis:
- 90 standard system reports
- Ad hoc reporting tool

HR Automation:
- Automatically route job requisitions and hire actions for approval
- Automatically score and pass/fail applicants based on scoring plans
- Automatically email users when there are candidates sent to them for review
- Automatically email jobseeker job interest card notices for jobs posted on the main job openings page

Insight Training:
- NEOGOV will create a Customer-specific training environment for Insight Enterprise (IN), which is used by Customer during training and afterwards to train in prior to moving into production.
- Customer will have full access to the demo/training environment setup for Insight Enterprise (IN).
- NEOGOV training is available online (web-based, pre-built, content) unless otherwise proposed as included in the Order Form.
- NEOGOV's pre-built, online training consists of a series of web courses as well as a series of hands-on exercise designed to introduce the standard features and functions and may be used as reference material by the staff following training to conduct day-to-day activities. The pre-built, online training includes exercises that are designed to be flexible enough to allow Customer led training sessions internally to introduce user-specific requirements and processes for staff to learn the system as closely as possible to the customer's actual recruitment processes after go-live.

(b) GovernmentJobs.com Job Posting Subscription. A subscription to GovernmentJobs.com Job Posting Subscription will include the following functionality:
- Enables organizations to advertise their job postings created in Insight on the GovernmentJobs.com website.
- May add an unlimited number of postings
- Note: Jobs advertised on the promotional and transfer webpages are not advertised on GovernmentJobs.com as these are typically for internal employees.

(c) Perform (PE). Perform (PE) is designed to address the major areas of human resource activities centered around employee performance management. As described below, Perform (PE) includes built-in workflow for business processes, configurable tasks, performance evaluations and reports. A subscription to Perform (PE) will include the following:
- Configurable Performance Evaluations
- Ability to build Library of Goals, Competencies, and Writing Assistants
- Shareable Competency Content
- Development Plans
- Configurable Process Workflows
- Scored and Non-scored Rating Scales
- Log of Performance Observations throughout the year
- Peer Reviews & Multi-rater capability
- Configurable Email Notifications
- Automatic Evaluation Creation
- Ability to perform actions in bulk for Employees & Evaluations

(d) Onboard (ON). Onboard (ON) is designed to facilitate the onboarding process for new hires. As described below, NEOGOV maintains standard forms as part of the annual subscription. Agencies shall maintain any custom forms created by Customer. A subscription to Onboard (ON) will include the following functionality:
- Electronic Employee File of Onboard forms
- Federal I9 and W4 forms
- Checklists of tasks to create specific Onboard process by position, department, division or class spec
- Configurable new hire portal
- Ability to promote, rehire and offboard employees (task assignment based on new position)
- Global form bank
- Configurable Email Notifications
- Automation of Onboard process
- Build your own Onboarding forms. Onboard (ON) includes Federal I9 and Federal W4 forms which are updated as new versions are released.

Additional forms or form maintenance is available from NEOGOV at the following cost:

- Background forms $295 per form
- Dynamic Forms $195 per form
- Updates to existing forms $200 an hour

(e) Learn (LE). Learn (LE) is designed to provide a seamless experience for organizations to train and develop employees. LE addresses the critical need of organizations to ensure completion of required trainings. By tracking both in-person and online training in one central place, organizations can improve employee performance and safety and reduce risk and liability claims. A subscription to Learn (LE) will including the following:

- Create, schedule, enroll learners in, and track completion of online and in-person, classroom trainings
- Ability to upload SCORM course content files
- Certificates after course completion
- Learner transcripts & class rosters
- Course catalog with configurable categories for learners to browse
- Centralized dashboard that displays all required and elective trainings (online and in-person) that employees are enrolled in
- Hundreds of 'off-the-shelf' online courses
- Learn Setup and Implementation will include the following activities:
  - NEOGOV will work with Customer staff to understand the existing processes, as well as other workforce business practices, where applicable.
  - NEOGOV will establish Customer's production environment.
  - All NEOGOV products will be implemented off-site.

(f) NEOGOV Training.

- NEOGOV training is available online (web-based, pre-built, content) unless otherwise proposed as included in the Order Form.
- NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions and may be used as reference material by the staff conducting day-to-day activities.

(g) NEOGOV Implementation. The following activities will be conducted as a part of the Services:

- Customer to review the project kick-off tutorial for information on the project timeline, deliverables, and establish project expectations.
- NEOGOV will work with Customer staff to understand the existing processes as well as other workforce business practices where applicable.
- NEOGOV will establish Customer's production environment.
- All NEOGOV products will be implemented off-site. Customer may integrate NEOGOV solutions with other systems using standard NEOGOV integration tools, export data from Insight Enterprise (IN) using web services and/or flat files to integrate with other systems, but the specifications and scope must be defined prior to agreeing to a timeline or price.
- Following NEOGOV product rollout, NEOGOV and Customer will confirm the rollout was completed successfully and that any production questions are addressed promptly.

(h) NEOGOV Integrations. NEOGOV offers Standard Integrations as well as platform APIs for third party system integration(s). A subscription to Standard Integrations includes the following:

- Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
- Annual maintenance by NEOGOV
- Employee import and export
- Department division position import and export
- Note: NEOGOV APIs are to be configured directly by Customer staff using NEOGOV documentation. If required, professional services may be included by NEOGOV to help define and validate scope, business requirements, timelines, and associated costs (if applicable).

2. Miscellaneous.

(a) Online Services Agreement. This Order Form is an attachment to and part of that certain Online Services Agreement (the "Agreement") by and between NEOGOV and Customer. Terms not defined in this Order Form shall have the meanings set forth in the Agreement. THERE ARE SIGNIFICANT ADDITIONAL TERMS AND CONDITIONS, WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS CONTAINED IN THE AGREEMENT. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS READ THE AGREEMENT IN ITS ENTIRETY AND AGREE TO BE BOUND BY ITS PROVISIONS.

(b) Effectiveness. Neither Customer nor NEOGOV will be bound by this Order Form until this Order Form has been signed by authorized representatives of both parties.

(c) Modifications. This Order Form may not be modified or amended except through a written instrument signed by the party to be bound.

**IN WITNESS WHEREOF**, the parties have caused this Order Form to be executed by their respective duly authorized officers as of the date set forth below.

| **Customer:** | **Pascua Yaqui Tribe** | **NEOGOV: GovernmentJobs.com, Inc.** | |
|---|---|---|---|
| Signature: | | Signature: | |
| Print Name: | Robert Valencia | Print Name: | John Closs |
| Title: | Chairman | Title: | Controller |
| Date: | 10/31/18 | Date: | 11/5/2018 |

**AMENDMENT NO. 1**
**TO THE**
**SERVICES AGREEMENT**
**BETWEEN THE**
**PASCUA YAQUI TRIBE**
**AND**
**GOVERNMENT JOBS, INC. DBA NEOGOV**

This Amendment No. 1 is entered into by and between the Pascua Yaqui Tribe and NEOGOV, and amends the Services Agreement executed by the parties on or about November 5, 2018 ("Agreement").

The parties agree to:

1. Amend Section 1(a) of the Agreement to add additional services, terms and conditions as described in the order form attached hereto as Exhibit B to the Agreement.

Except as set forth in this Amendment, all other terms and conditions remain intact and in full effect.

**PASCUA YAQUI TRIBE**

By: _____
Robert Valencia,
Chairman

Date: 10/17/19

**NEOGOV**

By: _____
John Closs
Title Controller

Date: 9/20/2019

**Approved as to Form:**

_____
Attorney General, Pascua Yaqui Tribe

Date: _____

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| NEOGOV ORDERING FORM | |
|---|---|
| Employee Count: 1103 | Governmentjobs.com, Inc. (dba "NEOGOV")<br>300 Continental Blvd., Suite 565<br>El Segundo, CA 90245<br>accounting@neogov.com |

| Customer Information | | | |
|---|---|---|---|
| **Customer Name:** | Pascau Yaqui Tribe (AZ) | **Customer Contact Name:** | Andrew Esposito |
| **Customer Address:** | 7474 South Camino De Oeste<br>Tucson, AZ [redacted] | **Email Address:** | andrew.eposito@pascuayaqui-nsn.gov |

| Fee Summary | | | |
|---|---|---|---|
| **Description of Subscriptions** | **SaaS Subscription Fees** | **Non-Recurring Professional Service Fees** | **Service Fee Sub-Totals** |
| Insight Enterprise (IN)<br>Onboard (ON)<br>GovernmentJobs.com (GJC)<br>Perform (PE)<br>E-Forms (EF)<br>Learn (LE)<br>Core HR & Benefits (CHR)<br>Payroll (PR)<br>Payroll Services (PS)<br>Time & Attendance (TA) | $534,441.00 | $0 | $534,441.00 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | Order Total: | **$534,441.00** |

**A. Agreement and Applicable Modifications to the Agreement.**

1. **Agreement.** This Order Form is an attachment to and governed by the terms and conditions within the Online Services Agreement (the "Agreement") executed by and between NEOGOV and Customer on or around November 5th, 2018, as well as the Schedule H (HRIS Terms and Conditions) attached hereto, and Service Specifications found at https://www.neogov.com/service-specifications. Terms not defined in this Order Form shall have the meanings set forth in the Agreement. THERE ARE SIGNIFICANT ADDITIONAL TERMS AND CONDITIONS, WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS CONTAINED IN THE AGREEMENT. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS READ THE AGREEMENT IN ITS ENTIRETY AND AGREE TO BE BOUND BY ITS PROVISIONS.
2. **Effectiveness & Modification.** Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative. This Order Form may not be modified or amended except through a written instrument signed by the parties.
3. **Order of Precedence**. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement and documents incorporated therein.

**B. General Terms Summary.**

1. **Summary of Fees**. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
2. **The Effective Date**. This Order is made and entered into as of the date of Customer signature on this Order Document (the "Effective Date").
3. **Subscription Initial Term**. The Subscriptions shall commence on the Effective Date and expire three (3) years thereafter (the "Initial Term").
4. **Initial Term Billing**. Subscription Fees in the Initial Term shall be due net thirty (30) from the Effective Date.
5. **Renewal Term Billing**. Annual and due net thirty (30) from Customer receipt of NEOGOV invoice.
6. **Pre-existing Subscriptions.** Customer and NEOGOV previously entered into an Agreement for IN, ON, GJC, and PE Subscriptions on or around November 2018. The Parties desire to align billing and payment for all Subscriptions. Therefore, Subscription Fees listed above for IN, ON, GJC, and PE may be subject to a reduction that is proportionate to the remaining days on the previously executed contract for IN, ON, GJC, and PE.
7. **Offer Validity.** This Order is valid for 30 days from the date of Customer receipt of this Ordering Document unless extended by NEOGOV.

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IN WITNESS WHEREOF, the parties have caused this Order to be executed by their respective duly authorized officers as of the date set forth below, and consent to the Agreement.

| Customer | Governmentjobs.com, Inc. (DBA "NEOGOV") |
|---|---|
| Entity Name: | |
| Signature: | Signature: |
| Print Name: Robert Valencia | Print Name: John Closs |
| Date: 10/17/19 | Date: 9/20/2019 |

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## Schedule H – HRIS Terms and Conditions

The terms and conditions set forth in this NEOGOV Schedule H – HRIS Terms and Conditions and Annexes affixed hereto (collectively referred to as "Schedule H") shall apply solely with respect to the HRIS Services (defined below) that Customer elects to receive and NEOGOV provides, and shall supplement the applicable NEOGOV Service Agreement (or if explicitly specified by the parties otherwise, such equivalent terms and conditions or agreement governing the provision and receipt of NEOGOV Services) between NEOGOV and Customer (the "Master Agreement").

If any terms and conditions of this Schedule H directly conflict or are inconsistent with such Master Agreement, this Schedule H shall supersede such Master Agreement to the extent of such conflict or inconsistency. Schedule H, the Master Agreement, applicable Ordering Document, and all documents incorporated therein shall constitute the entire agreement between the Parties in regard to HRIS Services.

1. General Terms; References; Definitions. The following terms govern the use of the HRIS Services (the "HRIS General Terms and Conditions"). The HRIS General Terms and Conditions are generally applicable to all HRIS Services. Terms and conditions within each Annex of this Schedule H relate to specific HRIS Services selected by Customer and shall apply to the extent Customer elects to receive the HRIS Services governed by such Annex. If any provision within the HRIS General Terms and Conditions directly conflicts with a provision within any Annex herein, the Annex shall take precedence to the extent of the conflict solely with respect to the HRIS Services covered by such Annex. If any provision in any Annex directly conflicts with a provision of any other Annex, the provision in each Annex will govern, but solely with respect to the HRIS Services covered by such Annex. "HRIS Services" refers to the following SaaS Applications or any Add-Ons (defined below) or Professional Services related to such SaaS Applications: NEOGOV Core HR, NEOGOV Payroll, and NEOGOV Time and Attendance. A reference to "HRIS Services" within a given Annex shall solely reference the HRIS Services selected by Customer and covered by such Annex. Definitions not explicitly defined herein shall retain the meaning as prescribed in the Master Agreement or the Service Specifications.

2. HRIS Service Provisioning.

   a) Use of Services. Customer agrees to the following regarding its use of HRIS Services: (i) Customer shall use HRIS Services in accordance with the instructions and reasonable policies established by NEOGOV from time to time and communicated to Customer, (ii) to the extent Customer elects to decline any HRIS Services, relies on its own provision of services, or delegates the performance of any service to a third party, Customer will be solely responsible, (iii) Customer shall be responsible for ensuring that Customer and its employees that access HRIS Services or use any HRIS Services to be provided hereunder comply with all the terms of this Schedule H and documents incorporated herein, (iv) Customer, and not NEOGOV, will remain solely responsible for all decisions affecting its employees and agents, other than, to the extent applicable, NEOGOV, (v) Customer will remain responsible for the manner in which it uses the HRIS Services, including the manner in which it interprets and acts upon any guidance or recommendation provided by NEOGOV, (vi) Customer understands and agrees that the HRIS Services are intended for use in the U.S. only for employees located in the U.S., and (vii) Customer will be responsible for the consequences of any instructions Customer may give to NEOGOV or NEOGOV Fulfillment Partners (defined below). All HRIS Services provided hereunder may be modified from time to time at NEOGOV's sole discretion, provided, however, that any such modifications will not have a material adverse impact on any of the HRIS Services Customer is receiving.

   b) Password Protection. Customer agrees to maintain the privacy of usernames and passwords associated with any HRIS Services. Customer is fully responsible for all activities that occur under Customer or Customer Personnel Accounts. Customer agrees to (a) immediately notify NEOGOV of any unauthorized use of Customer's password or Account or any other breach of security, and (b) ensure that Customer exits from Customer's Account at the end of each session. NEOGOV shall not be liable for any damages incurred by Customer or any third party arising from Customer's failure to comply with this section or to comply with applicable laws, regulations, governmental rules [or guidance,] the National Automated Clearing House Association Operating Rules and Guidelines ("NACHA Rules") or other applicable system rules or guidance ("Laws"). Customer agrees that NEOGOV may audit Customer's compliance with this Agreement, the NACHA Rules and Laws at any time, upon five days prior notice to Customer. Customer also represents and warrants that the payment has been properly authorized in accordance with the Law, the authorization has not been revoked.

   c) Modification. Customer will not write or modify interfaces or reports to any HRIS Services except as expressly authorized by NEOGOV. CUSTOMER WILL NOT RECOMPILE, DISASSEMBLE, REVERSE ENGINEER, OR MAKE OR DISTRIBUTE ANY OTHER FORM OF, OR ANY DERIVATIVE WORK FROM, NEOGOV HRIS SERVICES.

3. Accuracy of Customer Information, Review of Data. All HRIS Services provided hereunder will be based upon information provided to NEOGOV by Customer (including proof of federal, state and local tax identification). Upon receipt from NEOGOV, whether electronically or otherwise, or NEOGOV's making such information available to Customer, Customer

will promptly review within one week of the records or reports, as applicable, are made available to or provided by NEOGOV to Customer all records and reports prepared by NEOGOV for validity and accuracy according to Customer's records and Customer agrees that it will promptly notify NEOGOV of any discrepancies (but in any case, before any distribution or reliance on any such records or reports) within two weeks of the date the records or reports, as applicable, are made available to or provided by NEOGOV to Customer.

4. Compliance with Laws. Customer acknowledges that the HRIS Services may assist Customer in providing information on applicable Laws and governmental regulations, and that Customer and its employees and agents will be solely responsible for: (i) compliance with all Laws affecting it; (ii) all NACHA and other system rules applicable to it; and (iii) any use Customer may make of HRIS Services.

5. Implementation; Add-Ons; and Configuration Limitation. Implementation of HRIS Services will proceed in accordance with the implementation schedule provided by NEOGOV. Customer is obligated to fill out the "Implementation Workbook" to facilitate the implementation process. During implementation, Customer shall elect optional add-on services that supplement the SaaS Applications (the "Add-On" Services). Customer shall have access to the HRIS Services during implementation. After completion of implementation, any subsequent changes Customer requests to the configuration of the HRIS Services will be at cost.

6. Intellectual Property. The right to use NEOGOV HRIS Services is granted to Customer for the sole purpose of utilizing HRIS Services as provided in this Agreement. All HRIS Services licensed to Customer hereunder are the licensed and/or owned property of NEOGOV and embody the proprietary trade secret technology of NEOGOV and/or its affiliated third-party providers (if any) and are protected by copyright laws, international copyright treaties, as well as other intellectual property laws. Customer receives no rights to any HRIS Services or any intellectual property of NEOGOV or its affiliated third-party providers, except as expressly stated herein.

7. Nondisclosure and Privacy.

   a) Confidentiality. All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own Confidential Information. The receiving party will limit access to Confidential Information to its affiliates, employees and authorized representatives with a need to know and will instruct them to keep such information confidential. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (ii) as appropriate and with prior notice where practicable, to respond to any summons or subpoena or in connection with any litigation, and (iii) relating to a specific employee, to the extent such employee has consented to its release. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, NEOGOV may retain information as may be required by applicable law for regulatory purposes or in back-up files, provided that NEOGOV's confidentiality obligations hereunder continue to apply.

   b) Protection of Customer Files and Transmission of Data. NEOGOV will employ commercially reasonable storage and reasonable precautions to prevent the loss of or alteration to Customer's data files in NEOGOV's possession, but NEOGOV does not undertake to guarantee against any such loss or alteration. NEOGOV is not, and will not be, Customer's official record keeper of source documentation. Customer will, to the extent it deems necessary, keep copies of all source documents of the Customer Data delivered to NEOGOV. In the event Customer requests NEOGOV provide any employee or plan participant information to any third party or to any non-U.S. location, Customer represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable Laws.

   c) Customer agrees that NEOGOV may disclose certain Customer Data to its affiliated third parties to the extent necessary for NEOGOV to perform the services and to provide Customer and/or Customer's employees access to certain services.

8. Disclaimer of Warranties.

   a) NEOGOV Not Fiduciary Advisor. Customer acknowledges that, in making HRIS Services available, NEOGOV is not acting as an investment advisor, broker-dealer, insurance agent, attorney or intermediary or a financial or benefit planner. NEOGOV is not providing any benefits or information related thereto.

   b) HRIS Services Do Not Constitute Legal or Other Advice. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE HRIS SERVICES PROVIDED HEREUNDER (INCLUDING, BUT NOT LIMITED TO, ANY AND ALL INFORMATION, MATERIALS, AND FORMS) ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON

BY CUSTOMER AS EITHER LEGAL, FINANCIAL, INSURANCE OR TAX ADVICE. TO THE EXTENT CUSTOMER REQUIRES ANY SUCH ADVICE, CUSTOMER REPRESENTS THAT IT WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING OR OTHER PROFESSIONALS. CUSTOMER SHOULD REVIEW AND COMPLY WITH APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO THE LAWS IN ALL JURISDICTIONS WHERE CUSTOMER OPERATES OR HAS EMPLOYEES, BENEFICIARIES, AGENTS, FORMER EMPLOYEES OR OTHER RECIPIENTS OF PAYMENTS , OR ANY PERSONALLY IDENTIFIABLE INFORMATION ON ANY INDIVIDUAL, AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE.

c) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SCHEDULE H, THE HRIS SERVICES AND ALL EQUIPMENT PROVIDED (IF ANY) ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE HRIS SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE HRIS SERVICES, ANY CUSTOM PROGRAMS CREATED BY NEOGOV OR ANY THIRD-PARTY SOFTWARE DELIVERED BY NEOGOV, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE HRIS SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED. NEOGOV FURTHER DISCLAIM ANY WARRANTY THAT THE RESULTS OBTAINED THROUGH THE USE OF HRIS SERVICES, ANY CUSTOM PROGRAMS CREATED BY NEOGOV OR ANY THIRD-PARTY SOFTWARE DELIVERED BY NEOGOV WILL MEET CUSTOMER'S NEEDS.

d) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE HRIS SERVICES AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

9. Limitation of Liability.

a) Waiver. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY, OR TO ANY OTHER PERSON OR ENTITY, ARISING OUT OF OR RELATED TO THIS AGREEMENT, UNDER ANY CIRCUMSTANCE, CAUSE OF ACTION OR LEGAL OR EQUITABLE THEORY OF LIABILITY, OR DUE TO ANY EVENT WHATSOEVER, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF BUSINESS OPPORTUNITY OR PROFIT, CUSTOMER'S USE OR INABILITY TO USE THE SERVICES, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION).

b) Maximum Liability. WITHOUT LIMITATION OF 9(A) OR ANY ADDITIONAL LIABILITY LIMITATIONS IN ANY ANNEX HERETO, EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, THE AGGREGATE LIABILITY OF EITHER PARTY DURING ANY CALENDAR YEAR FOR ANY AND ALL CLAIMS AND DAMAGES OF ANY TYPE OR CHARACTER MADE BY THE OTHER PARTY, OR ANY THIRD PARTY, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO THE LESSER OF (I) THE AMOUNT OF ACTUAL DAMAGES INCURRED BY SUCH PARTY OR (II) THE AMOUNTS PAID BY CUSTOMER DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE CLAIM FOR THE HRIS SERVICE THAT GAVE RISE TO SUCH CLAIM. NEOGOV WILL ISSUE CUSTOMER CREDIT(S) EQUAL TO THE APPLICABLE AMOUNT AND ANY SUCH CREDIT(S) WILL BE APPLIED AGAINST FUTURE HRIS SERVICE FEES. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN

ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

10. Indemnification.

a) Customer Indemnification. To the extent authorized by the laws and constitution of the state in which customer resides, and subject to the terms and conditions set forth in Section (b) (Exceptions and Limitations on Indemnification), Customer shall indemnify and hold harmless, NEOGOV and its managers, officers, directors, employees, agents, Fulfillment Partners, NACHA, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorneys' fees (collectively, "Losses"), arising from or claimed to have arisen from, assessed in or otherwise incurred in connection with:

i. Any suit or cause of action brought by any Customer employee or plan participant, dependents of such employee or plan participant, and/or administrators or sponsors of any benefits plan, or others who have or claim to have an interest in or coverage under any Customer plan or ERISA generally, which suit or cause of action is related to or arising from this Agreement or use of the Benefits Module, by Customer, or any Customer employee or plan participant;

ii. Any suit or cause of action arising out of or relating to (a) any and all acts or omissions of Customer, or benefits plan groups, sponsors or administrators and their officers, directors, shareholders, employees, and agents or plan participants, (b) positions taken by Customer or benefit plan groups, sponsors or administrators, whether prior to or during the term of this Agreement, which are relied upon by NEOGOV or which form the basis for any services or work product of NEOGOV hereunder;

iii. Any instruction, approval, election, decision, action, inaction, omission or non-performance by Customer or benefit plan groups, sponsors or administrators, or information provided by benefit plan groups, sponsors or administrators to NEOGOV hereunder;

iv. Any error, omission, inadequacy, delay caused by erroneous, untimely, or incomplete deliveries or transmissions of data provided by Customer or any employees, plan participants, agents, other administrators or sponsors of Customer to NEOGOV;

v. Any errors, omissions, or delays that are the result in whole or in part of any unauthorized act at Customer's place of business;

vi. Any third-party claim of any kind against NEOGOV arising from access or use by Customer or Customer agent, employee, or plan participant of the Benefits Module, in an inappropriate, unauthorized or otherwise wrongful manner;

vii. Any negligent, fraudulent, criminal, or willful misconduct by Customer or any Customer agent, employee, or payee;

viii. Customer's failure to comply with any provision of the NACHA rules that results, either directly or indirectly, in the violation by NEOGOV or Fulfillment Partner of the Federal Electronic Fund Transfer Act or Federal Reserve Board Regulation E;

ix. Customer's failure to comply with all Laws including, but not limited to, the U.S. Patriot Act, the Unlawful Internet Gambling Enforcement Act, the Bank Secrecy Act, and Anti Money Laundering Laws; or

x. Breach of any warranty made to NEOGOV under this Agreement.

b) Exceptions and Limitations on Indemnification.

i. Exceptions. Notwithstanding anything to the contrary in this Agreement, Customer is not obligated to indemnify, or hold harmless Indemnified Party against any claim (whether direct or indirect) if

such claim or corresponding Losses arise out of or result from Indemnified Party's: (i) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or (ii) bad faith failure to materially comply with any of its material obligations set forth in this Agreement.

ii. Maximum Aggregate Indemnification. Customer is not obligated to reimburse Indemnified Party under this Section (Indemnification) for any Losses that exceed, in the aggregate, three times (3X) the total amount paid or payable by Customer to NEOGOV under this Agreement in the twelve (12) month period preceding the event giving rise to the indemnification claim, (the "Cap").

c) Sole Remedy. THIS SECTION (INDEMNIFICATION) SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF THE CUSTOMER AND THE SOLE AND EXCLUSIVE REMEDY FOR THE INDEMNIFIED PARTY FOR ANY DAMAGES COVERED UNDER THIS SECTION (INDEMNIFICATION).

11. Miscellaneous.

a) Customer's Vendors. To the extent that the delivery of HRIS Services requires Customer third party vendors to send and/or to receive data from and to NEOGOV, Customer shall at its own expense cause its third-party vendors to send and/or to receive data from and to NEOGOV and represents and warrants that such third-party vendors shall do so in compliance with applicable Law. Customer shall reimburse NEOGOV for any costs NEOGOV is required to bear in connection with or arising out of any such transmissions of data from and/or to such third-party vendors including any costs associated with any failure by Customer third party vendors to comply with applicable laws.

b) Force Majeure. Excluding any payment obligations to NEOGOV as provided hereunder, any party hereto will be excused from performance under the Agreement for any period of time that the party is prevented from performing its obligations hereunder as a result of an act of God, war, utility or communication failures, or other cause beyond the party's reasonable control. Both parties will use reasonable efforts to mitigate the effect of a force majeure event.

c) Waiver. The failure of either party at any time to enforce any right or remedy available to it under this Agreement or otherwise with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

d) Severability. If any of the provisions of this Schedule H shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Customer and NEOGOV shall be construed and enforced accordingly.

e) Relationship of the Parties. The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of this Schedule H and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith.

f) Limitation of Claims. No action arising under or in connection with this Schedule H, regardless of the form, may be brought by Customer more than three (3) years after Customer becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the cause of action.

g) Use of Third Parties. NEOGOV may designate any third-party affiliate, or other agent or subcontractor (each a "Fulfillment Partner"), without notice to, or the consent of, Customer, to perform such tasks and functions to complete any Services.

**Annex 1 – Core HR & Benefits Additional Terms**

The following terms and conditions supplement the HRIS General Terms and Conditions and shall apply to the extent that Customer elects to receive or utilizes NEOGOV Core HR, and HRIS Services involving benefits administration (the "Benefits Module").

1. Benefits Module Representative. Customer shall designate one or more persons who shall serve as NEOGOV's designated contact for the Benefits Module (the "Benefits Representative"). Customer represents and warrants to NEOGOV that the Benefits Representative has, and shall at all times have, the requisite authority to transmit information, directions and instructions on behalf of Customer, each "plan administrator" defined in Section 3(16)(A) of the ERISA and Section 414(g) of the Code and, if applicable, each "fiduciary" (as defined in Section 3(21) of ERISA) of each separate employee benefit plan covered by the Benefits Module (each, a "Benefit Plan"). The Benefits Representative also shall be deemed to have authority to issue, execute, grant, or provide any approvals, requests, notices, or other communications required or permitted under this Agreement or requested by NEOGOV in connection with the Benefits Module.

2. Use of the Benefits Module.

   a) HR Users. Customer shall authorize an administrator to input information and access certain information relating to (i) the benefits offered by Customer and (ii) Customer's employees/plan participants and their benefit options and elections as well as view certain personal and company information regarding company employees. The Benefits Module permits Customer's employees/plan participants to make various benefits elections and to view and update certain personal and company information. It is Customer's responsibility to submit instructions and information relating to the Benefits Module and to verify the accuracy and completeness of all such instructions and information submitted by Customer, employees, and plan participants.

   b) NEOGOV Not Fiduciary Advisor. Customer acknowledges and agrees that, in making the Benefits Module available, NEOGOV is not acting as an investment advisor, broker-dealer, insurance agent, attorney or intermediary or a financial or benefit planner. NEOGOV is not providing any benefits or any information related thereto; Customer is responsible for making available all benefits and information related thereto referenced or included in the Benefits Module.

   c) NEOGOV's Health Care Clearinghouse Status. Customer expressly acknowledges and agrees that NEOGOV is not a "Health Care Clearinghouse" within the meaning of HIPAA, and Customer shall not request or otherwise require NEOGOV to act as such.

   d) Business Associate Amendment. In the event Customer believes it is a "Covered Entity" or "Business Associate" and, to the extent that NEOGOV receives, maintains, transmits, uses or discloses Protected Health Information pursuant to the federal Health Insurance Portability and Accountability Act ("HIPAA"), the Health Information Technology for Economic and Clinical Health Care Act ("HITECH"), the U.S. Department of Health and Human HRIS Services regulations entitled "Standards for Privacy of Individually Identifiable Health Information" ("Privacy Rule"), Security Standards for the Protection of Electronic Protected Health Information ("Security Rule") and the Breach Notification for Unsecured Protected Health Information ("Breach Notification Rule"), the benefit services provided hereunder are subject to additional Subcontractor Business Associate Agreement either provided to Customer or located at https://www.neogov.com/service-specifications which are incorporated herein and may be modified from time to time and as required by law.

3. Additional Termination Rights. NEOGOV may terminate Core HR, the Benefits Module, or this Agreement immediately upon written notice to the Customer upon (a) the failure of Customer to maintain its Benefit Plan(s) in compliance with ERISA or other applicable laws or regulations or (b) NEOGOV's determination that the exercise of any of the rights granted hereunder or the continued performance by NEOGOV of its obligations under this Agreement would cause NEOGOV to violate any applicable international, federal, state or local law(s) and/or regulation(s).

4. ERISA. The terms of this Section only shall apply to the extent Customer uses services governed, in whole or in part, by the Employee Retirement Income Security Act of 1974, as amended ("ERISA")

   a) NEOGOV's Non-Fiduciary Status. Customer expressly acknowledges and agrees that NEOGOV is not an "Administrator", "Plan Sponsor," or a "Plan Administrator" as defined in Section 3(16)(A) of ERISA, and Section 414(g) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively, nor is NEOGOV a "fiduciary" within the meaning of ERISA Section 3(21), and Customer shall not request or otherwise require NEOGOV to act as such. NEOGOV shall not exercise any discretionary authority or control respecting management of any of Customer's benefit or welfare plans ("Plan" or "Plans") or management or disposition of any of Customer's benefit or welfare Plan assets. NEOGOV shall not render investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of any Plan, nor does NEOGOV have any authority or responsibility to do so. NEOGOV has no discretionary authority or discretionary responsibility in the administration of the Plan(s).

   b) Use of NEOGOV'S Name. Customer or the Plan Administrator must obtain the prior written consent of NEOGOV to insert any references to NEOGOV or its affiliates, or to NEOGOV Services, with respect to any communication or document pertaining to a Plan prepared by Customer, or on behalf of Customer (other than documents prepared by NEOGOV), unless the reference only identifies NEOGOV as a service provider or the reference is required in a filing or document required by ERISA or any other applicable law. Without limiting the foregoing, in no event may Customer or the Plan Administrator identify or refer to NEOGOV as "administrator", "plan administrator", "third-party administrator", "plan sponsor", "fiduciary", "plan fiduciary" or similar title.

5. Direct to Carrier Services. Customer may elect direct to insurance carrier services (each a "Carrier Link") at its option, each for an additional cost. Reconfiguration of existing Carrier Links, establishing new Carrier Links, and additional elections are available for an additional fees and may be completed by NEOGOV at NEOGOV's then current rates. NEOGOV, or its Fulfillment Partners will electronically transmit employee data, including employee benefits enrollment data, to Customer's carriers or other third parties authorized by Customer, and Customer authorizes NEOGOV and its Fulfillment Partners, to

provide such transmission on Customer's behalf. NEOGOV's ability to transmit data is subject to the provision of a current functional interface between HRIS Services and the carriers' systems. NEOGOV will not be obligated to transmit Customer's data to carriers if at any time Customer's carriers fail to provide the proper interface as solely determined by NEOGOV. If Customer requires development of any special or customized interfaces in order to transmit such data, all work performed by NEOGOV to create such interfaces will be at NEOGOV's then current fees for such services. Customer shall be responsible for promptly reviewing all records of transmissions to carriers and other reports prepared by NEOGOV for validity and accuracy according to Customer's records, and Customer will notify NEOGOV of any discrepancies promptly after receipt thereof.

**Annex 2 – NEOGOV Payroll & Time and Attendance**

The following terms supplement the HRIS General Terms and Conditions and shall apply to the extent that Customer elects to receive or utilize NEOGOV Payroll, Tax Services of which are a component of NEOGOV Payroll, or NEOGOV Time & Attendance.

1. Payroll Processing and Tax Filing. NEOGOV will deliver (i) payroll administrative services to Customer through NEOGOV's payroll software as a service (the "Payroll Module"), (ii) at Customer's election, direct deposit administration to those employees electing such service via ACH processing (collectively referred to as the "Payroll Services"), remit payroll taxes on Customer's behalf to those federal, state, and local taxing jurisdictions designated by Customer, and file related tax returns (such remitting of payroll taxes and filing of related tax returns, the "Tax Services"). At NEOGOV's then current fees, NEOGOV may also process calendar year-end W-2 forms for Customer's employees and Forms 1099-MISC. NEOGOV will, and Customer hereby authorizes NEOGOV and Fulfillment Partners to, initiate debits or reverse wire transfers prior to each paydate for Customer's payroll ("Paydate") and credit the bank accounts of Customer's employees and others to be paid by Customer by direct deposit payment on Paydate (a "Payee"), all in compliance with the operating rules of the National Automated Clearing House Association and the terms and conditions hereof.

2. Documentation and Required Information.

   a) Authorization Forms; Proof of Name. Customer will be required to complete and submit the following documents in order to use the payroll processing components of Payroll Module: (i) power of attorney forms for each jurisdiction in which Customer will use the HRIS Services (the "POA"), (ii) Authorization to Debit/Credit Bank Account(s)/Obtain Bank Account Information (the "Authorization Form"), (iii) an IRS proof of legal name/FEIN and (iv) any authorization form for Fulfillment Partner authorizing debiting and crediting Customer's bank account.

   b) Proof of Existence. Customer will provide NEOGOV, and authorize NEOGOV to provide to Fulfillment Partner, Customer's (i) legal name, and "doing business as" name if applicable, (ii) physical street address (not a PO Box or PMB), (iii) phone number, (iv) Primary Business Activity (Nature of Business), (v) Duns Number (if one exists), (vi) Tax ID Number, (vii) estimated transaction count and dollar volume, (viii) number of employees, and (ix) supporting evidence via (A) either certified Articles of Incorporation, IRS EIN Letter, unexpired government issued business license, trust instrument or other government-issued evidence showing legal existence, and (B) either a voided business check, copy of utility bill, other evidence of legal name, physical address, DBA Name, or Tax ID.

   c) Permitted Disclosure Authorization. Customer hereby authorize NEOGOV to (i) provide Customer's data to Fulfillment Partner for the purposes of performing the Payroll and Tax Services, and (ii) take such action as is necessary to perform the Payroll and Tax Services.

   d) Time and Attendance Information. Prior to commencement of Time and Attendance Services, Customer shall provide to NEOGOV all necessary information and guidance relating to its time and attendance policies and guidelines and coordinate with NEOGOV to establish standards for NEOGOV in its execution of the Time and Attendance Services. Customer agree to promptly comply with NEOGOV's request for such additional documentation and understand that the Payroll or Tax Services may be impaired or delayed if Customer do not.

3. Customer Obligations, Representations, and Warranties. Customer acknowledges that NEOGOV's obligation to perform the HRIS Services is subject to Customer's obligations, representations, and warranties. Customer represents and warrants the following:

   a) Processing Authorization. Customer authorizes NEOGOV to process payroll entries on behalf of Customer. Customer acknowledges that NEOGOV is acting solely in the capacity of data processing agent and is not a source of funds for Customer. Customer shall be liable for each payroll related transaction initiated by NEOGOV on behalf of Customer, whether by electronic entry or wire transfer. NEOGOV, or its Fulfillment Partners, electronically transmit employee data, including employee payroll data, to designated third parties, and Customer authorizes NEOGOV and its Fulfillment Partners, to provide such transmission on Customer's behalf. Customer agrees that NEOGOV maintains specific

Fulfillment Partner(s) for NEOGOV Payroll and Tax Services fulfillment during the term of and in accordance with the Agreement and that Customer shall not, directly or indirectly, supplement, substitute, or otherwise modify the provision of such Payroll and Tax Services without terminating this Agreement.

b) Information Accuracy; Reliance; Change Notice. Customer shall input, maintain, and verify the accuracy of any and all information, including payroll and tax information, and Customer shall continually ensure that such information is kept complete, accurate, delivered on time, and up to date at all times. Customer acknowledges that NEOGOV and NEOGOV Fulfillment Partners will rely on the accuracy of this information as it performs its requested functions. NEOGOV shall not be responsible for any delays or inaccuracies in Customer's delivery of data to NEOGOV. Customer will notify NEOGOV immediately of any change in the processing information, including the Authorization Form. Customer will also obtain a voluntary written authorization from any Payee prior to the initiation of the first credit to the account of such Payee and shall provide upon demand a copy of such written authorization to NEOGOV.

c) Processing Deadlines. Unless otherwise agreed to by the Parties, Customer will: (a) complete and execute all required documentation so that NEOGOV or Fulfillment Partner may withdraw funds from Customer's account to process direct deposit payrolls, (b) input or report all relevant payroll data for ACH transmissions to NEOGOV no later than 2:00 p.m. Pacific Standard Time (PST) three (3) banking days prior to each Paydate, (c) input or report all other relevant payroll data to NEOGOV no later than 2:00 p.m. Pacific Standard Time (PST) two banking days prior to each Paydate, (d) have available in Customer's bank account good, collectable funds in a sufficient amount to cover funding disbursements, checks, direct deposits, tax payments, or recurring payments to third parties no later than the opening of business (i) two banking days prior to each Paydate for debits by electronic entry, and (ii) two banking days prior to each Paydate for funding by wire transfer, and (e) compare all reports on credits or debits initiated by Customer to NEOGOV's records and promptly notify NEOGOV of any discrepancies. In the event Customer does not meet the deadlines specified herein, NEOGOV shall make reasonable efforts to complete processing prior to the Paydate; however, NEOGOV makes no representation or warranty that payroll will process by the Paydate where Customer fails to provide all required documentation by the deadline. Additional Fees may apply for expedited processing.

d) Customer Review. Within seven (7) business days after receipt from NEOGOV, Customer will promptly conduct a detailed review of all payroll and tax registers produced by NEOGOV or Fulfillment Partners for accuracy, validity and conformity with Customer's records. Customer will promptly notify NEOGOV of any error or omission discovered by Customer in any payroll registers, disbursement records, payroll or tax reports and documents produced by NEOGOV or Fulfillment Partners, or any discrepancy between the information provided by NEOGOV or Fulfillment Partners, and Customer's records. Customer will not rely on any record, report or document containing any discovered error, omission or discrepancy until such error, omission or discrepancy, has been corrected. Customer will be responsible for any consequences resulting from instructions Customer may give to NEOGOV or Fulfillment Partners with regard to HRIS Services or any payroll registers, disbursement records, reports and documents prepared by NEOGOV based on information provided by Customer.

e) Document Retention. Customer will retain copies of all information entered into or generated by the HRIS Services and Customer shall be solely responsible for maintaining such data, and all tax records, in accordance with any legal obligations.

f) Special Processing. Customer understands and acknowledges that administering processing dates beyond standard payroll dates, and correcting, amending, or cancelling a payroll entries or mistaken reversals (collectively "Special Processing"), are complicated, highly manual, and may result in additional expenses, tax consequences, and penalties. Therefore, Special Processing may be subject to additional NEOGOV Fees.

g) Recovery Cooperation. Customer agrees to undertake reasonable efforts to cooperate with NEOGOV and any other parties involved in processing any transactions hereunder to recover funds credited to any employee as a result of an error made by Customer, NEOGOV, or Fulfillment Partners, or any other loss recovery efforts and in connection with any actions that the relevant party NEOGOV may be obligated to defend or elects to pursue against any third-party.

h) Compliance with Laws. Customer acknowledges that, in order to put into effect the Payroll Services which include ACH transactions, Customer will be the Originator of the ACH transactions and will follow and be bound by the rules for ACH Originators as adopted from time to time by the NACHA. Customer agrees that it has assumed the responsibilities of an Originator under the ACH Rules and acknowledges that entries may not be initiated in violation of the laws of the United States. Customer agrees to be compliant with Laws. Customer will comply with all Laws including, but not limited to, the U.S. Patriot Act, the Unlawful Internet Gambling Enforcement Act, the Bank Secrecy Act, and Anti Money Laundering Laws.

4. Effect of Failed Funds. If Customer fails to pay the taxes, direct deposits, employee payments or other charges, including fees, then Customer agrees to pay NEOGOV for all costs of collection, including reasonable attorney fees, which may be associated

with collection of the amounts due. NEOGOV also may, at its sole option, terminate this Agreement and withhold or suspend any work in progress. This is in addition to any other rights NEOGOV may have under this contract or under law. NEOGOV also reserves the rights to reverse employee transactions and /or tax payments for which funds have not been received from Customer

5. Rejection of Entries. NEOGOV shall reject any file or entry that does not comply with the requirements of this Agreement, the NACHA Rules, or uses an improper SEC Code, or if NEOGOV suspects fraud or illegal or improper activity. NEOGOV shall have no liability.

6. Resolution of Error Exceptions. For the purposes of this Section, the term "error exception(s)" shall mean any data requirements within the HRIS Services that, based on Customer's configuration, have been assigned a severity level designation of "error"; such designation shall create a requirement for an operational task to be completed by Customer in order to proceed with Customer's processing, including processing of Customer payroll for the designated period. Failure to resolve an error exception will prevent Customer's payroll from being processed as scheduled. NEOGOV is not obligated to clear any such error on behalf of Customer.

7. NEOGOV Errors and Omissions Warranty. NEOGOV warrants it will use commercially reasonable efforts to properly transmit the appropriate reports, data, or filings based on the information provided in Customer's HRIS Services. In addition, NEOGOV will use commercially reasonable efforts to rectify any Customer report, data, or filing error, including any deposit, corrected or reversal debit or credit entry, for which NEOGOV is solely responsible; provided that, in each case Customer advises NEOGOV no later than ten (10) business days after the occurrence of such errors or omissions. This is Customer's sole remedy in the event of a breach of the foregoing warranty. Notwithstanding the foregoing, Customer will be solely responsible for payment of all tax penalties, interest, and additional NEOGOV fees if: (i) the penalty is the result of incorrect, inaccurate, or incomplete information Customer provides to NEOGOV, (ii) Customer has insufficient funds in Customer's designated bank account to process HRIS Services, or (iii) a party other than NEOGOV, or a NEOGOV Fulfillment Partner, fails to perform services in a timely manner.

8. Additional Liability and Warranty Limitations. This Section 8 shall supplement Section 8 (Disclaimer of Warranties) and Section 9 (Liability Limitations) of the HRIS General Terms and Conditions.

   a) General Waiver. NEOGOV, ITS PROVIDERS, AND FULFILLMENT PARTNERS, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS OF EACH WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES OR UNDER ANY THEORY OF RECOVERY (WHETHER IN CONTRACT OR TORT OR OTHERWISE) FOR (i) ANY FEES, COSTS, CHARGES, OR ANY DAMAGES CAUSED BY LOST SHIPMENT OR TRANSMISSION OF CHECKS OR ANY FORM OF DISBURSEMENT INCLUDING, BUT NOT LIMITED TO, STOP PAYMENT FEES, REPRINTING OR RETRANSMISSION COSTS, SHIPPING CHARGES, OR CONSEQUENTIAL EXPENSES AND DAMAGE, (ii) ANY CHARGES, FEES, OR EXPENSES INCURRED BY CUSTOMER, CUSTOMER'S AGENTS, OR EMPLOYEES WHICH ARE DUE TO LATE PAYCHECKS, REGARDLESS OF WHETHER SUCH PAYCHECKS ARE TO BE PREPARED AND DELIVERED BY NEOGOV, FULFILLMENT PARTNERS, OR BY CUSTOMER, (iii) NON-PERFORMANCE OF HRIS SERVICES WHICH HAVE BEEN SUSPENDED DUE TO FAILURE OR DELAY IN PAYMENT OF FEES OWED UNDER THIS AGREEMENT, AND (IV) FOR ANY DAMAGES TO CUSTOMER ARISING FROM OR IN CONNECTION WITH A DECISION BY NEOGOV TO SUBMIT FILES FOR PROCESSING AFTER CUSTOMER HAS FAILED TO CLEAR OUTSTANDING ERROR EXCEPTIONS WITHIN THE SPECIFIED DEADLINE.

   b) Disclaimer of Events Outside NEOGOV Control. NEOGOV, NEOGOV OFFICERS, DIRECTORS, EMPLOYEES, AND FULFILLMENT PARTNERS WILL NOT BE LIABLE FOR ANY LOSS THAT RESULTS FROM ANY CAUSE OVER WHICH NEOGOV DOES NOT HAVE CONTROL. SUCH CAUSES INCLUDE, BUT ARE NOT LIMITED TO: (1) THE FAILURE OF ELECTRONIC OR MECHANICAL EQUIPMENT OR COMMUNICATION LINES, (2) TELEPHONE OR OTHER INTERCONNECT PROBLEMS, (3) CONFIGURATION PROBLEMS, OR THE INCOMPATIBILITY OF COMPUTER HARDWARE OR SOFTWARE, (4) THE FAILURE OR UNAVAILABILITY OF INTERNET ACCESS, (5) PROBLEMS WITH INTERNET SERVICE PROVIDERS OR OTHER EQUIPMENT OR SERVICES RELATING TO CUSTOMER'S COMPUTER OR NETWORK, (6) PROBLEMS WITH INTERMEDIATE COMPUTER OR COMMUNICATIONS NETWORKS OR FACILITIES, (7) PROBLEMS WITH DATA TRANSMISSION FACILITIES OR CUSTOMER'S TELEPHONE, CABLE, OR WIRELESS SERVICE, (8) UNAUTHORIZED ACCESS, THEFT, HACKERS, OPERATOR ERRORS, OR (9) ACTS OF GOD, INCLUDING WITHOUT LIMITATION, NATURAL DISASTER, FIRE, TERRORISM, LABOR STOPPAGE, WAR, TERRORISM, MILITARY HOSTILITIES, OR CRIMINAL ACTS OF THIRD PARTIES. NEOGOV IS ALSO NOT RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER, SOFTWARE, MODEM, TELEPHONE, WIRELESS DEVICE, OR OTHER PROPERTY RESULTING IN ANY WAY FROM CUSTOMER'S USE OF THE HRIS SERVICES. ANY SERVICE LEVEL COMMITMENT SET FORTH IN THE AGREEMENT WILL NOT APPLY TO THE PAYROLL OR TIME AND ATTENDANCE SERVICES.

c) Errors & Omissions. NEOGOV SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY ANY ERRORS OR OMISSIONS IN ANY DATA, CONTENT, OR OTHER INFORMATION PROVIDED THROUGH THE HRIS SERVICES.

9. Additional Termination Rights.

a) Termination for Default. Customer's breach of the NACHA Rules, violation of any applicable federal or state regulation, or failure to maintain account funding as required by this Agreement (and as a result any debit to Customer's account is returned), shall each constitute a default. Upon default, NEOGOV may suspend the HRIS Services or terminate this Agreement in a manner that permits NEOGOV to comply with the NACHA Rules. Termination is effective immediately upon written notice of such termination to Customer. The right to suspend the HRIS Services and/or terminate this Agreement is in addition to any other rights and remedies provided under this Agreement or otherwise under law.

b) Effect of Termination. No termination of this Agreement shall release Customer from any obligation to pay NEOGOV any amount that has accrued or becomes payable at or prior to the date of termination. No suspension of HRIS Services shall release Customer from any obligation to pay NEOGOV any amounts due under this Agreement. Customer shall not be entitled to any refund of any amounts paid to NEOGOV as a result of a termination based on Customer's default. Notwithstanding the termination of this Agreement, the Parties shall continue to comply with the NACHA Rules with respect to transmissions pursuant to this Agreement.

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, City Clerk |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Possible Adoption**: City Council Rules of Procedure

**STAFF RECOMMENDED ACTION:**

Approve the City Council Rules of Procedure dated April 6, 2021.

**Executive Summary:**

As changes are made or procedures require clarification, City Council will periodically make amendments to the City Council Rules of Procedure. A list of proposed amendments was discussed by the City Council at their Regular Meeting of February 9, 2021, and those changes are reflected in the attached document.

**Financial Impact:**

None.

**Policy Impact:**

None.

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

Effective Governance

**Previous Council Decision on This:**

The City Council discussed the proposed changes at their Regular Meeting of February 9, 2021.

**Background/History:**

Below is a recap of the proposed amendments discussed on February 9, 2021:

- Section 3.01 Regular Meetings
  - Change the regular meeting date in August to allow the Council to hold their regular meeting on the third or **fourth** Tuesday of August following the summer break.
  - Change the meeting times of the Regular Council Meetings to 3:00 p.m. and 5:00 p.m.
- Section 5.01 - Regular Meeting Agenda
  - Add "Legislative Update" to the Regular Meeting Agenda Order of Business template as needed during the legislative session.
- Add Section 5.02 "Work Session Agenda"
  - Designates an order of business for work sessions.

- Clarify language in Sections 9.01 and 9.02 relating to public participation protocols.
- Add Section 11.07 "Meetings with State and Federal Delegation and Lobbying Trips"

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**Attachments:** 2021 Rules of Procedure

# FLAGSTAFF CITY COUNCIL RULES OF PROCEDURE

~~FEBRUARY 19, 2019~~APRIL 6, 2021

**RULES OF PROCEDURE**
for the
**FLAGSTAFF CITY COUNCIL**

## Rule 1
## GENERAL RULES

[Flagstaff City Charter Art. II, §14]

### 1.01 Rules of Procedure; Journal

The Council shall determine its own rules and orders of business and shall provide for keeping a record of its proceedings. The record of proceedings shall be open to public inspection.

### 1.02 Written Rules, Order of Business, and Procedure

These Rules of Procedure of the Council shall be available to all interested citizens.

## Rule 2
## CODE OF CONDUCT & CONFLICTS OF INTEREST

### 2.01 Code of Conduct

City Councilmembers occupy positions of public trust. All actions and business transactions of such officials dealing in any manner with public funds shall be in compliance with all laws or ordinances establishing a code of conduct for public officials or pertaining to conflicts of interest of public officials or employees.

### 2.02 Participation and Voting Bar [A.R.S. §38-503]

Any Councilmember prohibited from participating or voting on any matter before the City by the state conflict of interest laws shall make known such conflict on the record of any meeting where the item is discussed, and shall not enter into discussion, debate, or vote on such matter.

## Rule 3
## COUNCIL MEETINGS

[Flagstaff City Charter Art. II, §12 and 13]

### 3.01 Regular Meetings

The City Council shall hold regular meetings on the first and third Tuesday of January, February, March, April, May, June, September, October, November, and December, and on the first Tuesday of July and third or fourth Tuesday of August unless a majority of the Council decides to postpone or cancel such meeting. No change shall be made in regular meeting times or place without a published seven day notice.

Regular meetings shall consist of a ~~4:30~~3:00 p.m. and ~~6:00~~5:00 p.m. meeting. The ~~4:30~~3:00 p.m. portion of the meeting will include Approval of Minutes, Appointments, Liquor License Hearings, Consent Items, ~~and~~ Routine Items, and Legislative Updates. At the agenda review work session one week prior to the regular Council Meeting, the City Council may direct that any of the agenda items be moved to the ~~4:30~~3:00 p.m. or ~~6:00~~5:00 p.m. portion of the meeting. At the ~~4:30~~3:00 p.m. meeting, the Council may vote to defer any item on that portion of the agenda to the ~~6:00~~5:00 p.m. meeting.

The ~~6:00~~5:00 p.m. meeting is intended for items of specific interest to the community or items that may require extended discussions, as well as advertised public hearings. The agenda shall include carryover items from the ~~4:30~~3:00 p.m. meeting, public hearings, regular agenda items, and discussion items.

If the day fixed for any regular meeting of the Council falls upon a day which the City observes as a legal holiday, the meeting may be cancelled or held at a time and date designated by the Council. All regular meetings of the Council shall be held in the City Hall Council Chambers. No change shall be made in regular meeting times without a published seven-day notice. However, the Mayor or City Manager may change the Council meeting location to adjust to a specific need for additional space required to accommodate a large citizen turnout, upon giving the public notice of such change pursuant to notice requirements. All regular meetings of the Council shall be open to the public.

### 3.02 Special Meetings

Special meetings may be called by the City Manager, three or more members of the Council, or by the Mayor. The Council may hold any other meetings it deems necessary at such times and locations as it determines appropriate under the circumstances for the purposes of addressing specific issues, specific neighborhood's concerns, strategic planning, budgeting, or for any other purpose allowed by law, so long as notice of such meeting has been given in accordance with the Arizona Open Meeting Law. The City Clerk shall prepare written notice of special sessions, stating time, place, and agenda; this notice shall be given personally, or by telephone, to each member of the Council, the City Manager, and the City Attorney, and shall be posted no later than twenty-four hours in advance of the special meeting. If an emergency requires an earlier meeting of the Council than allowed by this rule, Rule 3.05 pertaining to emergency meetings shall be followed.

### 3.03 Work Sessions and Agenda Review

Work sessions are public meetings held for the following purposes: (1) briefing Councilmembers on items included on the Council's regular meeting agenda, (2) discussion of long range plans and programs for which no immediate action is required, (3) detailed discussion of matters which may soon be placed on a regular meeting agenda, and (4) exchange of information between the staff and Council. No formal vote shall be taken on any matter under discussion, nor shall any Councilmember enter into a commitment with another respecting a vote to be taken subsequently in a public meeting of the Council, providing that nothing herein shall prevent the Council from giving staff direction on any matter under discussion. Any formal action, however, must be scheduled for Council action at a regular or special Council meeting.

The City Council may hold work sessions every second and fourth Tuesday of each month at 6:00 p.m. When there are five Tuesdays in a month, work sessions will be held on the

second and fifth Tuesdays, and the fourth Tuesday will be available for holding a work session, either at City Hall or throughout the community. No meetings will be held on the last Tuesday of December, unless otherwise agreed to by a majority of the Council.

The work session held the Tuesday prior to a regular Council meeting shall include a review of the action items on the next week's regular Council agenda. In the agenda review, the Council may discuss items on the next week's agenda and give direction to the City Manager as to additional information needed. Public comment need not be taken, but may be accepted, at the discretion of the Chair.

No work sessions will be held during the summer break unless called as a special meeting as provided in Section 3.02 of these Rules.

### 3.04 Executive Sessions [A.R.S. §38-431.03]

The Council may meet in, or recess into, executive session for all purposes allowed by law. The City Manager shall schedule any such meetings on the second and fourth Tuesdays at 4:00 p.m., or earlier as the need arises, prior to work sessions, but an executive session may be scheduled at any other time where circumstances require more immediate action. When there are five Tuesdays in a month, executive sessions shall be held on the second and fifth Tuesday at 4:00 p.m., or earlier, as needed. An executive session may be convened at a special meeting called for that purpose on a majority vote of the members of the Council, or during a regular meeting, special session, or work session of the Council for legal advice on matters on a meeting's properly noticed agenda. Attendance at the executive session shall be limited to members of the City Council, the City Manager and City Attorney or their designees, and appropriate City staff or consultants to the City as the Council may invite or as may be required for advice or information. No formal vote involving final action shall be taken on any matter under discussion while in an executive session, except the Council may instruct its attorneys and representatives as allowed by law.

### 3.05 Emergency Meetings [A.R.S. §38-431.02]

In case of an actual emergency, the Council may hold a meeting, including an executive session, upon such notice as is appropriate to the circumstances, but shall post a public notice within twenty-four hours declaring that an emergency session has been held, and setting forth the agenda of specific items discussed, considered, or decided.

### 3.06 Minutes of Meetings [A.R.S. §38-431.01]

Except as otherwise provided by state law, there shall be minutes of all Council meetings. Such minutes shall include, but need not be limited to: (1) the date, time, and place of the meeting; (2) the members of the City Council recorded as either present or absent; (3) a general description of the matters considered; (4) an accurate description of all legal actions proposed, discussed, or taken, and the names of members who propose each motion; and (5) the name of persons, as given, making statements or presenting material to the Council and a reference to the legal action about which they made statements or presented material. Minutes of all meetings, except executive sessions, shall be open to public inspection.

## Rule 4
## THE COUNCIL AGENDA

### 4.01 Procedures for Preparation of Council Agendas

All reports, communications, ordinances and resolutions, contracts or other documents, or other matters to be submitted to the Council as part of the Council meeting agenda packet shall be available to the Council, along with a staff summary by the Friday preceding the agenda review work session for the draft agenda and by the Friday preceding the regular meeting for the regular agenda. The City Manager shall review items submitted for timeliness and completeness of information.

Those items which are approved for the Council agenda by the City Manager shall be placed on the agenda in accordance with the order prescribed in Rule 5. Copies of the agenda and any background material shall be disseminated to the Mayor and the City Council in the manner prescribed by the Council; to the City Manager, the Deputy City Managers, the City Attorney, and the City Clerk; and shall be made available to the public on the Friday preceding the Council meeting at which the agenda will be reviewed.

Should a Councilmember wish to share information regarding an item on an agenda other than under the F.A.I.R. process, copies may be distributed on the dais.

The agenda shall be made public in advance of the meeting by posting on the regular public posting board at City Hall and on the City's website. Such action shall be taken concurrently with the furnishing of the agenda to the City Council.

### 4.02 Future Agenda Item Requests (F.A.I.R.)

The City Manager shall consider any request by a Councilmember to include an item on the Future Agenda Item Request (FAIR) portion of the agenda. A Councilmember may submit an item for consideration in a public meeting during To/From and the City Manager may place it in a queue with other Council requests to be placed on an agenda.

The requesting Councilmember must be present through each step of the F.A.I.R. process to provide information and solicit the support for their item. Should scheduling conflicts arise the requesting Councilmember must contact the City Manager and ask that the item be rescheduled.

In the event that there are remaining F.A.I.R. items from an outgoing Councilmember the items will be placed on a separate list to seek a current Councilmember sponsor. If after 30 days from the last day of their term no Councilmember comes forward to sponsor the item, it will be removed from the queue.

Once the item is placed on an agenda under F.A.I.R.:

a) If three or more Councilmembers agree, it is placed in the Discussion Queue for future meetings in chronological order. (Shown on working calendar as a discussion item)

b) Should a Councilmember wish to move the item to the front of the Discussion Queue, a separate and secondary request must be made. Should a minimum of

four Councilmembers agree to such request, the item will be placed at the front of the Discussion Queue and Items previously placed on future agendas for discussion will be shifted accordingly.

c) Should a Councilmember wish to change the order of the items in the Discussion Queue, a request must be made by a Councilmember as to the preferred priority order. Should a minimum of four Councilmembers agree to such a request, the order shall be revised accordingly.

Once an item has been considered under the F.A.I.R. process and placed on a future agenda for discussion, staff time in preparing for such item is limited to eight hours or less. Once direction is given by a majority of the Council, further staff time may be expended. (Show on the Working Calendar as a Regular Item.)

### 4.03 Removal of a F.A.I.R. Item

A Councilmember who has previously requested a F.A.I.R. item may have it removed up until the time it appears on the agenda as a F.A.I.R. item. No other Councilmember is permitted to remove an item. If an item is removed prior to it appearing on an agenda, the City Manager will notify the Council of its removal at the next Council Meeting. If another Councilmember wants to retain the item, it shall retain its then-current place in the queue. Once on the agenda, the request to remove must be made during a public meeting.

Once it has been placed on the agenda as a F.A.I.R. item, and there are three or more Councilmembers who support moving it to a future agenda for discussion, an item may not be removed until it has been placed back on the agenda as a F.A.I.R. item to be Removed. Should there be no objection from Councilmembers, the item will be removed as a F.A.I.R. item. If at least three other Councilmembers wish to keep it on the F.A.I.R. list, it will be placed on a future agenda as outlined in Section 4.02(a) above.

## Rule 5
## ORDER OF BUSINESS

### 5.01 Regular Meeting Agenda

The agenda for regular meetings of the City Council shall follow the following order:

**~~4:30~~3:00 P.M. MEETING**

Call to Order
Roll Call
Pledge of Allegiance and Reading of the Mission Statement
Approval of Minutes of Previous Meetings
Public Participation
Proclamations and Recognitions
Appointments
Liquor License Public Hearings
Consent Items
Routine Items*
Legislative Updates (as needed)

Recess

**~~6:00~~5:00 P.M. MEETING**

Reconvene Regular Meeting
Roll Call
Pledge of Allegiance
Public Participation
Carryover Items from ~~4:30~~3:00 p.m. portion of Meeting
Public Hearing Items
Regular Agenda
Discussion Items
Council Liaison Reports
Future Agenda Item Request (FAIR)
Informational Items and Reports to/from Council and Staff, and Requests for Future Agenda Items
Adjournment

**Routine Items include those agenda items that are common, reoccurring, have been discussed at length in prior Council meetings, or are expected to have little to no public participation. They may include resolutions or ordinances.*

Consent Agenda items may be considered and acted upon by one motion, unless a Councilmember specifically requests that a consent item be considered and voted on separately. If related to a public hearing item on the agenda, ordinances or resolutions shall be placed under Public Hearings. Items requested for consideration and discussion by a Councilmember and placed in the Future Agenda Item Request Section need not have a staff summary or staff review, but the requesting Councilmember may specify in a memorandum what discussion, action, or options are proposed. There will be no discussion of issues raised during public participation, information items and reports, or requests for future agenda items. The City Clerk shall enter into the minutes all consent items approved with one motion, and shall record separately action taken on those items considered separately.

## 5.02 Work Session Agenda

The agenda for Work Sessions of the City Council shall follow the following order:

Call to Order
Pledge of Allegiance and Reading of the Mission Statement
Roll Call
Public Participation
Review of Draft Agenda for next Council Meeting
Legislative Updates (as needed)
Work Session Topics
Public Participation
Informational Items and Reports to/from Council and Staff, and Requests for Future Agenda Items
Adjournment

## Rule 6
## PRESIDING OFFICER

[Flagstaff City Charter Art. II, §7 and §8]

### 6.01 Mayor as Chair

The Mayor, or in his or her absence, the Vice Mayor, shall be the Chair for all meetings of the Council.

### 6.02 Temporary Chair

In case of the absence of the Mayor and the Vice Mayor, the City Clerk shall call the Council to order. If a quorum is found to be present, the Council shall proceed to elect, by a majority of those present, a Chair for the meeting.

### 6.03 Selection of Vice Mayor

The candidate with the highest number of votes in the most recent general candidate election shall be appointed Vice Mayor until the next general candidate election. If for whatever reason the Vice Mayor cannot fulfill their term the position will be transferred to the candidate with the next highest number of votes in the most recent general candidate election.

## Rule 7
## MEETING DECORUM AND ORDER

### 7.01 Decorum and Order among Councilmembers

The Chair shall preserve decorum and decide all questions of order, subject to appeal to the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the order of the Chair or the Rules of the Council. Every Councilmember desiring to speak shall address the Chair, and upon recognition by the Chair, shall confine himself or herself to the question under debate and shall avoid all personal attacks and indecorous language. A Councilmember once recognized shall not be interrupted while speaking unless called to order by the Chair or unless a point of order is raised by another Councilmember. If a Councilmember is called to order while he or she is speaking, he or she shall cease speaking immediately until the question of order is determined. If ruled to be out of order, he or she shall remain silent or shall alter his or her remarks so as to comply with the Rules of the Council. Councilmembers shall confine their questions to the particular issues before the Council. If the Chair fails to act, any member may move to require him or her to enforce the Rules and the affirmative vote of the majority of the Council shall require the Chair to act.

If Council discussion of a matter exceeds one hour, each Councilmember shall limit their subsequent remarks to three minutes.

### 7.02 Decorum and Order among City Staff

The Chair shall have the authority to preserve decorum in meetings as far as the audience, staff members, and city employees are concerned. The City Manager shall also be responsible for the orderly conduct and decorum of all City employees under the City Manager's direction and control. Any remarks shall be addressed to the Chair and to any or all members of the Council. No staff member, other than the staff member having the floor, shall enter into any discussion either directly or indirectly without permission of the Chair.

### 7.03 Decorum and Order among Citizen Participants

Citizens attending Council meetings should observe the same rules of propriety, decorum, and good conduct applicable to members of the Council. Any person causing a disturbance of the peace and good order during a Council meeting, may be removed from the room if so directed by the Chair, and such person may be barred from further audience before the Council. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the Chair, if such actions cause a disturbance of the peace and good order the Chair may direct the Sergeant-at-Arms to remove such offenders from the room. Should the Chair fail to act, any member of the Council may move to require the Chair to enforce the Rules, and the affirmative vote of the majority of the Council shall require the Chair to act. Political campaigning is prohibited. Any member of the public desiring to address the Council on any agendized item shall be recognized by the Chair shall state his or her name and city of residence in an audible tone for the record, and shall limit his or her remarks to the questions under discussion. Any remarks shall be addressed to the Chair and to any or all members of the Council.

~~Citizens are allowed to address the Council a maximum of three times throughout the meeting, including comments made during Public Participation. Other than Public Participation, comments shall be limited to the business at hand. Once the Chair recognizes a speaker, the Chair shall limit the period of speaking to a reasonable period of time of no more than three minutes per person, at the discretion of the Chair and a speaker may address the Council with the speaker's own statements and the statements of other persons within the set time period.~~

## Rule 8
## RIGHT OF APPEAL FROM THE CHAIR

### 8.01 Process for Appeal

Any Councilmember may appeal to the Council from a ruling of the Chair. If the appeal is seconded, the member making the appeal may briefly state his or her reason for the same, and the Chair may briefly explain the Chair's ruling. There shall be no debate on the appeal, and no other member shall participate in the discussion. The Chair shall then put the question, "Shall the decision of the Chair be sustained?" If a majority of the members present vote "aye", the ruling of the Chair is sustained; otherwise, it is overruled.

## Rule 9
## PUBLIC PARTICIPATION IN COUNCIL DISCUSSIONS

## 9.01 Non-Public Hearing Discussions

Any person wishing to speak on any matter on the agenda before the Council, or during Public Participation, shall fill out a comment card and submit that card to the recording clerk, who will deliver the card to the Chair. The Chair shall limit the period of speaking to a reasonable period of time of no more than three minutes per person (exceptions listed below); a speaker may address the Council with the speaker's own statements and the statements of other persons within the set time limit. The person desiring to speak shall limit his or her remarks to the matter under discussion and shall address his or her remarks to the Chair. Speakers may not cede any portion of their allotted time to another speaker.

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. The ten persons must be listed on the speaker card and be present at the time the comment is give. The persons will be requested to identify themselves by standing and those included in the group are precluded from making comments on the same topic but may participate in any other agendized topics up to the limit addressed in Section 7.03.

Any person wishing to speak with the assistance of a translator shall designate such on the speaker card and be permitted to speak up to five minutes.

## 9.02 Public Hearings

A. In the case of a public hearing, the Chair shall announce prior to such hearing the total time limit, if any, to be allowed for public debate, depending upon the circumstances and public attendance. The Chair shall also announce the time limits for each individual speaker (normally no more than three minutes), and that no speaker may be heard more than once.

B. Any person wishing to speak with the assistance of a translator shall designate such on the speaker card and be permitted to speak up to five minutes.

C. 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. The ten persons must be listed on the speaker card and be present at the time the comment is give. The persons will be requested to identify themselves by standing and those included in the group are precluded from making comments on the same topic but may participate in any other agendized topics up to the limit addressed in Section 7.03.

D. Speakers may not cede any portion of their allotted time to another speaker.

E. The order of presentation and time limits shall be as follows:

1. Staff presentation (ten-minute time limit, except with specific Council permission to exceed this limit).
2. Applicant presentation, only upon applicant's specific request (up to ten minutes, except with specific Council permission to exceed this limit).
3. Council's questions to staff and applicant.
4. Public comment (three minutes for individual speakers, up to fifteen minutes for a representative of ten or more persons present at the meeting

who have contributed their time to the representative), The ten persons will be requested to identify themselves by standing and those included in the group are precluded from making comments on the same topic, but may participate in any other agendized topics up to the limit addressed in Section 7

5. Applicant's response, only upon applicant's specific request (5 minutes),
6. Staff's response (5 minutes),
7. Council deliberation and questions to staff and applicant.

F. This rule will not preclude questions from members of the Council to the speaker where it is deemed necessary for purposes of clarification or understanding, but not for purposes of debate or argument.

## Rule 10
## RULES GOVERNING MOTIONS BY THE COUNCIL

### 10.01 Motion to be Stated by the Chair - Withdrawal

When a motion is made and seconded, it shall be so stated by the Chair before debate commences. A motion may not be withdrawn by the mover without the consent of the member seconding it.

### 10.02 Motion to Suspend Rules

Suspension of these Rules requires a majority consent of the Councilmembers present. A motion to suspend may not be made while another motion is pending unless it directly applies to the pending motion. Suspension of the Rules may not be appropriate in the context of a Public Hearing.

### 10.03 Motion to Change Order of Agenda

The Chair may, at his or her discretion, or shall, upon the majority vote of Councilmembers present, change the order of the agenda. However, caution should be given to not changing the order to circumvent the Open Meeting Law.

### 10.04 Motion to Table

A motion to table is used to delay discussion on an item until later in the meeting or until the next meeting. Neither the motion to table nor other business can be discussed, until a vote has been taken on the motion. If the motion is successful, no further discussion can be had without a motion to take off the table. To take a motion off the table at the same or immediately succeeding meeting, a motion and second must be made to take the item off the table, and it must pass by majority vote.

If not revived by the adjournment of the immediately succeeding meeting, the matter is considered to be dead.

### 10.05 Motion to Postpone

A motion to postpone is in order when an item is rescheduled to a time certain, when it is delayed with conditions, or when the matter is intended to be disposed of without action.

If the motion prevails, the item shall return for Council action at the meeting specified or in accordance with the conditions established in the postponement. A motion to postpone may be debated prior to vote, but no other motion, including a motion to amend, may be offered until the vote is taken and only if the motion to postpone fails.

A motion to postpone indefinitely, if it receives a majority vote, effectively extinguishes an item.

**10.06 Motion to Divide the Question**

If the question contains two or more divisionable propositions, the Chair may, and upon request of a member shall, divide the same.

**10.07 Motion to Amend**

On a motion to amend or "strike out and insert", the motion shall be made so that the intent of the amendment is clear to the Council and public, and for the record.

The Council may materially amend an ordinance after the first read of that ordinance and proceed immediately to the second read and adoption. In other words, it is not necessary to proceed as though it is a new ordinance after a material change.

**10.08 Motion to Amend an Amendment**

A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be introduced. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order.

**10.09 Motion to Reconsider**

After the decision on any question, any member who voted with the majority may move for a reconsideration of any action at the same meeting or at the next regular meeting that occurs at least one week after the date the action was taken. In the event of a tie vote on a motion, any Councilmember may move for reconsideration at the next regular meeting of the City Council that occurs at least one week after the date the action was taken, but not thereafter. To ensure that the matter will be included on the posted agenda in conformance with the Open Meeting Law, any Councilmember who wishes to have a decision reconsidered must alert the city clerk in writing at least five (5) days, exclusive of Saturdays, Sundays, and intermediate holidays, prior to the meeting at which the motion to reconsider will be made, unless the motion to reconsider was made and seconded at a Council meeting. A motion to reconsider shall require the affirmative vote of the majority of the members present at the time of reconsideration. After a motion for reconsideration has once been acted on, no other motion for reconsideration of the same subject shall be made without unanimous consent of all Councilmembers.

After the reconsideration time period has expired, the same matter may be placed on a later Council meeting agenda under Future Agenda Item Request at the request of any Councilmember. It shall require agreement by Councilmembers during Future Agenda Item Request to be placed on a future agenda as an action item. If the matter is considered for formal action on a future meeting, the motion for or against taking an action need not be made by a member of the prevailing vote.

### 10.10 Motion for Roll Call Vote

Any Councilmember may request a roll call vote, or the Chair may ask for a roll call vote for purposes of clarifying a vote for the record. The roll may be called for yeas and nays upon any questions before the Council. Unless allowed by the Chair, it shall be out of order for members to explain their vote during the roll call, or to engage in additional debate or discussion on the subject after the vote is taken.

## Rule 11
## MISCELLANEOUS PROVISIONS

### 11.01 Prior Approval by Administrative Staff

Except as to matters requested by individual Councilmembers under the Future Agenda Item Request Section of the agenda, all ordinances, resolutions and contract documents shall, before presentation to the Council, have been approved as to form and legality by the City Attorney or his or her authorized representative, and shall have been examined for practicality by the City Manager or his or her authorized representative.

### 11.02 Placement of Items on Agendas for Council Action

Pursuant to Council direction received during any Council meeting, the City Manager may present ordinances, resolutions, and other matters or subjects to the Council, and any Councilmember may assume sponsorship thereof by moving that such ordinances, resolutions, matters or subjects be adopted. In addition, ordinances, resolutions and other matters or subjects requiring action by the Council may be introduced and sponsored by a member of the Council through the Future Agenda Item Request process described in Rule 4.01.

### 11.03 No New Agenda Items after 9:30 p.m. except by Majority Vote

No new agenda items shall begin after 9:30 p.m. unless approved by majority vote of the City Council. If, however, discussion on an item commences prior to 9:30 p.m., the Council may continue its deliberation or move to postpone that item. Agenda items on a Council agenda not considered will be placed on the immediately succeeding Regular or Special Council meeting.

### 11.04 Robert's Rules

Robert's Rules of Order, latest edition, shall serve as a guideline for interpretation of and supplementation for these Rules in all cases to which they are applicable, provided they are not in conflict with these Rules or with the Charter of the City of Flagstaff or the laws of the State of Arizona. The interpretation of these Rules and Robert's Rules shall be guided by the principles underlying Parliamentary law, that is, a careful balance of the rights of individuals and minority subgroups of the council with the will of the majority. In no case shall the strict application of a rule or procedure be interpreted to deny any individual or minority the right to participate in a debate, discussion, or vote, nor shall these

rules be interpreted in such a way so as to defeat the will of the majority of the whole of the Council.

### 11.05 Citizen Petitions [Flagstaff City Charter Art. II, §17]

A citizen or a group of citizens may present a written petition to the City Manager, signed by a minimum of 25 citizens from the City of Flagstaff in a form prescribed by ordinance, who shall present it to the Council at its next regular meeting. The Council must act on the petition within 31 days of the City Manager's presentation. Citizen petitions will first be placed on the agenda under Future Agenda Item Request to determine if there is Council interest in placing the item on a future agenda for consideration. Failure to give such direction shall constitute "action" for purposes of this section.

### 11.06 Video Streaming, Recording, and Photography

For City Council safety and other security purposes, audio/video streaming, audio/video recording, photography, or similar activities are not permitted on the City Council side of the lectern counter. Such activities are permitted *only* on the public side of the lectern counter so long as they do not obstruct the view of the public in City Council Chambers and the view of the City's official internet live streaming viewers. In the event the City Council meets anywhere outside of City Council Chambers, this same rule shall apply, and no such activities will be permitted on the City Council side of the lectern. This rule does not apply to the City's official internet streaming and any audio/visual equipment for the same, and also does not apply to body cameras used by law enforcement officers.

### 11.07 Meetings with State and Federal Delegation and Lobbying Trips

At least two members of Council must be in attendance at any meetings with State or Federal representatives where any city, state, or federal business is discussed. When the City Council participates in state or federal lobbying trips, the Mayor, or Councilmember designee, will accompany two other councilmembers and optionally staff on each trip. The councilmembers chosen to attend will be determined by an established rotation to ensure equal opportunity to participate and represent the City in this capacity. The Council reserves the right to select a councilmember outside the rotation by a three-fourth (super-majority) vote of the Council.

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Sarah Darr, Housing Director |
| **Co-Submitter:** | Deborah Beals |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Approval:** Section 8 Security Deposit Assistance Program - a loan program to assist voucher holders to overcome the barrier of high-security deposits.

**STAFF RECOMMENDED ACTION:**

Approve Section 8 Security Deposit Assistance Program and authorize staff to make non-substantive administrative amendments as necessary

**Executive Summary:**

The Section 8 (S8) Security Deposit Assistance Program (SDAP) has been developed to help voucher holders overcome the barrier that high-security deposits create. Many voucher holders do not have the resources to pay a security deposit or are severely burdened by the payment. This program will assist voucher holders in securing an affordable rental housing unit by providing up-front funding for these expenses. Participating households will repay the housing authority loan over six to twelve months, depending on household income.

**Financial Impact:**

This program can be funded with administrative fees provided by HUD for the administration of Section 8 and other voucher programs. The CARES Act provided $144,009 in additional funds to be used for Section 8 eligible administrative costs and for additional COVID-related expenses. This CARES Act funding frees up standard administrative fee funding to be used for this program-related expenditure. Thus, the $75,000 loan fund is fully covered by HUD funding.

This will be a revolving loan fund with all loan terms under 12 months, and, as such, it is not anticipated the funding will need to be replenished.

**Policy Impact:**

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

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

Safe and Healthy Community
Inclusive and Engaged Community
Robust Resilient Economy
Livable Community

**Regional Plan**
Goal NH.1. Foster and maintain healthy and diverse urban, suburban, and rural neighborhoods in the Flagstaff region.
Goal NH.3. Make available a variety of housing types at different price points, to provide housing opportunity for all economic sectors.
Policy NH.3.3. Increase the availability of affordable housing for very low-income persons, through innovative and effective funding mechanisms.

**Previous Council Decision on This:**

There is no previous Council action regarding this program.

The program was considered by the Housing Board of Commissioners at the January 21, 2021, meeting. The Board was in support of the program and requested that unit transfers due to employment changes be included as eligible loans. This change was incorporated into the program and the Board unanimously approved forwarding it to City Council for consideration.

**Options and Alternatives:**

- Approve the program as proposed.
- Approve the program with amendments as directed during the meeting.
- Request that alternate policy be written.
- Not approve the program.

**Background/History:**

Households participating in voucher programs have limited resources to pay security deposits and application fees. This vulnerability is a substantial barrier to successful participation in Section 8 and other voucher programs, which can effectively limit the number of units available to voucher holders and either delay or prohibit the lease-up of an affordable unit due to household lack of funds for the security deposit/ and application fees. The award of a loan to cover these costs enables the household to participate in the programs quickly, expands housing opportunities by increasing the number of units available to the household, and enhances household's ability to budget for the security deposit by providing monthly repayment.

**Key Considerations:**

The proposed program parameters are outlined below. Full plan details are set forth in the attached Section 8 Security Deposit Assistance Program (attached).

- The program is available for all voucher types issued by the Housing Authority and for use within the Flagstaff, Arizona jurisdiction.
    - This includes Veterans Administration Supportive Housing (VASH) and Foster Youth for Independence (FYI) program
- The SDAP program will provide zero interest loans to voucher holders for the security deposit and application fees at the time of unit lease up.
- SDAP loans will have a term of 6 to 12 months, based on household income.
- SDAP assistance will be for new move-ins and for unit transfers in limited circumstances. In general, SDAP assistance for unit transfers will be available only every three years and for moves that are beyond the control of the household or change in employment.
- Eligible costs shall include up to one month’s rent on the new unit plus up to two application fees per adult family member. Only refundable portions of the security deposit will be covered. Households with income below 30% of Area Median Income (AMI) are eligible for loan amount up to 100% of eligible costs. Households with income between 30% and 50% of AMI will be eligible for loans of half of eligible costs.
- SDAP loans will be documented by a Promissory Note between the Housing Authority and the household. No interest will be charged. The loan term will be twelve months for households with

income below 30% of AMI and six months for households with income between 30% and 50% of AMI.
- SDAP loans will be due in full if the household moves out of the unit. As with other repayment agreements utilized with voucher programs, failure to repay will be grounds for termination from the program.

Administration of this program is minimal and can be absorbed within existing and anticipated staffing.

The program was considered by the Housing Board of Commissioners at the January 21, 2021, meeting. The Board was in support of the program and requested that unit transfers due to employment changes be included as eligible loans. This change was incorporated into the program and the Board unanimously approved forwarding to City Council for consideration.

**Expanded Financial Considerations:**

There is no General Fund impact. All funds have been received from HUD and this program is an eligible use of funds. As this program is being established as a revolving loan program, no additional funds are needed.

**Community Benefits and Considerations:**

The SDAP program will provide a tool for very low-income voucher participants to compete more effectively for rental units by providing up-front funding for security deposits and application fees. This enhances housing stability for the vulnerable populations served and children in assisted families; this housing stability improves participant quality of life and enhances workforce stability. The community benefits are targeted to at-risk populations and increases community equity by serving disadvantaged communities first.

**Community Involvement:**

On December 14, 2020, a description of the proposed program and a request for comments were sent to all current voucher holders. More than 30 calls/emails were received in support of the program. Many asked for more details and/or to apply for the program. Support of the program was strong; no negative comments were received.

The program was considered by the Housing Board of Commissioners at the January 21, 2021, meeting. The Board was in support of the program and requested that unit transfers due to employment changes be included as eligible loans. This change was incorporated into the program and the Board unanimously approved forwarding it to City Council for consideration.

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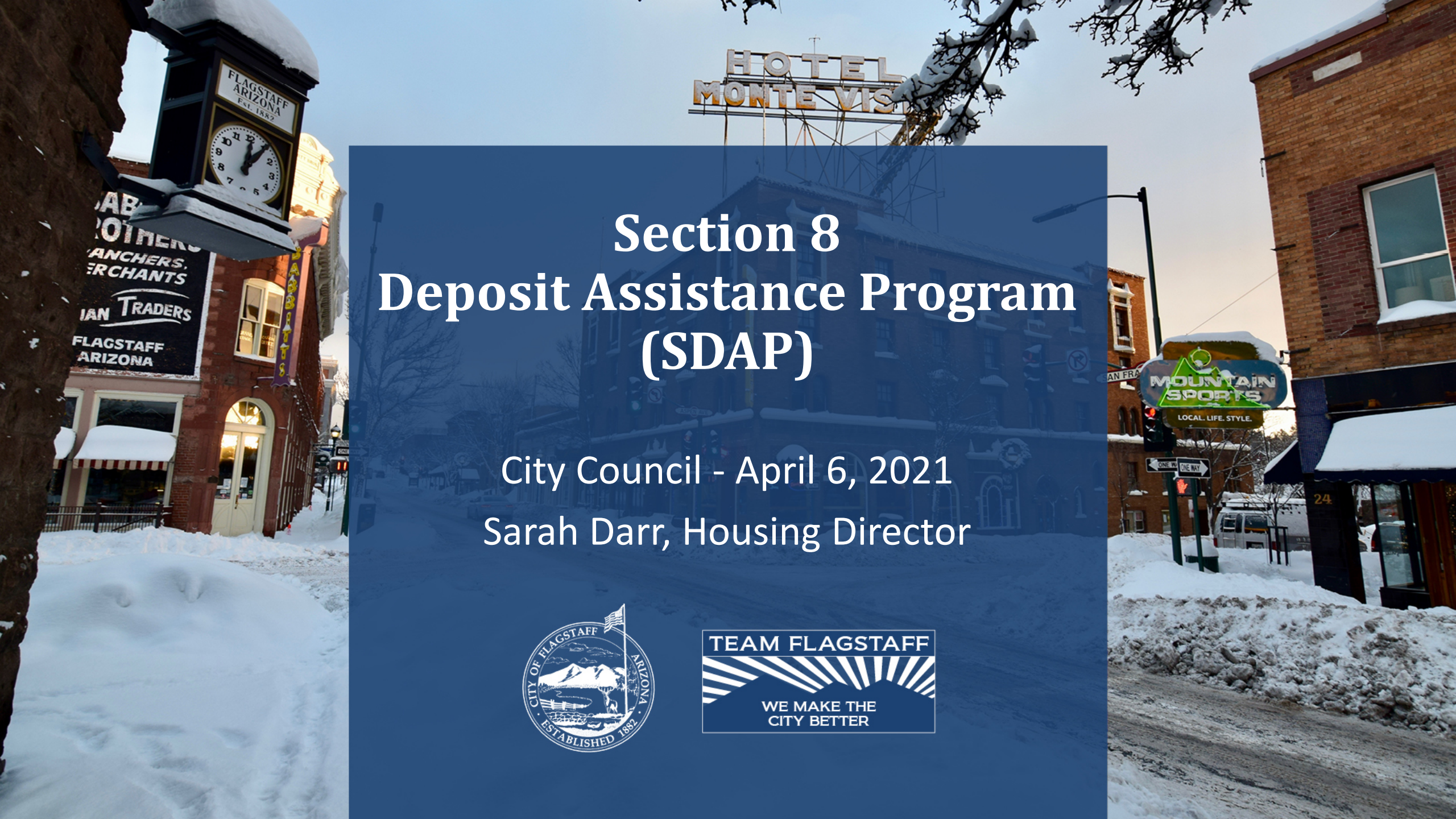
**Attachments:** Presentation
SDAP Program




# Section 8 Deposit Assistance Program (SDAP)

City Council - April 6, 2021

Sarah Darr, Housing Director

CITY OF FLAGSTAFF · ARIZONA · ESTABLISHED 1882

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

# Reminder of How Voucher Programs Work

**City of Flagstaff administers 480+ voucher**

Section 8 (including new Mainstream Vouchers)

Veterans Administration Supportive Housing (VASH)

Foster Youth to Independence (FYI)

- Voucher is issued to income eligible household
- Household is responsible for identifying a unit to rent in the market
- Household pays 30% of income towards rent, remainder is payed by Housing Authority with funding from HUD

# Overview of SDAP

- Developed to overcome the barrier that high security deposits create for some voucher holder households
- Program will assist voucher holders in securing affordable rental housing by providing up-front funding for refundable deposits and up to two application fees per adult household member
- Participating households will repay the loan over six to twelve months, depending on household income.

# More on the “why”

- The award of a loan to cover these costs enables the household to participate in the programs quickly
- Expands housing opportunity by increasing the number of units available to the household
- Enhances household ability to budget for the security deposit by providing monthly repayment option instead of needing all the money up front

# Funding Details

- This program can be funded by administrative fees provided by HUD for voucher programs

- CARES Act provided $144,009 in additional funds to be used for eligible voucher administrative costs and for additional COVID related expenses. This funding frees up standard administrative fee funding, allowing for this program related expenditure

- **The $75,000 loan fund is fully covered by HUD funding**

# Area Median Income - AMI

- Annually adjusted by HUD (2021 limits not yet published)
- Applies to the entire Metropolitan Statistical Area (MSA)
- Adjusted for household size – example below is for a 3 person household

**HUD Area Median Income (AMI) Limits**

| Income Category | AMI % | AMI Income Ranges* |
|---|---|---|
| Extremely Low | 0 - 30% | $0 - $21,720 |
| Very Low | 30 - 50% | $21,720 - $33,850 |
| Low | 50 - 80% | $33,850 - $40,620 |
| Low to Moderate | 80 - 120% | $40,620 - $64,980 |
| Moderate to High | 120% > | $64,980 > |

** Income ranges based on three person household*

# SDAP Details

**Available for all voucher types issued by CFHA and for use within the Flagstaff, Arizona jurisdiction**

- **0% interest loans to voucher holders for the security deposit and application fees** at the time of unit lease up

- Loans will have a **term of 6 to 12 months**, based on household income

- For **new move-ins and unit transfers** in limited circumstances

# SDAP Details

- Eligible costs shall include **up to one month's rent on the new unit plus up to two application fees per adult family member.**
  - Only refundable portions of the security deposit will be covered.
  - Households with income *below* 30% of AMI are eligible for loan amount up to 100% of eligible costs.
  - Households with income *between* 30% and 50% of AMI will be eligible for loans of half of eligible costs.

# SDAP Details

- 0% interest loans will be documented by a Promissory Note
  - The loan term will be twelve months households with income below 30% of AMI and six months for households with income between 30% and 50% of AMI.

- SDAP loans will be due in full if the household moves out of the unit. Failure to repay will be grounds for termination from the program.

# Eligibility

**Initial lease-up** and **unit transfers** meeting the following criteria will be eligible:

- **Unit is within City of Flagstaff jurisdiction;**
- **Sale of property** and resulting lease non-renewal;
- **Change in family size** requiring a change in needed bedrooms;
- **Change in employment where access to place of employment is limited by location of current unit**;
- Circumstances covered by the **Violence Against Women Act**;
- **Non-renewal of lease by landlord for causes beyond the household's control;**
- Moves approved as a **reasonable accommodation;**
- **Relocation due to major unit repairs** or incidents such as flooding or fire damage (non-tenant caused)

# Public Comment

- December 14, 2020 - a description of the proposed program and request for comments was sent to all voucher holders.
- More than 30 calls/emails in support of the program were received.
  - Many asked for more details and/or to apply for the program. Support of the program was strong; **no negative comments were received.**

- The **Housing Authority Board of Commissioners unanimously approved** forwarding the program for City Council's consideration at the January 21, 2021 meeting

# Requested Action

**Options**:

- Approve the program as proposed
- Approve the program with amendments as directed during the meeting
- Request that alternate policy be written
- Disapprove the program

**CITY OF FLAGSTAFF HOUSING AUTHORITY**

**SECTION 8 AND VETERANS ADMINISTRATION SUPPORTIVE HOUSING**

**SECURITY DEPOSIT ASSISTANCE PROGRAM POLICY**

## Overview

The Security Deposit Assistance Program (SDAP) provides funding to Section 8 and other voucher holders for the security deposit at the time of unit lease up. Funding will be in the form of a loan with a term of six to twelve months. The purpose of the program is to overcome the barrier created by high security deposits; many voucher clients do not have the resources to pay a security deposit or are severely burdened by the payment. This program will assist program participants in securing a more affordable rental housing unit.

## Program Description

SDAP loans will be provided to households with S8 Housing Choice Vouchers, Veterans Administration Supportive Housing (VASH) and other vouchers issued by the Housing Authority, excluding incoming portability vouchers as discussed in Section 12.4 of the Administrative Plan, when each of the following criteria are met:

1. SDAP funding is available;
2. SDAP loans will be available for units within CFHA's jurisdiction for initial lease-up and unit transfers meeting the following criteria:
    a. Unit transfer due to:
        i. Sale of property and resulting lease non-renewal;
        ii. Change in family size requiring a change in needed bedrooms;
        iii. Change in employment where access to place of employment is limited by location of current unit;
        iv. Circumstances covered by the Violence Against Women Act;
    b. Non-renewal of lease by landlord for causes beyond the household's control;
    c. Moves approved as a reasonable accommodation as set forth in the Administrative Plan for the S8 Program;
    d. Relocation due to major unit repairs or incidents such as flooding or fire damage (non-tenant caused).
3. Household has not received security deposit assistance from the City of Flagstaff Housing Authority (CFHA) in the last three years;
4. Household gross income is less than 50% of Area Median Income (AMI);
5. Household has no outstanding debts owed to CFHA;
6. Household is in compliance with all other program and lease requirements;
7. Household has not had a Repayment Agreement with CFHA for reasons other than SDAP within the 24 months preceding application for SDAP assistance; AND
8. The unit to be occupied must be within our jurisdiction and meet all S8HCV housing quality standards and the landlord must agree to participate in this program.

Upon approval of SDAP application and the Request for Tenancy Approval (RFTA) and household execution of the Promissory Note, a letter of intent will be issued to landlord indicating that CFHA has approved paying the refundable portion of security deposit and that payment of the deposit will be released with first Housing Assistance Payment, unless other arrangements have been made with landlord.

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**SDAP Program Funding**

The SDAP program is a revolving loan fund program. Initial funding for the program shall be $75,000, which shall be available until December 31, 2021. After that date, the program shall be self-funded with SDAP loan repayments, and SDAP awards shall be subject to funds availability.

**Amount of SDAP Household Assistance**

Eligible SDAP expenses are limited to refundable security deposit in an amount no greater than one month's rent on the unit to be leased PLUS the cost of up to two application fees per adult family member. Non-refundable portions of the security deposit are not eligible be covered by this program. For example, non-refundable pet deposits are not eligible to be paid under this program.

Households are encouraged to contribute a minimum of $100.00 to the payment of security deposit and application fees. However, because the amount of security deposit is limited to one month's rent and up to two application fees, it is possible that the household may need to contribute more than $100.00.

The amount of SDAP assistance shall be limited as follows:

1. Households with income below 30% of AMI are eligible for the maximum amount of available assistance as defined above.
2. Households with family income between 30% and 50% of AMI are eligible for 50% of the maximum amount of available assistance as defined above.

**Household Obligations**

Households choosing to participate in the SDAP program will agree to certain obligations as listed below. Failure to meet household obligations shall be grounds for termination of participation in the program.

1. Household will enter a Promissory Note to repay the assistance in 12 or fewer monthly payments. The term of the Promissory Note will be based on household family income as described below.
2. Failure to meet repayment obligations shall constitute a failure to comply with S8HCV program requirements and constitute grounds for termination of assistance under the S8HCV program.
3. Payment of security deposit on behalf of households in no way makes the Housing Authority responsible for tenant charges/ tenant-caused damages.

**Household Application for SDAP Assistance**

Applications for SDAP assistance shall be submitted with the RFTA form. The CFHA has up to 15 business days to process the RFTA. During this period the CFHA will review the RFTA, process the Application for approval/denial and, inspect the unit, and the Promissory Note and lease will be executed by the adult household members.

**SDAP Assistance Repayment Requirements**

The approved SDAP funds will be provided in the form of a zero-interest loan; SDAP payments will be paid directly to the landlord. The terms of the loan, including provision for repayment, shall be set out in a written Promissory Note between the CFHA and adult household members, signed after both SDAP application and RFTA are approved. The repayment term shall be no longer than 12 months for families with income at or below 30% of AMI and no longer than 6 months for families with income between 30% and 50% of AMI. Repayment shall be monthly due on the first day of each month. The first payment shall be due no later than 45 days after the first day of the lease agreement. If household moves out of unit before the loan is repaid, the remaining balance shall be immediately due in full. Outgoing portability requests will not be approved until the Promissory Note is repaid in full.

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**ATTACHMENTS**

**APPLICATION FOR SECURITY DEPOSIT ASSISTANCE PROGRAM LOAN**

**PROMISSORY NOTE**

**LETTER OF INTENT TO LANDLORD**

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**CITY OF FLAGSTAFF HOUSING AUTHORITY**

**Application for Security Deposit Assistance Program Loan**

EQUAL HOUSING OPPORTUNITY

**Application MUST be submitted with Request for Tenancy Approval**

**A description of the Housing Authority's Security Deposit Assistance Program (SDAP) was provided in your briefing packet. Please note that your qualification for the SDAP program will be based on the income information you have provided to CFHA as well as other program requirements set forth in the program description.**

Head of Household Name_____

Current Address_____

Home Phone (____) _____ Cell Phone (_____) _____ Email: _____

## SECURITY DEPOSIT INFORMATION

Address of Prospective Unit (including street address, apt #, city, zip code)

_____

Requested move-in date _____

Name of Landlord/Complex: _____

Landlord/Complex Address (including street address, city, state, zip code) _____

Landlord/Complex Phone: ) _____ Landlord/Complex FAX/Email: _____

1. Amount of Application Fee Required per Adult _____

2.Total Application Fee Required _____

3, Amount of Refundable Security Deposit Required _____

4. Total Amount Required by Landlord (Line 2 plus Line 3) _____

5.Amount Household Will Pay : _____ _____

6.Requested Amount of Assistance (Line 4 minus Line 5)_____

7. If this is a unit transfer, please check off reason for move:

a. Property old to new owner and lease not renewed
b. Change in family size
c. Change in employment where access to place of employment is limited by location of current unit;
d. Circumstances covered by the Violence Against Women Act;
e. Non-renewal of lease by landlord for causes beyond the household's control;
f. Moves approved as a reasonable accommodation as set forth in the Administrative Plan for the S8 Program;

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g. Relocation due to major unit repairs or incidents such as flooding or fire damage (non-tenant caused).

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## CERTIFICATION

I/We do hereby certify that all the information above is true and correct to the best of my/our knowledge. I/We understand that false statements or information are punishable under Federal and state law and are grounds for denial or termination of housing assistance.

I/We understand that this program is a loan program and that I/we will be required to enter into a Promissory Note to repay funds advanced under this program. The term of repayment is based on household income; families with income below 30% Area Median Income (AMI) will have up to 12 months to repay the note and families with income between 30% and 50% of AMI will have up to six months to repay. I/We understand that failure to meet repayment obligations shall constitute a failure to comply with program requirements and constitute grounds for termination of assistance.

**Signature of Head of Household:** _____ **Date:** _____

**Signature of Spouse:** _____ **Date:** _____

**Signature of Other Adult:** _____ **Date:** _____

**Signature of Other Adult:** _____ **Date:** _____

***WARNING!!*** ***Title 18, Section 1001 of the United States Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department or agency of the United States.***

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# PROMISSORY NOTE

Date: _____ (VO#): _____

Payee: City of Flagstaff Housing Authority Principle Amount Owed: _____

Maker: _____

Address: _____

_____

**Purpose for Note**: **Repayment of Security Deposit Assistance**

Maker, as principal, without grace, for value received, promises to the Payee (FHA) in lawful money of the United States the principal amount hereof, together with interest thereon, if any, in the manner and at the time hereinabove set out. Maker shall have the right of early prepayment of any or all of the principle without penalty. Repayment shall be as set forth in the attached repayment schedule. Balance shall immediately become due in full should maker move out of assisted unit listed above.

Any failure on the part of the Maker hereof to pay the principal and interest, if any, as hereinabove set out, when due, shall, at the option of the Payee, mature the whole amount of this amount.

If this note be placed in the hands of an attorney after maturity or default, for collection, then the Maker, sureties and endorsers agree to pay in addition to the principal and interest, if any, then due hereon, a reasonable amount as attorney's fees. The sureties, endorsers and guarantors of this note consent that the time of payment may be extended without notice thereof. We, Maker and endorsers, waive protest, notice of non-payment and suit and all exemption laws and rights there under.

- **This note shall be governed by the laws of the State of Arizona. Waiver of any default shall not constitute waiver of any subsequent default. If this note is signed by more than one Maker, the obligations of all such Makers shall be joint and several. All words herein shall be construed to be of such gender and number as the circumstances require and all references herein to Maker shall include all other persons primarily or secondarily liable hereunder, including heirs, successors of assigns. The provisions hereof shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors or assigns of the parties hereto.**

Maker

Signature/s: _____ Date: _____

Payee

Signature: _____ Date: _____

(FHA Staff)

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# TENANT'S LEDGER FOR REPAYMENT AGREEMENT

## Beginning Balance: _____

| Due Date: | Amount Due: | Date Paid: | Amount Paid: | Balance: |
|---|---|---|---|---|
| 1st day of month no later than 45 days after date of lease | | | | |
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Tenant _____ Date _____

Housing Services Specialist _____ Date _____

cc: Finance Director

Name
Street Address
City, State, Zip

Dear :

**LETTER OF INTENT Security Deposit assistance Payment Program (SDAP)**

The City of Flagstaff Housing Authority (CFHA)has approved paying the **refundable portion** of the security deposit and application fee for:

| Household Name | Application Fee Amount | Refundable Security Deposit Amount | Address |
|---|---|---|---|
| | | | |

Payment cannot be made until you indicate agreement to participate in this program by signing and returning this letter to CFHA. Please also complete and return the attached W-9 Form, if a W-9 is not already on file with CFHA.

Please contact me if you have any additional questions.

Thank you,

Housing Services Specialist

By signing and returning this letter:

1 You agree to accept our payment by direct deposit **with the first Housing Assistance Payment on the assisted unit.**
2 At the time the participating household moves out of the unit, the refundable portion of the security deposit, less any damages or other charges allowed under state law, will be returned to the participating household.
3 Payment of security deposit on behalf of participating household in no way makes the Housing Authority responsible for tenant charges/ tenant-caused damages.

_____ _____

Property Manager/Owner Signature Date

_____

Printed Name/Position

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# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Alaxandra Pucciarelli, Current Planning Manager |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Adoption of Ordinance No. 2021-06:** An Ordinance of the City Council of the City of Flagstaff, amending the Flagstaff Zoning Map to rezone approximately 11 acres of real property generally located at 151 West High Country Trail, APNs 112-05-001W and 112-05-011 from the Estate Residential (ER) zone to the Medium Density Residential (MR) zone with conditions, providing for severability, authority for clerical corrections, and establishing an effective date.

**STAFF RECOMMENDED ACTION:**

Staff recommended that the Planning and Zoning Commission forward the Direct to Ordinance Zoning Map Amendment request to the City Council with a recommendation for approval, in accordance with the findings presented in the attached report.

The Planning & Zoning Commission disagreed with staff's recommendation and instead recommends that the City Council, in accordance with the findings, deny the requested Direct to Ordinance Zoning Map Amendment for Aura Flagstaff (PZ-20-00008-01).

Should the Council decide to deny the requested Zoning Map Amendment:

At the April 6, 2021 Council Meeting:
1) Hold the Public Hearing
2) Approve a motion to deny the application for Zoning Map Amendment

Should the Council decide to approve the requested Zoning Map Amendment:

At the April 6, 2021 Council Meeting:
1) Hold the Public Hearing
2) Read Ordinance No. 2021-06 by title only for the first time
3) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)

At the April 20, 2021 Council Meeting:
4) Read Ordinance No. 2021-06 by title only for the final time
5) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)
6) Adopt Ordinance No. 2021-06

**Executive Summary:**

Trinsic Acquisition Company LLC has submitted an application for a Direct to Ordinance Zoning Map Amendment to rezone approximately 11 acres located at 151 West High Country Trail from the Estate Residential (ER) zone to the Medium Density Residential (MR) zone for the purpose of a multi-family residential development (Aura Flagstaff). The development site is already located within the Resource Protection Overlay (RPO). The Planning & Zoning Commission held a public hearing on this request on December 9, 2020. The Commission recommended that the City Council deny this request in a 7-0 vote.

**Financial Impact:**

The Direct to Ordinance Zoning Map Amendment has no financial impact.

**Policy Impact:**

The Direct to Ordinance Zoning Map Amendment has no policy impact.

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

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

Safe & Healthy Community

- Support social services, community partners, and housing opportunities

Sustainable, Innovative Infrastructure

- Facilitate and develop carbon-neutral energy opportunities

Robust Resilient Economy

- Support and strengthen a more robust, diverse, and sustainable economy in ways that reflect community values and provides for affordable housing opportunities

Livable Community

- Create a welcoming community through partnerships, resilient neighborhoods, and civic engagement
- Provide amenities and activities that support a healthy lifestyle
- Actively support attainable and affordable housing through City projects and opportunities with developers

**Regional Plan**

A complete analysis of the Regional Plan goals and policies can be found in the attached project narrative and Planning & Zoning Commission Staff Report, dated November 24, 2020.

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

There has been no prior Council decisions made in regard to this application.

**Options and Alternatives:**

The City Council may approve the ordinance, approve the ordinance with modified conditions, or deny the ordinance.

The Planning & Zoning Commission recommends the City Council, in accordance with the findings, deny the requested Direct to Ordinance Zoning Map Amendment for Aura Flagstaff (PZ-20-00008-01).
At the Planning and Zoning Commission meeting, staff had recommended the Planning and Zoning Commission, in accordance with the findings presented in the attached report, forward the Direct to Ordinance Zoning Map Amendment request to the City Council with a recommendation for approval with the following conditions:

1. The subject property must be developed in accordance with the approved site plan and the conditions of approval dated August 10, 2020. Modifications (other than minor modifications) to the approved site plan will require an amendment to this Direct to Ordinance Zoning Map Amendment request.
2. The two parcels must be combined and the approximately 2-acre portion of parcel 112-05-011 located north of High Country Trail shall remain a part of the parcel to the south.
3. The State archeological database must be updated to reflect the removal of archeological resources on the subject property.
4. All other requirements of the Zoning Code and other City codes, ordinances, and regulations, shall be met by the proposed development.
5. All terms, conditions, and restrictions detailed within the "Aura Development Agreement" must be fully satisfied.
6. In the event the property is rezoned and the Developer fails to obtain final Civil Plan approval within two (2) years of the effective date of the rezoning ordinance, then the City may schedule a public hearing before the City Council for the purpose of causing the zoning on the Property to revert to the former classifications of Rural Residential (RR) and Estate Residential (ER) in accordance with A.R.S. § 9-462.01.

**Background/History:**

The development site to be rezoned is approximately 11 acres comprised of two contiguous parcels located just west of the intersection of High Country Trail and Lake Mary Road. The property is a portion of the Auza Family Ranch, historically used for livestock herding between Arizona, Colorado, and California, since before Flagstaff was incorporated. The Auza property has been impacted by the construction of Interstate 17 at the north end of the property, the bisection of the property by High Country Trail, and an electrical utility easement for the high voltage electrical transmission lines along the south side of High Country Trail.

The Auzas would like to maintain the existing single-family house constructed in the 1980s and located on the north side of High Country Trail. This Direct to Ordinance Zoning Map amendment proposes to rezone 11 acres, primarily located south of High Country Trail, from Estate Residential (ER) to Medium Density Residential (MR). The electrical utility easement running along the south side of High Country Trail prohibits any structures from being constructed near the street. This pushes the proposed development to the far southern portion of the property, adjacent to the existing single-family residential neighborhood.

This project was originally submitted as PZ-17-00218-02 for a 173-unit multifamily residential development with a 16.11 acre project area that included parcels both north and south of High Country Trail. Concerns were raised by staff regarding the proposed concentration of density, proximity to adjacent single-family homes, and the amount of grading on the site. After much consideration, Staff arrived at a recommendation of denial. The Planning and Zoning Commission heard the case on May 22, 2019, and made a recommendation to the City Council of denial. A recording of this meeting may be reviewed on the City's website: https://flagstaffaz.new.swagit.com/videos/55447
Following the Planning and Zoning Commission hearing, the applicant decided to withdraw the rezoning request. Council did not hear the case.

Since then the applicant has made significant changes to the project including a change in the parcels requested to be rezoned. The current application is a request to rezone only two parcels. One parcel includes some property north of High Country Trail, but the majority of the area (9 out of 11 acres) is located south of the road. The current proposal has decreased density from 173 to 160 units. The applicant has increased the setbacks from the adjacent homes. This has resulted in a significant number of existing trees being saved and dramatically reducing the amount of grading along the south property line. The current proposal will retain all stormwater on-site in underground vaults, eliminating the need for a deep retention basin in the area set aside as civic space. This improves the quality of the required public civic space.

**Key Considerations:**

A draft development agreement has been prepared. The primary purpose of this agreement is to set out roles and responsibilities in regard to the following (not limited to):

- Require the property to be maintained as a single parcel
- Construction and maintenance of the FUTS
- Administration of the Affordable Housing units
- Resource Protection easement for the portion of the parcel north of High Country Trail
- Sustainability density bonus requirements

Staff is requiring an easement over the portion of the property located north of High Country Trail to ensure that the required tree resources located on the property are not removed and to prohibit further development, as any additional development rights/density have been utilized on the southern portion of the parcel.

**Community Benefits and Considerations:**

Community benefits and considerations related to this request are addressed in more detail in the attached Planning & Zoning Staff Report, dated November 24, 2020.

**Community Involvement:**

Public hearings before the Planning and Zoning Commission and City Council are conducted in conjunction with requests for Direct to Ordinance Zoning Map Amendments. In accordance with State Statute, a notice of the public hearing was provided by placing an ad in the Daily Sun, posting notices on the property, and mailing a notice to all property owners within 1,000 feet (exceeding the minimum of 300 feet) of the site excluding rights-of-way.

The developer held two neighborhood meetings in regard to this case on March 23, 2020, and July 1, 2020. Both meetings were held virtually due to the pandemic. Per the meeting sign-in, approximately thirty-five (35) individuals attended both meetings. Citizen Participation summaries, attached, were prepared in response to the questions, comments and concerns presented. The meetings included a presentation from the developer and a question-and-answer session where questions could be typed into the chat. Comments on the project included the following topics: the area north of the road, open space requirements, traffic impacts, stormwater, views, and tree resources.

Two emails from the public have been received as of the writing of the staff report. The emails are from neighbors opposed to the development. Staff also received a letter from the president of the Ponderosa Trails HOA informing staff that a poll of the property owners was conducted and resulted in 88% of respondents opposing the rezoning, 11% in favor, and 1.5% did not have an opinion either way. Copies of the correspondence are attached.

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**Attachments:**

P&Z Commission Staff Report
Aura Staff Presentation
Applications
Area Context Map
Ord. 2021-06
Ex. A Legal Description
Draft DA
Legal Notices
Project Narrative and Regional Plan Analysis
Citizen Participation Plan and Reports
Emails/Letters from Public

01_Site Plans
02_Site Plans and Resource Protection
03_Apartment Bldg Floor Plans
04_Common Bldg Floor Plans
05_Building Elevations
06_Sign and Landscape Plans

**PLANNING AND DEVELOPMENT SERVICES REPORT**
**DIRECT TO ORDINANCE ZONING MAP AMENDMENT**

**PUBLIC HEARING**
**PZ-20-00008-01**

**DATE:** November 24, 2020
**MEETING DATE:** December 9, 2020
**REPORT BY:** Alaxandra Pucciarelli

**REQUEST:**
Direct to Ordinance Zoning Map Amendment, by Trinsic Acquisition Company LLC, of approximately 11 acres located at 151 West High Country Trail from the Estate Residential (ER) zone to the Medium Density Residential (MR) zone. The development site is already located within the Resource Protection Overlay (RPO).

**STAFF RECOMMENDATION:**
Staff recommends the Planning and Zoning Commission, in accordance with the findings presented in this report, forward the Direct to Ordinance Zoning Map Amendment request to the City Council with a recommendation for approval.

**PRESENT LAND USE:**
The subject property is approximately 11 acres comprised of two contiguous parcels, one of which is bisected by West High Country Trail. The parcels are currently owned by Auza Flagstaff, LLC. The Zoning Code defines a Development Site as "any lot or parcel of land, whether under common ownership or multiple ownership, which constitutes a site on which development is proposed, or exists." The property is a portion of the Auza Family Ranch; however, it is no longer used for ranching activities. The portion of the site north of West High Country Trail currently has a single-family house which encroaches slightly on to the parcel and a number of large existing Ponderosa Pine Trees. It is fenced and is connected to the Auza family's large outdoor seating and cooking area with ramadas, storage facilities, and restroom facilities. The portion of the property south of West High Country Trail is crossed by high voltage electrical transmission lines. South of this, the property is vacant.

**PROPOSED LAND USE:**
The developer proposes the construction of a multi-family residential development, concentrated on the portion of the site south of High Country Trail and the electrical transmission lines, consisting primarily of market rate apartments. The proposed development consists of four three-story apartment buildings, three two-story apartment buildings, a clubhouse with apartments above, a fitness center, outdoor amenities, and on-site surface parking. The portion of the site north of High Country Trail is proposed to remain as is described under present land use.

**NEIGHBORHOOD DEVELOPMENT:**
See the attached area context map.

North: Interstate 17; Auza Homestead zoned Rural Residential (RR)
East: Vacant parcel zoned Highway Commercial (HC); The Lodge Apartments zoned High Density Residential (HR)
South: Single Family Homes zoned Single Family Residential (R1)
West: Timber Trails Apartments zoned Medium Density Residential (MR); Single Family Homes zoned Single Family Residential (R1)

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## I. Project Introduction

### A. Background

The development site to be rezoned is approximately 11 acres comprised of two contiguous parcels located just west of the intersection of High Country Trail and Lake Mary Road. The property is a portion of the Auza Family Ranch, historically used for livestock herding between Arizona, Colorado, and California, since before Flagstaff was incorporated. The Auza property has been impacted by the construction of Interstate 17 at the north end of the property, the bisection of the property by High Country Trail, and an electrical utility easement for the high voltage electrical transmission lines along the south side of High Country Trail.

The Auzas would like to maintain the existing single-family house constructed in the 1980's and located on the north side of High Country Trail. This Direct to Ordinance Zoning Map amendment proposes to rezone 11 acres, primarily located south of High Country Trail, from Estate Residential (ER) to Medium Density Residential (MR). The electrical utility easement running along the south side of High Country Trail prohibits any structures from being constructed near the street. This pushes the proposed development to the far southern portion of the property, adjacent to the existing single-family residential neighborhood.

This project was originally submitted as PZ-17-00218-02 for a 173-unit multifamily residential development with a 16.11 acre project area that included parcels both north and south of High Country Trail. Concerns were raised by staff regarding the proposed concentration of density, proximity to adjacent single-family homes, and the amount of grading on the site. After much consideration, Staff arrived at a recommendation of denial. The Planning and Zoning Commission heard the case on May 22, 2019 and made a recommendation to City Council of denial. A recording of this meeting may be reviewed on the City's website: https://flagstaffaz.new.swagit.com/videos/55447
Following the Planning and Zoning Commission hearing, the applicant decided to withdraw the rezoning request. Council did not hear the case.

Since then the applicant has made significant changes to the project including a change in the parcels requested to be rezoned. The current application is a request to rezone only two parcels. One parcel includes some property north of High Country Trail, but the majority of the area (9 out of 11 acres) is located south of the road. The current proposal has decreased density from 173 to 160 units. The applicant has increased the setbacks from the adjacent homes. This has resulted in a significant number of existing trees being saved and dramatically reducing the amount of grading along the south property line. The current proposal will retain all stormwater on site in underground vaults, eliminating the need for a deep retention basin in the area set aside as civic space. This improves the quality of the required public civic space.

**B. Proposed Rezoning and Development Plan**

The developer, Trinsic Acquisition Company LLC, is requesting rezoning approval to permit the development of an apartment complex consisting of 160 units. The four three-story buildings, three two-story buildings, and the two-story clubhouse will include 160 units. The unit mix includes the following:

| UNIT DESCRIPTION | NO. OF UNITS | PERCENTAGE |
|---|---|---|
| 1 Bed/1 Bath | 112 | 70% |
| 2 Bed/2 Bath | 48 | 30% |

The minimum density requirement in the MR zone is 6 units per acre and the maximum density allowed is 9 units per acre (within the RPO). Based on the entire project area (11 acres) 99 units are allowed. With the inclusion of 20% affordable units, Zoning Code Division 10-30.20 allows for a 45% density bonus (refer to Table 10-30.20.050.A). Because the site plan includes 20 units (20%) that qualify as Category 1 of the city's affordable housing program, an additional 45 units are allowed for a total of 144 units. Zoning Code Division 10-30.70 also allows for a 25% density bonus through the utilization of sustainable building practices, allowing for another 25 additional units, for a total of 169 allowed units (refer to Table 10-30.70.030.A). The proposal isfor 160 units.

The project will also include a 5,545 square foot leasing office/clubhouse with 4 apartments on the second floor, a 1,615 square foot fitness center, and a 400 square foot ramada. Site access will be provided from two driveways on West High Country Trail. There are 242 surface parking spaces, including 8 ADA accessible parking spaces. The project will also be required to provide a minimum of 14 exterior bicycle parking spaces. The site plan indicates 3 bike racks (with 5 spaces each) located on the site, for a total of 15 bicycle parking spaces.

The MR zone permits a maximum building height of 35 feet, or 40 feet for buildings with roofs with a pitch of 6:12 and greater. The highest roofline of the proposed buildings will be 40 feet from finished grade with an increased roof pitch.

## II. Staff Site Plan Review

On August 10, 2020, the Inter-Department Staff (IDS) approved a new application for Site Plan Review of the proposed development subject to successfully obtaining a Direct to Ordinance Zoning Map Amendment (rezoning). A copy of the application is attached to this report. Should the rezoning be denied, the Site Plan as submitted will no longer be approved.

### A. Zoning – City of Flagstaff Zoning Code

If this Direct to Ordinance Zoning Map Amendment request is approved, approximately 11 acres will be rezoned to the Medium Density Residential (MR) zone. Development of the site will be conditioned to the approved site plan and a final development agreement. Any substantial change to the approved site plan would require a new rezoning request and further review and approvals by the Planning and Zoning Commission and City Council. The Site Plan provided includes the overall site layout, open space and civic space areas, resource protection plan, preliminary landscaping, building floor plans and elevations, and site sections.

#### i. Site Planning Standards

In accordance with Section 10-30.60.030 of the Zoning Code a site analysis was completed in conjunction with the concept plan for this project that examines the topography of the site, solar orientation, existing/native vegetation types, view corridors, climate, subsurface conditions, drainage swales and stream corridor, and the built environment and land use context. Unfortunately, the existing electric utility easement along the south side of High Country Trail does not allow for "building forward" design on the southern portion of the site, a zoning code requirement. Typically, the buildings would be located 10-15 feet from the property line, and parking would be located to the side or behind a building. As the utility easement does not allow buildings to be constructed within it, the easement is utilized as surface parking and the required civic and common open space. The parking, at its closest location to the street, is set back at least 50 feet. The developer proposes to locate the taller buildings towards the center of the site while the lower, two-story buildings are placed closer to the existing single-family homes. The developer has also provided an increased setback along the southern and southwestern edges of the site to help buffer the existing homes from the development and protect the existing trees. The portion of the site north of High Country Trail contains the majority of the required tree resources, approximately 70 of the 130 protected trees and 60% of the tree points.

#### ii. Resource Protection

There is a Resource Protection Overlay zone on the subject site. The Zoning Code requires 50% of the tree resources to be saved, but the Affordable Housing incentive allows that protection rate to be reduced to 25%. The developer proposes to save 28.28% of the existing tree resources. The developer is locating the majority of the required tree resources on the northern portion of the site (approximately 70 trees, including 9 trees with a DBH over 25 inches for 60% of the total tree points). This area will not allow any public or resident access, and staff is requiring a tree resource easement to be placed over this portion of the property. The southern portion of the development is designed to save 60 existing trees including 2 trees with a DBH over 25 inches.

#### iii. Open Space & Civic Space

The MR zone requires 15% of the gross lot area to be Common Open Space (Table 10-40-30.030.G). A minimum of 71,943 square feet of open space is required for the proposed residential project. The developer's provided Open Space Plan Preliminary (Sheet A1.12) identifies 79,983 square feet (1.84 acres) of common open space, which is 17% of the site area. Most of the open space (66,160 square feet) is located within the electrical utility easement. The remainder of common open space (13,823 square feet) is located around the leasing office/clubhouse and the play area in the southwest corner of the site. None of the Common Open Space is located to the north of High Country Trail.

Section 10-30.60.060.B.1.b of the Zoning Code requires developments with 50 or more dwelling units to

provide a minimum of 5% of the site as Civic Space. This space must be accessible to the general public. A total of 23,981 square feet of civic space is required for this project. The site plan identifies a total of 29,000 square feet (0.67 acres) of civic space within the residential development. The civic space is located in the electrical utility easement adjacent to the proposed FUTS path and behind the future bus stop. The area is indicated as a meadow landscape/ wildflower garden with a native grass and wildflower seed mix on the landscape plan. There is a stabilized granite trail and two benches. Staff believes that this Civic Space is an amenity and provides a benefit to the community within the constraints of the electrical utility easement.

**iv. Pedestrian and Bicycle Circulation Systems**

The developer will be removing the existing 5-foot-wide sidewalk along the south side of High Country Trail and replacing it with a 10-foot wide FUTS. While the sidewalk was located directly behind the street curb, the FUTS will be located further from the edge of the street. This 5-foot plus buffer between pedestrians and bicycle riders and the street, will greatly increase pedestrian safety and comfort. The length of FUTS along the developer's frontage does not currently tie into the existing FUTS trails, but rather ties back into the sidewalk. The developer has committed to construct the additional lengths of FUTS (west to South Wild West Trail and east to South Lake Mary Road) if the City is able to obtain the required property rights from the Ponderosa Trails HOA who owns the land. The developer has declined staff's requests to provide sidewalk improvements along their frontage on the north side of High Country Trail.

On the southern portion of the site, the developer has proposed sidewalks connecting the buildings, parking areas, and common amenities.

**v. Compatibility and Architectural Design Standards**

Compatibility does not mean "the same as" but rather it refers to how well a new development is sensitive to the character of existing development. The Zoning Code breaks down compatibility into three categories: Patterns of Development, Scale, and Continuity.

Patterns of Development include streetscapes, site relationships, signage, and landscape features. Due to the location of the high voltage electrical transmission lines and their easement the buildings are not constructed along the street. Likewise, the street frontage lacks the typically required landscaping since trees are not permitted in the easement.

Scale refers to similar or harmonious proportions, overall height and width, the visual intensity of the development, and the building massing. The development reads as more intense due to the concentration of density. There are three parcels to the northeast which are also zoned MR. The eastern development is two-stories, the center development is one and two-stories, and the development farthest to the west is three-stories. The existing apartment complex to the east (adjacent to the proposed development) is three-stories but is zoned High Density Residential. The proposed development contains buildings visible from the street that are three-stories high and over 100-feet long.

Continuity encompasses patterns of development and scale, but also site development, building forms, texture, materials, details, and colors.

**vi. Landscaping**

Landscaping plans are not required in conjunction with a Direct to Ordinance Zoning Map Amendment. The developer has provided a conceptual landscaping plan, showing all landscape areas and plant locations. The conceptual plan generally meets the requirements of parking lot landscaping, street buffer landscaping, building foundation, and peripheral buffer landscaping found within Section 10-50.60 of the Zoning Code. Unfortunately, the electrical utility easement does not allow any trees to be planted within it. The required number of trees will be located elsewhere on the site. A final landscape plan will be reviewed at the time of civil plan submittal.

**vii. Outdoor Lighting**

The subject property is located within Lighting Zone II and is allowed a total of 50,000 lumens per acre. Outdoor lighting plans are not required in conjunction with a Direct to Ordinance Zoning Map Amendment. The developer provided a conceptual outdoor lighting plan. A final lighting plan will be reviewed for compliance at the time of building permit submittal.

**viii. Parking**

Based on the requirements for market rate units, affordable units, and guest parking, 266 spaces are required. Since the development is located within a quarter mile of a bus stop, the developer has taken a 10% reduction in the number of required spaces resulting in 240 required parking spaces. The proposed development includes 242 surface parking spaces, including 8 ADA accessible parking spaces.

**ix. Historic/Cultural Resources**

A Cultural Resource Letter Report was completed for the subject property. The report identifies all existing construction on the north side of High Country Trail as modern construction and not historic resources. At least two archeological sites previously identified on the subject properties have been removed. Although the "homestead" may be significant to the Auza family, the property holds limited value to the community since the historically significant sites have been destroyed.

**B. Public Systems Impact Analysis**

**i. Traffic/Right-of-Way Impact**

The scope of a Traffic Impact Analysis (TIA) is generally determined by the estimated peak hour trips generated by a development, per the Engineering Standards. The estimated peak hour trips for this development is 42 vehicles/hour in the a.m. and 71 vehicles/hour in the p.m. According to the Standards, a level one analysis was appropriate, requiring the consulting engineer to analyze the intersection of Lake Mary Road and High-Country Trail, as well as the two site access driveways.

CivTech, the engineering consultant for the developer, completed a TIA in June of 2018. Due to the lapse of time, the Analysis was considered no longer valid so a new report was required. CivTech conducted turning movement counts at Lake Mary Rd. and High Country Trail., from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m. on January 20, 2020. The data was entered into an engineering software program, Synchro 10, to analyze the Level of Service (LOS) under existing conditions (LOS is a measure of the average delay a driver will experience at an intersection, graded on a scale from A – F). Then, the estimated turning movements generated by the development were added to the program to analyze the post development conditions at full build out. The software output revealed that the intersection is currently operating at an overall LOS of B in the a.m. peak hour and a LOS of B in the p.m. peak hour, while no individual movement operated below LOS C. With the trips from the development added, the a.m. peak hour will continue to operate at a LOS of B and the p.m. peak hour will operate at a LOS of B, again with no movement operating below LOS C. The Engineering Standards allow for an intersection to function at or above a LOS of D. When the LOS drops below D, improvements are required to mitigate the conditions back to an acceptable LOS.

Both access driveways were also analyzed with respect to site distance and turn-lane requirements. The easternmost driveway was originally proposed adjacent to the eastern property line, however, staff required that it be moved to the current location, where it meets standards for site distance. The southernmost driveway also meets standards for site distance.

The cross-section of High Country Trail includes a continuous left-turn lane at each of the two driveways. The volume of peak hour right- turns into each of the driveways was below the threshold for requiring

right- turn deceleration lanes.

**Transportation Improvements**
No off-site traffic improvements will be required.

The existing frontage conditions along High Country Trail include five-foot wide sidewalks at back of curb along both the north and south sides of the street. Current Engineering standards call for a five-foot parkway and a five-foot sidewalk. The developer has refused staff's request for new parkway and sidewalk along the north side of High Country Trail. The existing northern sidewalk will remain in its current condition. The proposed site plan calls for existing sidewalk along the south side of the street to be removed. In its place the developer will construct a new ten-foot wide concrete FUTS trail. The proposed FUTS trail will not connect to the existing FUTS sections west of Wild West Trail or along Lake Mary Road, but will tie back into the existing sidewalks to the west and east of the property.

**ii. Water and Wastewater Impact**

A Water and Sewer Impact Analysis (WSIA) was completed by the City on June 1, 2018. The proposed development is located within the City of Flagstaff urban growth boundary and can be served by City water and sewer utilities. Currently there is no infrastructure in the ground on-site to support this development, so all on-site sewer and water systems will have to be designed and built. No off-site water or sewer improvements will be required. It is the developer's responsibility to design and construct all on-site and connecting water infrastructure per the City of Flagstaff Engineering Standards.

**Water**
All public water infrastructure exists in the High Country Trail right-of-way adjacent to this property. There is a 12-inch water main along the property frontage. All appropriate looping and second source requirements can be met. The property lies within the Zone "B" water pressure system limits and meets the minimum pressure requirements stated in the City of Flagstaff Engineering Standards. The developer will be required to provide a looped water system by extending an 8-inch diameter waterline from the existing 12-inch diameter main located in High Country Trail.

**Wastewater**
To provide sewer services to the project, the developer proposes to connect to an existing 8-inch stub out connected to a manhole which flows through the adjacent properties to the east before heading northeast to the Rio-de-Flag Wastewater Treatment Plant. The developer will provide new on-site sewer service consisting of an 8-inch line that flows east through the property to the manhole on the adjacent property. This will require the developer to get the necessary utility access. The capacity of the existing collection system downstream of this project is adequate to convey the existing and proposed flow rates and maintain the City's requirements.

**iii. Stormwater Analysis**

The project's overarching drainage concept is to provide peak flow stormwater discharge mitigation (detention), partial stormwater runoff volume mitigation (LID ROCV), improvement to the water quality of site discharges (LID), and retention of the runoff volume increase for the 100-year 24-hour storm. There are no proposed offsite stormwater improvements required with the inclusion of onsite retention for increase runoff volumes.

As part of the rezoning request a Drainage Impact Analysis (DIA) was performed. The drainage impact analysis extended from the project site downstream to the Sinclair Wash. The impact analysis studied the existing High Country Trail Street section, catch basins and storm drains for capacity. Results of the impact analysis show the street has the capacity to handle the 10-year design storm and 100-year flow being

contained within the Right of Way. As such, no offsite improvements within High Country Trail have been proposed.

Development of the site will meet the peak flow mitigation, LID volume mitigation and water quality requirements using sub-surface water storage systems classified as extended detention basins (EDB), which consist of a detention and a retention storage capacity as well as filtration components. Lower portions of the site will provide the water quality requirements through the use of oil and grit separators.

The project will provide the attenuation required to reduce the post development peak runoff to the pre-development rates for the 10-year and 100-year storms. The Water Quality Improvements consisting of sediment capture components will be incorporated with the use of Low Impact Development (LID) Integrated Management Practices (IMPs) including sediment trapping isolator rows within the sub-surface storage systems, and filtration systems located outside of the EDB's.

The increase in volume of stormwater runoff discharged from the site will be mitigated by additional retention volume provided within aforementioned EDB's.

## III. Direct to Ordinance Zoning Map Amendment

An application for a Direct to Ordinance Zoning Map 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, granted with conditions to mitigate anticipated impacts caused by the proposed development, or denied.

Direct to Ordinance Zoning Map Amendments shall be evaluated based on the following findings:

### A. Finding #1:

The proposed amendment must be found to be consistent with and in conformance with the goals and policies of the General Plan and any applicable specific plans. If the application is not consistent with the General Plan, and any other applicable specific plan, the applicable plan must be amended in compliance with the procedures established in Chapter 11-10 of the City Code (Title 11: General Plans and Subdivisions) prior to considering the proposed amendment.

#### i. General Plan/Flagstaff Regional Plan (FRP 2030) Process and Analysis Summary

When staff performs a Regional Plan (the "Plan") analysis, staff reviews all maps, text, and goals and policies to determine which are the most relevant in relation to the proposed application. The Plan's Future Growth Illustration on Maps 21 and 22 (same map; one is regional scale and one city scale) and the text of the Plan provide supplemental information for the interpretation of goals and policies. In the case of any conflict between the Future Growth Illustration and the Plan's goals and policies, the goals and policies will prevail. The Future Growth Illustration has two types of land use designations: "Area Types" describe the place-making context of Urban, Suburban, Rural, or Employment, and "Place Types" such as activity centers, corridors, and neighborhoods which provide the framework for the density, intensities, and mix of uses within the area types.

Staff has identified that the subject property is designated as Existing Suburban and is not located within an activity center on the Plan's Future Growth Illustration. Suburban areas are intended to have medium to low densities of people, residences, jobs, and activities; the streets and sidewalks vary in pattern; the area is drivable to access homes and jobs, yet walkable by special pedestrian facilities such as FUTS trails; some services and goods are available to the residents; the area may have access to public transportation. The City's desired

Suburban Neighborhood Characteristics include a density of 2-13 units per acre, low-rise apartments (generally accepted as three-story maximum), and open spaces used for passive recreation.

The Regional Plan proposes a maximum density of 13 units per acre in Suburban areas. The overall density of the project is 14.5 units per acre (160 units /11 acres). However, the additional "bonus" units are not counted towards the calculated density, resulting in a calculated density of only 9 units per acre. As discussed, the site has several constraints, including the bisection of the property by both the road and the electrical transmission lines. The effect of these constraints is a concentration of density on the southern portion of the development, resulting in a perceived experience of 17.8 units per acre (160 units /9 acres), exacerbated by the bisection of the project by West High Country Trail.

Staff has identified the following Goals and Policies as most relevant to the current application proposal. This portion of the analysis is subjective in nature because some policies are given a higher weight in the analysis than others.

**ii. <u>Applicable General Plan Goals and Policies</u>**

As part of its review, staff identified relevant Regional Plan Goals and Policies that could be applied to support or not support the proposed Zoning Map Amendment. These goals and policies are located within the developer's narrative. The following is a discussion of how the project generally meets or conflicts with goals and policies in each chapter.

**a. Environmental Planning & Conservation (Air Quality, Climate Change and Adaptation, Dark Skies, Ecosystem Health, Environmentally Sensitive Lands, Natural Quiet, Soils, and Wildlife)**

The Regional Plan encourages development to work with the existing land forms. Developments should step down sloped sites and preserve as much natural topography as possible. Policy E&C.9.2 states that construction projects employ strategies to minimize disturbed area, soil compaction, soil erosion and destruction of vegetation. Policy CC.1.1 identifies the goal of preserving the natural character of the region through planning and design to maintain views of significant landmarks, sloping landforms, rock outcroppings, water courses, floodplains, and meadows, and conserve stands of ponderosa pine. The site has considerable topography and the proposed site plan utilizes significant grading, with retaining walls located along the east property line and south of buildings 6 and 7. The proposed retaining wall to the south is shown to be 8-10 feet high with a guard rail at the top. The retaining wall to the east is shown to be 3-almost 7 feet high with a guard rail at the top.

The revised site plan, with its greater setbacks and less severe grading, saves 60 trees on the southern portion of the site. This is a substantial increase in the number of trees which will serve to buffer the existing homes from the proposed development.

**b. Water Resources (Water Sources, Water Demand, Stormwater and Watershed Management, and Water Quality)**

As shown on Map 21 and referenced in Policy WR.4.3. "Development requiring public utility services will be located within the Urban Growth Boundary," the Property is located within the Urban Growth Boundary. There is existing water infrastructure in High Country Trail and existing sewer adjacent to the site that can support the proposed project. There are no off-site improvements required for sewer or water service. The proposed development complies with the findings of the Drainage Impact Analysis discussed in the Public Systems Impact Analysis section of this report.

**c. Efficient Use of Energy Goals and Policies**

The Regional Plan Policy E.1.4 promotes cost-effective, energy-efficient technologies and design in all new buildings for residential construction. The project proposes to include several design features that help

increase energy efficiency as listed in the developer's narrative. The majority of these features are required by code and are standard construction practice. Policy E.2.4 encourages small-scale renewable energy production and use on the local level on appropriate residential parcels. The developer states that they will reconsider the inclusion of solar panels after construction if the cost benefit analysis is improved.

The developer has elected to participate in the City's Sustainable Building Program and will meet the requirements for Water Resource Protection, Transportation/Air Quality, Waste Reduction During Construction, and Energy Efficiency. In return, the developer shall receive a 25% density bonus (25 additional dwelling units).

**d. Community Character (Scenic Resources and Natural Setting, Heritage Preservation, Community Design, and Arts, Sciences and Education)**

Policy CC.1.1 aims to preserve the natural character of the region and includes the preservation of stands of ponderosa pines. The Natural Resource Protection Plan indicates that 28% of the tree resources will be retained. The code requires 50% of the tree resources to be saved, but the Affordable Housing incentive allows that requirement to be reduced to 25%. The majority of the tree resources are located on the portion of the property north of High Country Trail.

Goal CC.3 aims to preserve, restore, enhance, and reflect the design traditions of Flagstaff. Specifically policies CC.3.1 and CC.3.2 discuss the desired design of buildings and their relationship to their context. The developer states that the architectural design was developed to be site specific and complement traditional design characteristics associated with Flagstaff. They feel the design is appropriate for the region and climate, and consistent with surrounding developments. They propose to use materials typical to Flagstaff construction such as cementitious lap siding and stone veneer and a color palette inspired by the surrounding earth and forest.

Policy CC.4.1 states streetscapes are to be context sensitive and transportation systems are to reflect the desired land use while balancing the needs of all modes for traffic safety and construction and maintenance costs. The existing sidewalk along the south side of High Country Trail will be replaced with a FUTS trail. Unlike the existing sidewalks, the FUTS trail is set back from the edge of the street, creating greater safety for pedestrians. The developer has committed to continue the FUTS on either side of their property to tie into the existing FUTS. This offer is dependent on the City acquiring the necessary property rights from the Ponderosa Trails HOA. The developer turned down staff's request to replace the existing sidewalk along the north side of the street for the inclusion of parkways.

The site design is constrained by an existing 80-foot-wide electric utility easement along the south side of High Country Trail. The easement restricts buildings from being located close to the street as required by the Zoning Code. The developer has worked to provide clear pedestrian paths between the buildings and the FUTS trail.

**e. Growth Areas & Land Use (Reinvestment, Greenfield, Urban Area, Suburban Area, Rural Area, Employment Area, Special Planning Area, and Activity Centers)**

The proposed development is on a vacant infill parcel. The development of the infill parcel includes the required civic space, open space and pedestrian amenities, including the portion of FUTS along the street frontage.

The developer has repeatedly met with residents and property owners. The Citizen Participation Report, required as part of the rezoning application and prepared by the developer, outlines the specific details of these efforts. Policy LU.1.11 calls for collaboration between a developer, residents, and property owners in existing neighborhoods where redevelopment and reinvestment are proposed so that they are included,

engaged, and informed. The developer has modified their proposal in response to concerns of the neighborhood. The developer now proposes to provide a higher quality civic space for the community, and continues to work with city staff and the HOA for Ponderosa Trails to provide a complete connection to the FUTS trail.

Policy LU.1.3 promotes reinvestment at the neighborhood scale to include infill of vacant parcels, redevelopment of underutilized properties, aesthetic improvements to public spaces, remodeling of existing buildings and streetscapes, maintaining selected appropriate open spaces, and programs for the benefit and improvement of the local residents. Staff is supportive of this suburban infill project that proposes multi-family development adjacent to public transit routes and possibly a complete FUTS trail system. The revised design includes additional pedestrian connections on site and natural buffers adjacent to the existing single-family homes. Policy LU.13.9 promotes the use of open space and FUTS trails to provide walking and biking links.

The proposed development will provide the community with 140 additional medium density market rate units (described by the developer as luxury) and 20 affordable housing units limited to individuals who make no more than 80% of the Area Median Income (AMI) of Flagstaff.

**f. Transportation (Mobility and Access, Safe and Efficient Multimodal Transportation, Environmental Considerations, Quality Design, Pedestrian Infrastructure, Bicycle Infrastructure, Transit, Automobile, Passenger Rail and Rail Freight, Air Travel, and Public Support for Transportation)**

The proposed development will place residents within walking distance of two existing bus routes, will provide for future bus stops on High Country trail, and a FUTS trail. Staff hopes to obtain the necessary property rights necessary for the developer to complete the FUTS. Although the sidewalk on the north side of High Country Trail is not improved to current engineering standards, these pedestrian connections do help promote the use of public transportation and bicycling as stated in Policy T.1.6 "Provide and promote strategies that increase alternate modes of travel and demand for vehicle travel to reduce peak period traffic."

**g. Neighborhoods, Housing, and Urban Conservation**

Goal NH.3 of the Regional Plan speaks to the desire to make available a variety of housing types at different price points, to provide housing opportunity for all economic sectors. The units proposed for affordable housing will permanently serve residents earning 80% of the area median income or less. For a single individual, that annual income limit is currently $42,150. Flagstaff Housing staff identified one-bedroom units for the proposed development to help fill a need in the community. The development will have 14 one-bedroom units and 6 two-bedroom units designated as affordable units.

The Regional Plan also aims to have compatible infill projects, specifically in Goal NH.6. The developer states that they choose the Medium Density Residential (MR) zoning district in an effort to blend new and existing buildings. Staff agrees that the allowable building height of 35 feet is appropriate given the existing multi-family structures and allowable heights to the south and to the east.

**B. <u>Finding #2</u>**

To meet the finding the proposed amendment must be determined not to be detrimental to the public interest, health, safety, convenience, or welfare of the City of Flagstaff (the "City"); and will add to the public good as described in the General Plan. Staff does not believe that the proposed project will be detrimental to the public interest, health, safety, convenience, or welfare. Staff also believes that the proposed amendment will add to the public good.

The developer has identified the following Community Benefits and Public Good:

i. The developer will provide the FUTS trail across the frontage of the southern portion of the property and has committed to continuing the FUTS to the east and west of the parcel if the necessary property rights are acquired.
ii. The developer will provide the required civic and open space along the south side of High Country Trail.
iii. The developer will provide 20 units (20% of the allowed number of units) to individuals making 80% of the AMI and 140 market rate units.
iv. The proposed project will participate in the Crime Free Multi-Housing Program.
v. The developer will place a Resource Protection Easement on the acreage north of High Country Trail.

**C. Finding #3**

To meet the finding the affected site must be determined to be physically suitable in terms of design, location, shape, size, operating characteristics; and the provision of public and emergency vehicle access, public services, and utilities to ensure that the requested zone designation and the proposed or anticipated uses and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located.

Staff believes that the proposed application meets this finding. The Inter-Division Staff reviewed the application and concluded that the site was suitable for the proposed development. The IDS team based its conclusion on the review of all applicable codes and requirements as well as impact analysis for the site. Any potential impacts were mitigated by the developer and no off-site improvements are required to serve this development.

## IV. DEVELOPMENT AGREEMENT

A draft development agreement has been prepared. The primary purpose of this agreement is to set out roles and responsibilities in regard to the following (not limited to):

- Require the property to be maintained as a single parcel
- Construction and maintenance of the FUTS
- Administration of the Affordable Housing units
- Resource Protection easement for the portion of the parcel north of High Country Trail
- Sustainability density bonus requirements

Staff is requiring an easement over the portion of the property located north of High Country Trail to ensure that the required tree resources located on the property are not removed and to prohibit further development, as any additional development rights/density have been utilized on the southern portion of the parcel.

## V. CITIZEN PARTICIPATION

Public hearings before the Planning and Zoning Commission and City Council are conducted in conjunction with requests for Direct to Ordinance Zoning Map Amendments. In accordance with State Statute, notice of the public hearing was provided by placing an ad in the Daily Sun, posting notices on the property, and mailing a notice to all property owners within 1,000 feet (exceeding the minimum of 300 feet) of the site excluding rights-of-way.

The developer held two neighborhood meetings in regards to this case on March 23, 2020 and July 1, 2020. Both meetings were held virtually due to the pandemic. Per the meeting sign-in, approximately thirty-five (35) individuals attended both meetings. Citizen Participation summaries, attached, were prepared in response to the questions, comments and concerns presented. The meetings included a presentation from the developer and a question and answer session where questions could be typed into the chat. Comments on the project included the following topics: the area north of the road, open space requirements, traffic impacts, stormwater, views, and tree resources.

Two emails from the public has been received as of the writing of this report. The emails are from neighbors opposed to the development. Staff also received a letter from the president of the Ponderosa Trails HOA informing staff that a poll of the property owners was conducted and resulted in 88% of respondents opposing the rezoning, 11% in favor, and 1.5% did not have an opinion either way. Copies of the correspondence are attached.

**RECOMMENDATION:**

Staff recommends the Planning & Zoning Commission forward the request to the City Council with a recommendation approving PZ-20-00008-01, subject to the following six conditions which will be included into the zoning map amendment ordinance:

1. The subject property must be developed in accordance with the approved site plan and the conditions of approval dated August 10, 2020. Modifications (other than minor modifications) to the approved site plan will require an amendment to this Direct to Ordinance Zoning Map Amendment request.
2. The two parcels must be combined and the approximately 2-acre portion of parcel 112-05-011 located north of High Country Trail shall remain a part of the parcel to the south.
3. The State archeological database must be updated to reflect the removal of archeological resources on the subject property.
4. All other requirements of the Zoning Code and other City codes, ordinances and regulations, shall be met by the proposed development.
5. All terms, conditions, and restrictions detailed within the "Aura Development Agreement" must be fully satisfied.
6. In the event the property is rezoned and the Developer fails to obtain final Civil Plan approval within two (2) years of the effective date of the rezoning ordinance, then the City may schedule a public hearing before the City Council for the purpose of causing the zoning on the Property to revert to the former classifications of Rural Residential (RR) and Estate Residential (ER) in accordance with A.R.S. § 9-462.01.

**Attachments:**

- Applications
- Area Context Map
- Legal Notice
- Project Narrative and Regional Plan Analysis
- Citizen Participation Plan and Reports
- Emails/letters from the Public
- Approved Site Plan Drawings

# Aura Flagstaff

## Direct to Ordinance

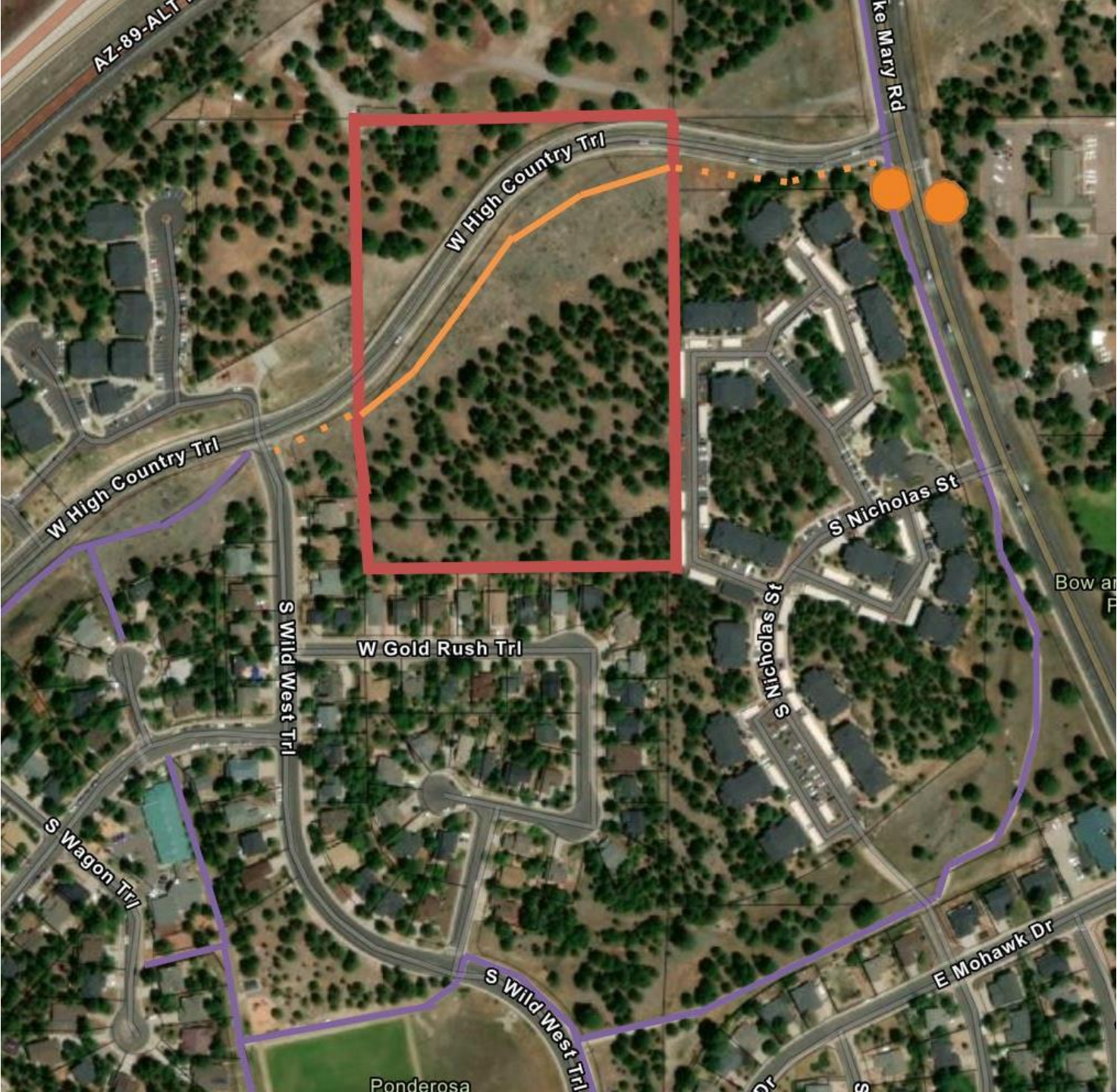
## Zoning Map Amendment

Alaxandra Pucciarelli

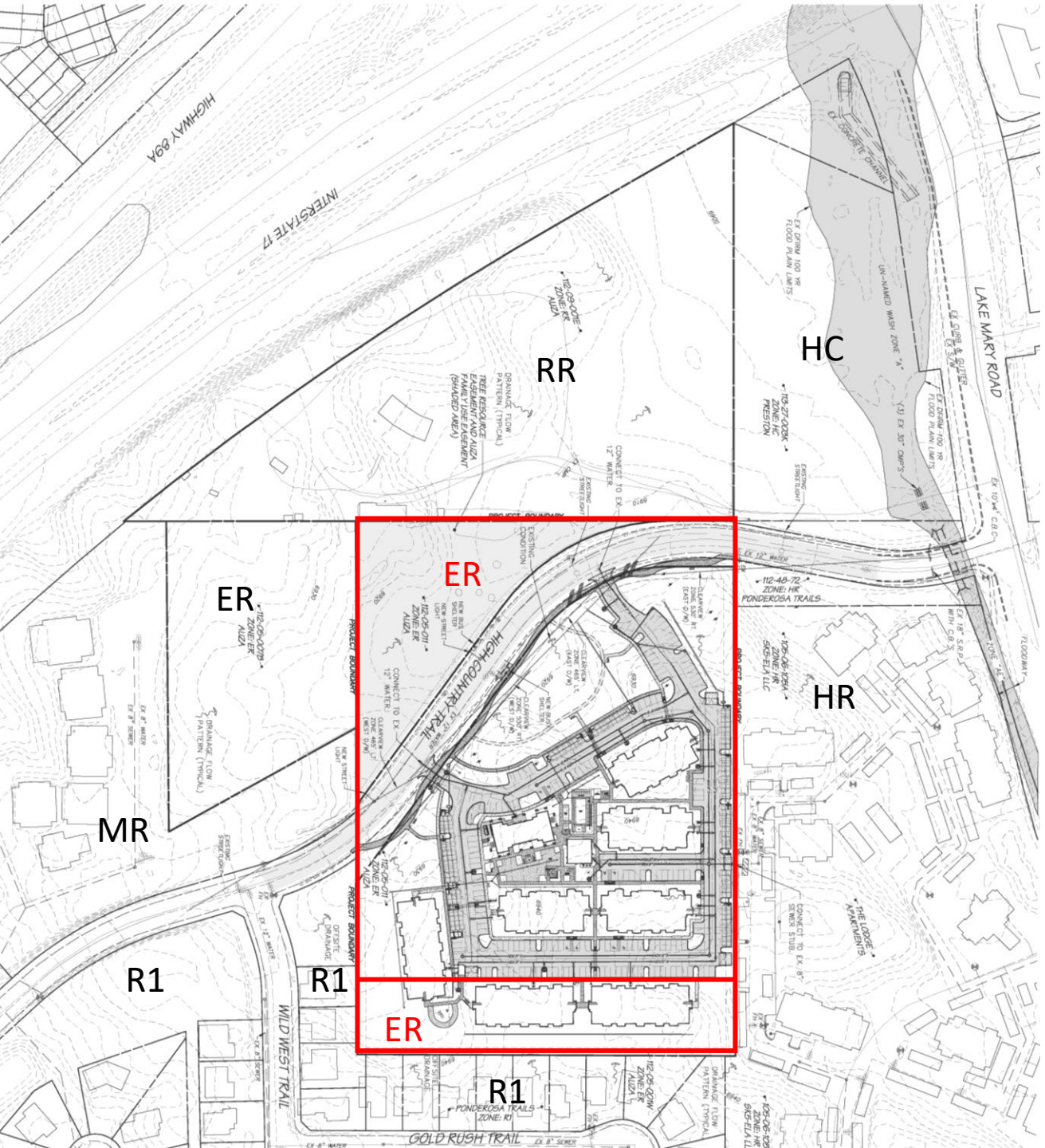
Planning Development Manager

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER




# Area Context Map



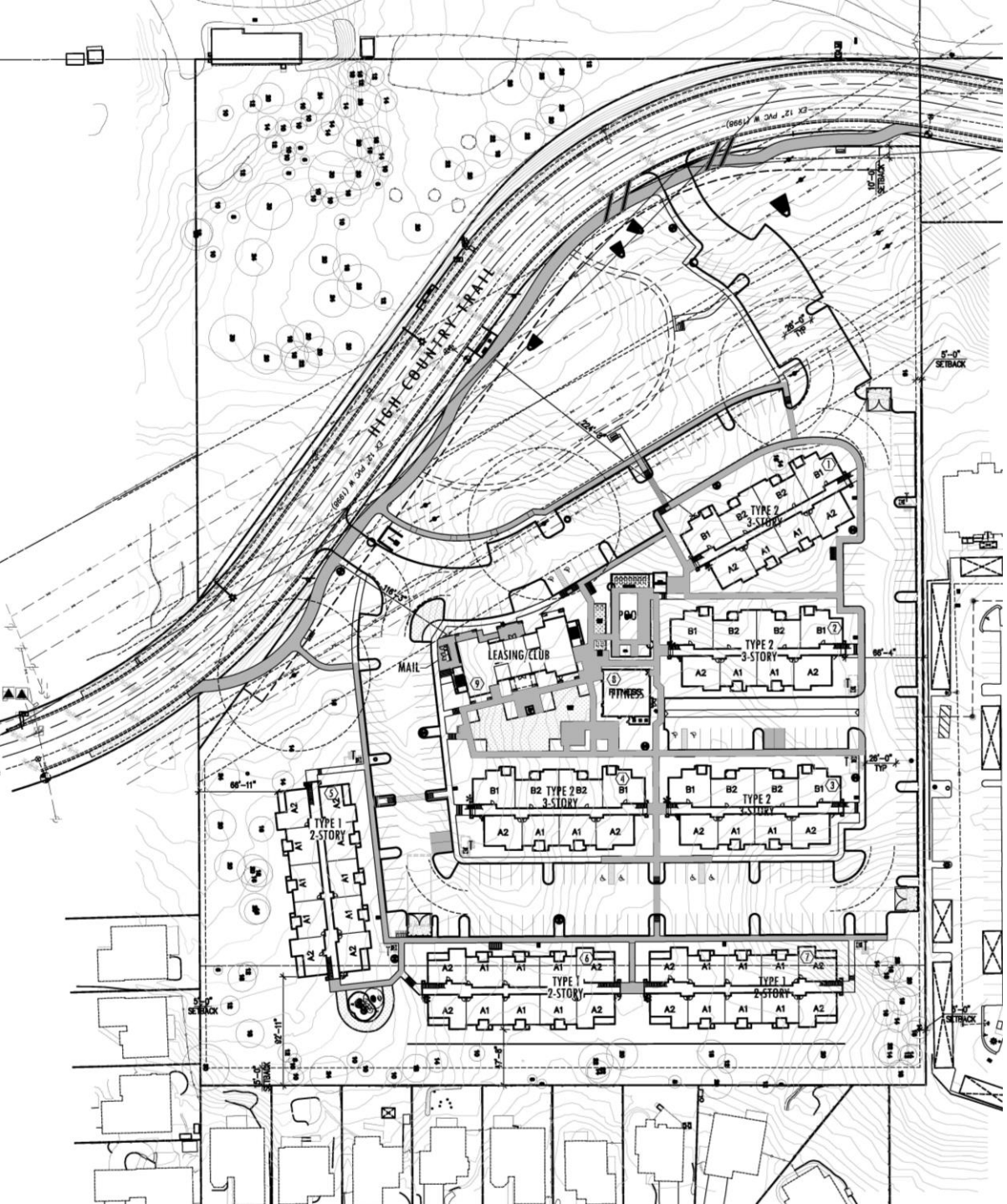

# Project Area

## Existing Conditions

- 2 Parcels
- 11 Acres
- ER zone with RPO

## Proposed

- 1 Parcel
- MR zone with RPO




# Proposed Density

- MR zone allows 6-9 units per acre in RPO
- 11 acres x 9 = 99 units
- 99 x 20% = 20 affordable units
- 99 x 45% density bonus = 45 additional units
- 99 x 25% sustainability bonus = 25 additional units
- 169 allowed units
- 160 proposed units

# Incentives

## Affordable Housing Incentives

- Provides 20% affordable units (20 units)

- Receives 45% density bonus (45 units)
- Receives reduction in forest resource protection
- Receives reduction in required number of parking spaces

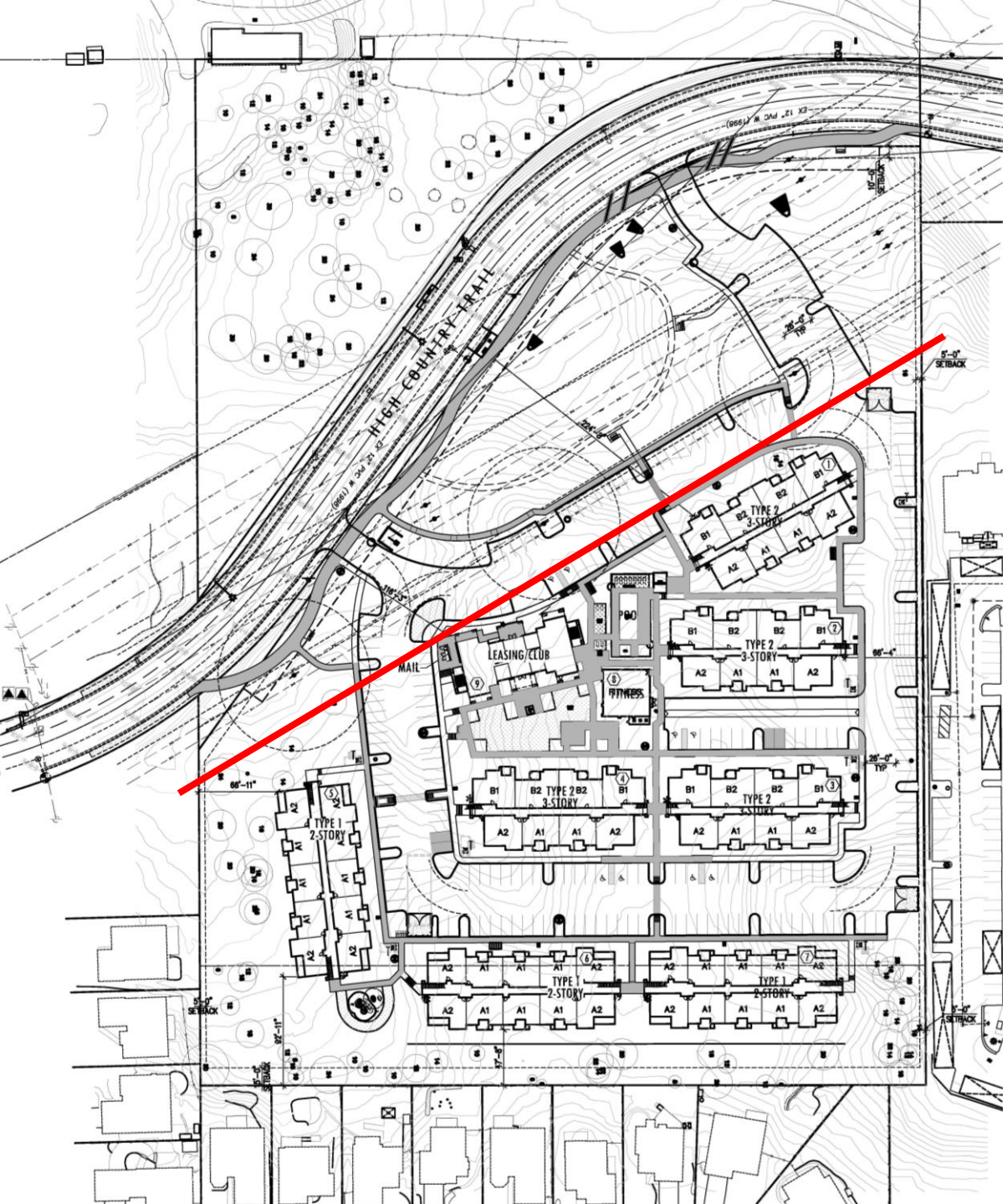
# Incentives

## Residential Sustainable Building Incentives

### Minimum Standards:

- Water Resource Protection: Landscape design shall not include an oasis zone
- Transportation/Air Quality: Located within ¼ mile of a bus stop or a FUTS trail
- Waste Reduction During Construction: Plan for recycling of paper, cardboard, plastics, and metals; and lumber scraps
- Energy Efficiency: 100% of units meeting HERS 50 standard

Receives 25% density bonus (25 units)




# Site Layout

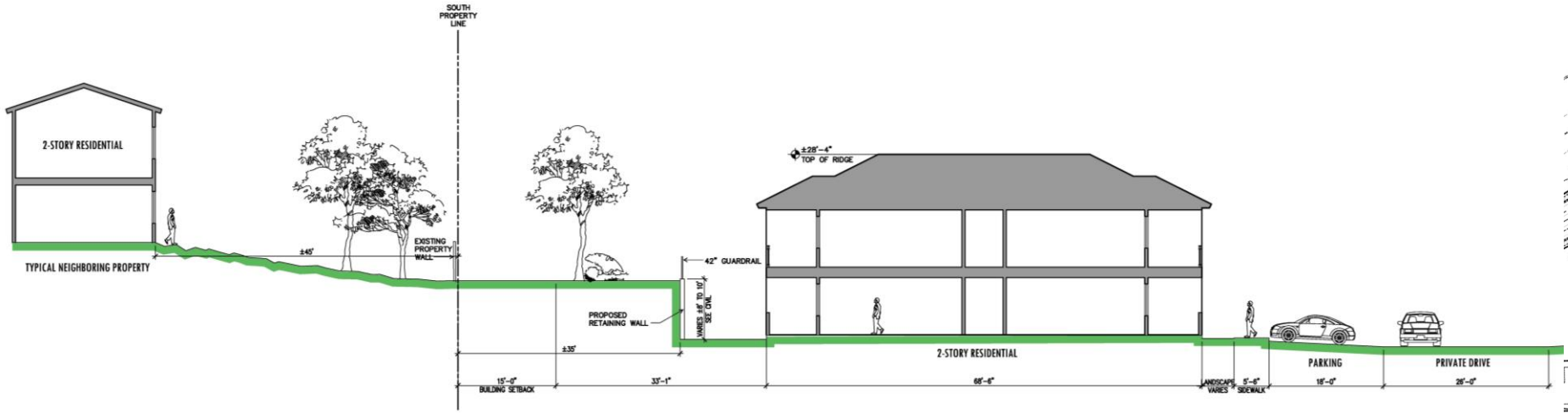
- Electrical Utility Easement
  - Prohibits buildings and trees
- 2 and 3-story apartment bldgs

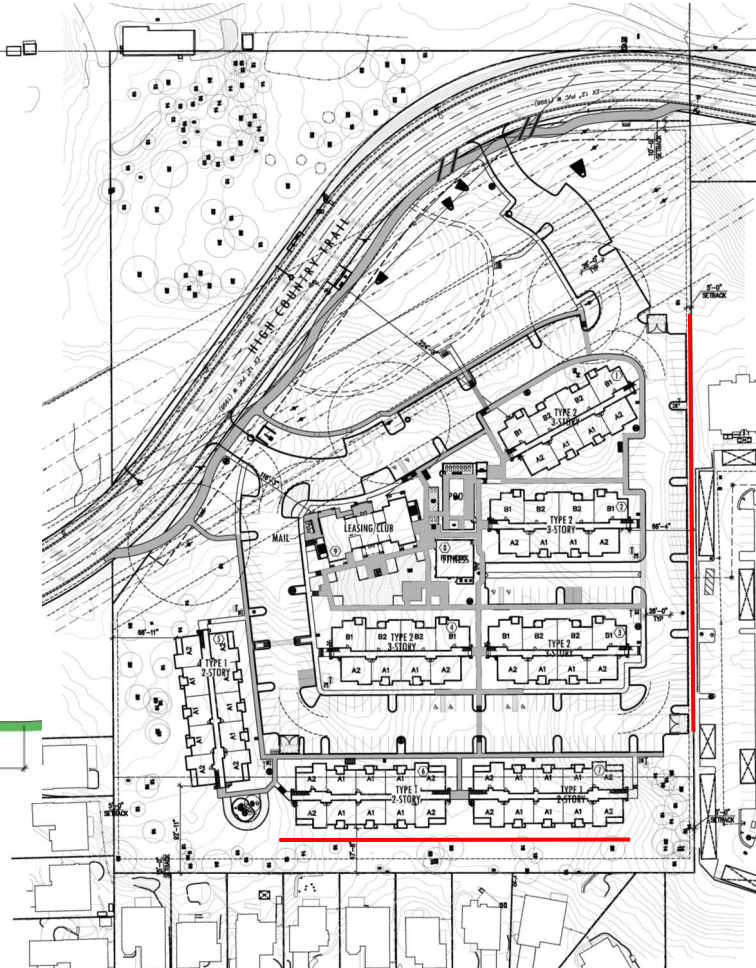
| Unit Type | Number | Percentage |
|---|---|---|
| 1 Bed/1 Bath | 112 | 70% |
| 2 Bed/2 Bath | 48 | 30% |

# Site Design

## Site Retaining Walls

- 10 feet high max. at south wall
- 7 feet high max. at east wall

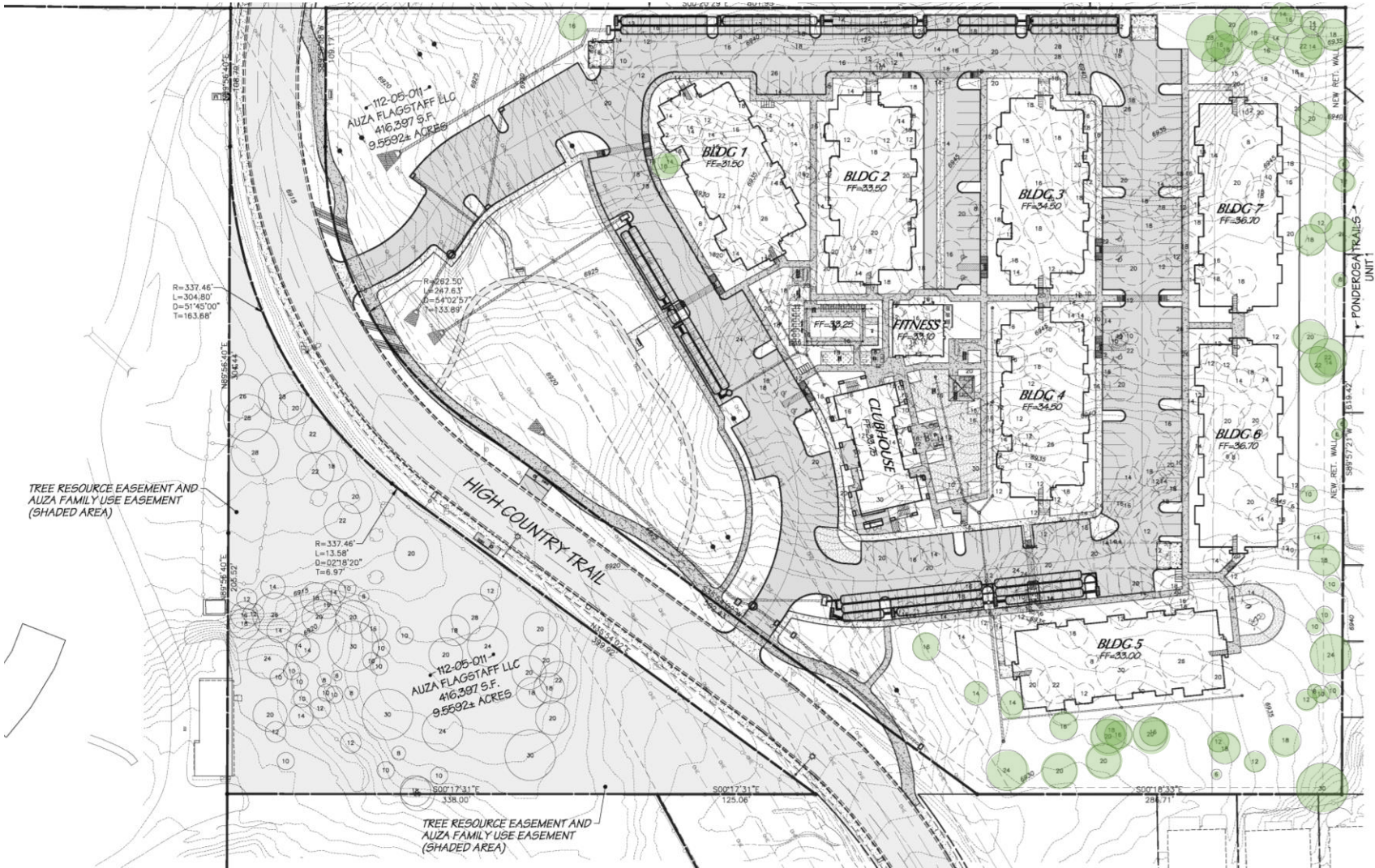


# Resource Protection

## Resource Protection Overlay

- Proposed design saves 28% of tree canopy
  - 70 trees saved on north portion (60% of saved tree resources)
  - 60 trees saved on south portion



# Common Open Space & Civic Space

## Civic Space (accessible to public)

- Provides 5% (29,000 sq ft)
  - Located in electrical utility easement
  - Meadow landscape/wildflower garden
  - Stabilized granite trail and 2 benches

## Common Open Space (tenants)

- Provides 17% (79,983 sq ft)
  - 83% (66,160 sq ft) located in easement
  - 17% (13,823 sq ft) located around leasing office/clubhouse and play area
  - None located north of High Country Trail

# Development Agreement

## Purpose of the agreement:

- Require the property to be maintained as a single parcel
- Construction and maintenance of the FUTS
- Administration of the Affordable Housing units
- Resource Protection easement for the portion of the parcel north of High Country Trail
- Sustainability density bonus requirements

# Findings

## Finding #1: Conformance with the General Plan

- Existing Suburban Area
- Bonus units not counted toward Density
- Greater setback at south
  - Less grading of site
  - More existing trees saved

# Findings

## Finding #2: Community Benefits and Public Good

- FUTS along frontage, and connections to east and west
- Required Civic and Open Space
- 20 Affordable Units, 140 Market Rate units
- Crime Free Multi-Housing Program
- Resource Protection Easement on northern portion of parcel

# Findings

## Finding #3: Site is Physically Suitable

- Meets applicable codes and requirements
  - Site Plan Submittal was approved on August 10, 2020, subject to Direct to Ordinance Zoning Map Amendment

- Mitigates any impacts determined by impact analyses
  - Traffic Impact Analysis (TIA) completed
  - Water and Sewer Impact Analysis (WISA) completed
  - Drainage Impact Analysis (DIA) completed
  - No off-site improvements required

# Recommendation

**Staff recommends the Commission forward the request to City Council with a recommendation of approval in accordance with the findings and subject to the following conditions:**

1) The subject property must be developed in accordance with the approved site plan and the conditions of approval dated August 10, 2020. Modifications (other than minor modifications) to the approved site plan will require an amendment to this Direct to Ordinance Zoning Map Amendment request.

2) The two parcels must be combined and the approximately 2-acre portion of parcel 112-05-011 located north of High Country Trail shall remain a part of the parcel to the south.

3) The State archeological database must be updated to reflect the removal of archeological resources on the subject property.

4) All other requirements of the Zoning Code and other City codes, ordinances and regulations, shall be met by the proposed development.

# Recommendation

## Conditions continued:

5) All terms, conditions, and restrictions detailed within the “Aura Development Agreement” must be fully satisfied.

6) In the event the property is rezoned and the Developer fails to obtain final Civil Plan approval within two (2) years of the effective date of the rezoning ordinance, then the City may schedule a public hearing before the City Council for the purpose of causing the zoning on the Property to revert to the former classification Estate Residential (ER) in accordance with A.R.S. § 9-462.01.

# City of Flagstaff Community Development Division

211 W. Aspen Ave P: (928) 213-2618
Flagstaff, AZ 86001 F: (928) 213-2609
www.flagstaff.az.gov


| Date Received (City Use) | **Application for Concept/Site Plan Review** | | File Number (City Use) |
|---|---|---|---|
| **Site Address** 151 W. High Country Trail | **Project Name** Aura Flagstaff | | **Parcel Number** 112-05-011 & 112-05-001W |
| **Property Owner(s)** Auza Flagstaff LLC | **Title** | **Phone** | **Email** |
| **Mailing Address** 3378 S. 16th Avenue | | | **City, State, Zip** Yuma, AZ 85365 |
| **Applicant(s)** Trinsic Acquisition Company LLC Todd Gosselink | **Title** Managing Director | **Phone** 480-448-0985 | **Email** TGosselink@trinsicres.com |
| **Mailing Address** 4040 E. Camelback Road Suite 160 | | | **City, State, Zip** Phoenix, AZ 85018 |
| **Project Representative** Withey Morris, PLC / Jason Morris | **Title** | **Phone** 602-230-0600 | **Email** Jason@witheymorris.com |
| **Mailing Address** 2525 E. Arizona Biltmore Circle Ste. A-212 | | | **City, State, Zip** Phoenix, AZ 85016 |

| **Requested Review:** | ☐ **Concept** | ☑ **Site Plan** |
|---|---|---|

| **Proposed Use(s)** Medium Density Multi-Family Residential | **Existing Use** Vacant | **Subdivision, Tract & Lot Number** |
|---|---|---|

| **Zoning District** Estate Residential (ER) | **Regional Plan Land Use Category** Suburban Existing | **Flood Zone** | **Size of Site (Acres)** 11.0 |
|---|---|---|---|

| **Property Information:** | ☐ Yes ☑ No Located in an existing Local/National Historic District? (Name:_____)<br>☐ Yes ☐ No Existing structures are over 50 years old at the time of application?<br>☑ Yes ☐ No Subject property is undeveloped land? |
|---|---|

| **Surrounding Land Uses:** (i.e. Res, Commercial, Ind.) | **North:** Single-Family Residential | **South:** Single-Family Residential | **East:** Highway Density Residential & Commercial | **West:** Single-Family & Medium Density Residential |
|---|---|---|---|---|

| **Proposed Use:** | **Number of Units** | **# of Affordable Units** | **# of acres per use** | **Building Square Feet** |
|---|---|---|---|---|
| **Duplex:** | | | | |
| **Multi-Family:** | 160 | 32 | 11 | 73,368 |
| **Commercial: Office** | | | | |
| **Commercial: Retail** | | | | |
| **Commercial: Restaurant** | | | | |
| **Commercial: Service** | | | | |
| **Commercial: Other** | | | | |
| **Industrial:** | | | | |
| **Institutional:** | | | | |
| **Other:** | | | | |

Please complete and submit: the *"Concept Plan and Site Plan Application"*; the *"Application and Information Checklist"*; required number of plans and information; and fees. **Concept Plan fees are $420. Site Plan fees are $2,550 for projects less than an acre; $1,062 plus $1,553 per acre for sites greater than one acre.** New application deadlines are every other Tuesday by **11:00 a.m.** (See schedule for dates). **Incomplete submittals will not be scheduled.**

| **Property Owner Signature** | **Date:** | **Applicant Signature** T Gosselink | **Date:** 1/8/20 |
|---|---|---|---|

**For City Use**

| **Staff Assignments** | **Planner:** | **Engineer:** | **Public Works/Utilities:** | **Fire:** | **Stormwater** |
|---|---|---|---|---|---|

| **Action:** |
|---|
| |

# 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

PREZ/PGM

| Date Received | **Application for Zoning Map Amendment and/or Minor Regional Plan Amendment** | File Number |
|---|---|---|

| | | | |
|---|---|---|---|
| **Property Owner(s)** Auza Flagstaff LLC | **Title** | **Phone** | **Email** |
| **Mailing Address** 3378 S. 16th Avenue | | | **City, State, Zip** Yuma, AZ 85365 |
| **Applicant(s)** Trinsic Acquisition Company LLC Todd Gosselink | **Title** Managing Director | **Phone** 480-448-0985 | **Email** TGosselink@trinsicres.com |
| **Mailing Address** 4040 E. Camelback Road Suite 160 | | | **City, State, Zip** Phoenix, AZ 85018 |
| **Project Representative)** Withey Morris, PLC / Jason Morris | **Title** | **Phone** 602-230-0600 | **Email** Jason@witheymorris.com |
| **Mailing Address** 2525 E. Arizona Biltmore Circle Ste. A-212 | | | **City, State, Zip** Phoenix, AZ 85016 |

**Requested Review** ☑ Zoning Map Amendment ☐ Minor Regional Plan Amendment ☐ Continued

| | | |
|---|---|---|
| **Site Address** 151 W. High Country Trail | **Parcel Number(s)** 112-05-011 & 112-05-001W | **Subdivision, Tract & Lot Number** |
| **Existing Zoning District** Estate Residential (ER) | **Proposed Zoning District:** Medium-Density Residential (MR) | **Existing Regional Plan Land Use Category** Suburban Existing |
| **Existing Use** Vacant | **Proposed Use** Multi-Family Residential | |

**Property Information:**
☐ Yes ☑ No Located in an existing Local/National Historic District? (Name:_____)
☐ Yes ☐ No Existing structures are over 50 years old at the time of application?
☑ Yes ☐ No Subject property is undeveloped land?

| | |
|---|---|
| **Requested Urban Growth Boundary Change (If Applicable)** | **Proposed Regional Plan Land Use Category** |

| | | | |
|---|---|---|---|
| **Property Owner Signature(required)** | **Date:** | **Applicant Signature** T Bonelli | **Date:** 1/8/20 |

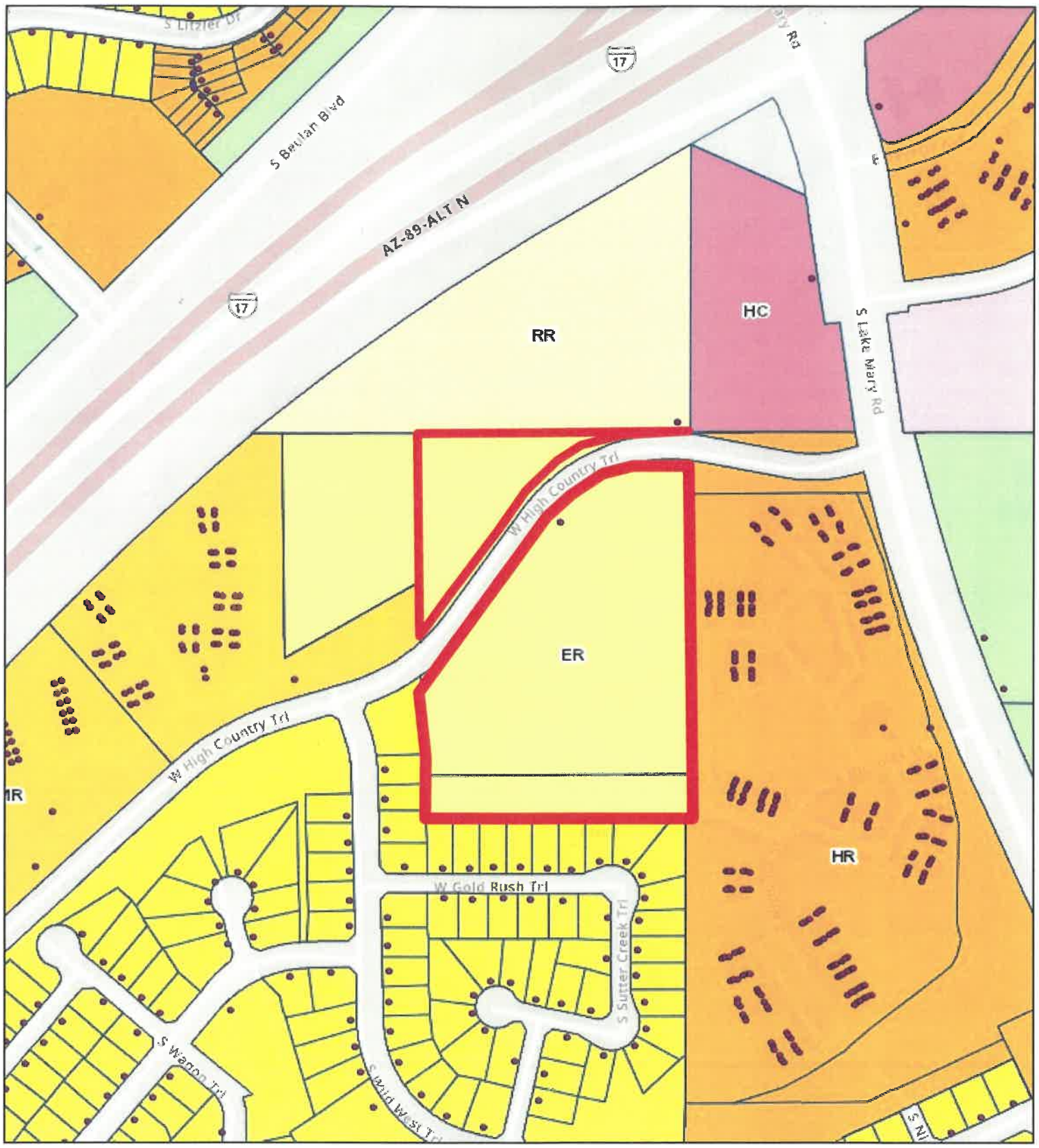
## For City Use

| | | | |
|---|---|---|---|
| **Date Filed:** | **File Number(s):** | | **Type of Zoning Map Amendment:** ☐ Small scale ☐ Medium scale ☐ Large scale ☐ Multi-phase scale |
| **P & Z Hearing Date:** | **Publication and Posting Date:** | | |
| **Council Hearing Date:** | **Publication and Posting Date:** | | |
| **Fee Receipt Number:** | **Amount:** | **Date:** | |

| **Action by Planning and Zoning Commission:** | **Action by City Council:** |
|---|---|
| ☐ Approved | ☐ Approved |
| ☐ Denied | ☐ Denied |
| ☐ Continued | ☐ Continued |

| Staff Assignments | Planning | Engineering | Fire | Public Works/Utilities | Stormwater |
|---|---|---|---|---|---|

# Zoning Map




151 W. High Country Trail – Flagstaff, AZ

N

**ORDINANCE NO. 2021-06**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF ZONING MAP TO REZONE APPROXIMATELY 11 ACRES OF REAL PROPERTY LOCATED AT 151 WEST HIGH COUNTRY TRAIL, APN 112-05-001W and 112-05-011, FROM THE ESTATE RESIDENTIAL (ER) ZONE TO THE MEDIUM DENSITY RESIDENTIAL (MR) ZONE WITH CONDITIONS; PROVIDING FOR SEVERABILITY; AUTHORITY FOR CLERICAL CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, Trinsic Acquisition Company LLC (the "Applicant"), has applied for a Direct to Ordinance Zoning Map Amendment to rezone approximately 11 acres of real property located within the City of Flagstaff, a legal description of which is provided in "**Exhibit A**" attached hereto and incorporated by this reference ("the Property") from the Estate Residential (ER) zone to the Medium Density Residential (MR) zone for purposes of developing a multi-family residential development with a maximum of 160 dwelling units; and

WHEREAS, the Applicant proposes to develop the Property pursuant to the terms and conditions of this Ordinance and a Development Agreement between Applicant and the City ("Agreement"), which will be presented to the City Council through a proposed resolution at the second reading of this Ordinance; and

WHEREAS, the Applicant conducted neighborhood meetings on March 23, 2020 and July 1, 2020, to discuss the proposed Zoning Map Amendment with the surrounding community, as required by Section 10-20.50.040 of the Flagstaff Zoning Code; and

WHEREAS, the Planning and Zoning Commission has formally considered the proposed Direct to Ordinance Zoning Map Amendment application, following proper notice and a hearing on December 9, 2020, and has recommended denial of the requested Zoning Map Amendment application; and

WHEREAS, the Council finds that the Applicant has complied with all application requirements set forth in Chapter 10-20 of the Flagstaff Zoning Code; and

WHEREAS, City staff has recommended approval of the Direct to Ordinance Zoning Map Amendment application, subject to certain conditions, and the Council has considered each of the conditions and has found each condition to be appropriate for the Property and necessary for the proposed development; and

WHEREAS, the Council has read and considered the staff reports prepared by the Current Planning Division staff and all attachments to those reports, the Applicant's application, the narrative provided by the Applicant, and all statements made by the Applicant and its representatives or agents during the presentation to Council, and the Council finds that the proposed Direct to Ordinance Zoning Map Amendment, subject to the conditions set forth below, meets the findings required by Section 10-20.50.040(F)(1)(a) of the Flagstaff Zoning Code.

**ENACTMENTS:**

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

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. The amendment requested in the application is consistent with and conforms to the goals of the General Plan.

SECTION 3. The amendment requested in the application will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, and will add to the public good as described in the General Plan.

SECTION 4. The affected site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle access and public services and utilities to ensure that the amendment requested in the application will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located.

SECTION 5. The Zoning Map designation for the Property is hereby amended from Estate Residential (ER) zone to Medium Density Residential (MR) zone as set forth in Exhibit A, attached hereto and incorporated by reference.

SECTION 6. The Zoning Map Amendment is conditioned on compliance with the Development Agreement between the City of Flagstaff and the Applicant, approved by the City Council through Resolution No. 2021-12 on April 20, 2021 and that should that Development Agreement not be approved and executed this Ordinance becomes null and void.

SECTION 7. The Zoning Map Amendment is further conditioned upon the Applicant's satisfaction of the following conditions proposed by the City staff:

CONDITIONS:

1. The subject property must be developed in accordance with the approved site plan and the conditions of approval dated August 10, 2020. Modifications (other than minor modifications) to the approved site plan will require an amendment to this Direct to Ordinance Zoning Map Amendment request.

2. The two parcels must be combined and the approximately 2-acre portion of parcel 112-05-011 located north of High Country Trail shall remain a part of the parcel to the south.

3. The State archeological database must be updated to reflect the removal of archeological resources on the subject property.

4. All other requirements of the Zoning Code and other City codes, ordinances, and regulations, shall be met by the proposed development.

5. All terms, conditions, and restrictions detailed within the "Aura Development Agreement" must be fully satisfied.

6. In the event the property is rezoned and the Developer fails to obtain final Civil Plan approval within two (2) years of the effective date of the rezoning ordinance, then the City may schedule a public hearing before the City Council for the purpose of causing the zoning on the Property to revert to the former classification of Estate Residential (ER) in accordance with A.R.S. § 9-462.01.

SECTION 8. That City staff is hereby authorized to take such other and further measures and actions as are necessary and appropriate to carry out the terms, provisions, and intents of this Ordinance.

SECTION 9. 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 10. 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 20th day of April, 2021.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
Legal Description

ASSESSOR PARCEL NUMBER
112-05-011
LEGAL DESCRIPTION
INSTRUMENT 3654325
9.5592 ACRES

Official Records of Coconino County 3654325
Patty Hansen - Recorder 02/19/2013 04:07 PM Pgs: 5
GADARIAN & CACY SW $13.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
GADARIAN & CACY, P.L.L.C.
2200 East River Road, Suite 123
Tucson, Arizona 85718

Recording Data:

**MAIL TAX STATEMENTS TO:**

Auza Flagstaff, L.L.C.
3378 S. 16th Avenue
Yuma, Arizona 85365

## CORRECTION TO DEED

**THIS DEED IS BEING RE-RECORDED FOR PURPOSES OF CORRECTING THE LEGAL DESCRIPTION AND TO REFLECT CORRECT DATES. DEEDS WERE EXECUTED BEFORE THE CREATION OF AUZA FLAGSTAFF, L.L.C.**

This Correction to Deed is intended to apply to real estate located known as Tax Code Parcel No. 112-05-011.

**EXEMPT UNDER A.R.S. SECTION 11-1134 B 2.**

Dated: February 15, 2013

Gregory V Gadarian
Attorney for Martin R. Auza, Sr., as Manager of Auza Flagstaff, L.L.C.

STATE OF ARIZONA )
) ss.
County of Pima )

The foregoing instrument was acknowledged before me this 15th day of February, 2013, by Gregory V. Gadarian, attorney for Martin R. Auza, Sr., as Manager of Auza Flagstaff, L.L.C.

CAROL COTA
Notary Public - Arizona
Pima County
My Commission Expires
March 14, 2014

Notary Public

Official Records of Coconino County 3649146
Candace Owens - Recorder 12/20/2012 03:38 PM Pgs: 3
GADARIAN & CACY SW $13.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Gadarian & Cacy, P.L.L.C.
2200 East River Road, Suite 123
Tucson, Arizona 85718

Recording Data:

**MAIL TAX STATEMENTS TO:**

Auza Flagstaff, L.L.C.
3378 S. 16th Avenue
Yuma, Arizona 85365

## SPECIAL WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, we

**Martin Auza and Shirley Auza, Trustees of the Auza Living Trust, created on September 21, 1992**

hereby convey to

**AUZA FLAGSTAFF, L.L.C.**, an Arizona limited liability company,

all right, title, or interest we have in the real property located in Coconino County, Arizona, described as follows:

**See Exhibit "A" attached hereto and incorporated herein by this reference.**

This Deed is intended to convey the real estate known as Tax Code Parcel No. 112-05-011.

The legal description herein is taken from that certain instrument recorded September 25, 1992 on Docket 1508 at Page 458 and is intended to be identical to the legal description contained in that instrument.

Subject to: current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record or otherwise.

Grantors warrant title as against all of Grantors' acts and no other acts and subject to all taxes, conditions, covenants, restrictions, reservations, easements, encumbrances and matters of record.

The Affidavit and fee required under A.R.S. § 11-1132 and 1133 do not apply to this transfer because the transfer is exempt under A.R.S. § 11-1134 B 8

The beneficiaries of the Auza Living Trust created on September 21, 1992 are:

Martin and Shirley Auza
3378 South 16th Ave.
Yuma, Arizona 85365

DATED: November 30, 2012.

**Auza Living Trust**

Martin Auza, Trustee

Shirley Auza, Trustee

STATE OF ARIZONA )
)ss.
County of Pima )

The foregoing instrument was acknowledged before me this 30th day of November, 2012, by Martin Auza and Shirley Auza.

OFFICIAL SEAL
DEBORAH M HACKSTADT
Notary Public - State of Arizona
PIMA COUNTY
My Comm. Expires July 20, 2014

Notary Public

J:\M-Clients\Auza, Martin & Shirley\Auza, Martin & Shirley - AZ LLC\1451_Deed- 112-05-011 to LLC.WPD

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The Affidavit and fee required under A.R.S. § 11-1132 and 1133 do not apply to this transfer because the transfer is exempt under A.R.S. § 11-1134 B 8

The beneficiaries of the Auza Living Trust created on September 21, 1992 are:

Martin and Shirley Auza
3378 South 16th Ave.
Yuma, Arizona 85365

DATED: December 14, 2012.

**Auza Living Trust**

Martin Auza, Trustee

Shirley Auza, Trustee

STATE OF ARIZONA )
) ss.
County of Pima )

The foregoing instrument was acknowledged before me this 14th day of December, 2012, by Martin Auza and Shirley Auza.

OFFICIAL SEAL
DEBORAH M HACKSTADT
Notary Public - State of Arizona
PIMA COUNTY
My Comm. Expires July 20, 2014

Deborah M. Hackstadt
Notary Public

J:\TM-Clients\Auza, Martin & Shirley\Auza, Martin & Shirley - AZ LLC\1451_Deed- 112-05-011 to LLC WPD

## EXHIBIT "A"

*The following described real property situated in Coconino County, Arizona:*

*The North 774.45 feet of the East 618.74 feet of Section 32, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona.*

*Less: 1.45 AC 1623/406.*

ASSESSOR PARCEL NUMBER
112-05-001W
LEGAL DESCRIPTION
PARCEL 1 OF
INSTRUMENT 3654328
1.4511 ACRES

Official Records of Coconino County 3654328
Patty Hansen - Recorder 02/19/2013 04:07 PM Pgs: 5
GADARIAN & CACY SW $13.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
GADARIAN & CACY, P.L.L.C.
2200 East River Road, Suite 123
Tucson, Arizona 85718

Recording Data:

**MAIL TAX STATEMENTS TO:**

Auza Flagstaff, L.L.C.
3378 S. 16th Avenue
Yuma, Arizona 85365

---

**CORRECTION TO DEED**

**THIS DEED IS BEING RE-RECORDED FOR PURPOSES OF CORRECTING DATES. DEEDS WERE EXECUTED BEFORE THE CREATION OF AUZA FLAGSTAFF, L.L.C.**

This Correction to Deed is intended to apply to real estate located known as Tax Code Parcel No. 112-05-007B and 112-05-001W.

**EXEMPT UNDER A.R.S. SECTION 11-1134 B 2.**

Dated: February 15, 2013

Gregory V. Gadarian
Attorney for Martin R. Auza, Sr., as Manager of Auza Flagstaff, L.L.C.

STATE OF ARIZONA )
) ss.
County of Pima )

The foregoing instrument was acknowledged before me this 15th day of February, 2013, by Gregory V. Gadarian, attorney for Martin R. Auza, Sr., as Manager of Auza Flagstaff, L.L.C.

CAROL COTA
Notary Public - Arizona
Pima County
My Commission Expires
March 14, 2014

Notary Public

Official Records of Coconino County 3649144
Candace Owens - Recorder 12/20/2012 03:38 PM Pgs: 3
GADARIAN & CACY SW $13.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Gadarian & Cacy, P.L.L.C.
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Recording Data:

**MAIL TAX STATEMENTS TO:**

Auza Flagstaff, L.L.C.
3378 S. 16th Avenue
Yuma, Arizona 85365

## SPECIAL WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, we

**Martin Auza and Shirley Auza, Trustees of the Auza Living Trust, created on September 21, 1992**

hereby convey to

**AUZA FLAGSTAFF, L.L.C.,** an Arizona limited liability company,

all right, title, or interest we have in the real property located in Coconino County, Arizona, described as follows:

**See Exhibit "A" attached hereto and incorporated herein by this reference.**

This Deed is intended to convey the real estate known as Tax Code Parcel No. 112-05-007B and 112-05-001W.

The legal description herein is taken from that certain instrument recorded September 25, 1992 on Docket 1508 at Page 461 and is intended to be identical to the legal description contained in that instrument.

Subject to: current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record or otherwise.

Grantors warrant title as against all of Grantors' acts and no other acts and subject to all taxes, conditions, covenants, restrictions, reservations, easements, encumbrances and matters of record.

The Affidavit and fee required under A.R.S. § 11-1132 and 1133 do not apply to this transfer because the transfer is exempt under A.R.S. § 11-1134 B 8

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Martin and Shirley Auza
3378 South 16th Ave.
Yuma, Arizona 85365

DATED: November 30, 2012.

**Auza Living Trust**

Martin Auza
Martin Auza, Trustee

Shirley Auza
Shirley Auza, Trustee

STATE OF ARIZONA )
) ss.
County of Pima )

The foregoing instrument was acknowledged before me this 30th day of November, 2012, by Martin Auza and Shirley Auza.

OFFICIAL SEAL
DEBORAH M HACKSTADT
Notary Public - State of Arizona
PIMA COUNTY
My Comm. Expires July 20, 2014

Deborah M. Hackstadt
Notary Public

Grantors warrant title as against all of Grantors' acts and no other acts and subject to all taxes, conditions, covenants, restrictions, reservations, easements, encumbrances and matters of record.

The Affidavit and fee required under A.R.S. § 11-1132 and 1133 do not apply to this transfer because the transfer is exempt under A.R.S. § 11-1134 B 8

The beneficiaries of the Auza Living Trust created on September 21, 1992 are:

Martin and Shirley Auza
3378 South 16th Ave.
Yuma, Arizona 85365

DATED: December 14, 2012.

**Auza Living Trust**

Martin Auza, Trustee

Shirley Auza, Trustee

STATE OF ARIZONA )
) ss.
County of Pima )

The foregoing instrument was acknowledged before me this 14th day of December, 2012, by Martin Auza and Shirley Auza.

OFFICIAL SEAL
DEBORAH M HACKSTADT
Notary Public - State of Arizona
PIMA COUNTY
My Comm. Expires July 20, 2014

Deborah M. Hackstadt
Notary Public

# EXHIBIT "A"

Parcel 1:

A parcel of ground lying in the Northeast quarter of Section 32, Township 21 North, Range 7 East, Gila & Salt River Base and Meridian, Coconino County, Arizona, described as follows:

Commencing at a 1965 B.L.M. Brass Cap Monument at the Northeast corner of Section 32;

thence South 00° 20' 29" East (Basis of Bearings), a distance of 774.90 feet (Record 774.45 feet) to a found and accepted ½ inch rebar at the TRUE POINT OF BEGINNING from which a found 1965 B.L.M. Brass Cap at the East quarter corner of Section 32 lies South 00° 18' 01" East, a distance of 1872.63 feet;

thence South 00° 18' 01" East, a distance of 102.10 feet to a set 5/8 inch rebar with plastic cap stamped "SEC RLS 13015";

thence South 89° 57' 11" West, a distance of 619.43 feet to a set 5/8 inch rebar with a plastic cap stamped "SEC RLS 13015';

thence North 00° 17' 28" West, a distance of 102.10 feet to a found and accepted ½ inch rebar;

thence North 89° 57' 12" East, a distance of 619.42 feet (Record 618.74 feet) to the TRUE POINT OF BEGINNING.

Parcel 2:

A parcel of ground lying in Section 32, Township 21 North, Range 7 East, Gila & Salt River Base and Meridian, Coconino County, Arizona, described as follows:

COMMENCING at a found 1965 B.L.M. Brass Cap Monument at the Northeast corner of Section 32, and the Northwest corner of Section 33, from which a found 1965 B.L.M. Brass Cap Monument at the North quarter corner of Section 33 bears North 89° 44' 00" East (Record per B.L.M., plat and Basis of Bearings for this description);

thence along the North line of Section 32, South 89° 56' 58" West, a distance of 618.74 feet to the TRUE POINT OF BEGINNING from which a found 1965 B.L.M. Brass Cap Monument at the North quarter corner section of Section 32, bears South 89° 56' 58" West, a distance of 2024.11 feet and also from which a found ½ inch rebar bears South 01° 29' 55" East, a distance 5.88 feet;

thence leaving said North line South 00° 17' 28" East, a distance of 338.00 feet from which, a found ½ inch rebar bears South 00° 17' 28" East, a distance of 436.86 feet;

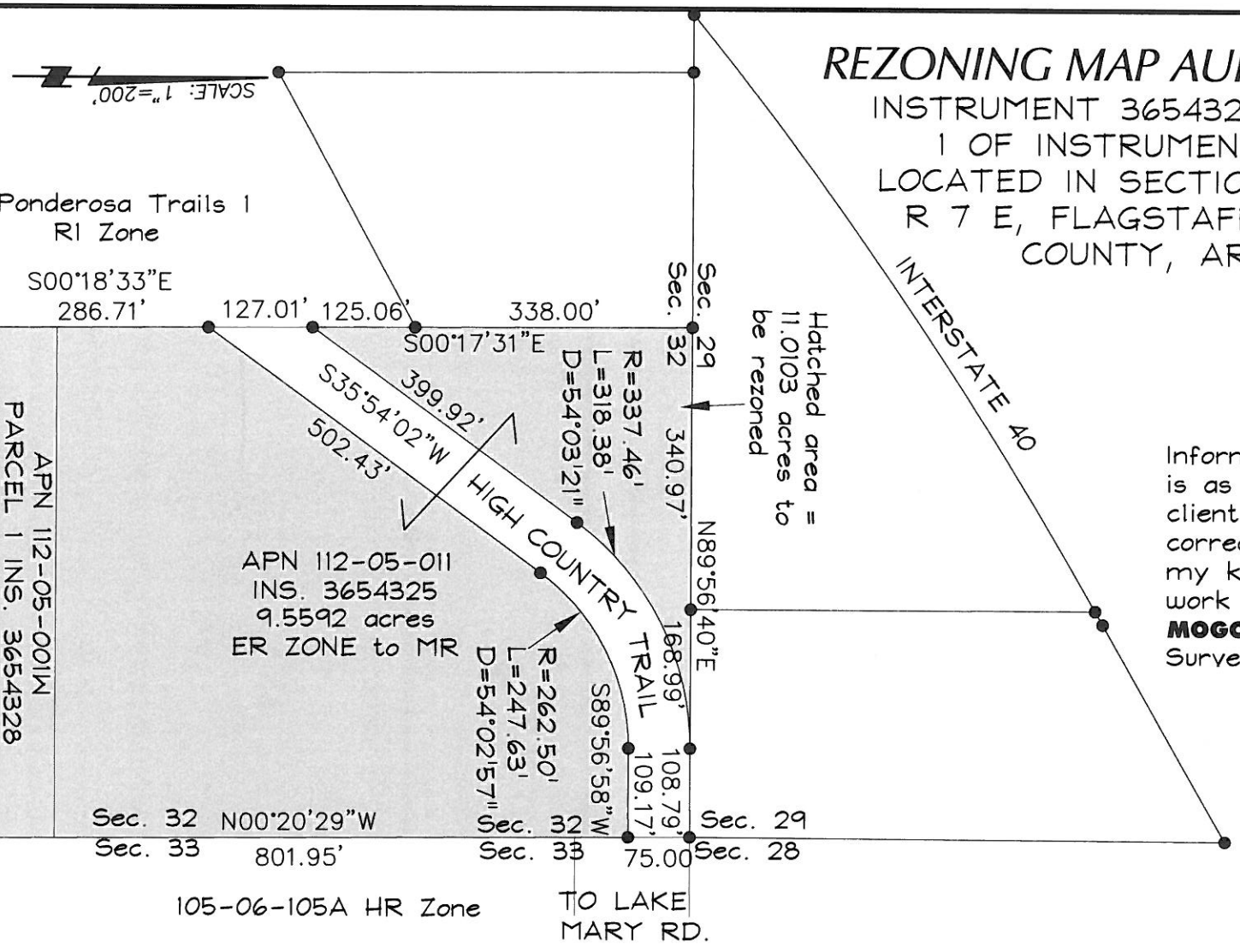
thence South 61°18' 42" West, a distance of 351.78 feet;

thence north 00° 17' 28" West, a distance of 506.60 feet to the North line of Section 32;

thence along said North line, North 89° 56' 58" East, a distance of 309.45 feet to the TRUE POINT OF BEGINNING.

# REZONING MAP AURA FLAGSTAFF

INSTRUMENT 3654325 and PARCEL 1 OF INSTRUMENT 3654328, LOCATED IN SECTION 32, T 21 N, R 7 E, FLAGSTAFF, COCONINO COUNTY, ARIZONA




Information shown hereon is as provided by the client and is true and correct to the best of my knowledge. No field work was performed by **MOGOLLON** Engineering & Surveying, Inc.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23950
KENT V.
HOTSENPILLER
Date Signed 1/30/20
ARIZONA U.S.A.

Expires on 3/31/__

HORIZONTAL SCALE: 1"=200'
VERTICAL SCALE:
DESIGNED/DRAWN BY:
PROJECT NO. 17259
DATE: 1/30/20


Mogollon Inc
ENGINEERING & SURVEYING
411 W. Santa Fe Avenue
Flagstaff, Az. 86001
Phone: 928-214-0214 • Mogollan99@aol.com


EXHIBIT B
REZONING MAP
AURA FLAGSTAFF

**WHEN RECORDED RETURN TO:**

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the ___ day of _____, 2020, by and between the CITY OF FLAGSTAFF, ARIZONA, an Arizona municipal corporation (the "**City**") and AUZA FLAGSTAFF, LLC (the "Owner") AND TRINSIC ACQUISITION COMPANY, LLC, a Delaware limited liability company (the "**Developer"**). The City and the Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

## RECITALS

A. AUZA FLAGSTAFF, LLC (the "Owner") owns that certain real property located west of the intersection of Lake Mary Road and High Country Trail in Flagstaff, Arizona, which consists of approximately 11 acres and is more particularly described on **Exhibit A** (the "**Property**").

B. It is the desire and current intention of the Developer to develop a 160-unit multi-family residential community on the south side of the Property (the "**Project**").

C. It is the desire and current intention of the Owner that upon approval by City Council of the rezoning of the Property as described in **Section 2** below, the Developer will acquire the Property, on which the 160-unit multi-family residential community will be constructed. The Developer is under contract with the Owner to purchase the Property upon which the Project will be constructed, and is authorized to make the commitments described herein.

D. Arizona Revised Statutes Section 9-500.05 allows a municipality and a landowner or any other person having an interest in real property located in the municipality to enter into a development agreement pertaining to any matter relating to the development of such real property, including applicable land use rules, regulation and official policies, permitted land uses, density and intensity of land use, phasing of the development and duration of the development agreement, and development fees.

E. The Parties desire to enter into this Agreement in order, among other things, to facilitate development of the Property by providing for and establishing the community character of the Property, the type of land uses and the location, density, and intensity of such land uses, designating twenty (20) units for affordable rental housing, and other matters relating to the development of the Property as depicted in the preliminary site plan for the Project (the "**Site Plan**"), a copy of which is attached as **Exhibit C** and incorporated by reference in this Agreement.

F. The City believes that the development of the Property pursuant to this Agreement would provide certain benefits to the City, and the Developer believes that the development of the Property pursuant to this Agreement would be beneficial and advantageous to the Developer.

## AGREEMENT

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Recitals**. The recitals above, A through F are incorporated into this Agreement.

2. **Implementation of the Concept Plan through the Rezoning.** The Developer has submitted an application for a direct to ordinance zoning map amendment to rezone the Property from Estate Residential (ER) to Medium Density Residential (MR) in accordance with the Site Plan. The Developer acknowledges that the City Council has absolute discretion to approve or disapprove the proposed zoning. The Parties acknowledge that certain conditions (the "Rezoning Conditions") will be approved separately in connection with the rezoning. In the event a conflict exists between the language set forth in one or more of the Rezoning Conditions and the terms of this Agreement, the Rezoning Conditions shall govern.

3. **Division and Combination of Parcels.** Following the zoning map amendment approval, the Developer will acquire the Property and file a lot combination with the City to combine the parcels that are subject to the zoning map amendment into one parcel. The final configuration of the parcels within the Property is shown in **Exhibit D**. The Property must be maintained as a single parcel as depicted in Exhibit D; this parcel cannot be split for the life of the Project. This paragraph survives the termination of this Agreement.

4. **Development Standards.** Development of the Property shall be governed by the City's ordinances, rules, guidelines, and policies controlling permitted uses of the Property, the density and intensity of uses, the maximum height and size of the buildings within the Property, as well as the standards for off-site and on-site public improvements in existence as of the effective date of this Agreement as well as any Rezoning Conditions and requirements set forth in this Agreement; provided, however, that Developer shall obtain certificate of occupancy for the multi-family housing development described in **Section 5** below within five (5) years following the effective date of this Agreement. The Developer's failure to obtain certificate of occupancy for the entirety of the multi-family housing development within five (5) years of the effective date of the rezoning ordinance shall entitle the City, in its sole discretion, to conduct a public hearing for the purpose of reverting the Medium Density Residential (MR) zoning on the Property to its former zoning classification of Estate Residential (ER), in accordance with Arizona Revised Statutes § 9-462.01. Regardless of the time of development, current City Engineering Standards, Building Code, Fire Code, and other Code provisions, regulations, rules, and guidelines will apply to the Project.

5. **Project Description.** The Project contemplated by this Agreement shall consist of a multi-family housing development consisting of one-hundred sixty (160) rental units on the 9-acre southern portion of the Property as set forth in the Site Plan attached hereto as Exhibit C,

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which include one hundred and twelve (112) one-bedroom units and forty-eight (48) two-bedroom units. Twenty (20) rental units will be permanently affordable and subject to the Affordability Plan, which is described in **Section 11** below. The Developer may request subsequent amendments to the Site Plan in accordance with the Flagstaff Zoning Code. Notwithstanding the forgoing, the unit mix may be modified no more than ten percent (10%) without City Council approval.

7. **Standards.** All public works facilities and infrastructure which Developer is required to construct pursuant to the provisions of this Agreement, and which, upon completion will be dedicated to the City, shall be designed and constructed to State and City standards.

8. **Construction of Public and Private Improvements.**

8.1 Developer shall, at its own expense, construct or cause to be constructed all public and private improvements as required by the City's code or ordinances and in accordance with approved specifications. Following construction of the described public improvements, and dedication of the same to the City, the City shall assume, at its expense, and in accordance with City policies, the maintenance and repair of all public improvements to be constructed, with the exception of the FUTS trail extension on the Property as described below in **Section 9.3**.

8.2 The Developer shall meet all City of Flagstaff storm water, pre vs post retention, peak flow mitigation, Low Impact Development, and rainwater harvesting requirements per the approved drainage report and site plan, and as shown on the approved civil construction plan.

8.3 Per the Aura Flagstaff Public Water & Sewer Impact Analysis prepared by the City of Flagstaff dated June 1, 2018, no off-site infrastructure improvements are required other than to serve the Project.

8.4 Developer shall extend the FUTS trail in accordance with all applicable City standards for trail width, paving, drainage, lighting, landscaping, and all other necessary requirements, through a portion of the Property, as generally depicted on the Site Plan. FUTS access pathways shall not be gated or otherwise obstructed and shall be open to the general public at all times. Developer shall be responsible for all maintenance and snow removal operations of the portion of the FUTS trail extension on the Property.

8.5 Developer shall build a concrete FUTS trail in accordance with all applicable City standards across adjoining parcels to the east and west between Wild West Trail and Lake Mary Road, provided the City is able to obtain property rights for the FUTS on those parcels.

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8.5 Per the Traffic Impact Statement ("TIS") for the Project prepared by CivTech, Inc. dated February 3, 2020 and submitted to the City of Flagstaff, traffic from the completed Project will have a minimal effect on existing conditions in the surrounding area and no mitigation measures are warranted or recommended. The Developer will work with the City to design and implement the recommendations in the TIS and in a manner that meets City Codes and guidelines.

9. **Dedication of Public Easements.** Public utility and drainage easements must be identified on the construction plans and dedicated prior to the issuance of building permits. Dimensions for these easements must be in accordance with City requirements.

9.1 As part of the development of the Property and to facilitate the expansion of FUTS, the Developer agrees to dedicate a twenty (20) foot wide FUTS easement (the "Easement") to the City and to construct the trail system in the configurations and dimensions depicted in the Site Plan as part of the public improvements. The Developer shall dedicate the FUTS easement to the City concurrently with the approval of the civil plan set for the Project. The Developer agrees that the construction of the trail system will coincide with the development of the Property.

9.2 In order to preserve the required forest resources, including those described below in **Section 10**, the Developer agrees to dedicate a resource protection easement for the approximate 1.93 acres of the Property on the north side of High Country Trail as identified in the Post Development Resources plan attached as **Exhibit G**.

10. **Resource Protection.** The Parties acknowledge and agree that resource protection provisions set forth in the City's Zoning Code are applicable to the entire Property. The Developer understands that it shall maintain twenty-five percent (25%) of the existing forest resources in their natural state. See **Section 14.3** below regarding the reduction in required forest resource preservation on the Property from fifty percent (50%) to twenty-five percent (25%).

11. **Affordable Housing.** Developer agrees to provide an affordable housing contribution of twenty (20) percent of the number of units allowed before the density bonus is applied, or twenty (20) of ninety-nine (99) allowable dwelling units. Developer shall provide for the long-term management of these units for households earning up to eighty percent (80%) of the Area Median Income (AMI) as defined by the US Department of Housing and Urban Development (HUD), or its successors, for thirty (30) years after the units are placed into service. Developer will comply with the affordable housing requirements set forth in the Affordability Plan attached as **Exhibit H**, attached hereto and incorporated by reference. The Affordability Plan may be modified only with the express written consent of the City of Flagstaff Housing Director.

Developer's property manager shall not discriminate against an applicant's source of income, and will accept HUD Housing Choice Vouchers and Veterans Affairs Supportive Housing ("VASH") Vouchers. No limits will be set on the number of vouchers accepted at the Project. Standards for applicant income shall be waived for voucher holders, as the rent

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affordability is reviewed and determined by the Flagstaff Housing Authority. Applicants that already possess a voucher will be placed in a market rate unit. Property management shall allow a tenant to break the lease on an affordable unit without penalty if awarded a Housing Choice Voucher or VASH Voucher, at which time the tenant may sign a new 12-month lease for market rate rent.

The provisions of **Section 11** shall survive the termination of this Agreement.

12. **Sustainable Building Program Density Bonus.** In order to meet the applicable density bonus criteria in Zoning Code Section 10-30.70.030, the applicant will construct seventy-five percent (75%) of the dwelling units to meet the Home Energy Rating System (HERS) Index 50 standard. Accordingly, the development will meet the minimum sustainable building standards outlined in Section 10.30.70.040 of the Zoning Code:

12.1 Water Resource Protection: The landscape design for the development shall not include an oasis zone (hydrozone 1) as otherwise permitted in Section 10-50.60.050(C), Oasis Allowance, and Section 10-50.60.060, Hydrozones.

12.2 Transportation/Air Quality: The development site is located within at least one-quarter mile of a bus stop; and, the development is located within at least one-quarter mile of a FUTS trail or connected to it; and, residential electrical systems are designed for electric vehicle charging.

12.3 Waste Reduction During Construction: A plan for the recycling or reuse of all paper, cardboard, plastics, and metals; and, a plan for the recycling or reuse of all lumber scraps so that they are diverted from the landfill

12.4 Energy Efficiency: An applicant applying the HERS rating system to receive the density bonuses allowed under Section 10-30.70.030, Density Bonus, shall obtain independent third-party verification that the minimum HERS rating has been achieved to the satisfaction of the Director and the Building Official before the density bonus is applied.

13. **Crime Free Multi-Housing Program.** Following completion of construction of the Project, the Developer shall work with City of Flagstaff to join and participate in the City of Flagstaff Crime Free Multi-Housing Program.

14. **Incentives.** In recognition of the Developer's agreement to set aside twenty (20) units for affordable rental housing purposes and utilize the City's sustainable building bonus, the City has approved the following incentives for the Project:

14.1 A density bonus of forty-five (45) units has been applied in accordance with Zoning Code Section 10-30.20.040(B)(2).

14.2 A density bonus of twenty-five (25) units has been applied in accordance with Zoning Code Section 10-30.70.030.

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14.3 A fifty percent (50%) reduction in the forest resource protection requirement per Zoning Code Table 10-30.20.040.B.

14.4 A reduction of 16 required parking spaces per Zoning Code Table 10-50.80.040.A.

15. **Notices.** Unless otherwise specifically provided in this Agreement, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the third business day after mailing by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City:

City Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

To Developer:

Todd Gosselink
Trinsic Acquisition Company
4040 E. Camelback Road Suite 222
Phoenix, AZ 85018

Copy To:

City Attorney
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

16. **DEFAULT; REMEDIES**

16.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance and such breach or default continues for a period of thirty (30) days after written notice thereof from the party not in default hereunder.

16.2. Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. 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 a Party's right to 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. The results of the mediation shall

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be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.

16.3. Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 8.1 above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.

16.4 City's Remedies. In the event that the Developer is in default under this Agreement, and the Developer thereafter fails to cure any such default within the time period described in Section 16.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Developer.

16.5 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

16.6 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by the Developer.

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## 17. General Provisions

17.1 Amendment. This Agreement may be amended at any time by written amendment executed by all Parties, which amendment shall be recorded in the official records of Coconino County, Arizona within ten (10) days following its execution.

17.2 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Arizona.

17.3 Assignment. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties, pursuant to A.R.S. § 9-500.05(D). In addition, Developer's rights and obligations may only be transferred or assigned to a person or entity that has acquired the Property and only by a written instrument recorded in the official records of Coconino County, Arizona expressly assigning such rights and obligations. Any such transfer or assignment shall not be valid as to the City until written notice has been sent to the City in accordance with **Section 18** of this Agreement. All rights and obligations of the

Developer under this Agreement shall constitute covenants running with the land and shall be binding on all of the Developer's successors and assigns.

17.4 Attorney's Fees and Costs. If legal action by any Party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs.

17.5 Authority. The person executing this Agreement on behalf of Developer warrants and represents that they have the authority to execute this Agreement on behalf of Developer, and that the execution of this Agreement has been approved by all required actions on the part of such Parties, and that this Agreement is fully binding on such Parties.

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

17.7 Consistent with General Plan. This Agreement ensures that all development on the Property shall be consistent with the City's General Plan recommendation for the Property as required by A.R.S. § 9-500.05(B).

17.8 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against any Party to it or against the Party who prepared the last draft.

17.9 Counterparts. This Agreement may be executed by the Parties in two (2) counterparts, which counterparts shall be construed as a single document and have the same effect as if all of the Parties had executed the same instrument.

17.10 Covenants Run with the Land. The covenants and agreements contained in this Agreement are mutual covenants and also constitute conditions to the subsequent or concurrent performance of the Party benefitted thereby. All covenants shall be covenants running with the land, and shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

17.11 Effective Date and Term. This Agreement shall be effective (the "**Effective Date**") upon execution by the parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty years from such date. Notwithstanding the termination date of this Agreement, Developer has the obligation to provide the affordable units for a term of thirty (30) years from the date the affordable units are placed into service.

17.12 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and shall not be changed or added to except in the manner

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provided in **Section 17.1**. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, other than those specifically incorporated in this Agreement, are superseded by this Agreement. The parties acknowledge and agree that this Agreement is to be read and interpreted with the ordinance approving the zoning map amendment.

17.13 Exhibits. All exhibits attached are incorporated by reference as though fully set forth in this Agreement.

17.14 Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

17.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Coconino, State of Arizona, and the Parties waive all provisions of law providing for the filing, removal, or change of venue to any other court. This **Section 17.15** shall survive termination of this Agreement.

17.16 Modification. No modification of this Agreement shall be deemed effective unless in writing and signed by the Parties, and any waiver granted shall not be deemed effective except for the instance and circumstances particularly specified in a written waiver executed by the Party against whom enforcement of the waiver is sought.

17.17 No Partnership; No Agency. It is specifically understood and agreed by and among the Parties that the development of the Project on the Property is a private development, that no Party acting as the agent of any other Party in any respect, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The Parties acknowledge and agree that this Agreement does not create a partnership, joint venture, or similar entity, and that no such partnership, joint venture, or similar entity has been created by the City and the Developer.

17.18 No Obligation to Develop Property. Except as specifically set forth in this Agreement, there shall be no obligation for the Developer to construct the Project.

17.19 No Third Party Beneficiaries. No person or entity other than a Party to this Agreement or legal representative, successor in interest, or assign of such party shall be entitled to rely on this Agreement or the performance of any Party; this Agreement is not made for the benefit of any person or entity not

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a Party; and no such person or entity shall be entitled to assert any claim arising out of, or in connection with, this Agreement.

17.20 Proposition 207 Waiver. Developer hereby waives and fully releases any and all financial loss, injury, claims, and causes of action that the Developer may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138 (the "Act"), in connection with the application of the City's existing land use laws and including Ordinance Number 2020-21 regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless, and defend City, its officers, employees, and agents, from any and all claims, causes of actions, demands, losses, and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney's fees, or costs under the Act that they may have, as a result of the application of the City's existing land use laws, including Ordinance Number 2020-21, upon the Property.

17.22 Recordation of Agreement. In accordance with A.R.S. § 9-500.05(D), this Agreement shall be recorded in its entirety in the official records of the Coconino County Recorder, State of Arizona no later than ten (10) days from the date of its execution.

17.23 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

17.24 Compliance with All Laws. Developer will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations, and policies.

17.25 Time is of the Essence. For the purposes of enforcing the provisions of this Agreement, time is of the essence.

17.26 Waiver. No waiver by any Party to this Agreement of a breach of any of the terms, covenants, conditions of this Agreement shall be construed or be held to be a waiver of any succeeding or proceeding breach of the same or any other term, covenant, or condition of this Agreement.

[Signatures on Following Pages]

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**DEVELOPER**

_____, a(n)
_____

By: _____
Name: _____
Title: _____

STATE OF _____ )
) ss.
County of _____ )

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, as _____ of _____, a(n) _____ _____, on behalf of the Company.

_____
Notary Public

My Commission Expires:

_____

**OWNER**

_____, a(n)
_____

By: _____
Name: _____
Title: _____

STATE OF _____ )
) ss.
County of _____ )

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, as _____ of _____, a(n) _____ _____, on behalf of the Company.

_____
Notary Public

My Commission Expires:

_____

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**CITY**

CITY OF FLAGSTAFF, an Arizona municipal corporation

By: _____
_____, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

DRAFT

STATE OF ARIZONA )
) ss.
County of_____)

The foregoing instrument was acknowledged before me this _____ day of_____ _____, 2020, by_____, the Mayor of the City of Flagstaff, an Arizona municipal corporation.

_____
Notary Public

My Commission Expires:

_____

# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Flagstaff City Council will hold a Public Hearing on Tuesday, April 6, 2021, at 3:00 p.m. to consider the following:

**A. Explanation of Matters to be considered:**

1. A proposed amendment to the official City of Flagstaff zoning map to rezone 11 acres from Estate Residential (ER) to Medium Density Residential (MR) for the purpose of multi-family residential development.

The site currently consists of land owned by Auza Family LLC at 151 West High Country Trail.

**B. General Description of the Affected Area:**
Approximately 11 acres, Coconino County Assessor's Parcel Number 112-05-001W and 112-05-011 located in a portion the SE ¼ of Section 29, and a portion the NE ¼ of Section 32, Township 21 North, Range 7 East, G&S.R.M. Located at 151 West High Country Trail, City of Flagstaff, Coconino County, Arizona.

City Council meetings are currently being held virtually. For instructions on the virtual meetings visit the following link:

https://www.flagstaff.az.gov/328/Meeting-Protocols-Information

Contact the Planning Development Manager listed for maps and information regarding the proposed amendment.

The meeting will also be live streamed on the city's website:

https://www.flagstaff.az.gov/1461/Streaming-City-Council-Meetings

**PROPOSED ZONING MAP AMENDMENT**
From Estate Residential (ER) to Medium Density Residential (MR) for the purpose of multi-family residential development

**ADDRESS:** 151 West High Country Trail
**APN:** 112-05-001W and 112-05-011
**ACRES:** Approximately 11 Acres
City of Flagstaff
Coconino County

**FOR FURTHER INFORMATION CONTACT**
Alaxandra Pucciarelli
Current Planning Manager
Planning & Development Services
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apucciarelli@flagstaffaz.gov

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Phoenix, Arizona 85016
(602)230-0600
ben@witheymorris.com

**Publish: March 13, 2021**

# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Flagstaff Planning and Zoning Commission will hold a Public Hearing on Wednesday, December 9, 2020, at 4:00 p.m. to consider the following:

**A. Explanation of Matters to be considered:**

1. A proposed amendment to the official City of Flagstaff zoning map to rezone 11 acres from Estate Residential (ER) to Medium Density Residential (MR) for the purpose of multi-family residential development.

The site currently consists of land owned by Auza Family LLC at 151 West High Country Trail.

**B. General Description of the Affected Area:**
Approximately 11 acres, Coconino County Assessor's Parcel Number 112-05-001W and 112-05-011 located in a portion the SE ¼ of Section 29, and a portion the NE ¼ of Section 32, Township 21 North, Range 7 East, G&S.R.M. Located at 151 West High Country Trail, City of Flagstaff, Coconino County, Arizona.

Planning and Zoning Commission meetings are currently being held virtually. For instructions on the virtual meetings visit the following link:

https://www.flagstaff.az.gov/2845/Planning-Zoning-Commission

Contact the Planning Development Manager listed for maps and information regarding the proposed amendment. The Council hearing for this item has not been scheduled at this time.

The meeting will also be live streamed on the city's website:

https://www.flagstaff.az.gov/1461/Streaming-City-Council-Meetings

**PROPOSED ZONING MAP AMENDMENT**
From Estate Residential (ER) to Medium Density Residential (MR) for the purpose of multi-family residential development

**ADDRESS:** 151 West High Country Trail
**APN:** 112-05-001W and 112-05-011
**ACRES:** Approximately 11 Acres
City of Flagstaff
Coconino County

**FOR FURTHER INFORMATION CONTACT**
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**Publish: November 21, 2020**

**Zoning Map Amendment Application Narrative**
**Case No. PZ-20-00008-01**
**PZ-17-00218-02**

**West of the Southwest Corner of High Country Trail and Lake Mary Road**

Approximately 11 acres
Assessor Parcel Nos. 112-05-001W and 112-05-011

**1st Submittal: December 26, 2018**
**2nd Submittal: February 21, 2019**
**3rd Submittal: March 21, 2019**
**4th Submittal: May 1, 2019**
**5th Submittal: May 13, 2019**
**6th Submittal: January 9, 2020**
**7th Submittal: May 18, 2020**
**8th Submittal: July 14, 2020**

Prepared By:
Withey Morris PLC
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Phoenix, Arizona 85016
602.230.0600

Architect:
ORB Architecture
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Suite 101
Phoenix, Arizona 85018
602.957.4530

Developer:
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Suite 222
Phoenix, Arizona 85018
480.448.0985

Engineer:
Mogollon Inc.
411 West Santa Fe Avenue
Flagstaff, Arizona 86001
928.214.0214

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# Zoning Map Amendment Narrative Report

**A request for MR Zoning to allow Multi-family Uses**
**Approximately 11 Acres**
**Located West of the Southwest Corner of High Country Trail and Lake Mary Road**

## A. Executive Summary

This project narrative and the proposed multifamily residential development it describes are the result of significant input feedback from the surrounding neighborhoods, city staff, and Flagstaff's public hearing bodies. This project was originally submitted as PZ-17-00218-02 for a 173-unit multifamily residential development with a 16.11-acre project area that included parcels both north and south of High Country Trail west of Lake Mary Road. During the process, concerns were raised regarding density, proximity to adjacent single-family homes, the amount of earthmoving needed to execute the project, and drainage.

In response to these concerns, the applicant has made significant changes to the project, including but not limited to:

- Decrease in density from 173 to 160 units.
- 25% decrease in number of bedrooms from 265 to 208 due to change in unit mix.
- Tripled setbacks adjacent to single-family to south and west.
- Reduced site area to 11 acres – no longer rezoning Auza homestead.
- Removed carriage buildings on south side of project and decreased height adjacent to single-family homes to the south.
    - Eliminates need for tiered retaining wall system and dramatically reduces cut and fill on south side of the site.
- Retaining all stormwater on site – won't feed into culvert system.
    - Eliminates the deep retention basin along High Country Trail – now usable, flat civic open space.
    - Eliminates the need to disturb High Country Trail for drainage purposes alleviating traffic disruption during construction.

The project proposal described herein is the product of more than two years of engagement and discourse with neighbors, staff, Planning & Zoning Commission, and City Council. The resulting proposal is a better development for both the surrounding community and the City of Flagstaff as a whole.

## B. Property Location & Background

The subject property (the "**Property**") is approximately 11 acres comprised of two parcels located west of the corner of High Country Trail and Lake Mary Road, Flagstaff, Arizona, as shown in the Aerial Maps at **Tab 1**. The Property includes the parcels identified as APNs 112-05-011 and 112-05-001W**.** The Property is a portion of the Auza Family Ranch, historically used for livestock herding between Arizona, Colorado, and California, starting in the years before Flagstaff was incorporated. The Auza family has one of the longest standing

independent sheep ranching operations in the western United States. The Auzas purchased the property prior to Arizona's statehood, and although their homestead sits on the property, they no longer use the parcels in this application for ranching activities. Historical aerials at **Tab 2** depict the homestead and how the area has been developed around the Property in 1980 and 1997. It was not until after 1997 that the adjacent neighborhoods began to develop.

The Property is currently zoned ER (Estate Residential) as shown on the Zoning Map at **Tab 3**. The Regional Plan designation for the Property is Suburban – Existing, as shown on the Regional Plan Map at **Tab 4**.

The Auzas maintain the homestead north of High Country Trail as a home for family gatherings to commemorate their legacy as sheepherders in Arizona. The Auza family began sheepherding in Arizona shortly after the turn of the 20th Century. Frank Auza Sr., a second-generation Arizona sheepherder born in Spain, grew up on the Auza family homestead in Flagstaff. He was the founder of Auza Sheep Company, now known as the Martin Auza Sheep Co., and a lifetime member of the Sheriff's Posse in Flagstaff.

The Auzas continue sheepherding operations in Yuma and Williams, Arizona. For the summer months, they move ewes from Yuma to Williams to graze in the mountains on flowers, brush and mountain grasses. In the fall, the ewes are moved back to Yuma to start the cycle over again.

Part of the sheepherding journey between northern and southern Arizona includes the crossing of the Verde River. In 1943, Frank Auza helped construct a suspension bridge, known as the Verde River Sheep Bridge, which was crossed by 12,000 sheep, four times per year over the span of 44 years. The bridge was placed on the National Register of Historic Places in 1978 before it was closed in 1987. In 1989, the U.S. Forest Service constructed a replica bridge for use by hikers; the west suspension tower remains today.

The U.S. Forest Service has continued to document the sheepherding history in Arizona by recording aborglyphs carved in Aspen trees throughout northern Arizona, by members of the Auza family, among others, dating as far back as the 1880s (source: Washington Post. Tree Carvings in Northern Arizona Have Many Stories to Tell. April 22, 2000). Frank Auza's children, grandchildren and great grandchildren continue to operate the family sheepherding business and keep their family legacy alive on their homestead in Flagstaff – the land directly north of the proposed development site.

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*Figure 2 – Copyright: Arizona Historical Society/Flagstaff, Frank Auza Collection, 1927-1948. Firebranding sheep at Frank Auza's sheep ranch, 1936.*

*Figure 1 - Source: wherefoodcomesfrom.com. Sheep grazing on the Auza family homestead*

*Figure 4 - Source: Library of Congress. Frank Auza at Verde River Suspension Bridge*

*Figure 3 - Source: bridgemeister.com. Replica suspension bridge at Verde River.*

*Figure 5 - Source: USDA website. Aspen carving by sheepherder.*

## C. Purpose of Request

The owner of the Property, Auza Flagstaff, LLC, the Auza family (the "**Owner**"), and the developer of the Property, Trinsic Acquisition Company LLC (the "Applicant") request to rezone the Property from Estate Residential (ER) to Medium Density Residential (MR) to permit the development of a high-quality market rate multi-family residential community. The historic taking of the Auza Family Ranch land has limited development options on the Property; those takings include the construction of Interstate 17 at the north end of the Property and, particularly, the bisection of the Property by High Country Trail and an electrical utility easement for the high voltage transmission lines along the south side of High Country Trail. Despite these development limitations, the Applicant and the Owner have worked diligently to create a development plan that meets the Zoning Code requirements for the MR zoning district and Resource Protection overlay and, most importantly, is sensitive to and compatible with adjacent uses. This proposal also includes affordable housing units to help the City of Flagstaff narrow the housing deficit for households that cannot afford market-priced rental or for-sale housing.

Changes imposed on the site through land takings have impacted the Property for many years. These include the following:

1. The construction of Highway 89A, now Interstate 17, in the middle of the 20th Century, across the northern portion of the Auza Homestead.

2. The 80-foot wide electrical easement traversing the entire site from east to west no later than 1962.

3. The construction of High Country Trail, bisecting the Property, between 1997 and 2002 to support the development of Ponderosa Trails community, followed by the Summit community and Timber Trails.

These changes to the Auza Homestead have placed restrictions on the property that have significantly limited development options available to the Auzas on their overall site. The proposed development provides an option that allows the Auzas to maintain their primary homestead, despite the land takings over the years.

## D. Description of Proposal

This zoning map amendment application is a proposal to develop multi-family residences on the south side of the High Country Trial, as depicted in the Site Plan included with this application.

Trinsic develops high-quality, amenity-rich multi-family residential properties. Their custom design approach to each residential community is site specific and driven by natural features and local architectural character. Trinsic uses "best in class" planning and construction practices, emphasizing high-end finishes, distinctive design elements and a full complement of amenities. Trinsic's team, which has well over 50 years of combined experience in the industry, has developed numerous communities in the southwest and northwest areas of the country.

The proposed multi-family community, branded as Aura Flagstaff, will be highly amenitized and offer larger units than most other multi-family communities. The proposed site plan takes into consideration the 7% average slope of the Property south of High Country Trail. There are approximately 5 acres of the Property that are within a utility easement adjacent to High Country Trail that will remain undeveloped but will contain

civic and common open space amenities and landscaping. Due to a reconfiguration of the on-site retention, this area will no longer be a retention basin for the site. Instead, it will be a flat, park-like area to be enjoyed by the greater community.

This application includes a Natural Resources Survey and Protection Plan and the Applicant intends to develop within the limitations of the Plan to meet the City's Zoning Code provisions. A Materials Management Plan is included with this application to clearly outline solid waste and recycling to be provided on site. The Applicant is an industry leader in promoting waste diversion programs at each of its communities, where in most jurisdictions, providing recycling for multi-family uses is not a requirement.

The development proposal includes two and three-story buildings, and a mix of 70% one-bedroom and 30% two-bedroom units. The proposed 160 multi-family units and amenity/office building total 73,368 square feet; 15.30% lot coverage. The open space area for the Property totals approximately 108,983 square feet and 23% of the site. The common open space, available to multi-family residential tenants, is provided exclusively south of High Country Trail and totals 79,983 square feet and 17% of the Property. Additionally, the civic open space provided is 29,000 square feet and 6% of the Property, located adjacent to High Country Trail.

The site plan includes units equal to 20% of the allowable base density that qualify as Category 1 of the City of Flagstaff Affordability Program. The density for the project was calculated using a 45% density bonus based on the inclusion of these units. The site plan also utilizes a 25% density bonus through the utilization of sustainable building practices and materials, allowing for an additional 25 units and an overall total of 169 residential units. Aura Flagstaff is proposing the development of 160 units – 9 units below the maximum allowable density.

The site plan proposes a setback of 116' 3" from the north property line, 47' 8" from the south property line, 66' 4" from the east property line, and approximately 66' 11" from the west property line – all of which exceed the Zoning Code requirements. The site plan utilizes the enhanced setback along south property line in conjunction with the natural slope and grade of the terrain to maximize privacy for the single-family residences to the south and the west.

The site is buffered by mature pine trees and a setback from High Country Trail of 116' 3" to 224' 8". This proposal should not have any detrimental impact on neighboring properties as Zoning Code provisions for setbacks will be met, with buildings lower than permitted adjacent to property lines, and a substantial number of pine trees will be preserved throughout the Property. The tree resources on the approximate 1.9 acres north of High Country Trail will be protected with a Resource Protection Easement. The applicant will utilize the affordable housing incentive to reduce the tree resource protection from 50% to 25%. The applicant will also dedicate an easement for the benefit of the Auza Family to allow the existing minor encroachment of the Auza Family residence across the north property line of the portion of the Property north of High Country Trail.

As noted in the Executive Summary, the proposed site plan was the subject of a substantial redesign and reconfiguration, resulting from input and feedback received from the community, staff, and during the public hearing process. The proposed site plan reduces the project area and residential density (with a greater reduction in the overall number of bedrooms), increases the number of affordable housing units, incorporates sustainable building techniques, triples the setbacks and removes the carriage buildings adjacent to single-family homes, reduces the overall acreage of the application, reduces earthwork

disturbance and lowers retaining requirements, and retains all storm water on site eliminating the need for a steep retention basin in the Common Open Space and Civic space, and eliminates the need to disturb High Country Trail.

**DEVELOPMENT STANDARDS – REQUIRED/PROVIDED**

| Standard | MR Zoning District Standard | Proposed with Development Plan |
|---|---|---|
| Setback | | |
| Front (min.) | 10' – 2nd Floor and Below<br>15' – Above 2nd Floor | 116' 3" |
| Side Yard (min.) | 5' | 66' 4" (East)<br>66' 11" (West) |
| Rear Yard (min.) | 15' | 47' 8" |
| Height (max.) | 35 feet<br>40 feet with a 6:12 pitched roof | 40 feet with a 6:12 pitched roof |
| Coverage (max.) | 40% | 15.3% |
| Density: Gross (units/acre) | 6 du/ac (Min.)<br>9 du/ac (Max.) | 14.54 du/ac (with affordable housing and sustainability bonus incentives) |
| Parking Spaces | 240 spaces (266 minus 10% reduction for bus service area) | 242 spaces |
| Open Space (% of Gross Lot Area) | Civic (5%): .55 Acres / 23,981 square feet<br>Common (15%): 1.65 Acres / 71,943 square feet | Civic (6%): .67 Acres / 29,000 square feet<br>Common (17%): 1.84 Acres / 79,983 square feet |

## E. Relationship of Property to Surrounding Area

The Property is west of Lake Mary Road, bisected by High Country Trail and just south of Interstate 17. The Property is adjacent to a multi-family use and undeveloped commercial land to the east; single family

residential uses to the south; and multi-family and single-family residential uses to the west. The zoning in the area is shown on the Zoning Context exhibit included with this application.

The adjacent property zoning is as follows:

North: Interstate 17 and Rural Residential (RR)
East: High Density Residential (HR), Highway Commercial (HC), Rural Residential (RR)
South: Single Family Residential (R1)
West: Single Family Residential (R1) and Medium Density Residential (MR)

The Regional Plan map designation for the Property is Suburban – Existing. The proposed development is consistent with the Regional Plan Suburban Neighborhood Characteristics for open space, density range, natural resources and type of residential. As designed, Aura Flagstaff is compatible with the surrounding neighborhoods, which consist of other high-density, medium-density and single-family residential developments, and commercially zoned property.

## F. Community Outreach

During the original rezoning case, PZ-17-00218-02 the Applicant conducted extensive outreach to the community over a two-year period, which resulted in the significant changes to the development plan outlined in the Executive Summary above. The following provides an overview of the community engagement and submittal process in the original case.

| Type | Date |
|---|---|
| **Original Zoning Case PZ-17-00218-02** | |
| Voluntary letter sent to neighborhood informing them of proposed development | 1/16/2018 |
| Individual meetings with homeowners on Goldrush Trail | 2/5/2018 |
| Concept Submittal 1 to the City | 2/6/2018 |
| Additional meetings with homeowners on Goldrush Trail | 2/22/2018 |
| Concept Submittal 2 | 5/3/2018 |
| Completion of Cultural Resource Report | 5/24/2018 |
| Concept Submittal 3 – included reduction from 197 to 173 units to increase open space | 6/28/2018 |
| Preparation of Traffic Impact Statement for proposed development for formal site plan submittal | 6/29/2018 |
| Formal Site Plan Submittal | 8/20/2018 |

| | |
|---|---|
| Hold first formal neighborhood meeting for larger surrounding community | 10/18/2018 |
| Attend & discuss proposed development at Ponderosa Trails Annual HOA Meeting | 10/24/2018 |
| Site Plan Submission 2 | 12/13/2018 |
| Formal Rezoning Application Submittal | 12/26/2018 |
| Attend and present to Ponderosa Trails HOA Board solutions to items previously raised by community including improved line of site from adjacent properties by lowering buildings through site grading, reduction in density, increase in open space, and driveway realignments to improve safety of driveways. | 1/17/2019 |
| Site Plan Submission 3 | 1/24/2019 |
| Site Plan Submission 4 | 2/21/2019 |
| Hold second neighborhood meeting for larger community with staff's approval | 3/4/2019 |
| Site Plan Submission 5 | 3/14/2019 |
| Planning & Zoning Commission Public Hearing | 5/22/2019 |
| Site Plan Submission 6 | 11/4/2019 |

**New Zoning Case PZ-20-00008-01**

| | |
|---|---|
| Site Plan Submission 7 | 1/9/2020 |
| Formal Rezoning Application Submittal | 1/9/2020 |
| Letters mailed for first formal neighborhood meeting | 3/13/2020 |
| Hold first formal virtual neighborhood meeting | 3/23/2020 |
| Site Plan Submission 8 | 5/18/2020 |
| Letters mailed for second formal virtual neighborhood meeting | 6/19/2020 |
| Hold second formal virtual neighborhood meeting | 7/1/2020 |

## G. Regional Plan Analysis

The Regional Plan map designation for the Property is Suburban – Existing. The proposed development is consistent with the Regional Plan Suburban Neighborhood Characteristics for open space, density range (up to 13 units per acre), natural resources and type of residential. As designed, Aura Flagstaff is compatible with the surrounding neighborhoods, which consist of high-density, medium-density and single-family residential developments and commercially zoned property.

The Regional Plan's existing Land Supply Analysis states that "[o]nly 12 percent of the land in the planning area is privately held. Given this small amount of land, determining how to encourage development patterns that fulfill the community vision (Regional Plan) is a significant task." This proposal for multi-family development is on 11 acres of privately held land and has been designed to support the goals and objectives of the community vision for Flagstaff.

The Land Supply Analysis of the Regional Plan also evaluates vacant land within city limits that is available for development based on current zoning. The Regional Plan then projects demand by land use under the current zoning for 2010-2020 and 2030-2050. Within city limits, the projected demand for multi-family development is a total of 225 acres by 2050, and under this land use, the Plan identifies a deficit of 46 acres of available land to be developed. The proposed project fulfills 11 acres of this deficit.

Growth is limited in Flagstaff not only by geography and land ownership, but by design, through careful City planning over the last 25 years. As such, the City has adopted a policy of promoting "compact development" that is focused on the areas within the City's boundaries to prevent sprawl and encourage smart planning. The proposed development is respectful of Flagstaff's scale, character, and design traditions and achieves many of the tenets of compact development including: connected access for pedestrians, bicyclists, and transit; medium densities in appropriate contexts; provision of a range housing options including multi-family housing options with shared amenities; and support of open space goals. While the city center is often a focus of compact development, the Regional Plan contemplates suburban development as appropriate in areas outside the city center as follows:

> *Support for the concept of more compact growth does not, and has not, precluded new suburban development from occurring away from the center of the City, such as the Ponderosa Trails subdivision.*

Rezoning the Property to permit the development of the proposed multi-family residential development, with affordable units, contributes to the Environmental Planning and Conservation, Water Resources, Energy, Community Character, Land Use, Transportation Neighborhoods, Housing, & Urban Conservation goals and policies of the Regional Plan as discussed below.

***Goal E&C.6. Protect, restore and improve ecosystem health and maintain native plant and animal community diversity across all land ownerships in the Flagstaff region.***

- ***Policy E&C.6.8. Disturbed areas for improvements and landscaping for new developments shall emphasize the use of native, drought-tolerant or edible species appropriate to the area.***

  All plants selected for the proposed palette are native or naturalized based on Section 3.030: City of Flagstaff Landscape Plant List. Additionally, most of the plants have low water needs based on the same section, with none of the plants requiring high water needs.

- ***Policy E&C.9.2. Construction projects employ strategies to minimize disturbed area, soil compaction, soil erosion, and destruction of vegetation.***

  This site plan was developed to minimize the disturbance of trees and natural grades on a site with

significant natural topography. The building layout and orientation are designed to protect the buildings during heavy rain and snowstorms and to provide a balance between the gradation of the site in specific areas and to minimize site cuts.

Most significantly, the current iteration of this site plan removes the carriage buildings previously proposed in close proximity to the south property line. This change allows for significantly enhanced setbacks adjacent to the single-family homes to the south, substantially reduces the need for cuts into the natural terrain and preserves more of the natural topography on site. Preserving more of the natural terrain south of the site also reduces the number of retaining walls – rather than a system of tiered retaining walls requiring substantial disturbance to the natural topography, only a single split-face CMU retaining wall is necessary

Approximately 6.5 acres will remain undisturbed and just over 28% of the tree points existing today will be preserved. This includes a .58-acre area at the southwest corner of the site and 1.93 acres north of High Country Trail.

***Goal WR.4. Logically enhance and extend the City's public water, wastewater, and reclaimed water services including their treatment, distribution, and collection systems in both urbanized and newly developed areas of the City to provide an efficient delivery of services.***

- ***Policy WR.4.3. Development requiring public utility services will be located within the Urban Growth Boundary.***

  A Water and Sewer Impact Analysis has been completed by the City of Flagstaff for this site in response to an application made and paid for by the Applicant. The city concluded that services will be provided to the site. Given that it is within the Urban Growth Area, the water and sewer utilities needed to serve the site meet this policy.

***Goal E.1. Increase energy efficiency***

- ***Policy E.1.4. Promote cost-effective, energy-efficient technologies and design in all new and retrofit buildings for residential, commercial, and industrial projects.***

  The Applicant incorporates sustainability features in all of their projects they develop. This project will include many design features that help increase energy efficiency.

  - Low E insulated glass
  - High efficiency HVAC – 15 SEER units
  - LED lighting throughout
  - Low voltage LED landscape lighting
  - Recycle program for residents and office/common areas
  - Low flow water fixtures
  - Energy Star appliances
  - Individual unit water meters to track usage

- Energy efficient pool pump and filtration equipment
- Unit separation assemblies with STC 55 or greater for enhanced sound separation and energy retention
- An irrigation design that employs low flow drip irrigation to maximize efficiency, and a smart controller with weather sensing technology
- Applicant will participate in the City of Flagstaff's Sustainable Building Program which will require apartment units to achieve a HERS rating of 50 or better.

***Goal CC.1. Reflect and respect the region's natural setting and dramatic views in the built environment.***

- ***Policy CC.1.1. Preserve the natural character of the region through planning and design to maintain views of significant landmarks, sloping landforms, rock outcroppings, water courses, floodplains, and meadows, and conserve stands of ponderosa pine.***

  The natural resources plan (the "Plan") for the project outlines 28.28% of trees to be retained, exceeding the minimum requirement. A portion of those trees are along the north side of High Country Trail, preserving views from the street., with additional new trees being planted along the south side of High Country Trail and throughout the multi-family project. A significant open space area at the southwest corner of the site will also preserve tree resources, adjacent to single-family residential to the south, in addition to those preserved throughout the site, as depicted on the Plan.

***Goal CC.3. Preserve, restore, enhance, and reflect the design traditions of Flagstaff in all public and private development efforts.***

- ***Policy CC.3.2. Maintain and enhance existing buildings and blend well-designed new buildings into existing neighborhoods.***

  The architectural design for Aura Flagstaff was developed to be site specific and complement traditional design characteristics associated with Flagstaff. The design is appropriate for the region and climate, and consistent with surrounding developments. Design inspiration for the development was drawn from surrounding existing buildings such as The Lodge Luxury Apartments, Timber Trails Apartments, Sandstone Highlands Apartments, and adjacent single family homes in the Ponderosa Trails subdivision. The use of cementitious lap siding (hardy plank), stone, recessed windows, covered stairways, and limited use of stucco on surrounding buildings helped steer the development's exterior material selections. The earth and forest inspired color palette will blend seamlessly into the preserved Ponderosa Pine trees on the site.

***Goal CC.4. Design and develop all projects to be contextually sensitive, to enhance a positive image and identity for the region.***

- ***Policy CC.4.1. Design streetscapes to be context sensitive and transportation systems to reflect the desired land use while balancing the needs of all modes for traffic safety and construction and maintenance costs.***

  The existing sidewalk at back of curb, along the south side of High Country Trail will be replaced with

a FUTS trail that meanders adjacent to the project. The FUTS trail will be setback from 5- to 7-feet from the property line, providing a larger buffer between the street and pedestrians. This setback provides greater safety for pedestrians. Additionally, the applicant will extend the FUTS trail beyond its property lines to connect to the trail's existing termination points east and west of the site with the permission of the Ponderosa Trails HOA. The applicant has requested approval from the Ponderosa Trails HOA to improve the portions of the proposed FUTS trail on the HOA's property at the applicant's sole cost. The request is still under consideration by the HOA.

The north side of High Country Trail will retain on site tree resources and preserve the streetscape as it exists. The setback along the south side of High County Trail, adjacent to the multi-family development is appropriate for the land use given the existence of an 80-foot electric utility easement and is sensitive to the surrounding uses and topography. Additionally, the design of both driveways city and AASHTO guidelines, accounting for the curvature of High Country Trail to maintaining traffic safety.

- ***Policy CC.4.4. Design streets and parking lots to balance automobile facilities, recognize human-scale and pedestrian needs, and accentuate the surrounding environment.***

  The site design is constrained by an existing 80-foot electric utility easement along the south side of High Country Trail. This condition limits where the buildings can be located and their connectivity with the street. The site design is further complicated by a U.S. Department of Housing and Urban Development Department ("HUD") requirement which restricts buildings from being located within the fall radius of the utility poles erected on site. Absent the utility easement and infrastructure, the Aura Flagstaff setbacks from the street are consistent with the Medium-Density Residential development to the immediate west. The site design provides clear pedestrian paths between each of the buildings and to the FUTS trail along High Country Trail. To help balance the impacts of the large utility easement, the area directly south of the FUTS trail will be civic open space landscaped with native grasses and wildflowers.

***Goal LU.1. Invest in existing neighborhoods and activity centers for the purpose of developing complete, and connected places.***

- ***Policy LU.1.3. Promote reinvestment at the neighborhood scale to include infill of vacant parcels, redevelopment of underutilized properties, aesthetic improvements to public spaces, remodeling of existing buildings and streetscapes, maintaining selected appropriate open space, and programs for the benefit and improvement of the local residents.***

  The proposed development is on a vacant infill parcel that currently provides no public benefit to the established neighborhoods adjacent to the site. The development of this infill parcel with civic open space and pedestrian amenities, including the extension of the FUTS path along the south side of High Country Trail. In addition to completing the FUTS path within the bounds of the Property on the south side of High Country Trail, the applicant will extend and connect the trail to its existing termination points east and west of the Property with the approval and permission of the Ponderosa Trails HOA. Further, the extension of the FUTS path, as a part of the Flagstaff pedestrian and bicycle network, will provide safer connectivity to employment and services accessible from the Mountain Line bus stop at the intersection of High Country Trail and Lake Mary Road and the two new Mountain

Line bus stops on the north and south sides of High Country Trail for which the applicant will provide concrete bus pads.

- ***Policy LU.1.11. Ensure that there is collaboration between a developer, residents, and property owners in existing neighborhoods where redevelopment and reinvestment is proposed so that they are included, engaged, and informed.***

  During the zoning map amendment process, the Applicant has and will continue to engage residents and property owners through public notices for hearings and neighborhood meetings. Information will be provided and input received from neighbors and neighborhood groups and incorporated into the project design. A citizen participation plan, prepared as part of the application, outlines the specific details of these efforts.

***Goal LU.5. Encourage compact development principles to achieve efficiencies and open space preservation.***

- ***Policy LU.5.2. Promote infill development over peripheral expansion to conserve environmental resources, spur economic investments, and reduce the cost of providing infrastructure and services.***

  The proposed project is within the Urban Growth Boundary and serviceable with existing city utilities and road infrastructure.

***Goal LU.6. Provide for a mix of land uses.***

- ***Policy LU.6.4. Provide appropriate recreational and cultural amenities to meet the needs of residents.***

  The proposed development will construct the planned extension of the FUTS along the south side of High Country Trail toward Lake Mary Road. In addition to constructing the portion of the FUTS along the portion of High Country Trail within the bounds of the Property, the applicant will construct and extend the FUTS to connect to its existing termination points west and east of the Property with the permission and approval of the Ponderosa Trails HOA. This extension will construct a portion of the planned pedestrian and bicycle network in Flagstaff.

***Goal LU.13. Increase the variety of housing options and expand opportunities for employment and neighborhood shopping within all suburban neighborhoods.***

- ***Policy LU.13.4. Plan suburban development to include a variety of housing options.***

  The area surrounding the Property has been developed with a variety of housing options including high-density, medium-density and single-family residential. Aura Flagstaff will provide additional medium-density market rate and affordable housing options. The limitations of the Urban Growth Area and the need for compact development support this proposal for additional medium density residential development in this area.

- ***Policy LU.13.9. Use open space and FUTS trails to provide walking and biking links from residential uses to employment, shopping, schools, parks, and neighborhoods.***

The FUTS trail that exists to the west of the proposed development is planned to be extended east to connect the established neighborhoods west of Lake Mary Road to the intersection at High Country Trail, where pedestrians and bicycles are able to access employment and services with public transit. The proposed development includes the construction of the FUTS trail extension for beyond merely the width of the Property, extending to connect to its existing termination points east and west of the site subject to the permission and approval of the Ponderosa Trails HOA.

***Goal T.1. Improve mobility and access throughout the region.***

- ***Policy T.1.6. Provide and promote strategies that increase alternate modes of travel and demand for vehicular travel to reduce peak period traffic.***

  The proposed development will place residents within walking distance of two bus routes and a FUTS path. The applicant is coordinating with the Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA) to improve the Mountain Line bus route along High Country Trail. Per NAIPTA's request, the applicant will pour concrete pads for new bus stops on both the north and south sides of High Country Trail to provide more convenient and efficient access to public transit.

***Goal T.2. Improve transportation safety and efficiency for all modes.***

- ***Policy T.2.1. Design infrastructure to provide safe and efficient movement of vehicles, pedestrians, bicycles, and pedestrians.***

  The site design provides clear pedestrian paths between each of the buildings and to the FUTS trail along High Country Trail. Pedestrian pathways will be striped where there are no sidewalks across parking drive aisles to provide clearly marked and safe crossing areas for pedestrians and to alert vehicles to the potential presence of pedestrians crossing. Many sidewalks are provided between buildings and leading to the clubhouse and leasing area which are isolated from drive aisles and parking areas.

***Goal T.5. Increase the availability and use of pedestrian infrastructure, including FUTS, as a critical element of a safe and livable community.***

- ***Policy T.5.4. Design streets with continuous pedestrian infrastructure of sufficient width to provide safe, accessible use and opportunities for shelter.***

  The existing sidewalks on the south side of High Country Trail, along with the new FUTS path that will constructed to extend beyond the width of the Property and connect to its existing termination points east and west of the site, are accessible from the proposed development and adjacent neighborhoods. This pedestrian infrastructure provides safe, accessible paths from Lake Mary Road into the neighborhood.

***Goal T.6. Provide for bicycling as a safe and efficient means of transportation and recreation.***

- ***Policy T.6.2. Establish and maintain a comprehensive, consistent, and highly connected system of bikeways and FUTS trails.***

As discussed above, the proposed development will extend the FUTS trail as identified by the Flagstaff Urban Trails System map. This extension will bring the "High Country Trail" to full connectivity between the "Bow and Arrow Trail" to the east and the "Ponderosa Trail" to the west. The "Ponderosa Trail" leads to recreational trails at Fort Tuthill. The "Bow and Arrow Trail" connects to other trails that lead to Northern Arizona University.

***Goal NH.3. Make available a variety of housing types at different price points, to provide housing opportunity for all economic sectors.***

- ***Policy NH.3.1. Provide a variety of housing types throughout the City and region, including purchase and rental options, to expand the choices available to meet the financial and lifestyle needs of our diverse population.***

  The units proposed for affordable housing will permanently serve residents earning 80% of the area median income or less. For a single individual, that annual income limit is $42,800 as of HUD guidance in 2019

  Flagstaff Housing staff identified one-bedroom units for the proposed development to help fill a need in the community. There is a great demand for affordable rental housing in Flagstaff. When included in a development with market rate units, affordable housing units become a possibility with the current costs of development and demand for developable land in Flagstaff.

- ***Policy NH.6.1. Promote quality redevelopment and infill projects that are contextual with surrounding neighborhoods. When planning for redevelopment, the needs of existing residents should be addressed as early as possible in the development process.***

  The MR zoning district was chosen instead of HR in the effort to blend new and existing buildings. The allowable building height of 35' (40' with a pitched roof) is appropriate given the existing multi-family structures and allowable heights to the south. The Applicant will conduct neighborhood meeting(s) to introduce the approved site plan and architectural renderings of their proposed multi-family project. When both parties arrive at a final design, the developer will present the plan to Council at a public hearing.

The project conflicts with the following Goal and Policy.

***Goal E.2. Expand production and use of renewable energy.***

- ***Policy E.2.4. Encourage small-scale renewable energy production and use on the local level on appropriate residential, commercial, and industrial parcels.***

  The client has incorporated small-scale renewable energy production into prior projects and continues to assess projects on a case by case basis. This project was assessed by the client as an opportunity to include small-scale energy production. There are certain restrictions on this development that make the introduction of solar difficult if not impossible. The required preservation of trees limits the opportunity for ground mounted solar arrays in undisturbed areas. Additionally, the APS easement occupying approximately 2.5 acres on the south end of High Country Trail prohibits vertical improvement in an area that could otherwise be considered for renewable energy production.

The applicant sees great value in meeting the policies and goals outlined by the Regional Plan and has made an effort to incorporate this policy but is unable to provide renewable energy for this project at this time. The Applicant will revisit and consider retrofitting the site to meet this policy after construction if the cost benefit analysis is improved at a later date. The applicant has elected to participate in the City of Flagstaff's Sustainable Building Program and will meet requirements associated with Water Resource Protection, Transportation/Air Quality, Waste Reduction During Construction, and Energy Efficiency.

## H. Location, Accessibility & Site Circulation

As noted above, the Property is located west of the southwest corner of Lake Mary Road, a minor arterial, and High Country Trail, a major collector. A northbound Interstate 17 off ramp is located to the northeast of the Property. Access to the Property is solely from High Country Trail, along the north boundary of the proposed multi-family development.

The anticipated traffic pattern would be to the east to access Lake Mary Road and the rest of the Flagstaff roadway network. There would be a limited number of westbound vehicles given the termination of High Country Trail/Pulliam Drive at the airport. Access to the property will be from two 30-foot driveway entrances on High Country Trail, the main entrance approximately 124 feet from the western property line and the secondary entrance approximately 199 feet from the eastern property line. The driveways are approximately 440 feet apart, exceeding the code requirements for driveway spacing. There is no vehicular access to the Property from its west, north or east sides. The main community entrance is aligned with the rental office and community amenity area. The main drive aisle serving the community will circulate around a majority of the residential units with additional individual drive aisles serving each building. Surface parking is provided for residents and guests throughout the site.

The Applicant has worked with CivTech, a registered traffic engineer, to prepare a traffic statement ("TIS") for the proposed project which has been submitted to the city. The TIS concludes the following:

- The trip generations revealed that the proposed development could generate a total of 644 trips per day with 42 trips (19 in/23 out) generated during the AM peak hour and 71 trips (37 in/34 out) generated during the PM peak hour.
- The results of the intersection capacity analysis that all study intersections are expected to operate with acceptable levels of service (LOS C or better). The intersection of Lake Mary Road and High Country Trail should continue to operate at overall LOS B or better; therefore, no mitigation measures are warranted or recommended.
- Since not more than three (3) right turns per hour are expected at either site driveway during either peak hour, per the City of Flagstaff's Engineering Design Standards Section 13-10-010 (Streets), eastbound right-turn lanes are not warranted on High Country Trail approaching either of the two proposed site accesses.

- Two of the existing three turn lanes at the intersection of Lake Mary Road and High Country Trail provide sufficient storage using the AASHTO method. The eastbound left turn movement from High Country Trail onto Lake Mary Road could require additional storage capacity. Drivers could use the existing CTWLTL on the approach as additional storage. If the CTWLTL on High Country Trail is re-

striped to extend the existing left turn lane, CivTech recommends that it not be striped to provide more than 300 feet of storage, a typical maximum turn lane length.

- Sufficient sight distances to and from Access B appear to be available. In the first submittal of this statement, CivTech recommended the relocation of Access A. On the current site plan, not only has the driveway been relocated slightly, CivTech understands that the development will eliminate much of the sloping terrain that was of primary concern, allowing adequate sight visibility to be provided. Thus, CivTech concludes that the final, engineered location of the driveway established by the civil engineer provides the required sight distances.
- CivTech recommends that sight visibility triangles at the site driveway be provided per AASHTO guidelines. In addition, within designated sight visibility triangles, landscaping should be maintained at a maximum of two (2) feet in height. Tree branches lower than seven (7) feet should be trimmed and maintained to meet current acceptable landscape requirements.

The Applicant and its traffic engineer will work with the city to design and implement the recommendations in the TIS and in a manner that meets City Codes and guidelines. To address the traffic engineer's conclusion regarding required sight visibility triangles to meet AASHTO guidelines, the eastern driveway was modified during the site plan review process and reviewed by city staff to ensure it meets standards.

The Property is ideally located for the proposed residential development given the proximity to Northern Arizona University and other Flagstaff employers. Additionally, the eastern driveway is approximately 600 feet from the Mountain Line Route 4 and 14 bus stops at Lake Mary Road and High Country Trail, providing convenient access to public transportation for community residents.

## I. Analysis of Public Good

As proposed, Aura Flagstaff helps achieve many of the Regional Plan's goals and policies. The proposed development provides additional market rate and affordable rental housing on a long vacant infill parcel that will add civic open space and extend the FUTS network. Aura Flagstaff will also participate in the City of Flagstaff Crime Free Multi-Housing Program which will be implemented at the time of construction, by working with the Police Department to train community management and ensure best practices for crime free housing are standard protocol for the management and operation of the Property. Additionally, the resource protection easement to be placed on the acreage north if High Country Trail, ensures the historical significance of the Auza family homestead and its natural resources are preserved on land that could otherwise be redeveloped and the tree resources and open space diminished along this portion of High Country Trail. The development will participate in both the City of Flagstaff's Affordable Housing Program and Sustainable Building Program. Aura Flagstaff enhances the public good, and does not threaten public health, safety, or convenience in a major way.

## J. Public Utilities Analysis

There is no existing infrastructure for water and sewer on-site. The on-site sewer and water will be designed and built for this Project. The Water and Sewer Impact Analysis, completed by the City on June 1, 2018, indicates adequate Fire Hydrant pressure and sewer system capacity for the proposed infrastructure. No off-site infrastructure improvements other than to serve the intent of this Site Plan are required of this development. All proposed infrastructure will be constructed to City of Flagstaff and A.D.E.Q. Standards. Dry utilities will utilize the City Trench Engineering Detail 09-01-032.

## K. Community Benefit

This proposal includes the extension and completion of the "Ponderosa Trail" FUTS trail along High Country Trail, the addition of civic open space along the south side of High Country Trail and 20 permanent affordable residential units to benefit the Flagstaff area. While a majority of the residential units under this proposal will be market rate, (20% of the maximum base density) will be affordable to those at or below 80% of the area median income (AMI), which the local housing market is not offering currently. The Applicant has worked with City staff to identify the greatest need in the community for the type of affordable units. City staff has identified the following types of units for Aura Flagstaff to help fill a void in the community and serve the public.

Unit Mix

| Unit Size | Designated for Program | Total in Project |
|---|---|---|
| One bedroom | 14 | 112 |
| Two bedroom | 6 | 48 |

The addition of the Aura Flagstaff affordable units will help fulfill the much-needed permanent affordable housing needs of families and individuals in Flagstaff.

Further, this project is a part of the U.S. Department of Housing and Urban Development ("HUD") 221d4 program which is a loan program for multi-family developments that targets projects with rental units to serve mid-income tenants. A project under this program must be located in an area that is shown to have excess demand for housing to be approved. HUD has completed research on the Flagstaff market and the rental housing demand, which as of 2016, when the latest report was published, had not been met. The developer of this project has been required to produce their own market analysis to clearly demonstrate the need for the proposed development to be qualified for this HUD funding program. This project clearly demonstrates the benefit to the community through new housing options identified by the Federal Government as necessary.

## L. Bonus Incentives

As noted above, the applicant will be utilizing both affordable housing and sustainable building bonuses as follows:

- Affordable Housing Density Bonus: The applicant is providing 20 affordable housing units in the project (20% of the maximum base density) to utilize the 45% density bonus permitted by Section 10-30.20.040 of the Zoning Code.
- Affordable Housing Parking Reduction: Section 10-50.80.040 of the Zoning Code allows for a reduction in typical parking requirements for affordable housing units. As indicated on the site plan parking table, the applicant is providing 1.0 spaces per one-bedroom unit and 1.5 spaces per two-bedroom unit in conformance with Table 10-50.80.040.A. In total, the applicant is allocating a total of 23 parking spaces for the affordable housing units – 14 spaces for 14 one-bedroom units and 9 spaces for 6 two-bedroom units.
- Affordable Housing Tree Resource Protection Reduction: By providing 20 units with permanent affordability and utilizing sustainable building incentives, the applicant is reducing its required forest resource protection from 50% to 25% per Table 10-30.20.040.B in the Zoning Code.

- Sustainable Building Density Bonus: Pursuant to Section 10-30.70.030 of the Zoning Code, seventy five percent (75%) of the applicant's units will meet a HERS 50 standard to utilize the corresponding 20% density bonus of 20 units. Accordingly, the development will meet the minimum sustainable building standards outlined in Section 10.30.70.040 of the Zoning Code:
    - Water Resource Protection:
        - The landscape design for the development shall not include an oasis zone (hydrozone 1) as otherwise permitted in Section 10-50.60.050(C), Oasis Allowance, and Section 10-50.60.060, Hydrozones.
    - Transportation/Air Quality: All 3 will be implemented
        - The development site is located within at least one-quarter mile of a bus stop; or
        - The development is located within at least one-quarter mile of a FUTS trail or connected to it; or
        - Residential electrical systems are designed for electric vehicle charging.
    - Waste Reduction During Construction
        - A plan for the recycling or reuse of all paper, cardboard, plastics, and metals;
        - A plan for the recycling or reuse of all lumber scraps so that they are diverted from the landfill
    - Energy Efficiency:
        - An applicant applying the HERS rating system to receive the density bonuses allowed under Section 10-30.70.030, Density Bonus, shall obtain independent third-party verification that the minimum HERS rating has been achieved before the density bonus is applied, to the satisfaction of the Director and the Building Official.

## M. Conclusion

This proposal brings a quality project to Flagstaff that provides amenities to the public, and most importantly, helps meet the ongoing critical housing needs of the greater community. The application is consistent with the goals and policies of the Regional Plan and addresses the need for additional market rate and affordable rental housing units identified by the city and HUD. The Applicant requests approval of this zoning amendment application. This rezoning will allow a reasonable opportunity to develop the Property for its highest and best use.

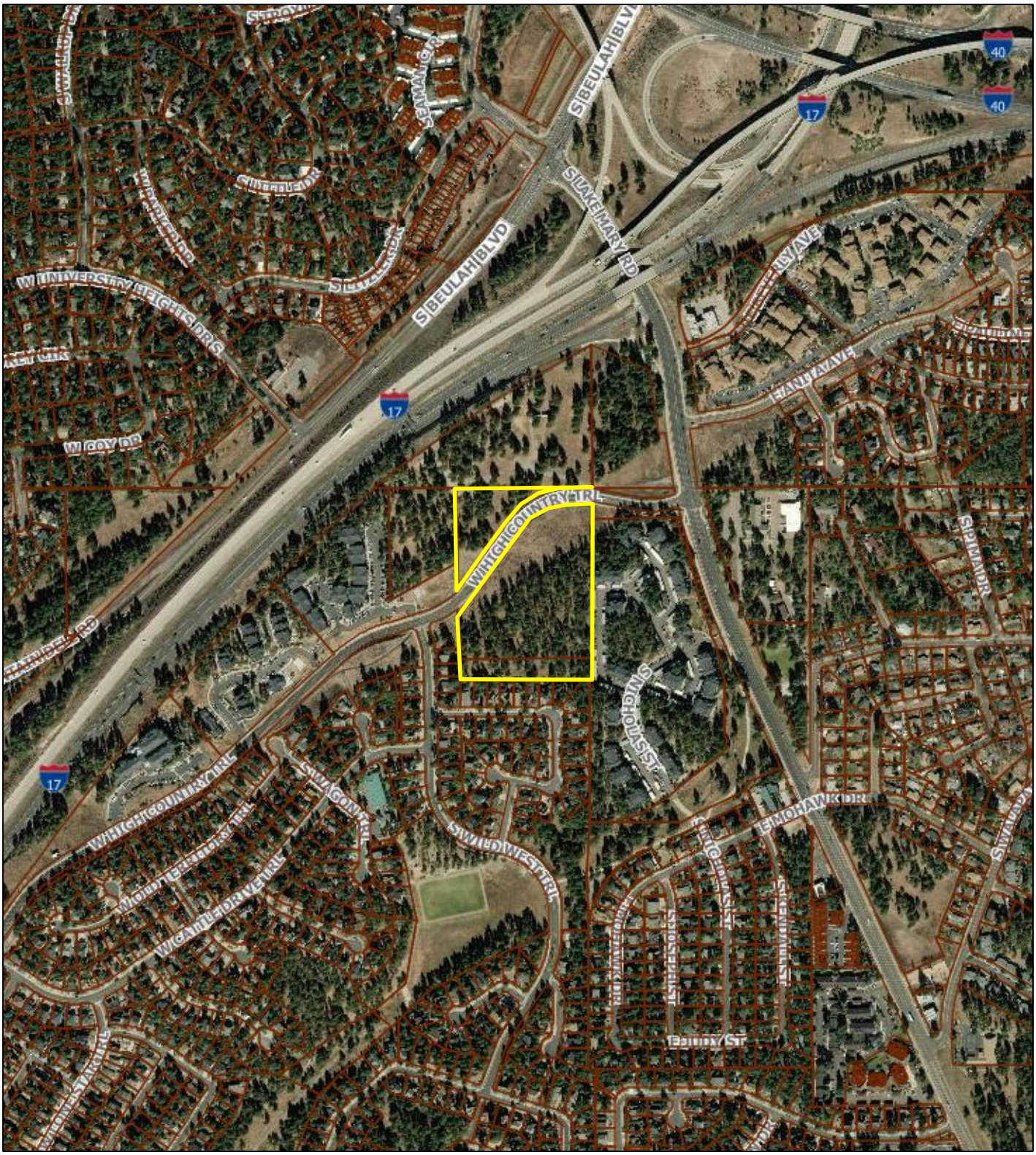
# TAB 1

# Aerial Map

151 W. High Country Trail – Flagstaff, AZ

N

# Aerial Map




151 W. High Country Trail – Flagstaff, AZ

N

# TAB 2

# Historical Aerial
# 1980

N

151 W. High Country Trail – Flagstaff, AZ

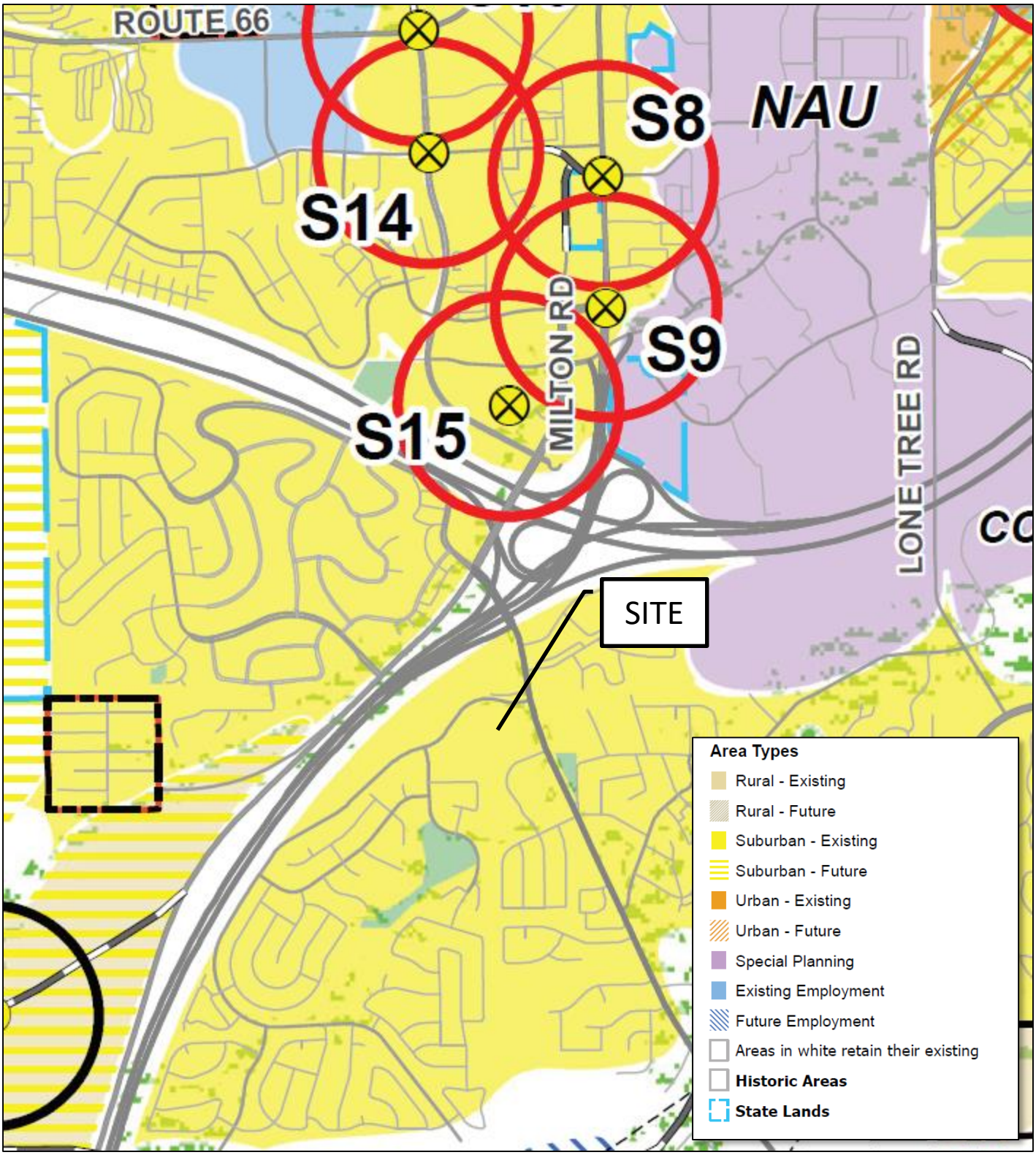
# Historical Aerial
# 1997

151 W. High Country Trail – Flagstaff, AZ

N

# TAB 3

# Regional Plan Map

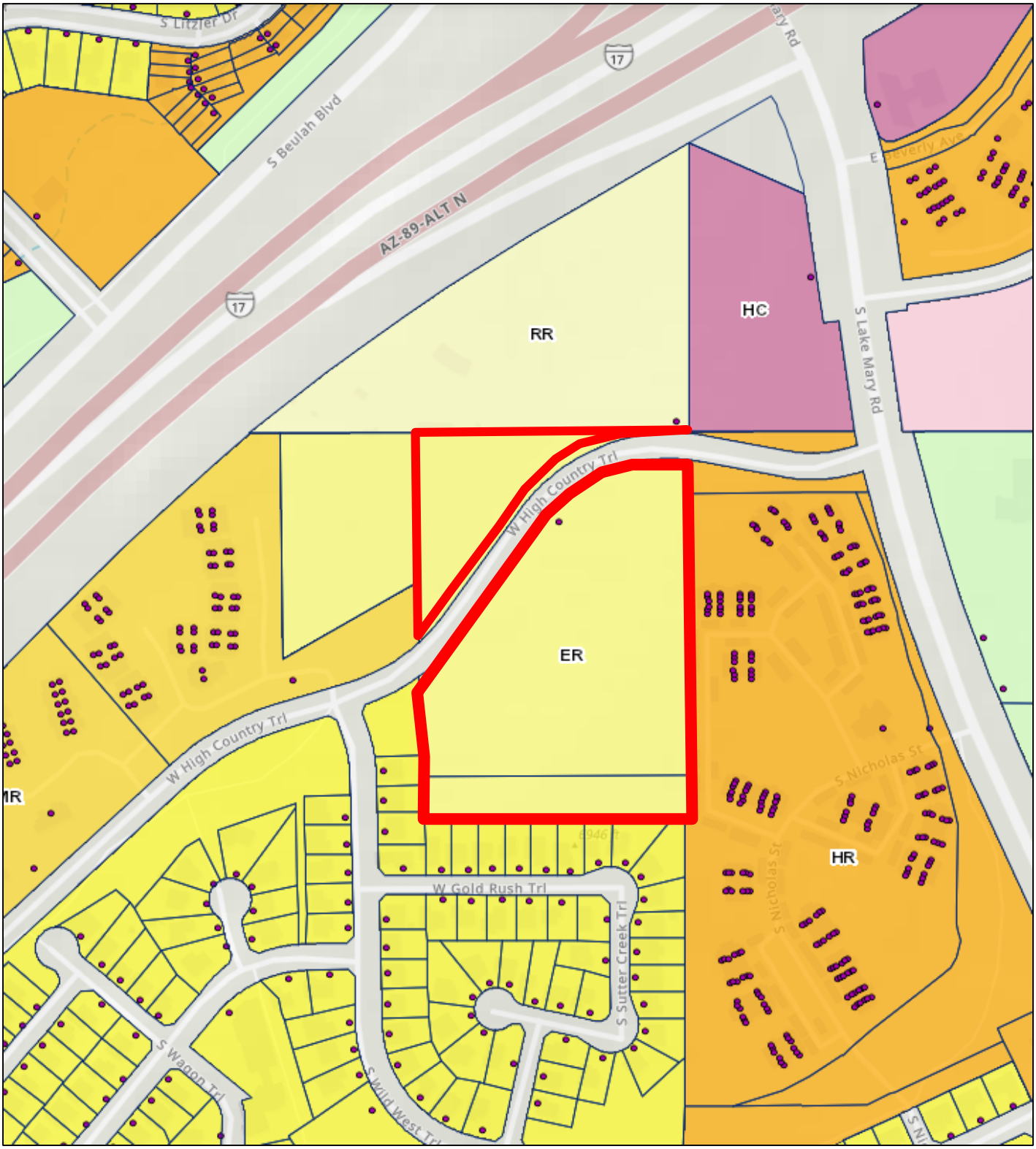



151 W. High Country Trail – Flagstaff, AZ

N

# TAB 4

# Zoning Map




151 W. High Country Trail – Flagstaff, AZ

N

AURA

**Citizen Participation Plan**
**Zoning Map Amendment Application**
**Case No. PZ-17-00218-02**

**West of the Southwest Corner of High Country Trail and Lake Mary Road**
Approximately 11 acres

APNs: 112-05-001W and 112-05-011

**Resubmittal Date: January 9, 2020**


Prepared By:
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## I. Introduction

This site is approximately 11 acres located at west of the southwest corner of Lake Mary Road and High Country Trail (the "Property"). The Property is zoned ER. The applicant originally filed applications with the City of Flagstaff for Site Plan Review and a Zoning Map Amendment to change the zoning to MR in December 2018. Following the Planning and Zoning Commission public hearing in May 2019 for these applications, the project was subject to a substantial overhaul and redesign that is now basis of this resubmittal.

These applications will allow ownership to develop a new multi-family residential development on the Property. The project is consistent with the City's General Plan designation and compatible with the surrounding uses. The purpose of this Citizen Participation Plan is to continue the substantial public engagement that occurred in the first phase of these applications and demonstrate how citizens, property owners and neighbor associations in the vicinity of the site will be informed of the application and provide feedback regarding the proposal.

This participation plan will ensure ongoing communication between the Applicant, potentially affected citizens and adjacent property owners, City staff and elected officials throughout the application review process. The information received by the Applicant from these communications will be used to make informed decisions throughout the application process with regard to the development proposal.

## II. Contact List

A contact list has been prepared for the zoning map amendment application using the following criteria. Additional contacts may be added over the course of the application process as requested by neighbors, the City of Flagstaff or the Applicant.

- 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.
- 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 1,000 feet of the property subject to the application for which the public hearing is required.
- The situs or actual address of all tenants and residents living on the subject property.
- All local government agencies which have reviewed and commented on the proposed development or Zoning Map amendment or which abut the subject property.
- All homeowners associations (HOAs) that govern land within 1,000 feet of the subject property as well as all persons or groups whose names are on the registry of persons and groups described above who are interested in receiving such notice.
- Neighbor attendees at all previous neighborhood meetings that signed in and provided contact information.

## III. Notification Technique / Notice of Neighborhood Meeting

Citizens, registered neighborhoods, homeowners associations, and other interested parties affected by the applications as detailed above, will be notified of the requests through an informational mailing, a sign posted on site to be updated with information regarding neighborhood meetings and public hearings, and hold two organized neighborhood meetings.

The Applicant will conduct the following notice procedures:

a. Create notices that set forth the purpose and substance of the proposed application, and the time, date and place of a neighborhood meeting and public hearings. The notices shall be sent by first class mail to the Contact List established in Section II of this Public Participation Plan.

b. A notarized copy of the mailing list and affidavit of notification to affected property owners shall be submitted to the City of Flagstaff prior to the fifteenth day prior to the public hearing date and 10 calendar days prior to a neighborhood meeting.

c. Install a minimum of one sign that is at least four feet by four feet in area on the property in a location or locations clearly visible from a public right-of-way to adjacent residents setting forth the purpose, time, date, and place of the neighborhood meeting and public hearings once they are scheduled, with an attached information tube containing copies of the meeting notice. This sign shall be installed a minimum of 10 days prior to the neighborhood meeting and updated 15 days prior to the public hearing.

d. 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 and 8 days prior to the public meeting.

The City of Flagstaff shall be responsible for placing the public hearing notices required by the Zoning Code in a newspaper of general circulation within the City.

## IV. Neighborhood Meeting Format

The neighborhood meetings will be held for a one hour period, beginning at 5:30 p.m. on the dates established by the applicant. The meeting will be an open house format where residents can come in at any point during the one hour window and receive information from the development team about the proposal. Full size plans will be mounted to presentation boards and available for neighbors to view up close. Development team members will present information about the proposal and request, and answer questions one-on-one that meeting attendees may have. Notes will be taken by development team members during the meeting. Comment cards will be available for attendees to share their thoughts about the proposal. Sign-in sheets will be available at the meeting room entrance for meeting attendees to provide name, address, email and telephone number so they may be added to the mailing list if not already on it, and for the applicant to follow-up on any additional information that may be requested by an attendee. A copy of the sign-in sheet will be provided to the city along with a summary as outlined in this plan to City staff following the meeting. The agenda for these meetings is as follows:

AGENDA:

- Introduce the project team which will wear name tags or other forms of identification so the public knows who to speak with.
- Provide an explanation of the purpose of the neighborhood meeting.
- Adequately describe the proposed project, its location, provide a context map.

- Describe what is allowed under the current zoning and what will be allowed if the rezoning request is granted.
- Explain what happens to the feedback received at the meeting.
- Explain the anticipated timeline for the public hearing process.
- Explain next steps in the project including review and approval of site plan, civil plans and construction drawings.

## V. Response Procedures

The Applicant shall respond to citizens that express interest. Individual meetings will be conducted upon specific request. The City of Flagstaff will be available to answer questions regarding the review and public hearing process. Parties affected by the applications may also share their feelings about the project by writing to the City of Flagstaff by contacting the planner assigned to the application at the following address.

Alaxandra Pucciarelli
Planning Development Manager
Current Planning Program
211 W. Aspen Avenue
Flagstaff, AZ 86001

## VI. Status Procedures

The Applicant shall keep the City of Flagstaff informed of the status of its citizen participation efforts. To do so, the Applicant will provide the following to the City of Flagstaff:

a. Details of techniques the applicant used to involve the public, including:

b. Dates and locations of neighborhood meetings;

   i. Copies of letters, notices, newsletters and other correspondence, including dates and numbers of mailings or deliveries;

   ii. A copy of the mailing list, and a summary of where residents, property owners, and potentially affected citizens receiving notices, newsletters, or other written materials were located;

   iii. The number and names of people that participated in the process based on the sign-in sheet for the meeting; and

   iv. A dated photograph of the sign installed in compliance with Flagstaff Zoning Code Section 10-20.30.060 (D)(6) as outlined above in Section III of the Citizen Participation Plan.

c. A summary of concerns, issues and problems expressed during the neighborhood meeting, including:

   i. The substance of the concerns, issues, and problems; and

   ii. The applicant's response to the comments received at the public meeting. The applicant's responses shall be included on the site plan, illustrative plan, other planning document(s), and/or in an associated report. If public comments are not included in any of these documents, an explanation why they were not included must be provided;

d. The applicant shall also send a copy of the written summary to all the people who recorded their names on the sign-in sheet for the meeting.

## VII. Inquiries

Inquiries will be documented and made available to City staff in the form of a report/neighborhood meeting summary as outlined above and prior to public hearings.

## VIII. Schedule for Implementation

| | | |
|---|---|---|
| 1. | Mail Notice Letters / Invitation to 1st Neighborhood Open House | February 2020 |
| 2. | Hold 1st Neighborhood Open House | February 2020 |
| 3. | Submit a summary of the Neighborhood Meeting to Staff and neighbors that attended the meeting | Within 10 days following the meeting or at the time of zoning map amendment application, whichever comes first |
| 4. | Mail Invitation to 2nd Neighborhood Open House* | Ten days prior to meeting |
| 5. | Hold 2nd Neighborhood Meeting | Within 30 days of formal application and no fewer than 31 days before the first hearing |
| 6. | Submit a summary of the Neighborhood Meeting to Staff and neighbors that attended the meeting* | Within 10 days of meeting |
| 7. | Mail Notification Letter for Public Hearing* | 15 days prior to 1st Hearing |
| 8. | Site Posting for Public Hearing | 15 days prior to 1st Hearing |
| 9. | Submit affidavit of sign posting and public hearing notice mailing | 15 days prior to the 1st Hearing |

*The second neighborhood open house meeting and public hearing notice may be mailed together, depending on the hearing schedule. If this occurs, the neighborhood meeting will occur no less than 31 days prior to the first public hearing date and a summary of the meeting will be submitted to the City the day after the meeting. Notice requirements as outlined above will be met.

AURA

**Aura Flagstaff Virtual Neighborhood Meeting Summary**

**Meeting Date:** 3/23/2020

**Time:** 5:30 pm to 6:30 pm

**Development Team:**

- Todd Gosselink, Trinsic Residential Group
- Jason Morris, Withey Morris, PLC
- Benjamin Tate, Withey Morris, PLC
- Richard Alvarez, ORB Architecture

**Development Summary:**

- 11-acre site west of southwest corner of Lake Mary Road and High Country Trail
- Request to rezone from ER (Estate Residential) to MR (Medium Density Residential)
- 160-unit high-quality multifamily residential development
    - One-bedroom units: 112
    - Two-bedroom units: 48
- Includes 20% affordable housing units
- Open space: 95,943 square feet
    - Civic open space: 24,000 square feet
    - Common open space: 71,943 square feet
- Lot coverage: 15.30%
- Parking:
    - Required: 229 spaces
    - Provided: 242 spaces

**Summary of Significant Changes from Previous Site Plan:**

- Decrease in density from 174 to 160 units.
    - 25% decrease in number of bedrooms from 265 to 208 due to change in unit mix.
- Tripled setbacks adjacent to single-family to south and west.
- Reduced site area to 11 acres – no longer rezoning Auza homestead.
- Removed carriage buildings on south side of project and decreased height adjacent to single-family homes to the south.
    - Eliminates need for tiered retaining wall system and dramatically reduces cut and fill on south side of the site.
- Retaining all stormwater on site – won't feed into culvert system.
    - Eliminates the deep retention basin along High Country Trail – now usable, flat civic open space.

**Frequently Asked Questions:**

- Will there be development on the north side of High Country Trail?
    - **No, the portion of the site on the north side of High Country Trail will be a tree resource protection area. All development for this project will be on the south side of High Country Trail**

- Does the project meet the open space requirements prescribed by the City?
    - **Yes, we are providing 24,000 square feet of civic open space (5% of the overall site) and 71,943 square feet of common open space (15% of the overall site) in compliance with the ordinance requirements. Additionally, the unimproved tree resource protection areas are not included in that calculation.**

- What is the parking ratio for the development? How many spaces are you providing per resident?
    - **We are providing a total of 242 spaces, which is a ratio of 1.5 spaces per unit. This is 13 spaces more than the 229 spaces required by ordinance.**

- Will High Country Trail be widened or will any turn lanes be added to the intersection of Lake Mary Road and High Country Trail to accommodate traffic?
    - **With respect to the widening of High Country Trail, our traffic impact analysis does not indicate a need to widen High Country Trail given the relatively low traffic impact of the reduced density development. Ultimately, however, the decision to make any changes to High Country Trail rests with the City of Flagstaff's Public Works Department**
    - **With respect to the intersection of Lake Mary Road and High Country Trail, that intersection is outside of our project boundaries. Any changes to that intersection would be made by the City of Flagstaff.**

- Would it be possible to have one driveway designated as an "entrance only" and the other designated as "exit only"?
    - **We will explore this possibility with the City of Flagstaff. Whether or not it is feasible will depend upon what creates the safest traffic conditions and allows for the most efficient flow of vehicular traffic.**

- Are there any entrances/exits from the site to Wild West Trail?
    - **No, like the previous plan there are only two points of ingress/egress from the site and they are both on High Country Trail.**

- What is the change in total square feet of housing between the old and new proposal?
    - **Old Plan: 220,330 gross square feet (lower + upper floors) with 82,223 SF footprint**
    - **New Plan: 187,269 gross square feet (lower + upper floors) with 73,368 SF footprint**

AURA

**Aura Flagstaff Virtual Neighborhood Meeting Summary**

**Meeting Date:** 7/1/2020

**Time:** 5:30 pm to 6:30 pm

**Development Team:**

- Todd Gosselink, Trinsic Residential Group
- Jason Morris, Withey Morris, PLC
- Benjamin Tate, Withey Morris, PLC
- Richard Alvarez, ORB Architecture

**Development Summary:**

- 11-acre site west of southwest corner of Lake Mary Road and High Country Trail
- Request to rezone from ER (Estate Residential) to MR (Medium Density Residential)
- 160-unit high-quality multifamily residential development
    - One-bedroom units: 112
    - Two-bedroom units: 48
- Includes 20% affordable housing units
- Open space: 108,983 square feet
    - Civic open space: 29,000 square feet
    - Common open space: 79,983 square feet
- Lot coverage: 15.30%
- Parking:
    - Required: 240 spaces
    - Provided: 242 spaces

**Summary of Significant Changes from 2019 Site Plan:**

- Decrease in density from 174 to 160 units.
    - 25% decrease in number of bedrooms from 265 to 208 due to change in unit mix.
- Tripled setbacks adjacent to single-family to south and west.
- Reduced site area to 11 acres – no longer rezoning Auza homestead.
- Removed carriage buildings on south side of project and decreased height adjacent to single-family homes to the south.
    - Eliminates need for tiered retaining wall system and dramatically reduces cut and fill on south side of the site.
- Retaining all stormwater on site – won't feed into culvert system.
    - Eliminates the deep retention basin along High Country Trail – now usable, flat civic open space.

**Summary of Additional Changes Since 3/23/2020 Virtual Meeting:**

- Increases in open space:
  - Civic Open Space: 24,000 SF → **29,000 SF**
  - Common Open Space: 71,943 SF → **79,983 SF**
  - Total Open Space: 95,943 SF → **108,983 SF**
- Coordination with Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA) to provide new Mountain Line bus stops on north and south sides of High Country Trail.
- Added 4 Electric Vehicle parking spaces/charging stations.
- Civic space area adjacent to High Country Trail converted from turf to natural grasses and wildflowers.
- Commitment to construct FUTS trail connections east and west of site:
  - Will bring "High Country Trail" to full connectivity between "Bow and Arrow Trail" to the east and "Ponderosa Trail" to the west.

**Frequently Asked Questions:**

- **If the stormwater isn't feeding into the culvert system, how will the site drain and where is the water going?**
  - All stormwater will be retained on-site using a series of chambers and dry wells underneath the drive aisles in the parking area. Water will percolate naturally into the ground from the dry well tanks.

- **How will the views from the homes adjacent to the south side of the project be affected by the new site plan vs. the old site plan?**
  - The view corridor for the homes immediately south of the project in the new site plan is a significant improvement over the original plan. In the original plan, the nearest building was a 24-foot-tall carriage building 15 feet from the property line and a 40-foot-tall, three-story building approximately 93 feet from the property line. In the new plan, the nearest building is a 28' 4"-tall, two-story building approximately 48' 1". As the sightlines show (See Site Section Exhibit on Page 9), the new plan is a significant improvement even with the changes in grade elevation. Importantly, the original plan required significant clearcutting of mature 60-foot Ponderosa pine trees between the property line and the nearest building. As the exhibit illustrates, far more of those trees between the homes to the south and the project will be left undisturbed. As a result, Ponderosa pines will remain a dominant feature of the view corridor far more than the previous plan.

- **What type of energy efficient features/sustainable building practices will be used?**
  - Low E insulated glass
  - High efficiency HVAC – 15 SEER units
  - LED lighting throughout
  - Low voltage LED landscape lighting
  - Recycle program for residents and office/common areas
  - Low flow water fixtures
  - Energy Star appliances
  - Individual unit water meters to track usage
  - Energy efficient pool pump and filtration equipment
  - Unit separation assemblies with STC 55 or greater for enhanced sound separation and energy retention
  - An irrigation design that employs low flow drip irrigation to maximize efficiency, and a smart controller with weather sensing technology
  - Applicant will participate in the City of Flagstaff's Sustainable Building Program which will require apartment units to achieve a HERS rating of 50 or better.

- **At the previous meeting there was a question about designating an exit-only driveway and an entrance-only driveway, any update?**
    - The City of Flagstaff does not recommend exit/entrance-only driveways for this site.

- **How will the new bus stops on the north and south sides of High Country Trail affect traffic?**
    - The request from the Northern Arizona Intergovernmental Public Transit Authority (NAIPTA) to install bus pads was a relatively recent request and we are working with NAIPTA and the City of Flagstaff to mitigate any impact on traffic.

- **Is there demand for new multi-family residential housing in the City of Flagstaff?**
    - Flagstaff has the highest multifamily occupancy rate (over 98%) of any major municipality in the State of Arizona. There is very high demand for new, Class A multi-family residential housing in the City of Flagstaff – both for market rate and affordable housing products.

- **How many trees are you "claiming" on each side of High Country Trail?**
    - The area on the north side of High Country Trail will be left completely undisturbed and all trees will be preserved in a tree resource protection easement dedicated to the City of Flagstaff. Our tree resource survey, which is part of the City of Flagstaff submittal requirements and prepared by a certified third-party arborist, is available from the City of Flagstaff through a public records request.

- **When will we know the traffic analysis and the exact plan?**
    - We recently submitted a revised Traffic Impact Statement to the City of Flagstaff for review. It is available through a public records request to the City of Flagstaff.

- **How many ADA-compliant apartments are available?**
    - Multifamily dwelling units are governed by ANSI not ADA. All ground floor units are designed to ANSI Type B standards (62 units). 2% of all units are designed to ANSI Type A standards (the highest level of accessibility). There will be a total of 4 ANSI Type A units.

- **What is your plan for fencing adjacent homes?**
    - A 42-inch-tall fence/guardrail will be placed on top of an 8' to 10' retaining wall set back approximately 35' from the property line. See the attached North/South Site Section.

- **What will the market/affordable units rent for?**
    - These estimates are ranges that are preliminary in nature and are subject to change due to market conditions and other factors:
        - 1-Bedroom: $1,500 to $1,600 (Market Rate)/$1,000 to $1,100 (Affordable)
        - 2-Bedroom: $1,700 to $2,000 (Market Rate)/$1,200 to $1,250 (Affordable)

AURA

# AURA FLAGSTAFF

West of SWC High Country Trail
and Lake Mary Road

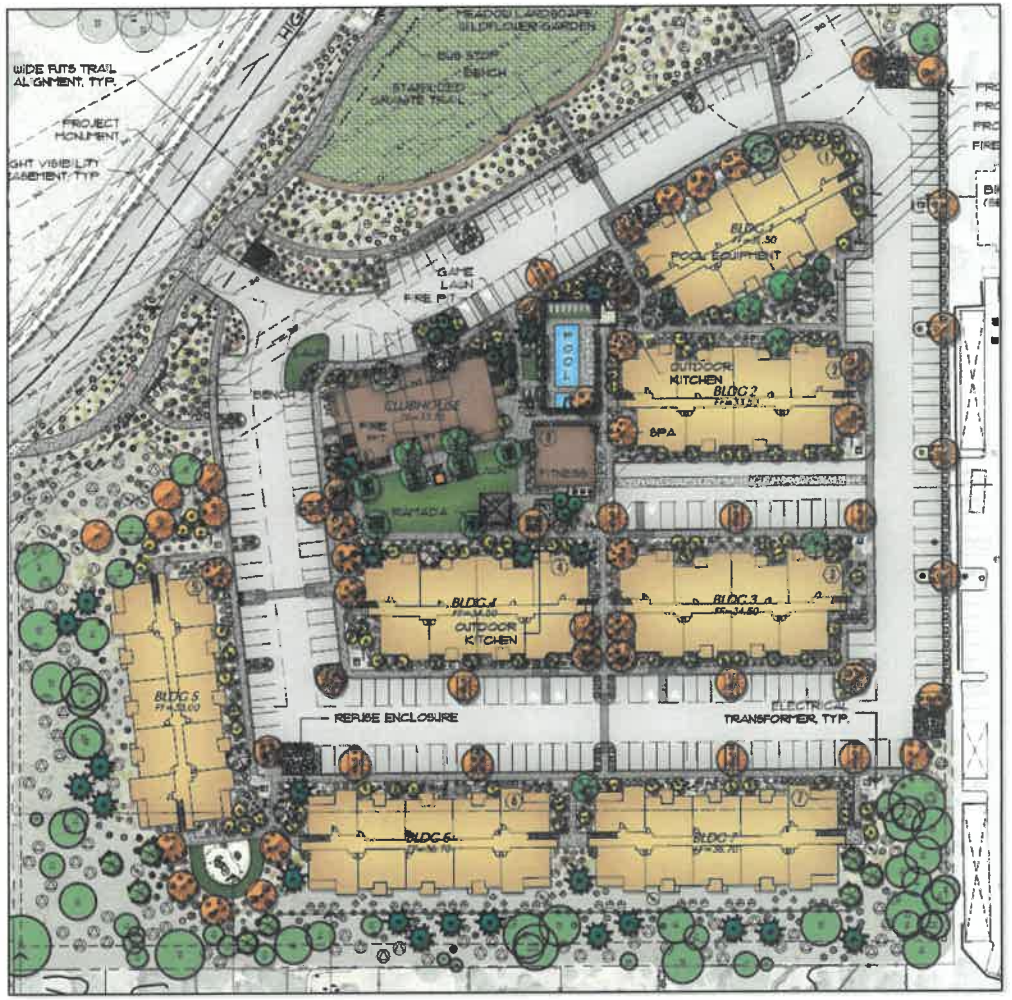
# OVERVIEW

- Rezoning application originally filed December 2018 for 173-unit, 15-building multifamily residential development plus Auza homestead on north side of High Country Trail.
    - 16.11-acre project area included Auza property north of High Country Trail.
- Multiple neighborhood meetings and public hearings held from January 2019 to November 2019.
- Re-filed new zoning application in February 2020
    - Reduction in project area
    - Reduction in density
    - Reduction in overall number of buildings
    - Increase in setbacks
- First virtual neighborhood meeting for new project held on March 23, 2020

# SUMMARY OF CHANGES

**March 2020**

- Decrease in density from 174 to 160 units.
  - 25% decrease in number of bedrooms from 265 to 208 due to change in unit mix.
  - Reduction in total number of buildings from 15 to 8
- Tripled setbacks adjacent to single-family to south and west.
- Reduced site area to 11 acres – no longer rezoning Auza homestead.
- Removed carriage buildings on south side of project and decreased height adjacent to single-family homes to the south.
  - Eliminates need for tiered retaining wall system and dramatically reduces cut and fill on south side of the site.
- Retaining all stormwater on site – won't feed into culvert system.
  - Eliminates the deep retention basin along High Country Trail – now usable, flat civic open space.

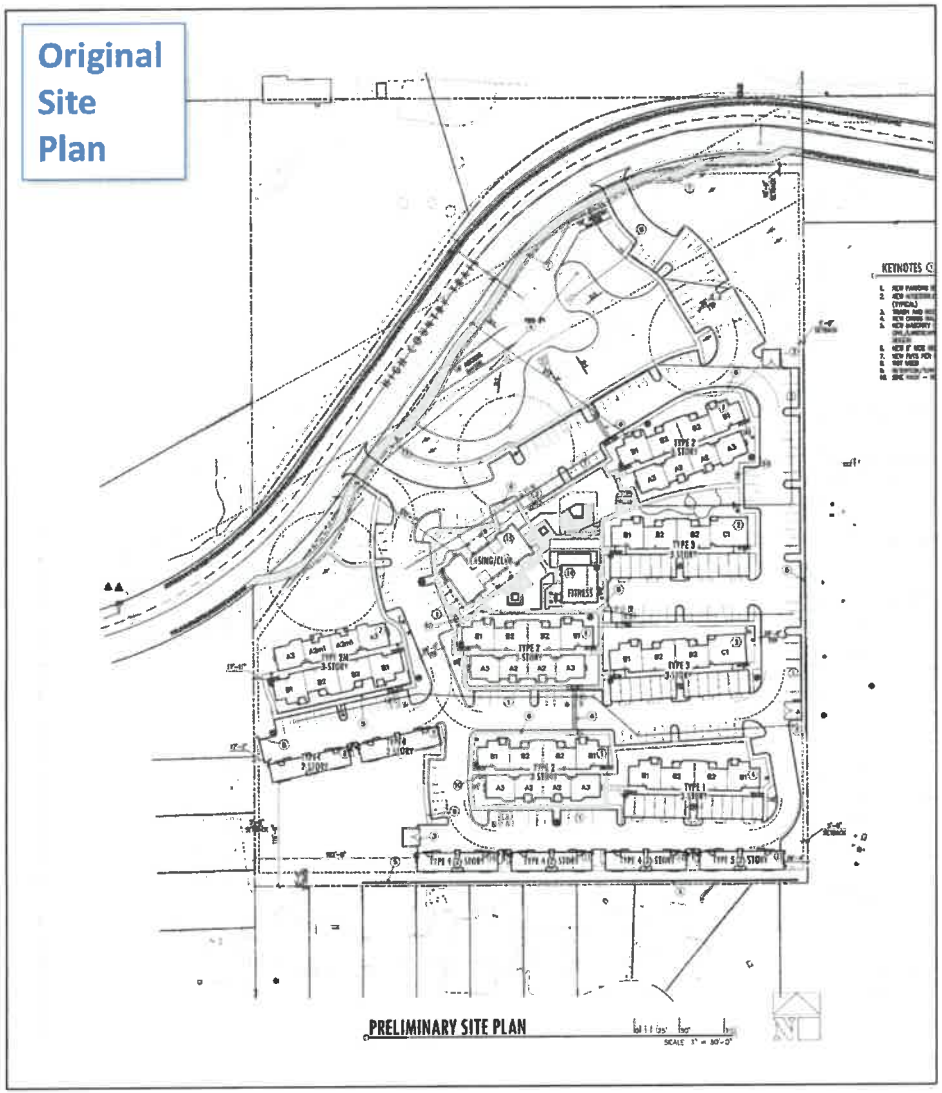


# SUMMARY OF CHANGES

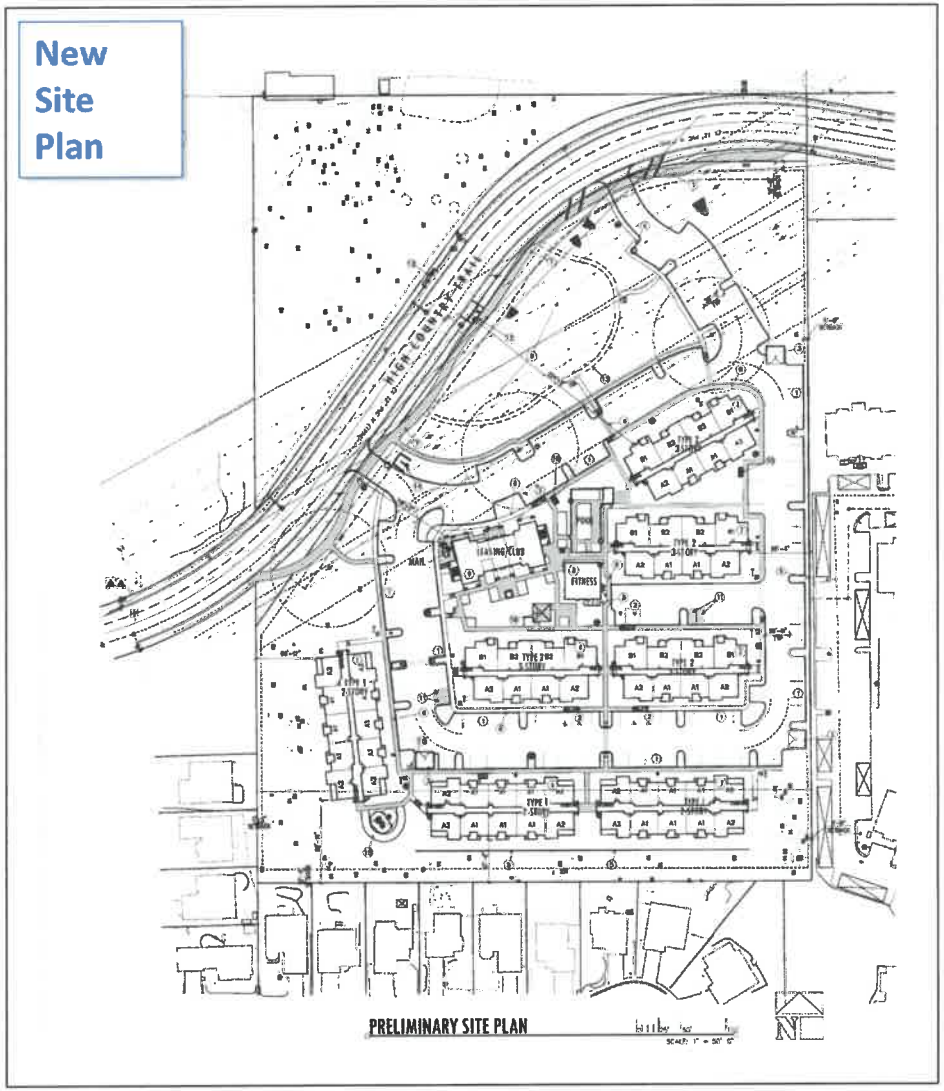
**Additional Refinements – July 2020**

- Increases in open space:
  - Civic Open Space: 24,000 SF → 29,000 SF
  - Common Open Space: 71,943 SF → 79,983 SF
  - **Total Open Space: 95,943 SF → 108,983 SF**
- Coordination with Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA) to provide new Mountain Line bus stops on north and south sides of High Country Trail.
- Added 4 Electric Vehicle parking spaces/charging stations.
- Civic space area adjacent to High Country Trail converted from turf to natural grasses and wildflowers.
- Commitment to construct FUTS trail connections east and west of site:
  - Will bring "High Country Trail" to full connectivity between "Bow and Arrow Trail" to the east and "Ponderosa Trail" to the west.

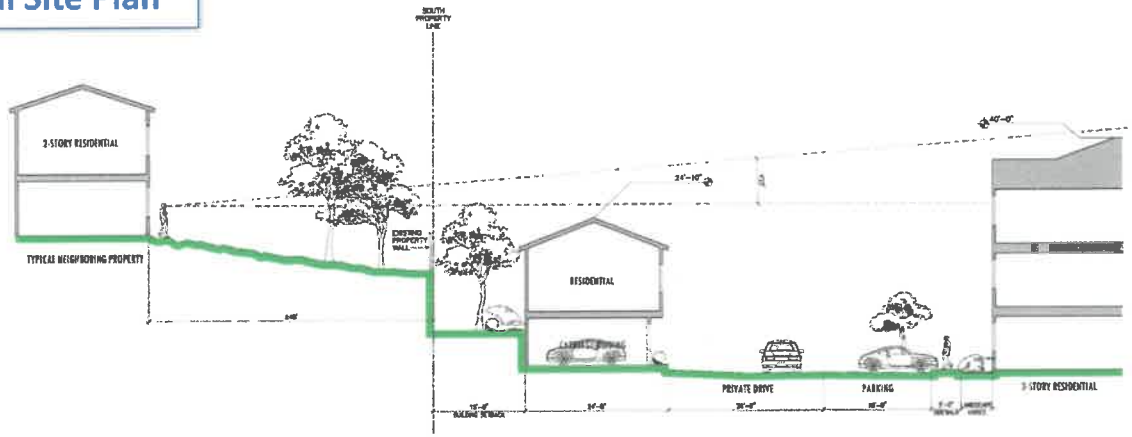
**Original Site Plan**




**New Site Plan**



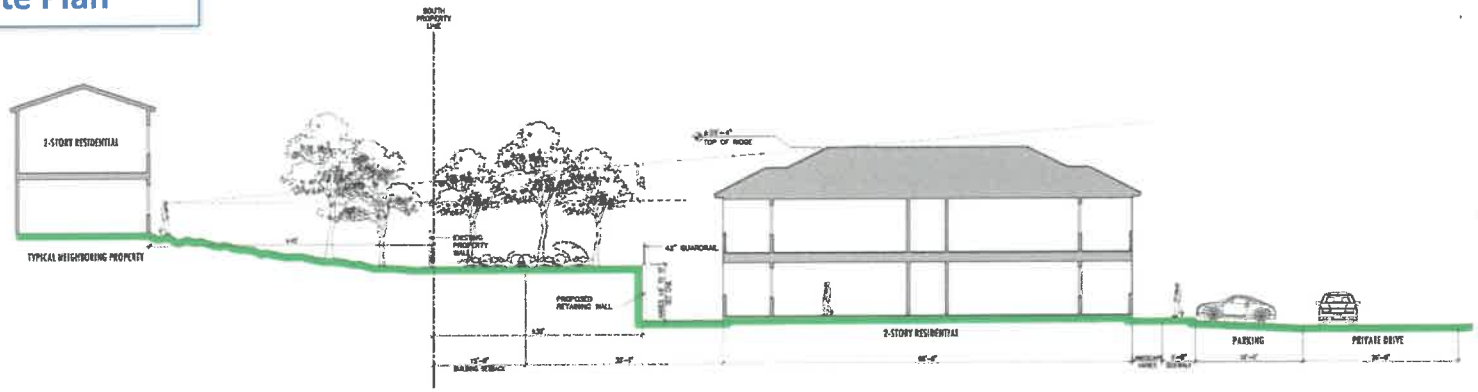
## Original Site Plan




PREVIOUS NORTH/SOUTH SITE SECTION

VICINITY MAP

## New Site Plan




CURRENT NORTH/SOUTH SITE SECTION

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
FLAGSTAFF, ARIZONA 86001

Office of Rich Barker Architecture, LLC
ORB

WorldHQ@ORBArch.com

DEVELOPER

Architect

REVISIONS

A1.11

SITE SECTION PRELIMINARY

# CURRENT PROJECT DATA

- 11-acre site west of southwest corner of Lake Mary Road and High Country Trail
- 160-unit high-quality multifamily residential development
  - One-bedroom units: 112
  - Two-bedroom units: 48
- Includes 20% affordable housing units
- Open space: 108,983 square feet
  - Civic open space: 29,000 square feet
  - Common open space: 79,983 square feet
- Lot coverage: 15.30%
- Parking:
  - Required: 240 spaces
  - Provided: 242 spaces

# PONDEROSA TRAILS HOA

Sent via first class mail

September 11, 2020

City of Flagstaff – Zoning Committee
211 W Aspen Avenue
Flagstaff, AZ 86001

RE: Aura Flagstaff

Dear Zoning Committee:

This letter is being written on behalf of the members of the Ponderosa Trails Homeowners Association regarding common concerns of its members, with the updated proposed development "Aura Flagstaff". In August 2020, an informal poll of the members of the Association was taken. A brief summary of the types of City Zoning pertaining to the property was given and the following question was asked: "Are you in favor of the proposed zoning change to rezone the property to Medium Density Residential (MR)?

There is a total of 639 lots within the Association, most with multiple owners; the poll was sent out to over 850 owners/representatives representing over 621 lots. 338 responses were tallied, resulting in 88% opposed to the zoning change, 11% were in favor, and 1.5% did not have an opinion either way.

Sincerely,

Katy Kuhns

Katy Kuhns, Community Manager
For:Bryan Burton, President
Board of Directors
Ponderosa Trails HOA
www.ponderosatrailshoa.com

## Alaxandra Pucciarelli

**From:** Nathan Jones <ndj1187@gmail.com>
**Sent:** Wednesday, July 1, 2020 7:39 PM
**To:** Alaxandra Pucciarelli
**Subject:** Aura Flagstaff

Hi Alex,

I hope this email finds you well during these challenging times.

I am writing to you today to express my frustration and resounding disapproval of the Aura Flagstaff development. I have attended every neighborhood meeting dating back to the initial meeting in either 2018 or 2019 when this project first started and came to the planning and zoning meeting. I have left every meeting feeling like I am being lied to and made to feel unintelligent.

Before I get into my points, I do want to assure you I support growth and development within Flagstaff, as long as it makes sense. I would fully support single family homes being built in lieu of these apartments, as I have recognized the need for more single family homes.

I have many concerns about this development, but I first want to start with my frustration with the developer. I understand that they are just doing their jobs to the best of their ability, but their inability to actually answer any of the questions is appalling. It is very apparent talking to them that they are lawyers and they think they know what's best for a town they have never, nor will they ever, live in. I feel like they haven't done any research about Flagstaff, but rather they insist on making the residents feel like we don't know what we are talking about. I have asked multiple questions during every meeting and never feel like my question is answered. They have no problem following up one-on-one with someone to answer their question, but I see this as a tactic to dance around the subject rather than face it head on.

Now to my concerns. My biggest issue with this development is the purchase of the entire 11 acres, but with no plan to build on 2 of them so they can "claim" they are saving trees. Are they saving trees? I guess, but not really if the intent is to never build there in the first place. My question to you, is how is this ok? Am I the only one that sees an issue with this? My next issue - Traffic. Traffic on High Country has always been a point of contention with the residents of Ponderosa Trails, and by adding 200-300 people to this neighborhood without adding an additional exit will only make it worse. Now the developer is saying that bus stops will be added along High Country which will only cause bottlenecks and more frustration. Thirdly - Parking. The current apartment complexes along High Country already park along Wild West trail when they run out of spots. What is stopping this from happening with this complex? I get that they are alloting 1.5 spaces per unit, but we both know most, if not all units, will have more than one car.

Some questions I have for you. I hope you are able to answer them, but I understand if you are not.
1. What data are they using to show the (to use the developers words) "overwhelming" need for additional apartments? Flagstaff has multiple complexes already under construction with more getting ready to come.
2. How old is their traffic study data? They never show us the data they have, which never makes sense. If you have the data and it backs up your point, why wouldn't you show it?
3. What are your thoughts on this development?

I know I just threw a lot at you, but I appreciate you taking the time to read through this.

Thank you,
Nathan Jones

## Alaxandra Pucciarelli

**From:** CRAIG ROSE <rose5az@hotmail.com>
**Sent:** Thursday, September 10, 2020 1:33 PM
**To:** Alaxandra Pucciarelli
**Subject:** AURA Flagstaff

**Importance:** High

My name is Craig Rose, and I live in Ponderosa Trails. We have been here, in this Development since 2002. I am a native of Flagstaff. We are currently troubled in this proposed development on High Country Trail, Lot # 110-50-211. I'm sure your office is aware of the request to rezone this plot for apartments. My position is negative. It will not be a family friendly apartment complex, due to the amount on only 1 bedroom apartments, (which would be destined for students). Only a few 2 bedroom and no 3 bedroom. The plans still show a high density apartment complex, and not a medium density complex. The wording is wrong by the developer who is wanting to build here. There are approximately 750 trees, that they will have to destroy to complete this complex, and I believe there are comprehensive plans/community plans that prohibit the destruction of open areas.

My question is what happened to the comprehensive/community plans that prohibit this type of building in an open area. What percentage of mature trees have to remain to keep this area. When we built our home here, we were told by the city, that we have to keep a certain percentage of trees on our property to keep it in perspective to the city plans. We have been to city hall when this first started and your commission recommended disapproval of this complex. Ponderosa Trails Development does not need extra traffic, on high country trail, this would cause more back up, accidents during snow season, safety to our citizens, who live here already, we have one exit on High Country Trail, and it's backed up every day. During work start times. Plus the area, is on two dangerous curves and during snow season is very icy, and I have personally seen since living here, about 150 accidents or slide offs.

So please take this to heart and not let this go through.

Sincerely
Craig Rose
3739 S Wild West Trl
Flagstaff, AZ 86005

Sent from Mail for Windows 10

## Alaxandra Pucciarelli

**From:** CRAIG ROSE <rose5az@hotmail.com>
**Sent:** Tuesday, December 1, 2020 10:54 AM
**To:** Alaxandra Pucciarelli
**Subject:** PZ-20-00008-01 Aura of Flagstaff

Commissioner Zimmerman and zoning commission members.

Good morning, My name is Craig Rose and live in the area adjacent to where this complex is proposed.

I'm sure you have seen and received a lot of emails concerning the planned mess. We have lived on Ponderosa Trails for 18 years, and knew that the Apartment complexes across the street at 250 and 300 High Country Trail were coming. Because that was part of the plan discussed when our area went in.

But, adding another apartment complex in this area, will deteriorate the beauty we have come to know in the Aura submission.
Additional reasons we don't need this project. The crime in the area has risen dramatically since the apartment complex's have been built. I canvassed the FPD and the excel sheet is to extensive to send to you. But we have seen the FPD and FFD's there constantly (usually on a daily basis). We witnessed a murder, and 2 suicides', in the past year.

As of now Flagstaff has to many apartment complex's in the works, and do not need to add to that process. I canvassed the apartments at Fremont station (only 47% occupied), The standard (45% occupied). The Lumber Jack (HUB) 47% occupied. NAU admissions in down 12% as of November and continuing to decline. The Developer who purchased the MVD property has pulled out of building for the reasoning of lack of students and would not be lucrative to his company. We really don't need this to develop .

Thank you for your time and consideration to deny this proposal.

Sent from Mail for Windows 10

## Alaxandra Pucciarelli

**From:** Uri Farkas <Uri.Farkas@nau.edu>
**Sent:** Tuesday, December 1, 2020 9:21 AM
**To:** Alaxandra Pucciarelli
**Cc:** David Zimmerman; Becky Cardiff
**Subject:** RE: PZ-20-00008-01
**Attachments:** P and Z Letter.docx

Hi Alaxandra,

Thanks to you, Chairman Zimmerman and Committee for the opportunity to share information. I've attached a brief statement for their review.

Will look forward to speaking with you all on Dec. 9th –

Best,
Uri Farkas
198 West Gold Rush Trail
Flagstaff, Arizona
86005

**From:** Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>
**Sent:** Monday, November 30, 2020 12:01 PM
**To:** Uri Farkas <Uri.Farkas@nau.edu>
**Cc:** David Zimmerman <zimmerdg@gmail.com>; Becky Cardiff <bcardiff@flagstaffaz.gov>
**Subject:** RE: PZ-20-00008-01

Hi Uri-

I have copied the Chairman on this email to make him aware of your request to speak. Did you wish to put anything in writing? I include copies of any written comments in the packets that go out to the commissioners.

Thank you,

**Alaxandra Pucciarelli**
Current Planning Manager
Community Development
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: (928) 213-2640
Email: apucciarelli@flagstaffaz.gov

**From:** Uri Farkas <Uri.Farkas@nau.edu>
**Sent:** Monday, November 30, 2020 8:43 AM
**To:** Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Tammy Bishop <tbishop@flagstaffaz.gov>
**Subject:** PZ-20-00008-01

Hi Alaxandra –

I would like to request to speak at the December 9th Planning and Zoning Meeting regarding the Aura and PZ – 20 – 00008 – 01.

Thanks for your consideration and please let me know if you need additional information prior to the meeting –

Thank you –
Uri Farkas
198 West Gold Rush Trail
Flagstaff, Az
86005

**From:** Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>
**Sent:** Friday, November 6, 2020 7:55 AM
**To:** Uri Farkas <Uri.Farkas@nau.edu>
**Subject:** RE: Upcoming Planning and Zoning Meeting

Hi Uri-

We are planning to take Aura before the Planning & Zoning Commission on December 9th. The developer should be updating their sign soon. We have not agreed to a city council meeting yet. It will probably not happen until January.

Thanks,

**Alaxandra Pucciarelli**
Current Planning Manager
Community Development
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: (928) 213-2640
Email: apucciarelli@flagstaffaz.gov

**From:** Uri Farkas <Uri.Farkas@nau.edu>
**Sent:** Thursday, November 5, 2020 3:12 PM
**To:** Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>
**Subject:** Upcoming Planning and Zoning Meeting

Hi Alaxandra,

I'm a resident of Ponderosa Trails and wanted to inquire about future Planning and Zoning meetings specifically related to the Aura project by Texas developers, Trinsic.

The sign on High Country Trail still notes a meeting time back in July and I was wondering if their project was slated to go before you and the committee anytime soon.

Thanks for your help and have a great week –
Uri Farkas
198 Gold Rush Trail
Flagstaff, Az
86005

November 30, 2020

Re: Aura Apartments, PZ-20-00008-01

Chairman Zimmerman and Committee,

Thank you all for taking the time to hear input from members of the Flagstaff community regarding the proposed building of the Aura Apartments in the Ponderosa Trails neighborhood. Our family is adamantly opposed to the construction of the apartments and would like to provide some brief context.

1) We are not anti-development in any way. Based on the City of Flagstaff Zoning map, the area to be developed is zoned ER (Estate Residential). We welcome any development following the designated zoning which we feel appropriate for our neighborhood.
2) Trinsic Development, no matter how many times they commit falsehoods, have never communicated with me or a member of my family regarding the development. They have repeatedly said in documents and in the past Planning and Zoning meeting they have "reached our directly to and offered to meet with all home owners on Gold Rush Trail". We have owned our home since June 2018 and have never been contacted in any way.
3) The repeated sales pitch noting a 16 acre development is not accurate. The only land being asked to be developed is 9 acres.
4) The continued sales pitch of "medium density" is not accurate. As a zoning committee, please see the number of units and it's clearly "high density". They are using credits to become "medium density".
5) The number one goal of the Flagstaff Regional Plan is "Identify, preserve, and build on the positive qualities of different places"
    a. We are asking you all please help preserve our neighborhood.
6) The Trinsic sales pitch of "family apartments" is a falsehood based on their number of one and two bedroom units.
7) If approved, the Ponderosa Trails neighborhood near the proposed development will lose home owners and families. It will become rental housing and the demise of a family friendly environment.

Simply put, this is the wrong development at the wrong time in the wrong location. High density housing is critical for thriving communities. The Ponderosa Trails neighborhood is not the right location of this project. Affordable housing is a critical need in Flagstaff. Let's not consider the 20 units of affordable housing in the proposed Aura complex a win for a community when a literal forest will be taken down to accommodate this. Let's all work on a community plan to create affordable housing on a larger scale and not try to jam 20 units into a student housing project. A Texas developer, building a 150 unit eyesore in place of a wooded forest at the entry of a family neighborhood is a mistake. I hope you all take into consideration the information provided and again, thank you for your service to the Flagstaff community.

# The Case for Denial

## Aura Flagstaff – PZ-20-00008-1

Phil Goldblatt, Resident, Ponderosa Trails HOA

December, 2020

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**Summary of this Paper to the Flagstaff P & Z Commissioners**

Dear Chairman Zimmerman and P & Z Commissioners:

I realize this paper is quite long and complex. Therefore I sincerely invite any and/or all of you to engage me in discussion if you have questions about anything I have written. And to of course feel free to pass it by the City's or preferably an independent attorney if you wish examination and/or clarification. Additionally, if even after the Public Hearing on "Aura" you wish to evaluate further, please feel free to not tender a vote but to recess if you wish to have more time to investigate and study this and any other issues I have raised re: this rezone.

Probably the first four Sections of this paper are most important to understanding the intent of it. Though I believe all are very relevant to this "Aura Flagstaff" proposal. Here is a short summary of each section for your convenience.

I. **Purpose/Authority of Code** - Our zoning code is "protective" of community character and therefore of the people who live in those communities. One of the MAIN purposes of our Code is to limit scale and density, not inflate it.
Another main purpose is to encourage aesthetically attractive developments that protect adjacent landowners from property devaluation and other adverse impacts.

II. **Community Character** - The impact of "Aura" on the neighborhood is "de facto" high density since it is proposed for 160 units on 9 acres or 17.8 units/acre. Those are the "facts on the ground" and no administrative rule or law can alter that. Because these facts would alter the community character, a Major Regional Plan amendment is required that has not been accomplished.

III. **Improper Designation of Development Site Area** - The two acres claimed by Applicants to be a part of the "development site area" are actually PROHIBITED from development by the conservation easement they would place on them. And they are not a contiguous site upon which any development at all is proposed. Furthermore they are apart from the 9 south side acres (separated by a street and private fence) upon which development **is** proposed. Therefore they must not be used to calculate the allowable baseline density,

the density bonus's, nor the "on-site" resource protection incentive allowable. Other incentives could have been awarded if the developer wanted to place such an easement on additional property. The developer also abrogates his responsibility regarding how he should use this conservation easement to mitigate impact. And significantly our Code itself provides rules of interpretation that show that the more restrictive provision utilized in this paper must be the one that governs and applies.

IV. **Arbitrariness of Plan Interpretation** - The Regional Plan "interpretation" used here to allegedly allow Applicants to apply for Medium Density without any cap on the degree of density bonus incentive is legally arbitrary in that it ignores negative consequences and depends on individual discretion rather than a fair application of the law. The "Suburban Characteristic Density Range" found in the Plan should apply instead. Further it elevates one of the sections of the Code above the main purposes for the Code itself and that is unlawful as well. It sweeps over broadly and therefore must apply to the "protection of forest resources" also but then that would disallow that incentive since it impedes (not furthering) the goals and policies of our Plan.

V. **Aesthetics in Zoning** - This section provides evidence and argument that aesthetics are essential for preserving pleasant residential areas. It also goes on to show that "Aura" lacks several elements contained in our Zoning Code to do just that; preserve and protect the community character from poor aesthetics. It lacks building forward design, location of entrances at the front of the buildings, no screen wall nor trees to screen from High Country Trail, parked cars easily seen from that street, and forward parking lots in front rather than the side and rear of the buildings as recommended by our Code. Lastly, all of the above and the general appearance of high density of this development add to the conclusion that "in a **down** market" it will have a significant negative economic impact on the adjacent single family homes.

VI. **High Density Nuisance** - This section explains why the factors of non-ownership, nuisance party noise and crime will all be present and constitute a private but permanent nuisance to the adjacent single-family homeowners. Best read

this section for more details. Raising small children is naturally an important consideration here.

VII. **Stormwater Analysis** - Reasoning is provided that shows why the "underground chamber" method for collecting storm water and two small culverts can not possibly maintain the flooding along High Country Trail in winter not worse than it is today; which is the standard communicated to me by the Water Services Division of Flagstaff. It also, by the way is inconsistent with one of the Goals and Policies of the Regional Plan, #WR 5.5. This policy discourages many dispersed basins rather than regional detention. I know this development is not regional but the principle is valid and the same.

VIII. **Significance of PTHOA Poll** - The results of the most recent Ponderosa Trails HOA poll on this development are presented and show 89.8% opposed with a margin of error of plus or minus 5.4% at the 99% confidence level. This time these results were corrected for a few homes that sent in more than one vote. But more significant is that no one can say that this development only inconveniences the residents of one or two streets since this whole community is opposed to it and therefore it does not benefit Flagstaff in general.

IX. **The Findings** - This Section presents my analysis of all three Findings. It also concludes that Aura fails them as well. Many reasons are given with substantiation for each reason. Many goals and policies of the Plan are shown inconsistent. The public interest and "..morals, general welfare" are not well served, and the site itself is too small for the number of units they want to build resulting in noncompliance with certain aspects of our Code as well as deficiencies in the type of storm drainage system proposed. The application should be denied.

---

To: Chairman Zimmerman & Planning & Zoning Commissioners

From: Phil Goldblatt, Resident, Ponderosa Trails HOA

Date: December, 2020

Subject: **LEGAL and LEGAL STYLE ARGUMENTS FOR DENIAL OF REZONE FOR AURA FLAGSTAFF – PZ-20-00008-1**

My neighbors and I will present arguments utilizing both the facts and the law pertaining to this rezone. Herein however I will primarily present the legal and legal type case supporting denial.
But first please see Note #1 on p. 27 below:

## I. Subversion of the Main and Explicitly Stated Authority and Purpose of our Zoning Code by Allowing "de Facto" High Density Apartments in a Maximum Medium Density Zone

As you can see for yourself, the below excerpts from our Zoning Code (Code) make it clear that protection of the citizen residents of Flagstaff from development that adversely impacts the general welfare by PRESERVING the desired character of our neighborhoods including Ponderosa Trails is a **major** objective and PURPOSE for our Code.
It is also evident that encouraging "attractive" development is a major goal of our Code. I will have more to say about that later. See Section V. Also please see Sect. II below for why this development is "de facto" high density.

### 10-10.20.010 Legislative Intent

In adopting this Zoning Code, it is the intent of the City to protect and promote the public health, safety, convenience, and general welfare of the citizens of the City by exercising all powers related to the regulation and use of land and structures within the City that are authorized by the City Charter and Arizona Revised Statutes (A.R.S.).

### 10-10.20.020 Purpose of Zoning Code

B.1. Land Use Patterns.
f. Limiting the size, scale, and density of new structures and additions to existing structures to preserve the desired character of neighborhoods and the community.
g. Encouraging quality, attractive, and marketable development.

B. 5. Justifiable Expectations and Taxable Value.
b. Protecting landowners from adverse impacts of adjoining developments.
d. Protecting and enhancing real property values.

## II. Alteration of the Community Character of our Neighborhood without First Requesting a Major Regional Plan Amendment that would allow Applicants to do so

Please refer to Page III-14 of our Flagstaff Regional Plan and specifically #5. It states in pertinent part as one of the conditions for requiring a Major Regional Plan Amendment:

"In neighborhoods and along commercial corridors more than ¼ mile from an activity center, changes from rural to suburban, or suburban to urban area types."

As you well know in this application and the last one, the Zoning change staff refers to therein would be from ER to HR so the area type would change (in my estimation) from Rural to Urban thus triggering a Major Plan Amendment.

It states in the **Staff Report** dated April 9, 2019 on page 11, under Finding #1, A IIg. that: "Had the developer chosen to rezone the property to the HR zone, this rezoning case would have required a major Regional Plan amendment to proceed." Yes, it IS a separate application but the same principle and technique Applicant used previously is still being applied for this present application. It is self evident in this case that the **IMPACT** of this development is 160 units/9 acres or 17.8 units/acre density that is well into the HR zone. It is "de facto" a high density development. More to say later on this as well.

It is legally impermissible on it's face to create an "administrative alternate reality" by "pretending" that facts on the ground do not matter with regard to density and other breaches of our Code. Even if a formal Major Plan amendment were not required, surely the additional safeguards and requirements must be. Among those that the Applicant/s have not completed are: (*please refer to Sect. 11-10.20.020 of our City Code*)

1) An infrastructure and community services impact analysis that includes: (yes, traffic analysis was already completed)
a) Water/wastewater analysis
b) Police and fire protection analysis
c) School impact analysis
d) Economic development analysis

Surely an economic development analysis would be prescient here in revealing the obvious that in a "down market" the property values of homes along W. Gold Rush Trl. and lower part of S. Wild West Trl. would be diminished more than property surrounding them. Right now we are in an "up" market so it would not make a significant

difference but in a down market it certainly would. This is obvious. Since the housing market is **cyclical**, no one can reasonably expect that those single-family homes will not be negatively affected.
So although understandable in that Applicants would never desire increased expenditure and proof that his development is illegal through creating a "Regulatory Taking", (in violation of ARS 12-1134-1138) (please see Appendix A for why this is likely) that does not make it acceptable. The de facto nature of this development proposal makes it necessary to meet **all** requirements for a Major Plan Amendment.
Additionally, we would agree that no homeowner is assured or can expect that an investment in a home and property will always increase in value, but what he/she should be assured of is that over time, the property values in a down market would not be negatively impacted more than similar homes nearby.
To do otherwise subverts the purpose and authority of our Zoning Code so it **no longer protects the communities of all of Flagstaff** as it is intended to do.

**III. Wrongful Designation of the Development Site Area and Calculation of the Baseline Density for "Aura" Leading to Surreptitiously adding a Concealed Density "Bonus" to an Otherwise Unconstrained but Appropriate Pair of Density Bonuses**

May I refer you to Section 10-80.20.040 (D) of our Code. The definition of Gross Density. This definition specifies that this term is calculated by using the "Development Site Area" as denominator. In that same section the Development Site Area is defined using the "total area of a development site" excluding all existing dedications for public Rights of Way._Then the "Development Site" definition states in pertinent part "...which constitute **contiguous** lots...on which development is proposed,....." (emphasis mine)

Because the calculation by Applicants of the baseline density INCLUDES 2 acres on the north side of High Country Trail and because those two acres are **NOT part of or a site on which development is proposed** (in fact just the opposite) they therefore can not be included in the "development site area" needed to calculate the allowable gross density.

But equally alarming is that this miscalculated baseline density is then used to further calculate how much density BONUS is awarded for both the Affordability provision and the Sustainability provision. This **artificially inflates the bonus density that is awarded**

because it is in effect adding a multiplier to the calculation that would not otherwise exist.

Furthermore, these same two acres are then also used to supply a significant part of the tree points needed to fulfill the forest resource protection standards even though it is not a part of the Development Site. The reduction of forest resources incentive explicitly specifies at 10-30.20.040 (B1b) and at 10-50.90.030 (B3) & (B4) that the forest resources to be protected are those "on-site". "On-site" can only reasonably refer to the "Development Site" upon which development is proposed according to the definition. Not upon which development is **not** proposed. In fact it is PROHIBITED by the conservation easement.

And lastly here these same two acres are utilized yet again to provide the developer with an incentive that does NOT further the goals and policies of the Regional Plan. (just the opposite; please see CC 1.1, 1.3 and CC 1.5). Please see next Sect. IV for why this is legally invalid and therefore cannot be used.

The mere fact that these two acres ARE used to provide a conservation easement does not mean they can be used "again and again" (or even once) to calculate allowable density or density bonus's that should be already calculated utilizing other standards. Many other jurisdictions award other incentives (such as reduction of development fees, expedited processing, etc.) if a developer provides land elsewhere for a conservation easement, but then our Code needs to authorize the City to award them exactly that incentive. But our Code does not authorize the City to provide that exact incentive. In any case it is legally impermissible for them to award a concealed and extra density bonus or to allow them to use this acreage to meet the forest resource protection standard. The City is not permitted to grant bonuses that are not authorized by our Code.

Furthermore it should be plain to see that the conservation easement Applicants desire to place on the north side two acres **prohibits** development; just the opposite of "site area" upon which development **is** proposed. So it is impermissible to still use those two acres for calculation of baseline density. Again, the mere fact that those two acres are part of the same parcel number does **not nullify** "facts on the ground" that show that this acreage is not contiguous with the acreage that IS proposed for development (i.e. the 9 south side acres) and that a street and fence separate these two acres from the **actual development site**. And that the landowner will continue to treat and use those as he has always done in the past and will continue to keep them private and not open to either the residents of Aura nor to the public. It cannot by any stretch of the imagination be considered as a part of the development site area. The parcel should

be split because it is contiguous with other land that the Auza's own on the north side of High Country Trail. It is really a separate parcel. A parcel number cannot nullify reality.
Incredibly as if this were not enough, the developer violates our Code Sect. 10-30.50.020 (B1) "Responsibilities" (and definition of "public improvements"; i.e.10-30.50.030 (A)) by placing the "**conservation** easement" (which is surely considered an improvement since such easements would normally add to the public good) onto the north side two acres but then refuses to USE IT as strongly implied by B1 above to "mitigate the impact of new land development" but instead uses it to increase density/intensity that exacerbates the impact of this development. And then because it is not available to the public but only the private use of the Auza family, it is not a "public" improvement at all but really a private one that the Auza's have not compensated the City for. Thus the developer shirks his responsibility regarding this so-called "public" improvement.
Additionally our Zoning Codes' own "Rules of Interpretation" at 10-10.30.040 (B1 & C) state that the Codes' standards are the "**minimum** requirements for.....restrictions, uses,..." and that in essence if there are overlapping or contradictory regulations, the provision that is "MORE RESTRICTIVE" **shall govern**, ..so that in **all** cases the **most** restrictive provision shall apply." Since the calculation of baseline density and the subsequent density bonuses and use of the "conservation easement" acreage thrice (once for calculation of baseline density, once for density bonuses and once for meeting the requirement for tree points for preservation of forest resources) are less restrictive than under this paper's viewpoint expressed here above, I conclude then that this interpretation must be the one that governs and applies according to our Code's own rules.

Furthermore, as you will read in the next Section IV, most localities provide a "CAP" on just how much density developers can add to the existing zone that they are applying for over and above the maximum density for that zone. But even in municipalities where there is no cap as here in Flagstaff MOST developers realize that they run into all sorts of issues and opposition regarding **Takings** problems and meeting other Zoning Code standards if they are unreasonable with regard to how much density bonus incentive they avail themselves of. **NOT TRINSIC though**! An actual records search result provided by Larysa Feyti, Records Coordinator for the City shows that over the last 20 years or so there have been NO developers here at all who utilized density bonuses that extended up over 40% into the next higher density range. In other words all of

them have been lower. These Applicants utilize 160 units/99 or 61.6% over and above the otherwise maximum limit for Medium density. And according to what I would consider the correct calculation as explained above it is really 160/81 (9 acres x 9 max units/acre for MR zone) or 97.5% over what should have been maximum medium density.

**IV. The Rational' for Permitting no Maximum Cap or Limit to the Degree of Density Bonus Awarded is Legally Arbitrary and Therefore Must be Applied to the Award of Reduction of Forest Resources as well – Or an Alternative Standard Utilized**

The interpretation of in particular here page IX-46 of our Regional Plan and the characteristic of "Density Range" stated there was that in essence it was fine to ignore this "Suburban Characteristic Range" in providing density bonuses because the incentives further the goals and policies of the Regional Plan (Plan) since they are given generally for providing affordable housing/sustainability both of which are two (in this case) of the goals/policies of the Plan. So what is the problem?? Here it is.

First off though the legal definition of "arbitrary" is that the decision is based on individual discretion rather than a fair application of the law. This Plan interpretation falls into that category as explained below.

A GENERALLY APPLICABLE PRINCIPLE is being used to **ONLY** apply to a SPECIFIC incentive; namely **Density Bonuses** but **ignores** all the other possible incentives that the City IS authorized to grant and to which such a principle must also be applied if it is applied to the density bonus incentive. Furthermore, it ignores unintended consequences that would violate other protections contained in our Code in the process of applying this one. Examples will follow a bit later. The City has **no authorization** to "wrangle" and finagle such an interpretation into what they think they want to accomplish. It is legally arbitrary on it's face and therefore the City/Applicants would be obstructing protections afforded by our Code to the communities/people in applying such a principle in the manner in which they are attempting to do so here.

One of those other incentives (used here for the Aura proposal), "reduction of forest resources" (used as an incentive since it is relaxing a standard of the Zoning Code) does just the opposite in that it **impedes** the goals and policies of the Regional Plan. In this Aura proposal the applicants are slated to receive an additional allowable reduction of forest resources of 25% or 50% of the remaining

resources after the first 50% is removed. So if this general principle is ok to apply to density bonuses it would not at all be even handed to not also apply it to the other incentives (such as reduction in forest resources) that the City is authorized to grant to incentivize affordable housing. It would not be fair or just and it almost sounds like this "interpretation" was made up "ad hoc" in order to allow something that if completely thought through would never be allowed because of the negative consequences that would surely follow without any codified regulation or means to prevent them. In other words, directly and automatically. The codified regulation must be approved by the people in order for the City to possess the legal authorization and warrant to act. A cap on how much total density bonus is allowable might be one such regulation. Or they could use the Suburban Characteristic Density Range from the Regional Plan. Otherwise they do so outside the rule of law.

But there is even more serious harm to the whole process of evaluating applications for rezone for a specific development. The essence of this Regional Plan "interpretation" as applied to Aura is that it allows and impermissibly "elevates" one or two goals of the Regional Plan above the MAIN intent and legislative purpose and AUTHORITY of the Zoning Code. How can that be??? Here's how. Any PART of a zoning code cannot and must not supersede a main legislative intent and purpose for the entire code itself. Nor can the Plan. That would mean that one part possesses a higher authority than the main purpose for the code or the authority of the Code itself. **Not permissible in any jurisdiction**!! If the people of the City of Flagstaff decide by referendum that the goal of providing more affordable housing units is worthy, then all of us should be willing to have our taxes raised and/or approve bond issues with precisely the goal of building or making land available on which **mostly** more affordable housing is constructed. I.e. 100% or 70% say affordable housing; not 10% or 20%.

And so it does damage to our legislative process because of the "reprioritizing" of objectives without explicit warrant for it by the law and/or the voters. To say it another way, it allows "political" policy to become a part of what should otherwise be sound and even handed application without bias of established ordinances or laws. To do otherwise would be to subvert the intent of our Code to protect the Community Character and to provide justice for the people to which they constantly rely on the City Government. Indeed that is one of the reasons for city governments to exist in the first place. The people expect justice, not privilege.

**Additional Clarification** – I stated above that I believed the Plan interpretation on density bonuses was "arbitrary" from a legal standpoint. Another reason is that it fails to achieve the purpose for which it was intended. It was intended as stated to "further the goals and policies of the Regional Plan" two of which are affordable housing. However many know that our Plan contains no less than 412 (if I counted correctly) goals and policies. However in this Aura development, in order to allow the additional "density" bonus to exceed the maximum suburban density range as presented in our Plan one also needs to impede at least two other goals and policies of the Plan in order to "make room" for this development by destroying more trees. But that then defeats the purpose for Zoning in the first place and the main goal/s for a **form based** code to preserve "Community Character". (Please see Sects. 10-10.20.020 (B1f,B1a,1e,1g,2b,3a,4f,5a,5b,5d))
It would no longer do so. So the City possesses no discretion to apply such an "interpretation". I only say this because the applicable law here is the Zoning Code. But nowhere to be found is a MAIN "purpose" for our Code listed as "encourage, promote, and create affordable or low income housing". Presumably it could be if the Code were revised to include that purpose. But presently it is allowed but **not** a main purpose for the Code. Yes, that section itself contains the purpose for it but such purpose is not reflected in the main purposes. And the mere fact that such "Affordability Incentives" Section implements the City's IPAH policy does not mean that that policy has priority over the Code or the Code's main purposes. Therefore it should not and must not be impermissibly elevated to a higher priority status.

But now I would also add that "Sustainability" and "Natural Resource" protection and preservation ARE MAIN purposes for our Zoning Code. Please see 10-10.20.020 (B3a & B2b) (protecting forests and ensuring new development conserves natural resources such as forests, ..). This just underscores the point above that "affordability" can not be elevated above the main purpose to preserve and protect forest resources. This shows that protecting forest resources is (at least for our Code) of legally higher priority than providing affordable housing.

Additionally what is also true is that the section of the Code on Affordable Housing itself is not well circumscribed and is convoluted. As mentioned in Sections **II.** and **III.** above it results in logical contradictions regarding lack of correspondence between the actual density facts on the ground and the legal ordinance it is trying to allow. Therefore it bears no relationship to either reality or adherence

to what the Code *would* permit. So it should not be used. And according to Constitutional law it is unreasonable. It is an unreasonable means of furthering the purpose for it. But as the Vanderbilt Law Review article (Vol. 34, April, '81) cited below states: "..the regulation *must be* a reasonable means of furthering that (Constitutional) purpose". (Emphasis & parentheses mine) So the "affordability section" of our Code fails the "reasonableness" standard for adherence to our US Constitution.

Please allow me now to show by example WHY the "affordability section" of our Code is convoluted and unreasonable. Please refer to Table 10-30.20.050A and Section 10-30.70.030 of the Code. Suppose I am a developer and wish to provide 16% of the baseline units of my projects' apartments as affordable under Category 3 but do NOT want to provide any sustainability and do not wish to lower the "household income range" into the Category 1 status. I would be disallowed by our Code to obtain ANY density bonus at all because the two categories are linked and convoluted compared with Category 1 where the two incentives (for affordability and sustainability) are completely separate. I could do it under cat 1 but not under cat 3. So because of the way the category for income range is codified, the two standards are not independent. AND what is also confusing is what the particular category even means in the following sense. Nowhere in the Code (or even the IPAH document) is it explained how the AMI standard is intended to operate in actual practice. For example, if a developer chooses to have his affordable units fall into the cat 1 standard, does that mean that he can charge a rent that is no higher than but equal to 30% of the 80% of the AMI regardless of what the applicants' actual income is (as long as it falls at or below 80% AMI)....OR....does it mean that all applicants who apply and who fall at or below the 80% AMI can pay a rent that is exactly 30% of *whatever* income they earn? It can make a huge difference in revenue for the developer/management company. And is it on a first come first served basis or are there other standards that can place an applicant at a priority for being accepted for such housing? So depending on how this operates in practice, there may be incredibly little difference ....**or** ...a significant difference between cat 1 and cat 3 for the purposes of what rent can be charged. Furthermore if cat 3 INCLUDES **all** of cat 1 in the sense that the rent charged only depends on the applicants income (but not on the 80% or 120% standard) then if most (if not all) of the applicants who apply to a cat 3 development have income that falls below the 80% AMI anyway, there is then little difference at all between the actual effect of choosing cat 1 or cat 3. Confusing, complex and unreasonable since it may constitute minimal reason for such distinctions in the first place.

That makes the ordinance impracticably complicated and lacks straightforwardness in violation of our Code's Purpose stated at 10-10.20.020 A. (..in a form that is ....straightforward, easily understood..) This portion of our Code is not straightforward nor is it easily understood.

And that is also why other jurisdictions (such as the California State Density Bonus Law (SDBL)) include an "upper bound" or limit to just how much their local governments are allowed to "bust into" the next higher density zone in approving a development. The SDBL uses 35% as reasonable. But even more revealing is that it allows any local municipality in California to, if they want, pass an ordinance allowing a different (could be higher or lower) maximum for total of all bonus densities. The crucial point here is that at least they will **have a standard** that is/was approved by the voters of that municipality. Flagstaff has no such standard at all. So our Code then lacks legislative authority to prevent unreasonable bonus densities that then automatically result in negative consequences elsewhere.
But yet there is more. My research has revealed certain things about cities that provide incentives for affordable housing (including Lancaster, PA; Portland, OR; Washington, DC; Cambridge, MA; Denver, CO; Austin, TX; Madison, WI; Dallas, TX; Atlanta, GA; Seattle, WA; Minneapolis, MN; and California as above). Firstly not all use a density incentive bonus; secondly, most of those that do use density bonuses also have an upper limit as to how much it is permissible to exceed the otherwise allowable zoned density maximum; and lastly most of them have other incentives that are even preferred by most developers such as expedited review and fee waivers or reductions. Our IPAH mentions those but they are not codified into our Zoning Code law. A report by the City of Denver for instance (published March, 2020) on "Affordable Housing Zoning Incentive" concluded that: "Density bonuses are not always the most meaningful incentives, the citywide system should explore additional incentives such as expedited review, parking reductions, and other financial incentives. Developers in Denver and many peer cities have expressed that predictability in reviews is a powerful incentive."
I conclude (but not only I) that density bonuses have drawbacks and downsides as well. Another article in "University of Florida Law", 2006 entitled *Incentive Strategies: Density Bonuses, Fee Waivers & Expedited Approvals* states that: "Optional bonuses have drawbacks as well, particularly administrative issues and possible takings problems." So we can surely appreciate that the single-family homes

along W. Gold Rush Trail are appropriately concerned about regulatory takings of their property.

To sum up this section our government is not authorized to allow its decisions to extend outside the rule of law. The upshot of this is that the "PEOPLE" would need to approve what priorities any particular provision of the Code or Plan would have beforehand so that the City could legislatively apply such priorities without them being legally arbitrary and therefore unlawful.

**V. Aesthetics are a Valid Consideration in Deciding Whether to Approve or Deny an Application for Rezone**

I wish to refer you to Section 10-10.20.020 (1g) of our Code and to the Marquette Law Review article Vol.39, 1955 – "Aesthetics Under the Zoning Power" by Joseph Swietlik and to Vanderbilt Law Review – Vol.34, April 1981 – "Aesthetic Regulation Under the Police Power".

The Marquette article argues strongly in favor of using aesthetics within the scope of the general welfare of the community and therefore within the police power and therefore within the zoning power. It states in pertinent part: "However, if we are to preserve pleasant residential areas today, aesthetic considerations in zoning laws are **essential**." (emphasis mine). It then goes on to address why such considerations are NOT discriminatory. It states that such a situation could only come about with unreasonable administration of the law. And also as stated above regarding the "general welfare". The Vanderbilt article lays out a litmus test to decide whether an aesthetic zoning regulation as an exercise of the police power is valid or not. The standard boils down to whether the regulation serves one of the traditional police power purposes, namely to further the public health, safety, morals, or general welfare. In order to do this the aesthetic regulation should have a significant economic impact. So it must achieve the desired purpose and secondly it must positively have a significant economic impact.

It surely appears to me and neighbors that aesthetics is included in our Code (see 10-10.20.020(1g)) as one of the essential ways to achieve desirable community character and to protect/enhance taxable values and real property values (please see 10-10.20.020(B5a, d). It does this through several provisions. I refer you to Sect. 10-30.60.060 (A, C & D) and 10-30.60.070 (A3 and A4) as well as Sect. 10-50.60.040 (D1a) as particularly applicable to the "Aura" development. The first Section refers to "Building Forward Design" and the primary entrance to the building as well as the need for a "Screen Wall" if the building cannot be located next to the

sidewalk. The second section here refers to the most "in front" parking lots needing to be located on the side and rear of the buildings and the need to "screen" parking areas from view of public ways. The third section refers to Screening requirements using landscaping to screen parking areas i.e. chiefly trees.

We can see if we apply the above Zoning elements to the Aura site plan, the first Sections are failed because the layout of the apartment buildings lack "Building Forward Design" and none of the **entrances for the buildings** (with exception of the "Club House") are located at the front of the buildings; they are all on the side and do not face a plaza or pedestrian way. Nor does "Aura" include a Screen Wall designed to serve to screen the development and especially parking lots from High Country Trail. What a contrast to "The Lodge" adjacent to Lake Mary Rd. that includes many tall Ponderosa Pines completely surrounding the development and effectively screening it from BOTH Lake Mary Rd. as well as High Country Trail.

The second Sections are failed in Aura because the most forward parking lots are not located at the side and rear of the buildings. Nor are they "screened" from view from High Country Trail that is indeed a "public way".

The third Sections are also failed in Aura because it appears to us that the amount of landscaping trees are insufficient to screen for the amount of parking spaces provided especially at the front of the development.

To be fair to our City, yes building of screen walls would probably not be allowed underneath the power lines. And tall trees are not allowed for screening underneath the power lines either. However, because of the parking requirement of our Code above and the screening requirement, we question why the developer has **not concluded** that the parcel on which they desire to construct such a large number of units is really not suitable to do so. It is way too small to accommodate such a high number of units while still maintaining adherence to our Zoning Code. But instead of then concluding that a smaller development and lower number of units would need to be proposed, or to develop on a larger different parcel that could easily be rezoned High Density (HR), he has concluded just the opposite to the detriment and strong opposition of the people. In my opinion this is exactly **not** what Flagstaff desires or needs.

Lastly do all of the above have a significant economic impact on the surrounding single family homes? Aesthetically it surely appears to us that they do because as currently designed this development looks more like dormitories on a student campus closely grouped together

than like luxury apartment houses they are advertised as being. In the long term and as I've stated previously in a down market, they will adversely affect property values in violation of Section 10-10.20.020 (B5b & d). Also please refer to an article by Yuqing Pan (March 2016) in "Realtor.com" entitled *The Neighborhood Features That Drag Down Your Home Value—Ranked* in which he compared various features like cemeteries, shooting ranges, and of interest here "high renter concentration". The analysis that Mr. Pan accomplishes in particular shows that this feature reduced home values 13.8% compared with homes in the surrounding area. Aura would be one of the last such apartment developments to be added to the immediate neighborhood and therefore the standards for acceptability because of incompatibility with our Community Character are very high as they should be. We do not wish our Community Character to be compromised.

**VI. Why are High Density Apartment Houses Considered a Private but Permanent Nuisance to Adjacent Single Family Homeowners?**

May I refer you to the following website: *www.law.cornell.edu/wex/nuisance*, the Legal Information Institute of Cornell Law School. Their definition of a private nuisance is "A private nuisance is when the plaintiff's use and enjoyment of her land is interfered with substantially and unreasonably through a thing or activity."

I believe three indicators can answer this admittedly highly contentious question: "Ownership, party noise and crime".

A very important consideration here is that Aura would not consist of units that are owned nor would they be units that are not high density. They are "de facto" high density. I know my neighbors and I would much rather see condos or town houses or single family homes on this parcel because they are **owned** and therefore the occupants are more likely to act responsibly on average.

Noise as from students or otherwise would constitute a nuisance in that it would be permanent (intermittent but still a concern as long as the development exists) and many neighbors are trying to raise children in their backyards adjacent to this development. Please also note that our City Code Sect. 6-08-001-0005 (C3) defines a "nuisance party" as including "disturbing the peace" and a party that "..causes a disturbance of the quiet enjoyment of private or public property...". With an admittedly large percentage of the residents of "Aura" being students, it is increasingly likely that student parties will occur that are also "nuisance parties". One would need to be naïve to

not believe such would occur frequently if this development is allowed to go forward.

One of my neighbors will submit and present evidence that "calls to the police" are **significantly higher** (more than 2X for the same one year timeframe) in the surrounding apartments than in Ponderosa Trails HOA. The numbers are normalized for the number of units or houses considered since PTHOA contains more "units" than the two apartment developments we considered. So we are not making this up. This indicator gives us an idea of what is going on since these data were obtained directly from Flagstaff Police reports. And families **raising small children** are concerned and would continue to be concerned since this would not go away in a few months. It may even get worse over time.

## VII. The Underground "Chamber" Method of Collecting Storm Water Used here by Aura along with Small Culverts is Insufficient to Prevent Greater Accumulation of Water onto High Country Trail than occurs without this Development

Through direct conversation and email with Mr. Doug Slover, Stormwater Project Manager, Water Services Division for the City, I obtained understanding of what standard is used to determine whether or not a drainage system for stormwater is acceptable. The standard provided by Mr. Slover was that it can not be worse than it is right now without any development at all. I consider that (yes) a reasonable and fair standard.

So how is it right now?? From personal experience both I and all folks in Ponderosa Trails and beyond know that in the winter after snow melt and after rain, High Country Trail (HCT) IN THE VICINITY OF THE **CURVE** in the road freezes over at night and becomes very icy and hazardous especially in the morning hours. Vehicles heading towards Lake Mary Rd. can easily slide on this ice and into oncoming traffic in the opposite lane because of centrifugal force. And this is the situation that exists now with all of the land specified for Aura presently consisting of earth with about 2/3rds of it consisting of forest and earth.

The "chamber" method proposed here for Aura means that drains and other channels should attempt to remove as much water from the development after a storm as the earth and trees are presently accomplishing. However, it should be self evident that with all of the concrete and asphalt covering the ground after construction of Aura would be completed, there will still be at least some runoff from

driveways, sidewalks and ground that will not be contained by drainpipes and culverts that do NOT divert onto High Country Trail. Even a cursory inspection of the new Aura site plan shows that two small culverts (I am unaware of the technical name for these) are intended to divert water from the forward ground of this development ONTO High Country Trail adjacent to the "eastside" driveway into/out of Aura. So the question then is whether or not this additional water would be greater than or less than water that could flow onto HCT right now from the earth and trees that is not absorbed by that earth? And also whether that water along with any water that is not captured by drains (heading into the chambers) but flows from that eastside driveway right onto the curved part of HCT would, taken together, be greater or worse than it is right now?

So this analysis understands the fact that right now the only water that DOES make it onto HCT is excess water that the ground immediately adjacent and all the way up the hill that constitutes this parcel is not able to fully absorb. It flows over the sidewalk and onto HCT. However, with this development, it is quite apparent that most of the water that would otherwise be absorbed by the ground will not be and that *some of that* will flow onto HCT. The chambers will not be able to capture all of it. Furthermore, the existence of the two small *culverts* (for want of a better identifier) adjacent to the east driveway in question would then add additional water from the "meadow" and adjacent ground from "underneath" the level of the sidewalk. That means that the amount of water being added to HCT from the culverts along with water from the driveway itself must be greater than what occurs right now because most of the water is absorbed by the ground presently and therefore unavailable to be able to flow onto HCT. And all this in the worst possible place for it along the **curved** portion of HCT where the east most driveway is located on the Aura site plan.

So it is my opinion that there must be more water after heavy rain or snow that causes hazardous conditions on HCT after Aura than there is right now. Therefore Aura fails this reasonable test.

## VIII. The Real Significance of the Most Recent Ponderosa Trails HOA email Poll on this Rezone Showing Great Majority Opposed

One of my neighbors as well as submittal from our HOA will show that the results of this poll of all of Ponderosa Trails were that 89.8% of those responding were opposed to the rezone for this development. About 8.6% were in favor of it and 1.6% had no opinion either way. These are the CORRECTED results but the effect is the same.

Out of 639 units in Ponderosa Trails, 303 valid votes responded for a Margin of Error of plus or minus 5.4% at the 99% confidence level. (4.1% at the 95% confidence level).
These results were corrected for several homes that had more than one email address AND submitted more than one vote. And if you read the question that was submitted it tended to favor this application for rezone in that no mention at all of any issues or problems were stated and even said that improvements were made. Still the results overwhelmingly favor denial.
But here's the thing. In evaluating applications of this type the City may often use the rational' that even if a few residents on one or two streets are disadvantaged, if the City as a whole benefits then the application can go forward. This poll shows that it is NOT ONLY the residents of one or two streets who believe this application should be denied but the great majority of a whole neighborhood believes it is not in their best interests to approve this development. So the City should not and really cannot say that Aura would be beneficial for us as a whole. This poll says otherwise.

## IX. What about the Findings??

Here's what my analysis of the 3 Findings shows:

### Finding #1 – Consistency with the Regional Plan (not optional under ARS 9-500.05B)

One of the main inconsistencies with our Regional Plan is that this proposal totally ignores the explicit Plan designation of the area as Suburban Residential and maximum MEDIUM DENSITY. The Community Character and such things as aesthetics from the street in front of this development do not depend on whether the Developer receives density bonuses or not. Reality is reality regardless of the rules of the Zoning Code and/or Regional Plan. Correspondence assures validity, not words on paper. That is why a Major Regional Plan amendment would have been required if the developer had applied for high density rezoning in the first place.

In addition to the above inconsistency also evidenced by CC 1.1 and CC 1.3 and 1.5 above, we also find this development to be inconsistent with the following goals and policies of the Regional Plan.

E&C 8.1 – Evaluate land use ....for their potential noise impacts. We believe this has not been accomplished. Lots more noise

would emanate from this development; i.e. nuisance parties, etc.

OS 1.4 – Use open space for non-motorized connectivity and enjoy views and quiet. The opposite of what Aura will do.

WR 5.5 – Please see Sect. VII above. Aura uses "numerous small dispersed basins" in essence rather than one larger detention basin as advocated by this policy.

E 2.1,2.2,2.4,2.5 – Although the developer purports to comply with the "sustainability" incentives, virtually **NONE** of the energy needed for Aura will be renewable. Check it out; I am not exaggerating.

CC 3.1, 3.2 – Aura is not respectful of our overall community image nor does it blend their buildings into our existing neighborhood. Please also see Sects. I, II, and V above.

CC 4.6 - Aura does not use landscaping to screen parking and improve aesthetics for this development, just the opposite in fact. Also this **reduces** the economic benefit inconsistent with this policy. Please see Sect. V above.

LU 3.4 - Aura does not utilize appropriate change between neighborhoods or developments in the area. It is "de facto" high density inconsistent with our Plan.

LU 4.2 - In a very **ironic** twist, Aura fails to respect the private property rights of the Auza family because they purchase a conservation easement on the north side two acres that PROHIBITS development but then use it to impermissibly increase density/intensity anyway even tho' the Auza's have not provided anything of value in exchange for those two acres. This promotes rather than discourages bad morals for the Auza's in opposition to sound Euclidean doctrine as the foundation for Zoning in the first place. (i.e. promote health, safety, morals, and general welfare)

NH 6.1 - Even though Aura is an infill project it is not a quality one in that the concentration and design of the buildings are more dormitory style than the luxury apartments they are advertised as being. So they are NOT contextual with the surrounding neighborhood nor do they enhance community character inconsistent with this policy.

Because of all of the above, Aura fails to meet Finding #1.

**Finding #2 – Not detrimental to the public interest and Euclidean doctrine and adds to the Public Good**

There are many reasons this project is detrimental to the public interest and not in the general welfare of the City of Flagstaff. Section IV above shows that this development uses methods that deprive the people of the equal protection of the Zoning Code and Regional Plan by providing no protection from applying the plain meaning of the Code but allowing the developer to do so in a distorted way. This violates the equal protection clause of the Fourteenth Amendment to our US Constitution. This is a violation on it's face and therefore invalidates any application. It is not in the public interest and damages the public trust the people are supposed to be able to place in our City government.

Furthermore, Sections I and II above show that the Community Character of our neighborhood is compromised by Aura in violation of our Zoning Code and inconsistent with the Regional Plan. This does harm to the general welfare of our community.

In the previous Staff Report dated April 9, 2019 the City called out this same developer for "reading more intense due to the concentration of density" and as having "buildings visible from the street that are 3 stories high and over 100 feet long." (p. 4, sect. v of the previous Staff Report). They also called out the developer for the need to "clear cut and mass grade" the site and to locate open and civic space under the high voltage transmission lines being detrimental to the public interest." (p. 13, under RECOMMENDATIONS of previous Staff Report).

But BOTH of these conditions remain true for this proposal. Therefore Staff must be even handed in also finding them detrimental to the public interest this time around.

Since many requirements of our Zoning Code are not met as shown in Sects. I, III, IV & V above as well, they do not add to the public good and in fact only add to the benefit of the Auza's who would retain total use of the north side two acres and presumably receive greater compensation for 11 acres than for the 9 acres they could have **properly sold** for a compatible and contextual development that could have been completely acceptable with regard to the Code, the Plan and the people.

Generally speaking if the City approves this development even though it violates certain legal doctrines and protections that the Code/Plan would otherwise afford, it does not serve the general welfare of Flagstaff since it undermines our laws that support general Euclidean doctrine for zoning.

Therefore, we conclude Aura fails to meet Finding #2.

**Finding #3 – Site is physically suitable in terms of design,..size,....storm drainage, etc. etc.**

Here the site upon which Aura would be constructed is not suitable in terms of size for the number of units developer has proposed. This results in the "de facto" density reaching into the HR range to an unacceptable degree thus resulting in inconsistency with our Regional Plan and also results in violations of our Zoning Code for things like the site plan design standards, size, and screening requirements for vehicles in parking spaces, building entrances and screen wall as shown above in Sect. V.

Furthermore Sect. VII above shows that the storm drainage for this site would be insufficient to maintain the "flooding" onto High Country Trail not worse than it is without this development.

So for these reasons we see that Aura fails to meet Finding #3.

**The inescapable result is that this application for rezone should be denied!!**

## Appendix A – Why the Current Housing Boom is Forecast to Decline

On October 8, 2020 an article in the NY Times entitled "With No Stimulus in Sight, Dire Forecast for Economy" addressed the idea that no second stimulus payments were forthcoming and the consequences that may follow. Of particular concern here though are a few statements from this article. One quote says commenting on how much better it was for 2019 "If we don't try to protect those gains, it will take a longer time, a really long time to come back." Another

quote from this article by a George Washington University economist states: "lawmakers should radically expand a tax credit that offsets the costs of retaining employees, along with additional aid for fixed costs like rent." So the pandemic has had major impacts on the economy meaning many more folks can no longer even pay their rent. This does not bode well for developments like Aura that would be 87.5% market rate units. But even more relevant to my discussion where this Appendix is referenced is the idea that a down market is coming and will be significant resulting in losses to adjacent single family homes that will be **greater than** the vast majority of surrounding homes.

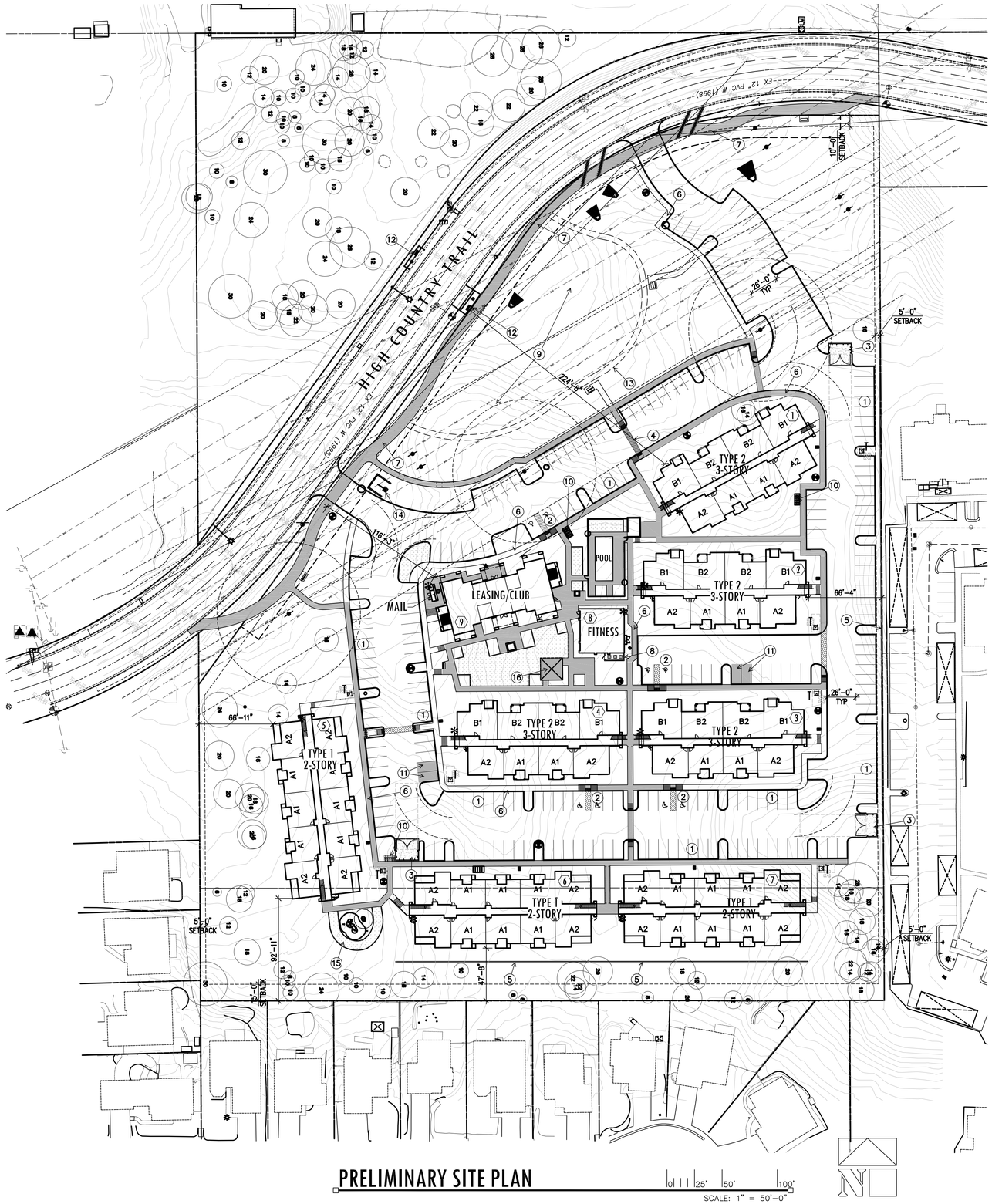
Another article in the NY Times dated September 17, 2020 and entitled "Slowing Growth in US Retail Sales Points to an Economic Recovery in Decline" addresses the effect that the pandemic is having on retail sales and the ripple effect that has on the overall economy. It states in this article that: "Economists say the full impact of these types of closings in the consumer economy may not be felt for months, when the after effects of the stimulus measures wear off." It also states that "...many consumers, who have kept making big purchases and renovating their homes, may not have fully realized the economy's fragility, but they inevitably will". So this does not forecast well for the housing market. With so many losing their jobs, they will not be able to afford increasingly high rents.

Another article from the Dallas Federal Reserve Bank entitled "The Impact of the COVID-19 Pandemic on the Demand for Density: Evidence from the U.S. Housing Market" (August 2020) states that: "We find that the pandemic lowers home sales more in neighborhoods with a greater share of telework-compatible jobs nearby, more consumption amenities, higher pre-pandemic home prices, and lower income levels. After holding these observables constant, we still find that housing demand declines more in locations with higher residual density, which suggests that home buyers may be concerned about density per se owing to the fear of viral transmission in crowded places."

So the demand for density is likely to decline in the coming months/years. This last article suggests that the home market affects the rental market as well. This makes sense because many of the very same factors that affect the demand for single family homes also affects the demand for apartments. More folks are working from home and do not need to live close to "center city" to do their jobs. Furthermore, although it is disappointing to contemplate, a significant number of people of working ages have passed away due to the pandemic and that means an automatic contraction in the economy that will be felt for many years to come and directly affects how many people need dwelling units.

Note #1 – Zoning and the Police Power

As most of you know, the Zoning Code falls under the "Police Power" of the state. But it is well documented and established that the Police Power is not absolute. It is circumscribed and limited by the Preamble to our Constitution (Promotion of the General Welfare) and by Article I Sect. 8 of same (provide for… general Welfare). This is where the Euclidean doctrine that circumscribes the Zoning Code originates so that any Zoning Code must provide for the "public health, safety, morals, and general welfare." In this present rezone case, it is the **general welfare** that is most relevant. But the Police Power bears a close relationship to the Public Trust doctrine as well. As quoted from the article below: "….zoning ordinances that control housing density and land uses help limit change, particularly if any change is inconsistent with, and therefore disruptive of, a neighborhood's character." (see p. 7 from below article) The public needs to be able to trust government to uphold protections contained in the Zoning Code. (from Boston College Environmental Affairs Law Review Vol. 28, #4 (2001) "Police Power and the Public Trust:…" by Donna Patalano.)




## PRELIMINARY SITE PLAN

SCALE: 1" = 50'-0"

## PROJECT DESCRIPTION

AN EXCEPTIONAL MULTI-FAMILY RESIDENTIAL (FOR RENT) PROPERTY LOCATED ON THE SOUTHEAST CORNER OF HIGH COUNTRY TRAIL AND S. WILD WEST TRAIL.

## DEVELOPMENT DATA

### LOT AREA :

TOTAL SITE: 11.0 ACRES 479,620 SF

APN NUMBER: 112-05-011, 112-05-001W

### ZONING :

CURRENT ZONING E.R.
PROPOSED ZONING M.R.

### UNIT DENSITY/COUNT :

PROPOSED: 9 DU PER ACRE

ALLOWABLE UNITS:
11.0 ACRES x 9 UNITS/ACRE 99 UNITS
45% AFFORDABLE HOUSING BONUS 45 UNITS
25% SUSTAINABLE BUILDING BONUS 25 UNITS
TOTAL ALLOWABLE UNITS 169 UNITS

PROPOSED UNITS 160 UNITS

* 20% OF UNITS TO BE AFFORDABLE HOUSING UNITS:
99 UNITS x .2 = 20 UNITS.
DENSITY BONUS FOR 20% AFFORDABLE HOUSING UNITS = 45% INCREASE IN ALLOWABLE UNITS (45 UNITS).

### UNIT MIX :

| | | # OF UNITS |
|---|---|---|
| ONE BEDROOM | 70% | 112 |
| TWO BEDROOM | 30% | 48 |
| TOTAL | 100% | 160 UNITS |

NOTE:
AT LEAST 2% OF THE UNITS, BUT NO LESS THAN ONE SHALL BE A TYPE 'A' UNIT, THESE UNITS MUST BE DISPERSED AMONG THE VARIOUS CLASSES OF UNITS.

### LOT COVERAGE :

| BLDG TYPE | FOOTPRINT SF | NO. OF BLDGS | TOTAL FOOTPRINT SF |
|---|---|---|---|
| TYPE 1 | 9,996 | 3 | 29,988 |
| TYPE 2 | 8,955 | 4 | 35,820 |
| LEASING/REC | 5,545 | 1 | 5,545 |
| FITNESS | 1,615 | 1 | 1,615 |
| RAMADA | 400 | 1 | 400 |
| TOTAL SF | | | 73,368 |
| TOTAL LOT AREA | | | 479,620 |
| **LOT COVERAGE** | | | **15.30%** |

### OPEN SPACE

| | | |
|---|---|---|
| SITE: | 11.0 ACRES | 479,620 SF |
| REQUIRED: | | |
| CIVIC OPEN SPACE 5% | 0.55 ACRES | 23,981 SF |
| COMMON OPEN SPACE 15% | 1.65 ACRES | 71,943 SF |
| PROVIDED: | | |
| CIVIC OPEN SPACE 5% | 0.55 ACRES | 24,000 SF |
| COMMON OPEN SPACE 15% | 1.65 ACRES | 71,943 SF |

### BUILDING SQUARE FOOTAGE

| BUILDING TYPE 1 | | BUILDING TYPE 2 | | CLUBHOUSE | | FITNESS | | RAMADA | |
|---|---|---|---|---|---|---|---|---|---|
| 1ST FLOOR | 10,154 | 1ST FLOOR | 9,105 | 1ST FLOOR | 5,485 | 1ST FLOOR | 1,665 | 1ST FLOOR | 400 |
| 2ND FLOOR | 10,137 | 2ND FLOOR | 9,105 | 2ND FLOOR | 4,568 | | | | |
| | | 3RD FLOOR | 9,105 | | | | | | |
| TOTAL | 20,291 | | 27,315 | | 10,053 | | 1,665 | | 400 |
| NO OF BLDGS | 3 | | 4 | | 1 | | 1 | | 1 |
| **TOTAL** | 60,873 | | 109,260 | | 10,053 | | 1,665 | | 400 |

**TOTAL PROJECT SQUARE FOOTAGE: 182,251**

### UNIT DATA :

**UNIT DATA**

| | UNIT TYPE | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | A1 | A2 | A3 | B1 | B2 | UNITS PER BLDG. | NO. OF BLDGS | NO. OF UNITS |
| LIVABLE SF. | 770 | 788 | 793 | 973 | 1013 | | | |
| PATIO/BAL SF. | 93 | 111 | 117 | 80 | 77 | | | |
| TOTAL SF | **863** | **899** | **910** | **1053** | **1090** | | | |
| BLDG TYPE 1 | 12 | 8 | 0 | 0 | 0 | 20 | 3 | 60 |
| BLDG TYPE 2 | 6 | 6 | 0 | 6 | 6 | 24 | 4 | 96 |
| LEASING/REC | 0 | 0 | 4 | 0 | 0 | 4 | 1 | 4 |
| **TOTAL UNITS ALL BUILDINGS** | **60** | **48** | **4** | **24** | **24** | **TOTAL** | **8** | **160** |

(20) UNITS SHALL BE RESERVED FOR CITY OF FLAGSTAFF AFFORDABLE HOUSING PROGRAM.
70% 1-BEDROOM UNITS (14 UNITS) AND 30% 2-BEDROOM UNITS (6 UNITS).

### PARKING : PER TABLE 10-50.80.040.A

| | | |
|---|---|---|
| REQUIRED (MARKET RATE): | | |
| 1.5 PER 1 BEDROOM | 1.5 x 98 = | 147 |
| 2.0 PER 2 BEDROOM | 2.0 x 42 = | 84 |
| TOTAL | | 231 P.S. |
| REQUIRED (GUEST): | | |
| .25 PER 2 BEDROOM | .25 x 48 = | 12 |
| REQUIRED (AFFORDABLE): | | |
| 1.0 PER 1 BEDROOM | 1.0 x 14 = | 14 |
| 1.5 PER 2 BEDROOM | 1.5 x 06 = | 9 |
| | | 23 P.S. |
| TOTAL REQUIRED PARKING: | | |
| MARKET RATE | | 231 |
| GUEST | | 12 |
| AFFORDABLE | | 23 |
| TOTAL | | 266 P.S. |
| 10% REDUCTION OF REQUIRED PARKING FOR BUS SERVICE AREA | | -26 |
| TOTAL | | 240 P.S. |
| PROVIDED: | | |
| OPEN PARKING (9'x18') | | 242 P.S. |
| RATIO: | | |
| 242 P.S./160 UNITS = 1.51 SPACES PER UNIT | | |

ACCESSIBILITY:
INCLUDED IN COUNT ABOVE:
ACCESSIBLE PARKING REQUIRED : 8
ACCESSIBLE PARKING PROVIDED: 8

### BIKE PARKING:

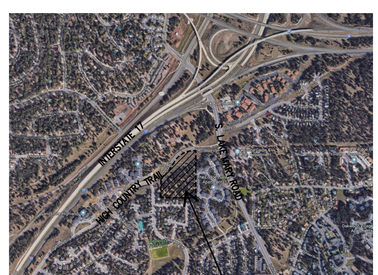
REQUIRED:
5% OF REQUIRED OFF-STREET PARKING
266/.05 = 14 SPACES
PROVIDED: 15 SPACES

## KEYNOTES (1)

1. NEW PARKING SPACES - 18'x9' (TYPICAL)
2. NEW ACCESSIBLE PARKING SPACE - 18'x11' WITH 5' ISLE (TYPICAL)
3. NEW INTEGRAL COLOR SPLIT FACE MASONRY TRASH AND RECYCLE BIN ENCLOSURE (TYPICAL). SEE LANDSCAPE FOR COLOR
4. NEW CROSS WALK - SEE CIVIL
5. NEW INTEGRAL COLOR SPLIT FACE MASONRY RETAINING WALL - SEE LANDSCAPE FOR COLOR.
6. NEW 5' WIDE SIDEWALK (TYPICAL) - SEE CIVIL
7. NEW FUTS PER REGIONAL PLAN - SEE CIVIL/LANDSCAPE
8. NEW SPLIT FACE MASONRY MECHANICAL UNIT SCREEN WALL - SEE LANDSCAPE
9. MEADOW LANDSCAPE - SEE LANDSCAPE PLANS
10. BIKE RACK - SEE HARDSCAPE
11. LOCATION OF PARKING SPACES PLANNED TO SERVE EV READY OUTLET. ONE OUTLET TO SERVE (2) PARKING SPACES.
12. NEW BUS STOP PAD
13. STABILIZED GRANITE TRAIL - SEE LANDSCAPE
14. MONUMENT SIGN - SEE LANDSCAPE
15. TOT LOT/PLAY AREA - SEE LANDSCAPE
16. COVERED RAMADA

## LEGEND

- (1) DENOTES BUILDING NUMBER
- DENOTES ACCESSIBLE ROUTE.
- 55' / 35' FIRE TRUCK TURNING LANE
- DENOTES PROPERTY LINE
- DENOTES ACCESSIBLE PARKING
- FIRE RISER LOCATION
- PROPOSED FIRE HYDRANT
- T TRANSFORMER LOCATION




VICINITY MAP
NOT TO SCALE

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
FLAGSTAFF, ARIZONA 86001


The Office of Rich Barber Architecture, LLC
ORB

WorldHQ@ORBArch.com

REGISTERED ARCHITECT
CERTIFICATE NO.
15213
Rich Barber
06 25 20
ARIZONA, U.S.A.
Expires 3/31/2023

**DEVELOPER**
TRINSIC RESIDENTIAL GROUP
4040 E CAMELBACK SUITE 160
PHOENIX AZ 85018
TEL. 602.799.9960
CONTACT: TODD GOSELINK
TGOSSELINK@TRINSICRES.COM

**Architect**
ORB ARCHITECTURE, LLC
2944 N. 44TH STREET #101
PHOENIX, ARIZONA 85018
TEL. 602 957-4530
CONTACT: RICHARD ALVAREZ
RAA@ORBARCH.COM

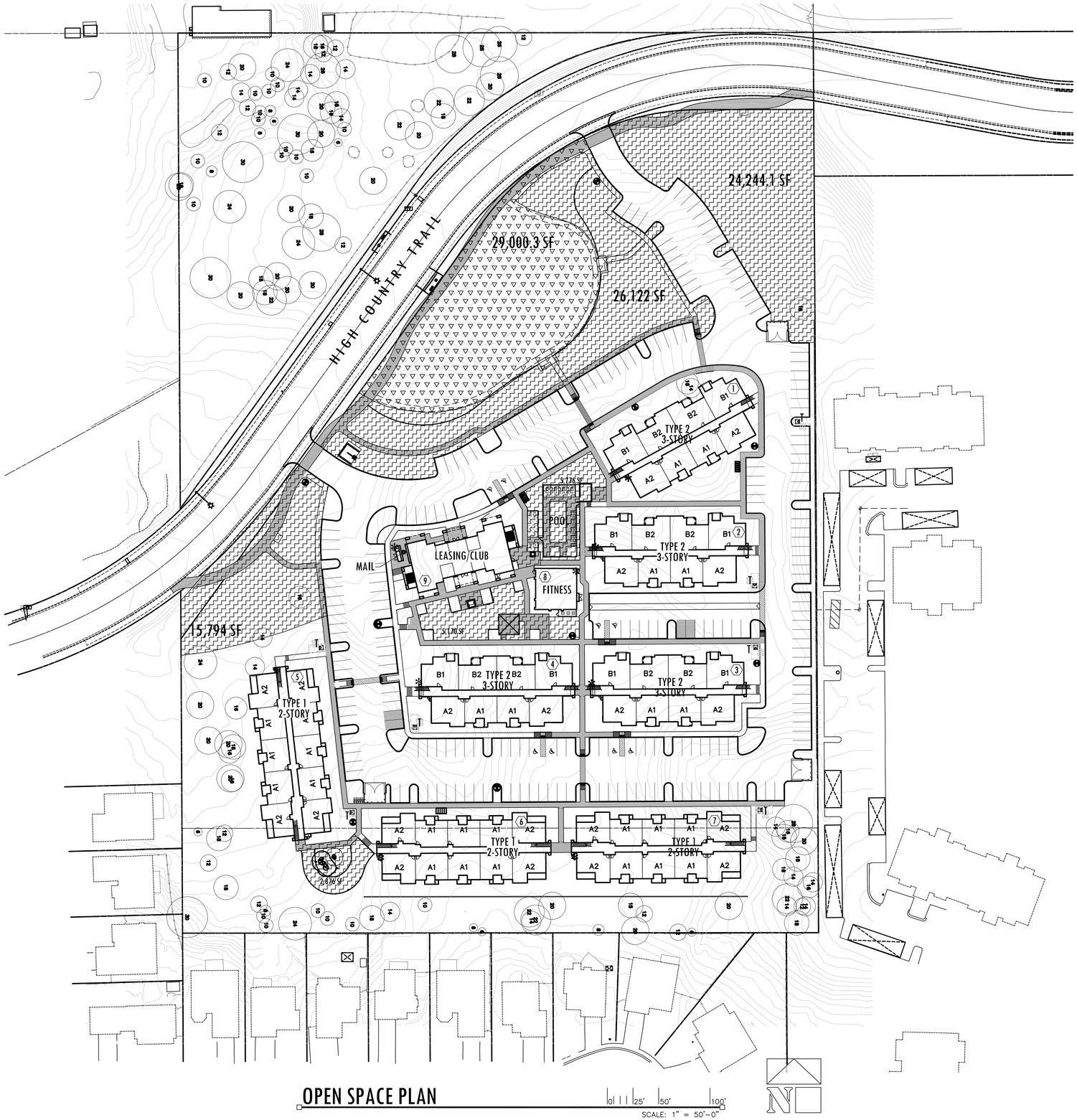

REVISIONS

DATE: JUNE 25, 2020 ORB # 17-227

# A1.10

SITE PLAN PRELIMINARY

FILE: T:\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A110 Site Plan.dwg USER: rao DATE: Jul, 02 2020 TIME: 11:01 am




OPEN SPACE PLAN

SCALE: 1" = 50'-0"

## OPEN SPACE CALCULATONS:

**OPEN SPACE**

| | | | | |
|---|---|---|---|---|
| SITE: | | 11.0 ACRES | 479,620 | SF |
| REQUIRED: | | | | |
| CIVIC OPEN SPACE | 5% | 0.55 ACRES | 23,981 | SF |
| COMMON OPEN SPACE | 15% | 1.65 ACRES | 71,943 | SF |
| PROVIDED: | | | | |
| CIVIC OPEN SPACE | 6% | 0.67 ACRES | 29,000 | SF |
| COMMON OPEN SPACE | 17% | 1.84 ACRES | 79,983 | SF |

INDICATES COMMON OPEN SPACE

INDICATES CIVIC OPEN SPACE

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
FLAGSTAFF, ARIZONA 86001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REGISTERED ARCHITECT
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PHOENIX, ARIZONA 85018
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RAA@ORBARCH.COM

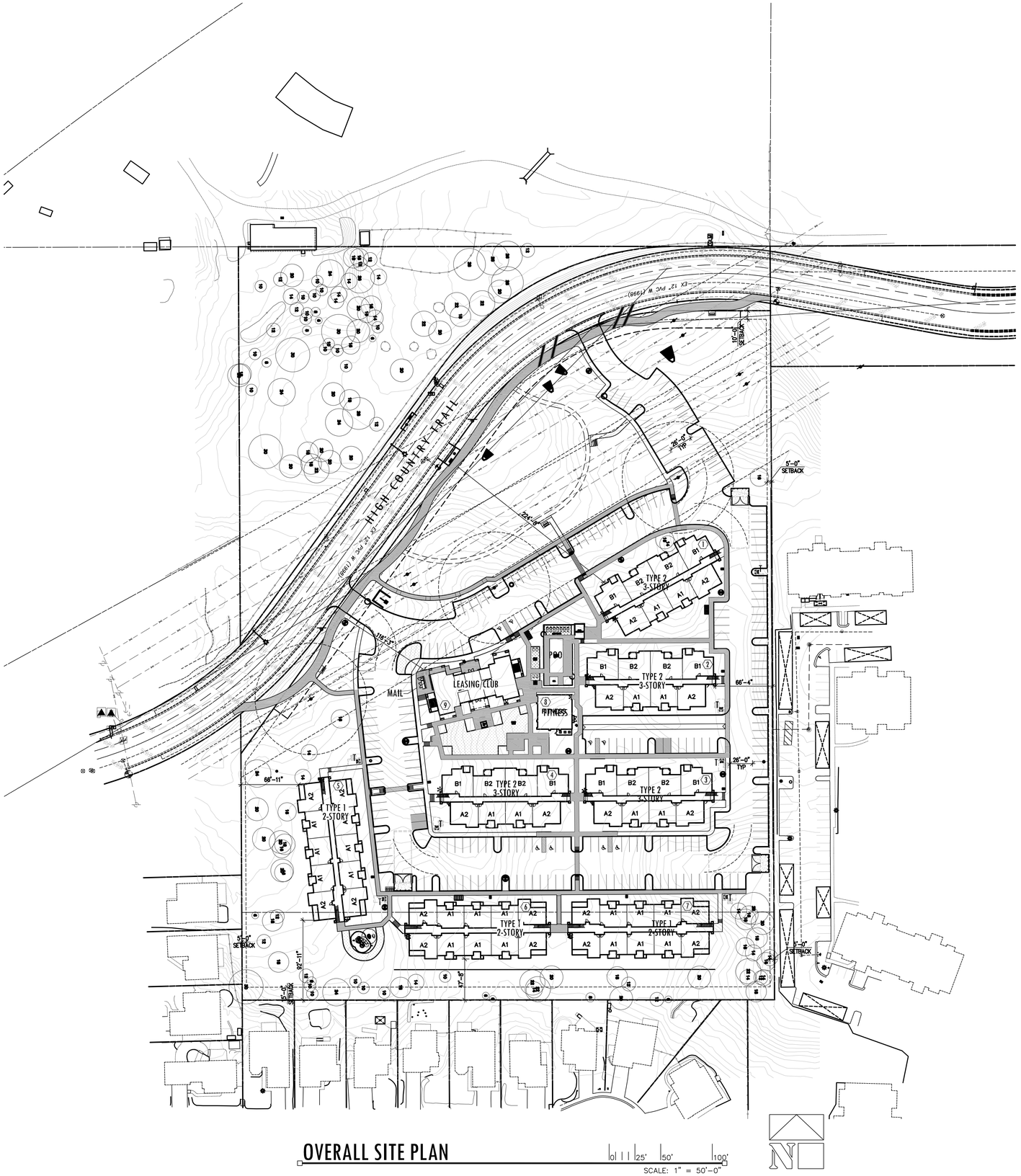

REVISIONS

DATE: JUNE 25, 2020 ORB # 17-227

# A1.12

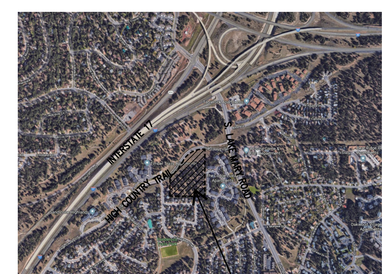
OPEN SPACE PLAN
PRELIMINARY

FILE: \\Orbsvr2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A110 Site Plan.dwg USER:roa DATE: Jun. 29 2020 TIME: 05:48 pm




## OVERALL SITE PLAN

SCALE: 1" = 50'-0"




VICINITY MAP
NOT TO SCALE

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
FLAGSTAFF, ARIZONA 86001


Office of Rich Barber Architecture, LLC
ORB
WorldHQ@ORBArch.com


REGISTERED ARCHITECT
CERTIFICATE NO.
15213
Rich Barber
04/20/20
Date Signed
ARIZONA, U.S.A.
Expires 3/31/2023


**DEVELOPER**
TRINSIC RESIDENTIAL GROUP
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PHOENIX AZ 85018
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CONTACT: RICHARD ALVAREZ
RAA@ORBARCH.COM


REVISIONS

DATE: APRIL 20, 2020 ORB # 17-227

# A1.13

PRELIMINARY
OVERALL SITE PLAN


FILE: T:\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A110 Site Plan.dwg USER: rao DATE: May. 14 2020 TIME: 10:27 am

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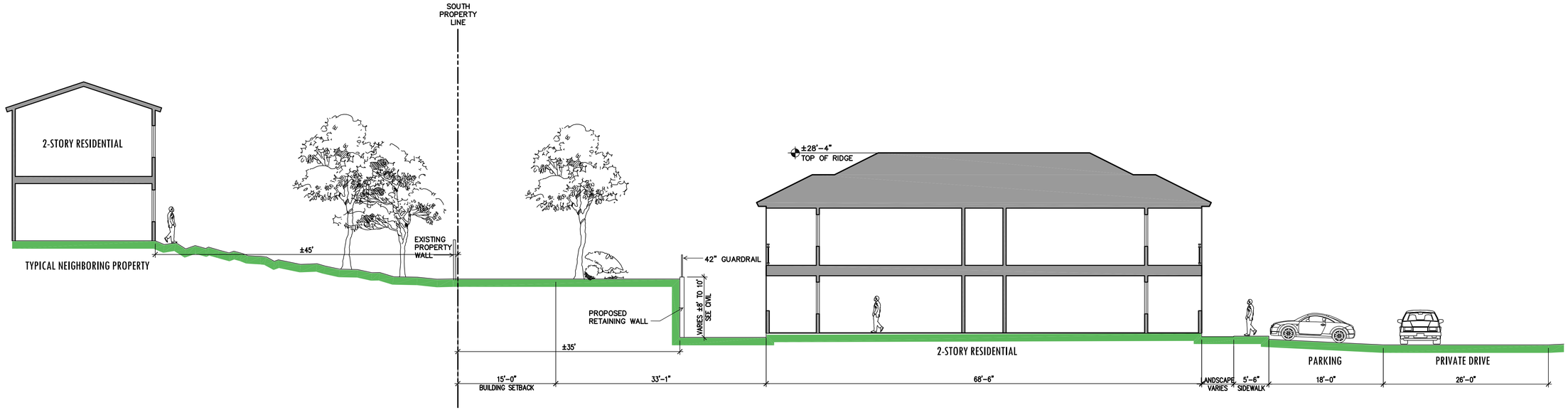


## NORTH/SOUTH SITE SECTION

AT SOUTH PROPERTY LINE

0 | | | 4' 8' 16'

SCALE: 3/32" = 1'-0"

VICINITY MAP

NOT TO SCALE

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
FLAGSTAFF, ARIZONA 86001

Office of Rich Barber Architecture, LLC
ORB
WorldHQ@ORBArch.com

REGISTERED ARCHITECT
CERTIFICATE NO.
15213
Rich Barber
06/25/20
ARIZONA, U.S.A.
Expires 3/31/2023

**DEVELOPER**
TRINSIC RESIDENTIAL GROUP
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RAA@ORBARCH.COM

REVISIONS

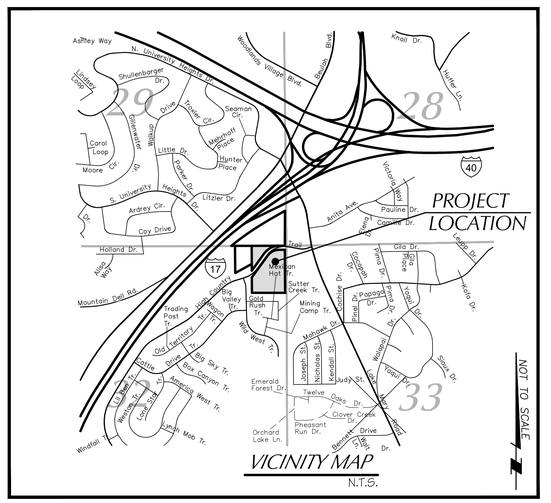
DATE: JUNE 25, 2020 ORB # 17-227

# A1.14

SITE SECTION
PRELIMINARY

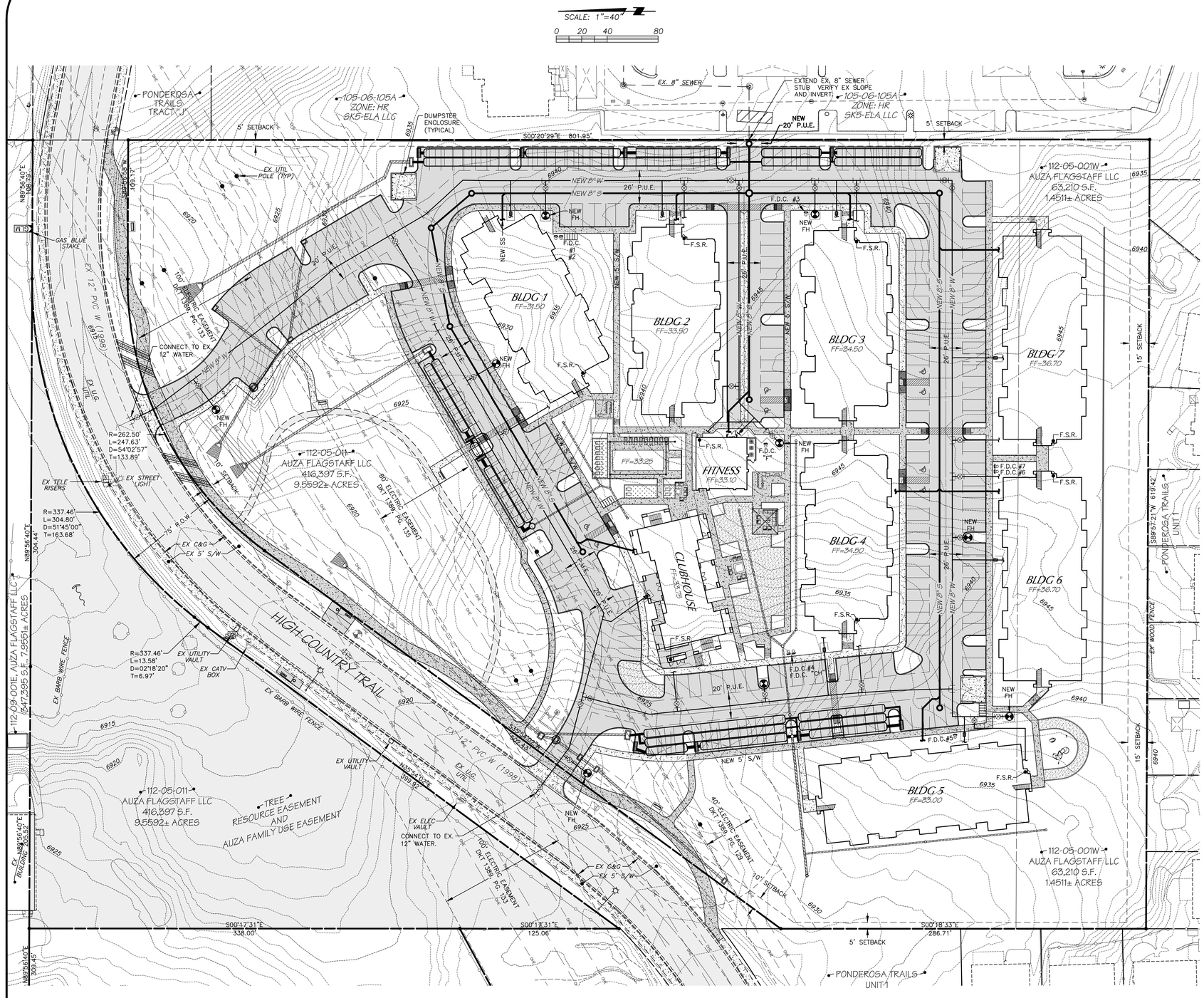
# SITE PLAN
## FOR
# AURA FLAGSTAFF

LOCATED IN A PORTION THE SE1/4 OF SECTION 29, AND A PORTION THE NE1/4 OF SECTION 32, TOWNSHIP 21 NORTH, RANGE 7 EAST, G&S.R.M. FLAGSTAFF, COCONINO COUNTY, ARIZONA


PROJECT LOCATION
VICINITY MAP
N.T.S.
29
28
33
Ashley Way
N. University Avenue
Shullenberger Dr.
Woodlands Village Blvd.
Beaver St.
Knoll Dr.
Hunter Ln.
Lindsey Loop
Seaman Dr.
Trailer Ct.
Meadow Ridge
Hunter Place
Carol Loop
Moore Cir.
Little Dr.
Litzler Dr.
S. University Heights Dr.
Ardrey Cir.
Coy Drive
Holland Dr.
Aspen Ave.
Anita Ave.
Pauline Dr.
Cosmic Dr.
Gila Dr.
Cedar Dr.
Mountain Dell Rd.
Big Valley Trl.
Gold Rush Tr.
Sutter Creek Tr.
Mining Camp Tr.
Old Overland Trl.
Old Settler Trl.
Sky Sky Tr.
Canyon Tr.
Emerald Forest Dr.
Twelve
Pheasant Run Dr.
Orchard Lake Ln.
Windfall
Clover Creek Drive
Sioux Dr.
Apache Dr.
Navajo Dr.
Hopi Dr.
Pima Dr.
Papago Dr.
Comanche Dr.
Cheyenne Dr.
Mohave Dr.
Shoshone Dr.
Kiowa Dr.
Kaibab Dr.
Judd St.
Humphreys St.
Fort Valley Rd.
Flagstaff Mall
Milton Rd.
Lone Tree Rd.
Woodlands Village Blvd.
Beaver St.
Route 66
Historic Route 66
Santa Fe Ave.
Aspen Ave.
Cedar Ave.
Phoenix Ave.
Arizona Ave.
Humphreys St.
Leroux St.
Switzer Canyon Dr.
Lone Tree Rd.
Milton Rd.
Fort Valley Rd.
Flagstaff Mall
Forest Meadows St.
Kendrick St.
Riordan Mansion State Park
Riordan Mansion Historic
Wild West Tr.
Old Settler Trl.
Trading Post Trl.
Big Valley Trl.
Gold Rush Tr.
Sutter Creek Tr.
Mining Camp Tr.
Old Overland Trl.
Sky Sky Tr.
Switzer

# SITE PLAN
## FOR
# AURA FLAGSTAFF

LOCATED IN A PORTION THE SE1/4 OF SECTION 29,
AND A PORTION THE NE1/4 OF SECTION 32,
TOWNSHIP 21 NORTH, RANGE 7 EAST, G&S.R.M.
FLAGSTAFF, COCONINO COUNTY, ARIZONA




## P.U.E.'s FOR WATER & SEWER

EASEMENTS ARE NOT FULLY LABELED FOR CLARITY:
(2) UTILITY LINES = 26' WIDE P.U.E.
(1) UTILITY LINE = 20' WIDE P.U.E.
FIRE HYDRANT LINES = 8' WIDE P.U.E. EXTENDED 4' BEYOND F.H.
WATER METER = 6' WIDE P.U.E. EXTENDED 4' BEYOND W.M.

## FIRE PREVENTION

A NFPA 13R FIRE SPRINKLER SYSTEM IS REQUIRED FOR THIS PROJECT. ADDITIONALLY, A FIRE ALARM SYSTEM DESIGNED IN ACCORDANCE WITH NFPA 72 NATIONAL FIRE ALARM AND SIGNALING CODE IS REQUIRED.

## FIRE SPRINKLER ROOMS

FIRE RISER ROOMS ARE IDENTIFIED AS "F.S.R"

## FIRE DEPARTMENT CONNECTION

FIRE DEPARTMENT CONNECTIONS ARE IDENTIFIED AS "F.D.C. #". # INDICATES BUILDING NUMBER, "CH" INDICATES CLUBHOUSE, "F" INDICATES FITNESS BUILDING.

## BACKFLOW PREVENTION

BACKFLOW PREVENTION SHALL BE IN ACCORDANCE WITH CITY CODE SECTION 7-03-001-0015

## PUBLIC WATER & SEWER MAINS

ALL NEW 8" WATER & SEWER MAINS SHALL BE PUBLIC.

## WATER & SEWER SERVICES

ALL NEW SEWER SERVICES SHALL BE 4" MINIMUM AND ALL NEW WATER SERVICES SHALL BE A 2" TO THE LARGER BUILDINGS AND 1" WATER SERVICE TO THE CLUBHOUSE. FIRE SPRINKLER LINE SIZE SHALL BE 4" MINIMUM.

ABBREVIATIONS

| | |
|---|---|
| SS | SEWER SERVICE |
| WS | WATER SERVICE |
| FS | FIRE SERVICE |
| FH | FIRE HYDRANT |
| W | WATER |
| S | SEWER |
| F.D.C. | FIRE DEPT. CONNECTION |
| F.S.R. | FIRE SPRINKLER ROOM |

PRELIMINARY
NOT FOR CONSTRUCTION OR RECORDING

PRELIMINARY
NOT FOR CONSTRUCTION OR RECORDING

7/7/20
MES#17259

AURA FLAGSTAFF
SITE PLAN
UNDERGROUND UTILITY PLAN

Mogollon Inc
ENGINEERING &SURVEYING
411 W. Santa Fe Avenue
Flagstaff, Arizona 86001
Phone: 928-214-0214

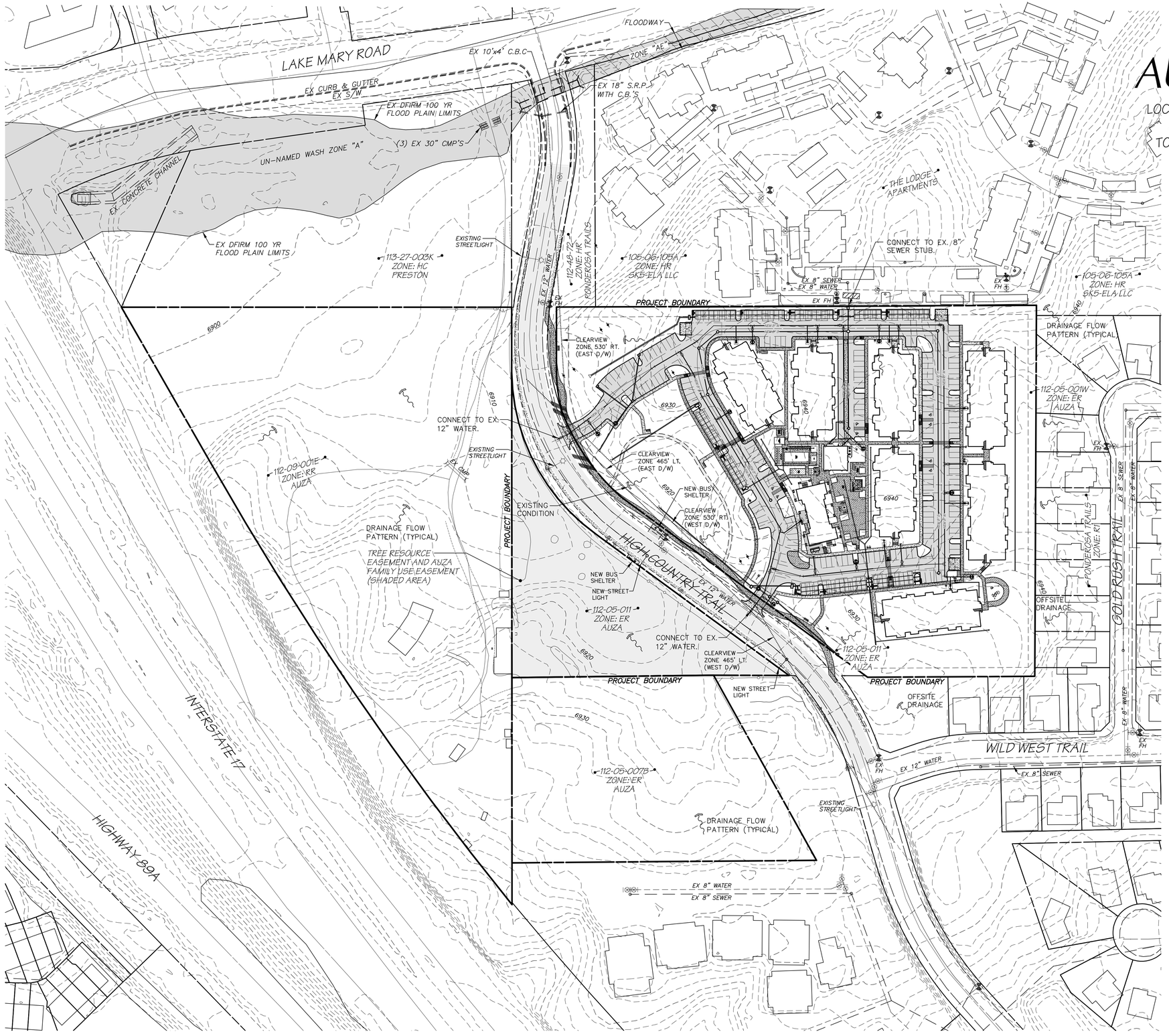
| | |
|---|---|
| DATE: | REVISIONS: 1/4/20 REVISED LAYOUT PER OWNER |
| PROJECT NO. 17254 | PER C.O.F. COMMENT DATED 3/18/20 |
| DESIGNED BY: MME | PER C.O.F. COMMENT DATED 6/29/20 |
| DRAWN BY: MME | |
| CHECKED BY: KVH | VERT SCALE: N/A HOR SCALE: 1"=40' |



COF PROJECT # PZ-17-00218-01

# AREA MAP
## FOR
# AURA FLAGSTAFF

LOCATED IN A PORTION THE SE1/4 OF SECTION 29,
AND A PORTION THE NE1/4 OF SECTION 32,
TOWNSHIP 21 NORTH, RANGE 7 EAST, G&S.R.M.
FLAGSTAFF, COCONINO COUNTY, ARIZONA




*CLEAR VIEW ZONES*

POSTED SPEED LIMIT = 35
DESIGN SPEED = 45 MPH
14.5' FROM MAJOR ROAD TRAVEL WAY

CASE B1 LEFT TURN FROM MINOR
I.S.D. TO RIGHT=1.47(45)(7.5+0.5)=529.2' (530')

CASE B2 RIGHT TURN FROM MINOR
I.S.D. TO LEFT=1.47(45)(7.0)=463.05 (465')

SCALE: 1"=80'
0 40 80 160

**PRELIMINARY**
**NOT FOR CONSTRUCTION OR RECORDING**


Mogollon Inc
ENGINEERING
&SURVEYING
411 W. Santa Fe Avenue
Flagstaff, Arizona 86001
Phone: 928-214-0214

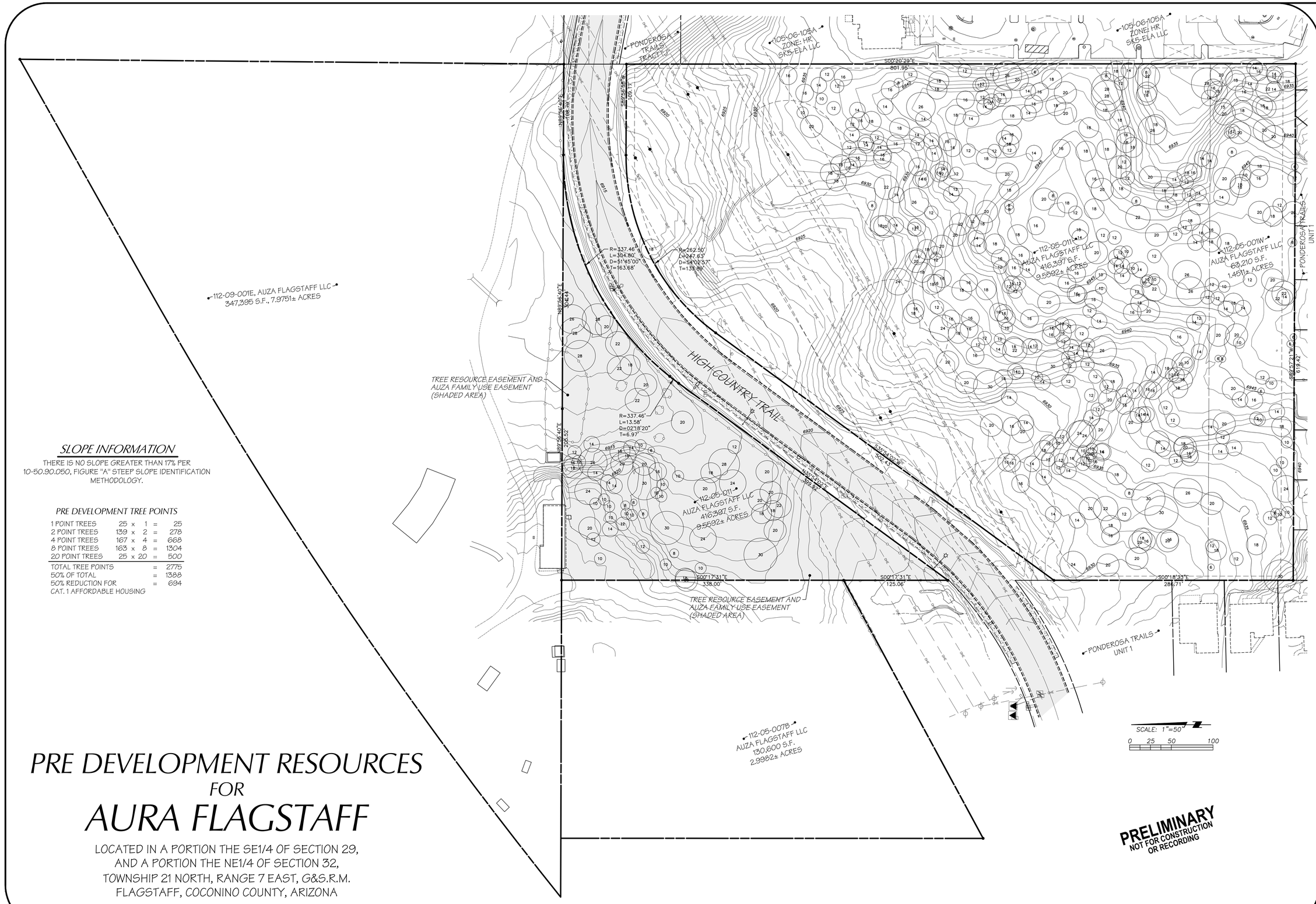

7/7/20
MES# 17259

AURA FLAGSTAFF
SITE PLAN
AREA MAP

PRELIMINARY
NOT FOR CONSTRUCTION OR RECORDING

| | |
|---|---|
| DATE: 7/7/20 | PROJECT NO. 17259 |
| DESIGNED BY: MME | FN: AREA-MAP-2018 |
| DRAWN BY: MME | VERT SCALE: N/A |
| CHECKED BY: KVH | HOR SCALE: 1"=80' |

REVISIONS: 1/9/20 REVISED LAYOUT PER OWNER
PER C.O.F. COMMENT DATED 3/18/20
PER C.O.F. COMMENT DATED 6/23/20




## SLOPE INFORMATION

THERE IS NO SLOPE GREATER THAN 17% PER 10-50.90.050, FIGURE "A" STEEP SLOPE IDENTIFICATION METHODOLOGY.

### PRE DEVELOPMENT TREE POINTS

| | | | | |
|---|---|---|---|---|
| 1 POINT TREES | 25 | x 1 | = | 25 |
| 2 POINT TREES | 139 | x 2 | = | 278 |
| 4 POINT TREES | 167 | x 4 | = | 668 |
| 8 POINT TREES | 163 | x 8 | = | 1304 |
| 20 POINT TREES | 25 | x 20 | = | 500 |
| TOTAL TREE POINTS | | | = | 2775 |
| 50% OF TOTAL | | | = | 1388 |
| 50% REDUCTION FOR CAT. 1 AFFORDABLE HOUSING | | | = | 694 |

# PRE DEVELOPMENT RESOURCES
FOR
# AURA FLAGSTAFF

LOCATED IN A PORTION THE SE1/4 OF SECTION 29,
AND A PORTION THE NE1/4 OF SECTION 32,
TOWNSHIP 21 NORTH, RANGE 7 EAST, G&S.R.M.
FLAGSTAFF, COCONINO COUNTY, ARIZONA

Mogollon Inc
ENGINEERING
&SURVEYING
411 W. Santa Fe Avenue
Flagstaff, Arizona 86001
Phone: 928-214-0214

AURA FLAGSTAFF
SITE PLAN
PRE DEVELOPMENT RESOURCE PLAN

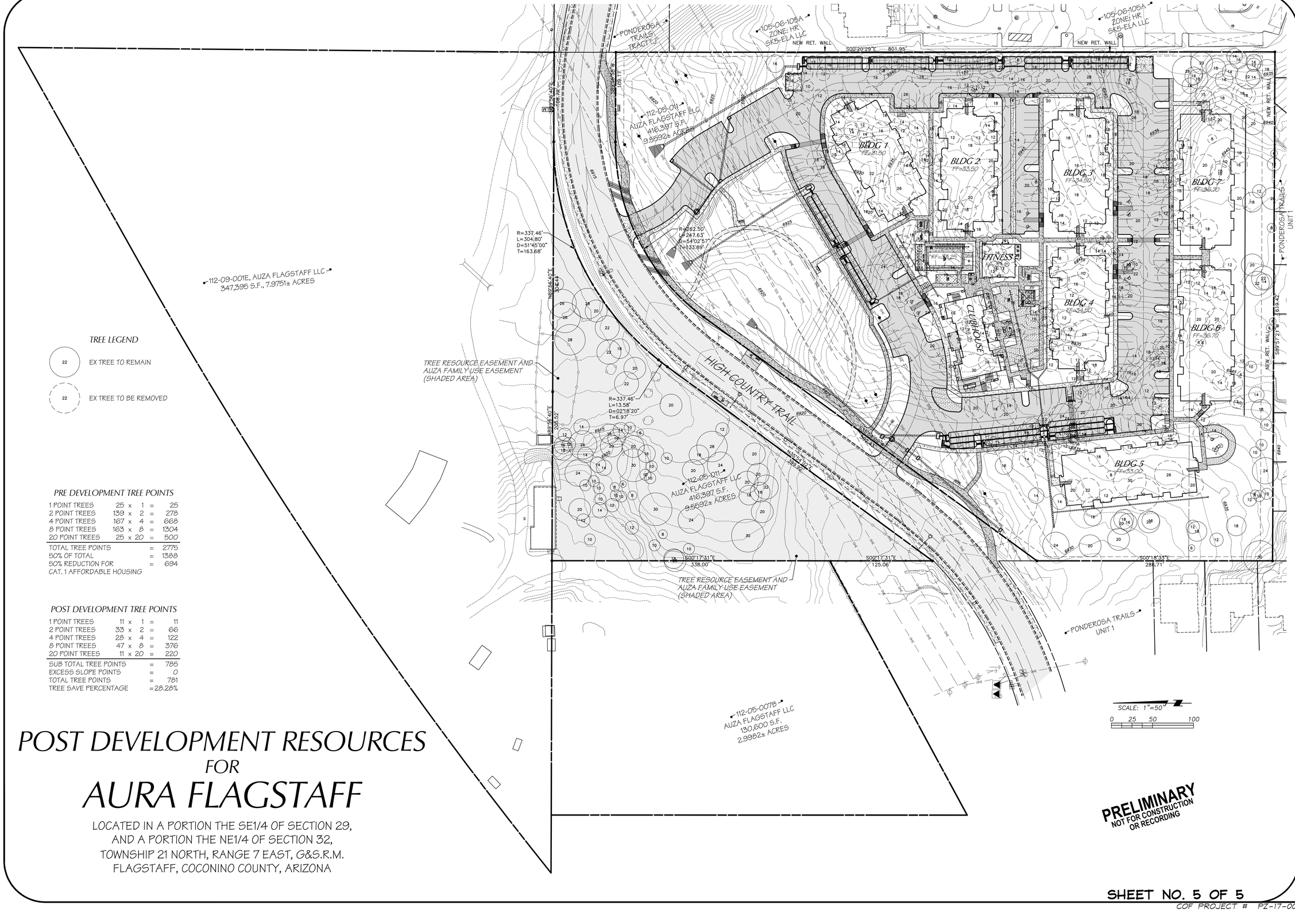
7/7/20
MES#17259

PRELIMINARY
NOT FOR CONSTRUCTION OR RECORDING

| | | |
|---|---|---|
| DATE: 7/7/20 | PROJECT NO. 17259 | REVISIONS: 1/4/20 REVISED LAYOUT PER OWNER |
| DESIGNED BY: MME | FN: SHEET-04 | PER C.O.F. COMMENTS DATED 3/18/20 |
| DRAWN BY: MME | VERT SCALE: N/A | PER C.O.F. COMMENT DATED 6/23/20 |
| CHECKED BY: KVH | HOR SCALE: 1"=50' | |



COF PROJECT # PZ-17-00218-01




*TREE LEGEND*

22 EX TREE TO REMAIN

22 EX TREE TO BE REMOVED

*PRE DEVELOPMENT TREE POINTS*

| | | | | |
|---|---|---|---|---|
| 1 POINT TREES | 25 | x 1 | = | 25 |
| 2 POINT TREES | 139 | x 2 | = | 278 |
| 4 POINT TREES | 167 | x 4 | = | 668 |
| 8 POINT TREES | 163 | x 8 | = | 1304 |
| 20 POINT TREES | 25 | x 20 | = | 500 |
| TOTAL TREE POINTS | | | = | 2775 |
| 50% OF TOTAL | | | = | 1388 |
| 50% REDUCTION FOR CAT. 1 AFFORDABLE HOUSING | | | = | 694 |

*POST DEVELOPMENT TREE POINTS*

| | | | | |
|---|---|---|---|---|
| 1 POINT TREES | 11 | x 1 | = | 11 |
| 2 POINT TREES | 33 | x 2 | = | 66 |
| 4 POINT TREES | 28 | x 4 | = | 122 |
| 8 POINT TREES | 47 | x 8 | = | 376 |
| 20 POINT TREES | 11 | x 20 | = | 220 |
| SUB TOTAL TREE POINTS | | | = | 785 |
| EXCESS SLOPE POINTS | | | = | 0 |
| TOTAL TREE POINTS | | | = | 781 |
| TREE SAVE PERCENTAGE | | | = | 28.28% |

# *POST DEVELOPMENT RESOURCES*
## *FOR*
# *AURA FLAGSTAFF*

LOCATED IN A PORTION THE SE1/4 OF SECTION 29,
AND A PORTION THE NE1/4 OF SECTION 32,
TOWNSHIP 21 NORTH, RANGE 7 EAST, G&S.R.M.
FLAGSTAFF, COCONINO COUNTY, ARIZONA

PRELIMINARY
NOT FOR CONSTRUCTION OR RECORDING

SHEET NO. 5 OF 5

COF PROJECT # PZ-17-00218-01

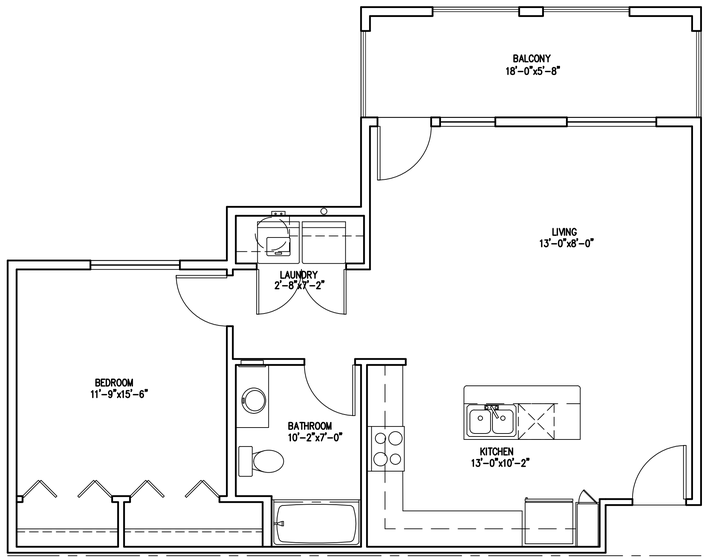
Mogollon Inc ENGINEERING &SURVEYING
411 W. Santa Fe Avenue
Flagstaff, Arizona 86001
Phone: 928-214-0214

*AURA FLAGSTAFF*
*SITE PLAN*
*POST DEVELOPEMENT RESOURCE PLAN*
7/7/20
MES#17259

PRELIMINARY
NOT FOR CONSTRUCTION OR RECORDING

DATE: 7/7/20
DESIGNED BY: MWE
DRAWN BY: MWE
CHECKED BY: KVH
PROJECT NO. 17259
FN: SHEET-05
VERT SCALE: N/A
HOR SCALE: 1"=50'

REVISIONS: 1/4/20 REVISED LAYOUT PER OWNER
PER C.O.F. COMMENTS DATED 3/18/20
PER C.O.F. COMMENT DATED 6/23/20

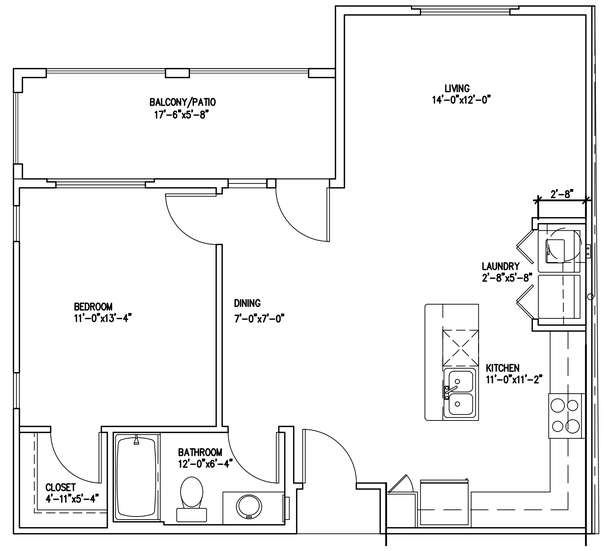



## UNIT PLAN A3

0 1' 2' 4' 8'

SCALE: 1/4" = 1'-0"

793 S.F. LIVABLE
117 S.F. BALCONY
910 S.F. GRAND TOTAL

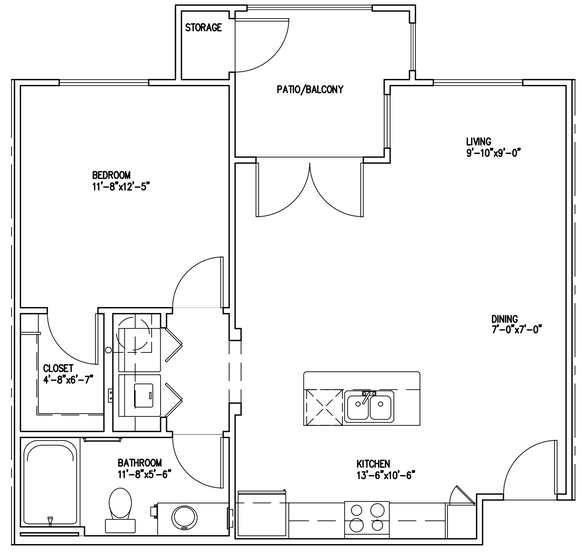



## UNIT PLAN A2

0 1' 2' 4' 8'

SCALE: 1/4" = 1'-0"

788 S.F. LIVABLE
111 S.F. PATIO/BALCONY
899 S.F. GRAND TOTAL

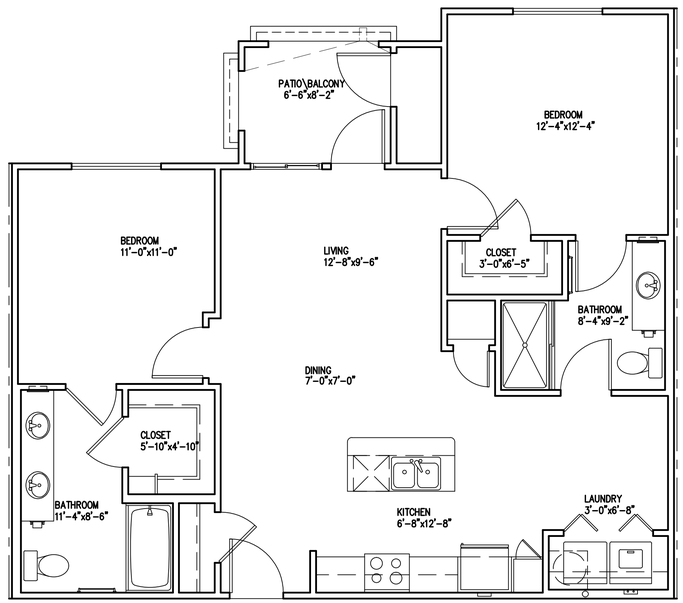



## UNIT PLAN A1

0 1' 2' 4' 8'

SCALE: 1/4" = 1'-0"

770 S.F. LIVABLE
81 S.F. PATIO/BALCONY
12 S.F. STORAGE
863 S.F. GRAND TOTAL

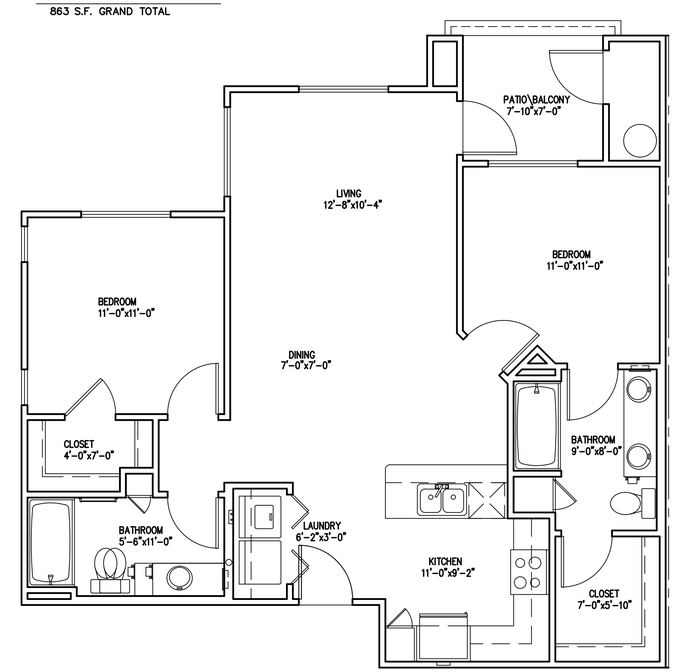



## UNIT PLAN B2

0 1' 2' 4' 8'

SCALE: 1/4" = 1'-0"

1013 S.F. LIVABLE
58 S.F. PATIO/BALCONY
19 S.F. STORAGE
1090 S.F. GRAND TOTAL




## UNIT PLAN B1

0 1' 2' 4' 8'

SCALE: 1/4" = 1'-0"

973 S.F. LIVABLE
55 S.F. PATIO/BALCONY
25 S.F. STORAGE
1053 S.F. GRAND TOTAL

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
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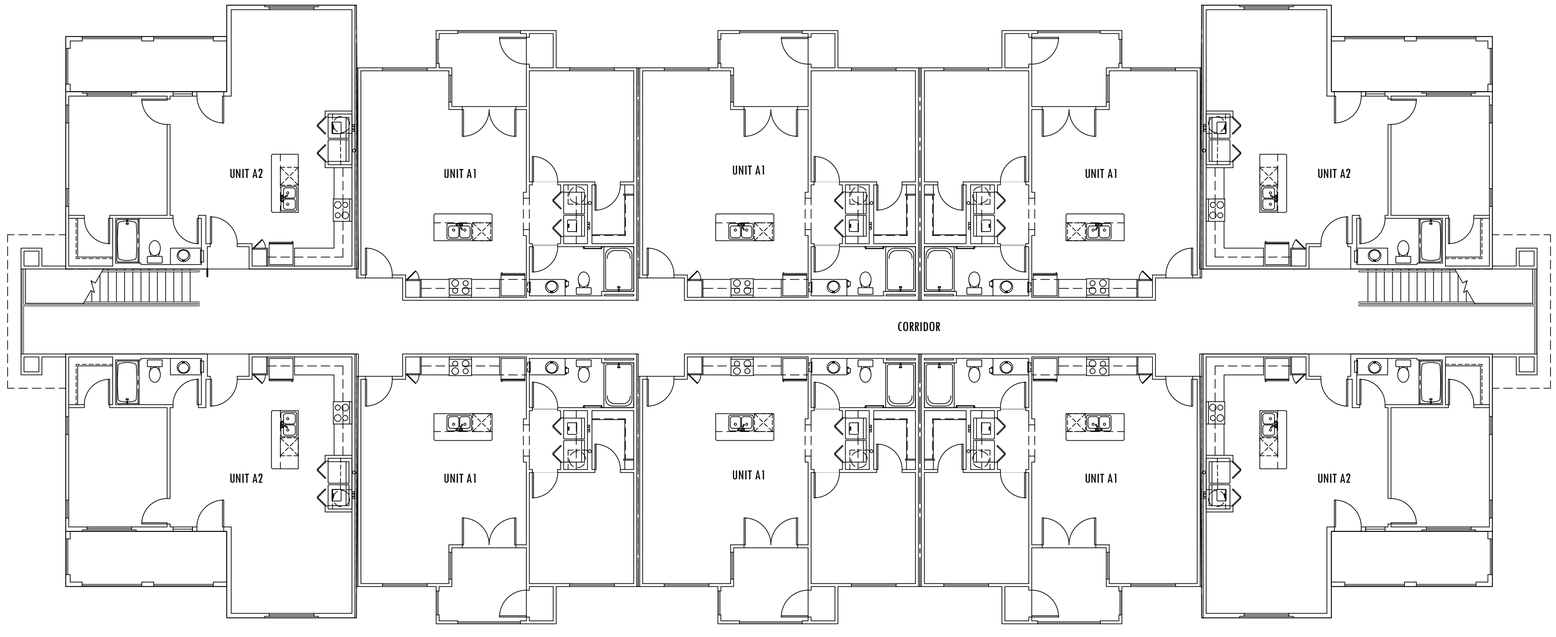
DATE: APRIL 20, 2020 ORB # 17-227

# A2.10

FLOOR PLANS UNITS
A1, A2, A3, B1 & B2

FILE:T:\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A210 Unit Plans.dwg USER:roa DATE:Apr. 20 2020 TIME: 02:12 pm

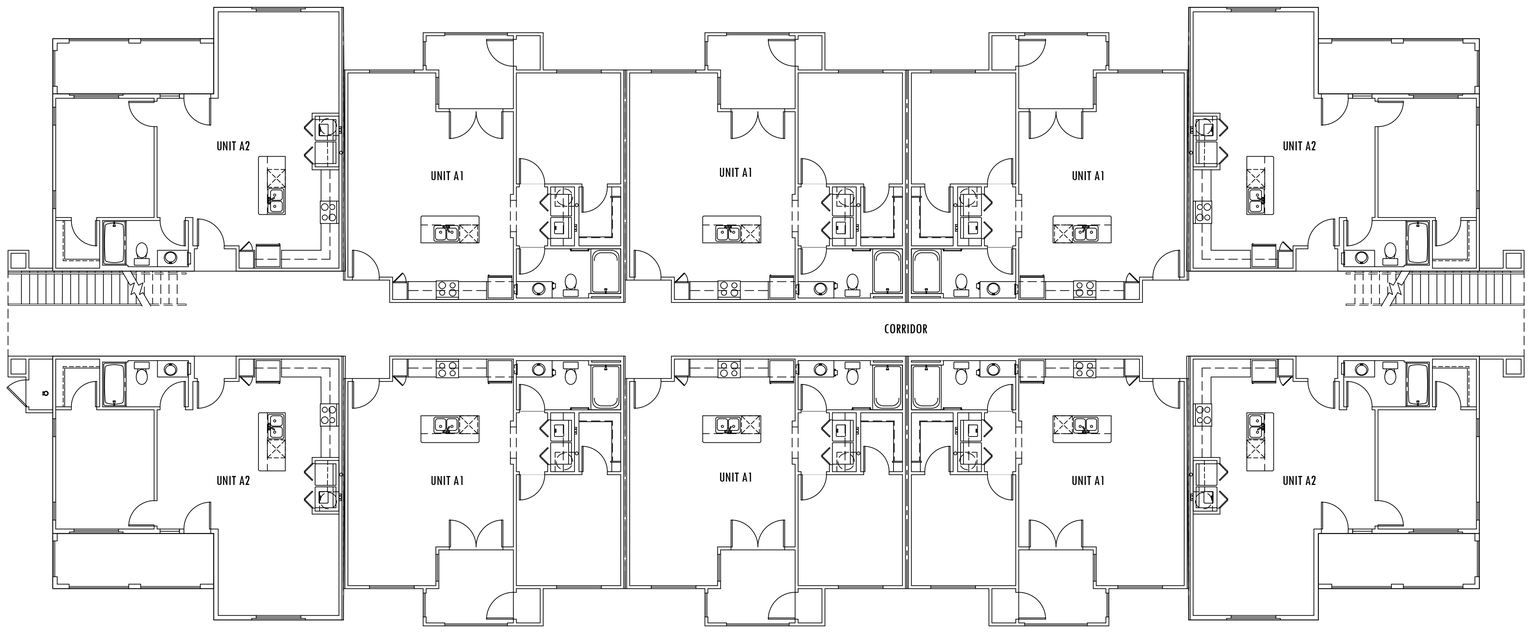



## BUILDING TYPE 1 - LEVEL 2

TOTAL AREA: 10,137 S.F.

0 4' 8' 16'

SCALE: 1/8" = 1'-0"




## BUILDING TYPE 1 - LEVEL 1

TOTAL AREA: 10,154 S.F.

0 4' 8' 16'

SCALE: 1/8" = 1'-0"

# AURA FLAGSTAFF APARTMENTS

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# A3.11

BLDG. TYPE 1 FLOOR PLANS
LEVEL 1 & 2

FILE: T:\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A311 Bldg_1-Level 1 & 2.dwg USER:rob DATE:Apr, 20 2020 TIME: 02:20 pm

# AURA FLAGSTAFF APARTMENTS

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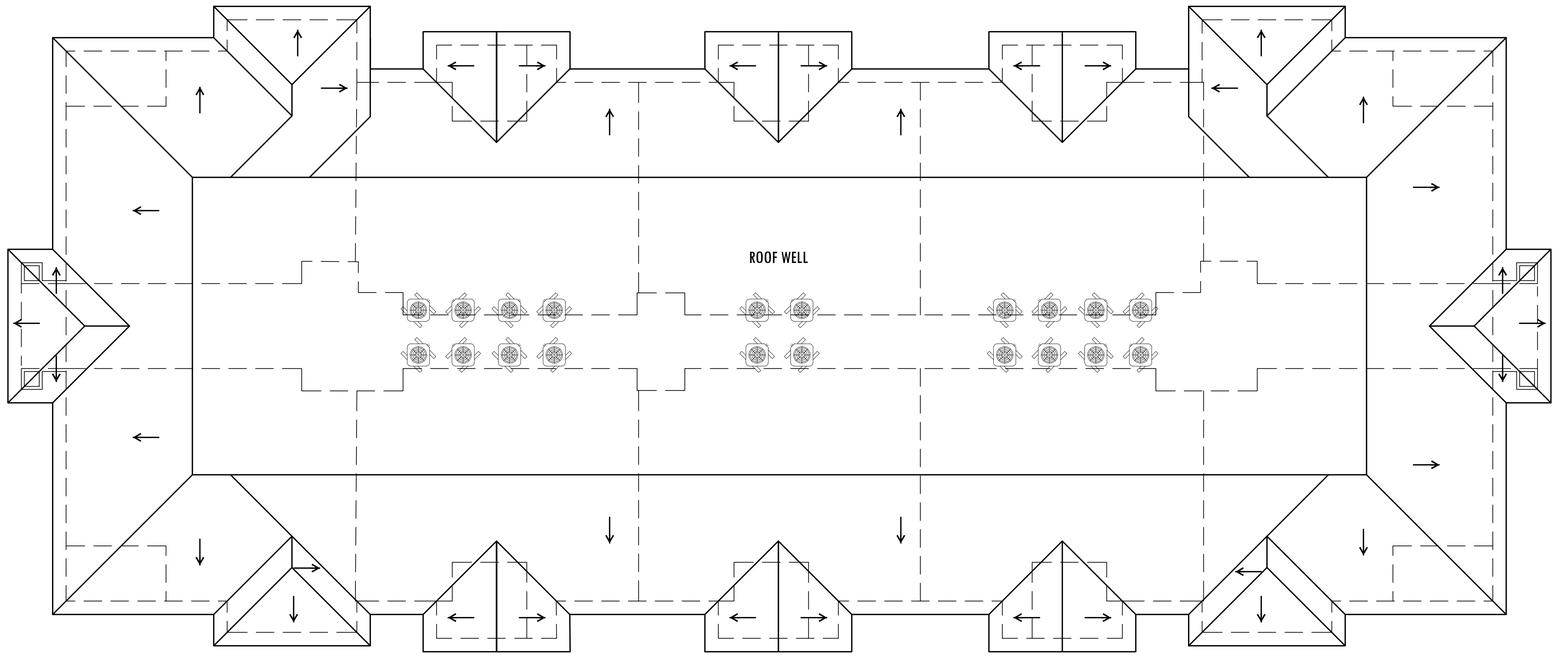



## BUILDING TYPE 1 - ROOF PLAN

0 4' 8' 16'
SCALE: 1/8" = 1'-0"

N

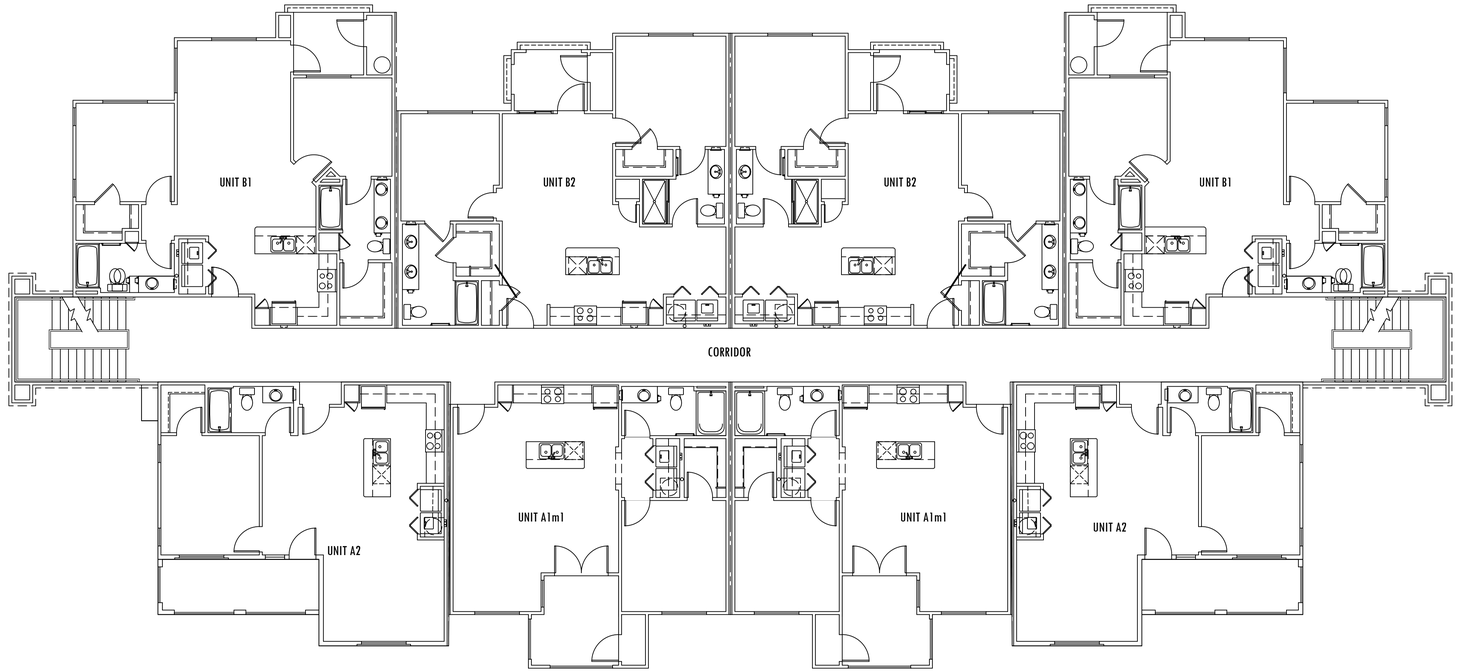
REVISIONS

DATE: APRIL 20, 2020 ORB # 17-227

# A3.12

BLDG. TYPE 1
ROOF PLAN


FILE: \\Orbsvr2016--vm--2\e\data\Orb\ORB Job Files\17-227_IRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A312 Bldg_1-Roof.dwg USER:rob DATE:Apr. 20 2020 TIME: 02:20 pm

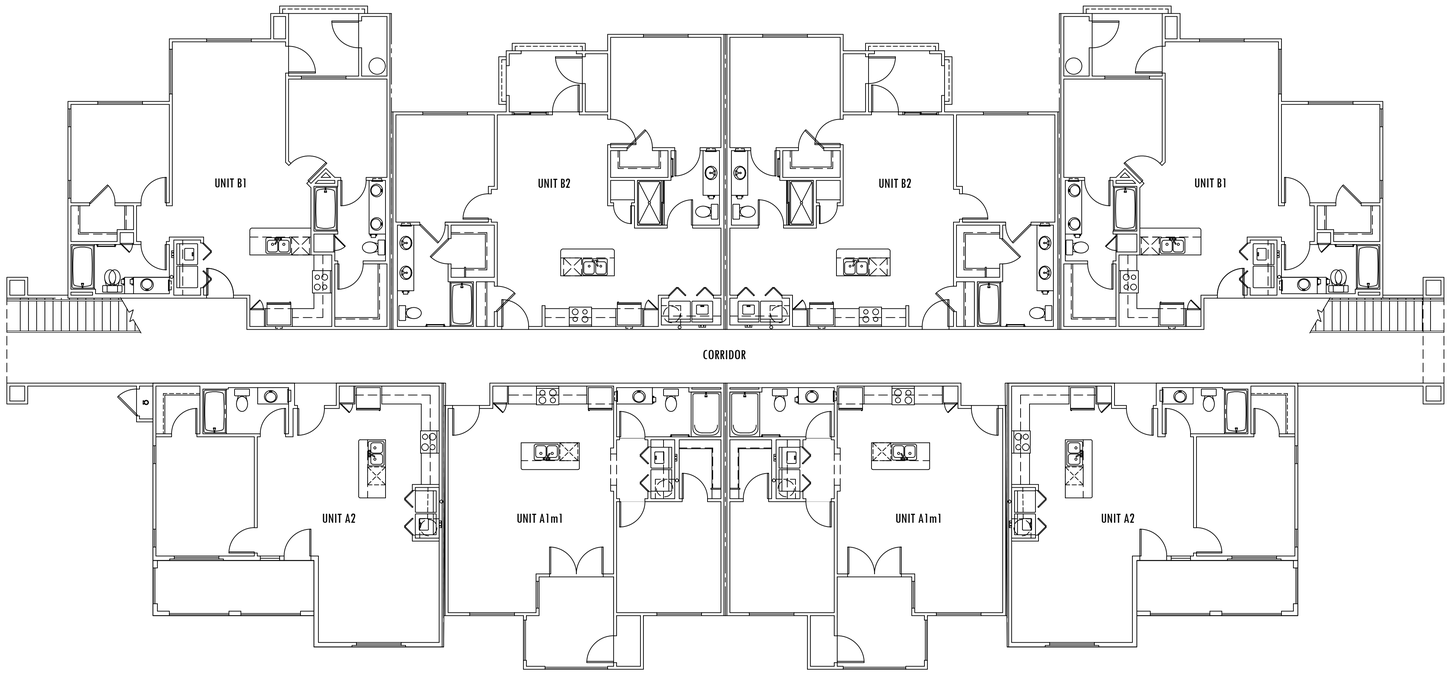



## BUILDING TYPE 2 - LEVEL 2

TOTAL AREA: 9,105 S.F.

0' 4' 8' 16'

SCALE: 1/8" = 1'-0"




## BUILDING TYPE 2 - LEVEL 1

TOTAL AREA: 9,105 S.F.

0' 4' 8' 16'

SCALE: 1/8" = 1'-0"

# AURA FLAGSTAFF APARTMENTS

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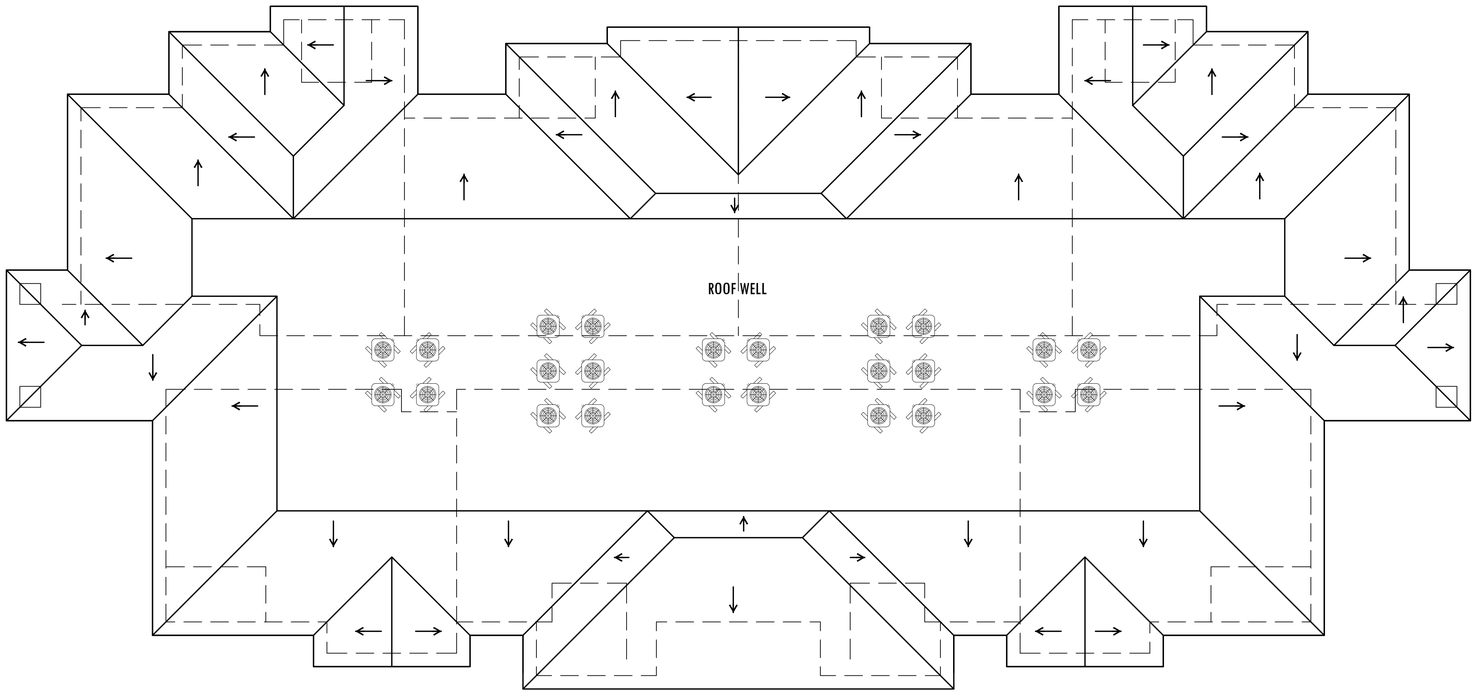
# A3.21

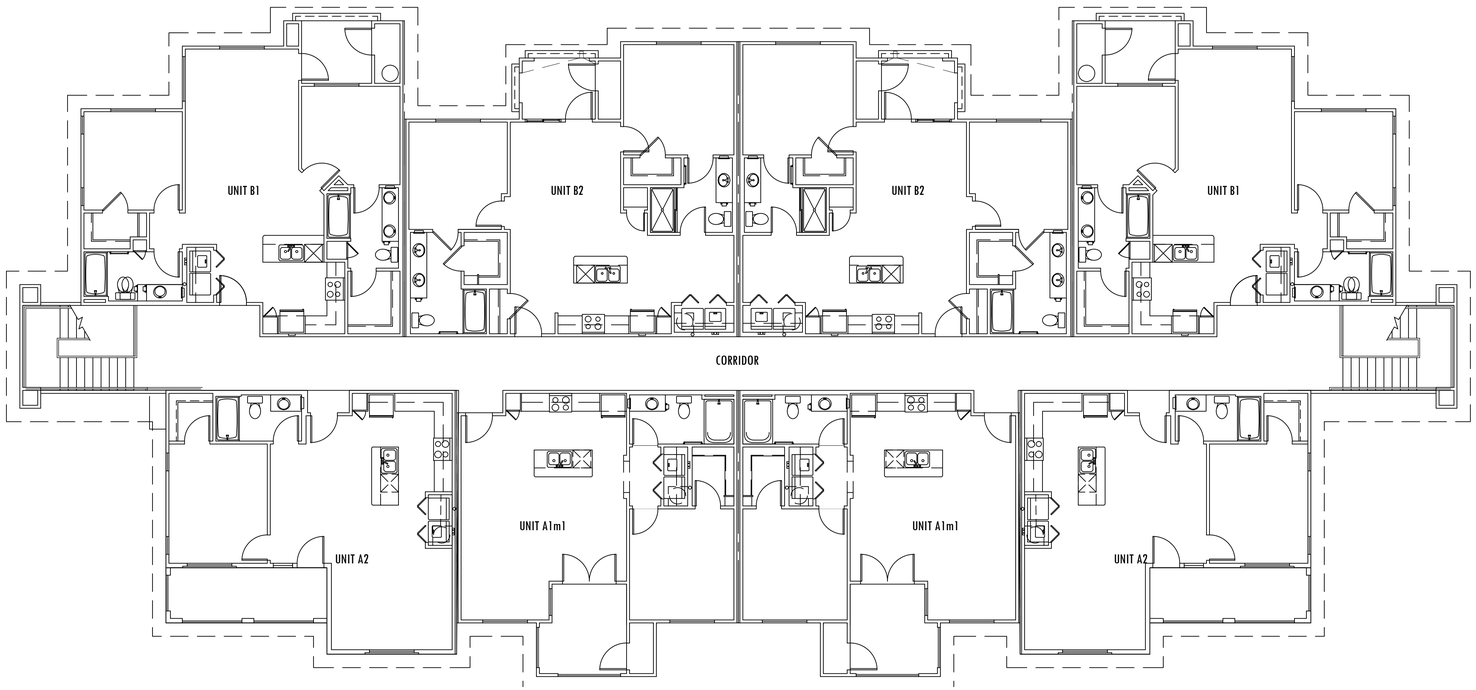
BLDG. TYPE 2 FLOOR PLANS
LEVEL 1 & 2

FILE: \\Orbsv2016--vm--2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A321 Bldg_2-Level 1 & 2.dwg USER:roa DATE:Apr. 20, 2020 TIME: 02:20 pm




## BUILDING TYPE 2 - ROOF PLAN

SCALE: 1/8" = 1'-0"




## BUILDING TYPE 2 - LEVEL 3

TOTAL AREA: 9,105 S.F.

SCALE: 1/8" = 1'-0"

# AURA FLAGSTAFF APARTMENTS

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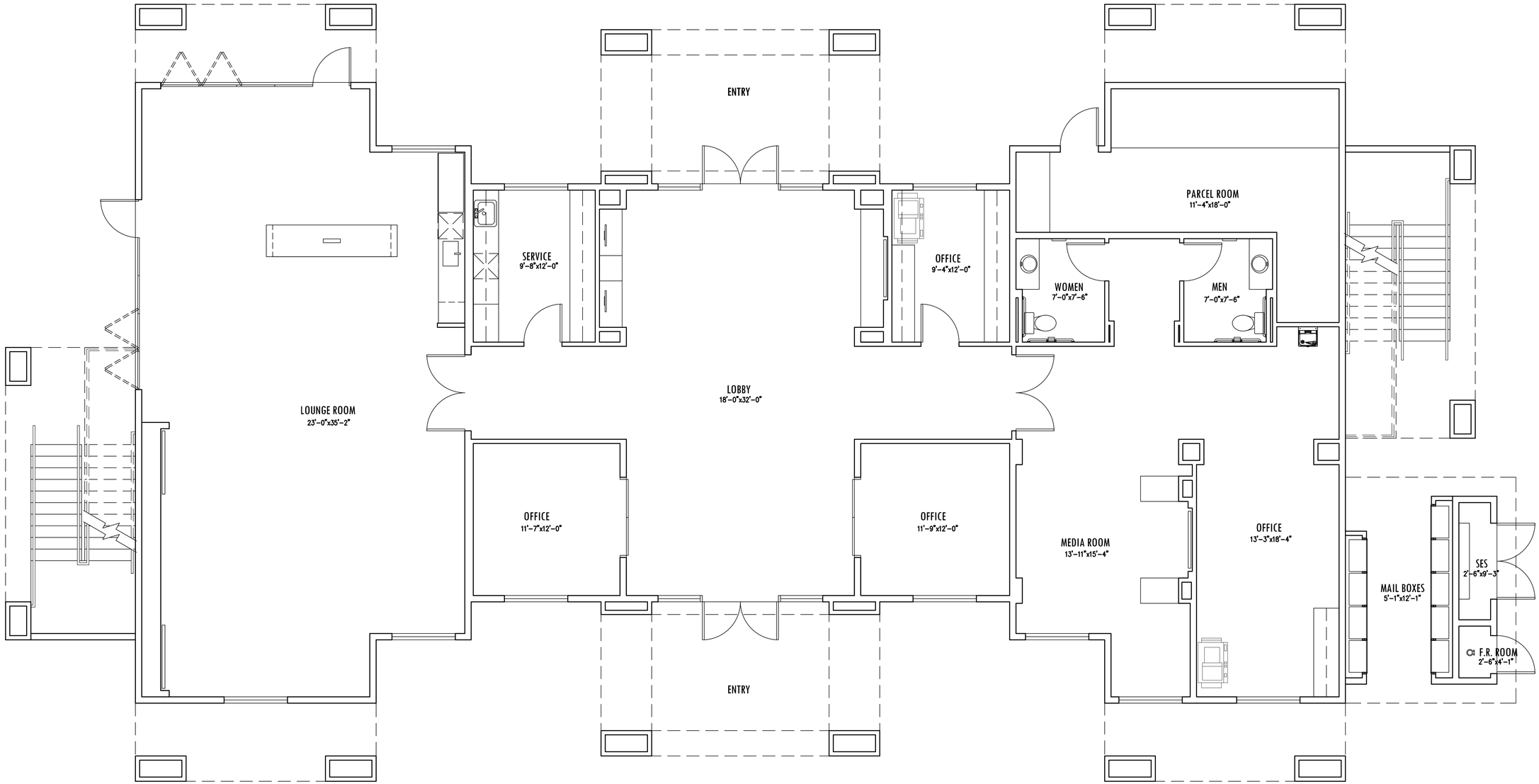
# A3.22

BLDG. TYPE 2 FLOOR PLANS
LEVEL 3 & ROOF

FILE: \\Orbsvr2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A322 Bldg_2-Level 3 & Roof.dwg USER:rop DATE:Apr. 20 2020 TIME: 02:21 pm




## CLUBHOUSE - LEVEL 1

5,485 S.F. GRAND TOTAL

0 | | | 2' 4' 8'

SCALE: 1/4" = 1'-0"

# AURA FLAGSTAFF APARTMENTS

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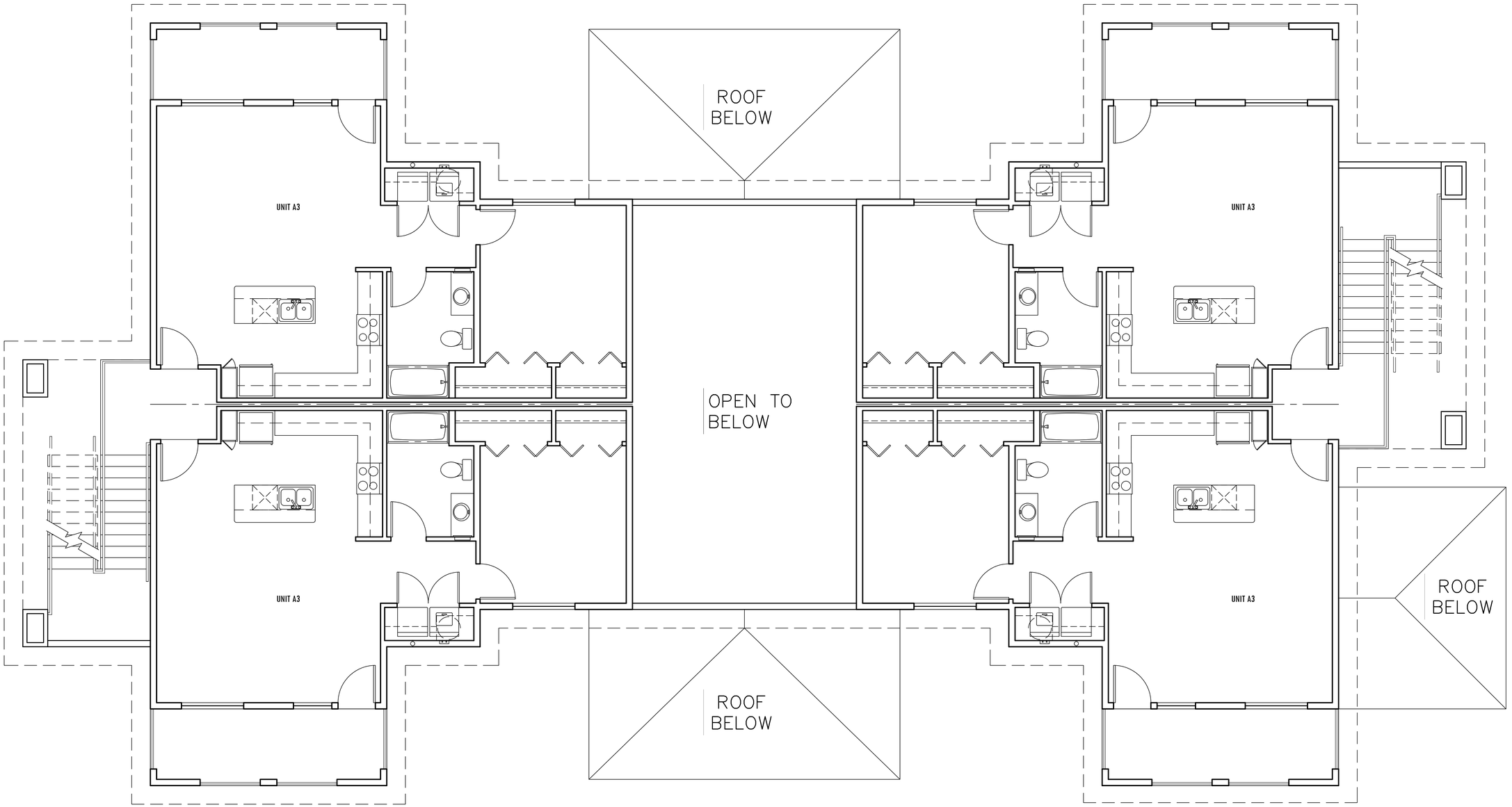
**A3.51**

CLUBHOUSE
FLOOR PLAN


FILE: \\Orbsrv2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A351 Clubhouse.dwg USER: rag DATE: Apr. 20 2020 TIME: 02:21 pm




## CLUBHOUSE - LEVEL 2

SCALE: 1/4" = 1'-0"

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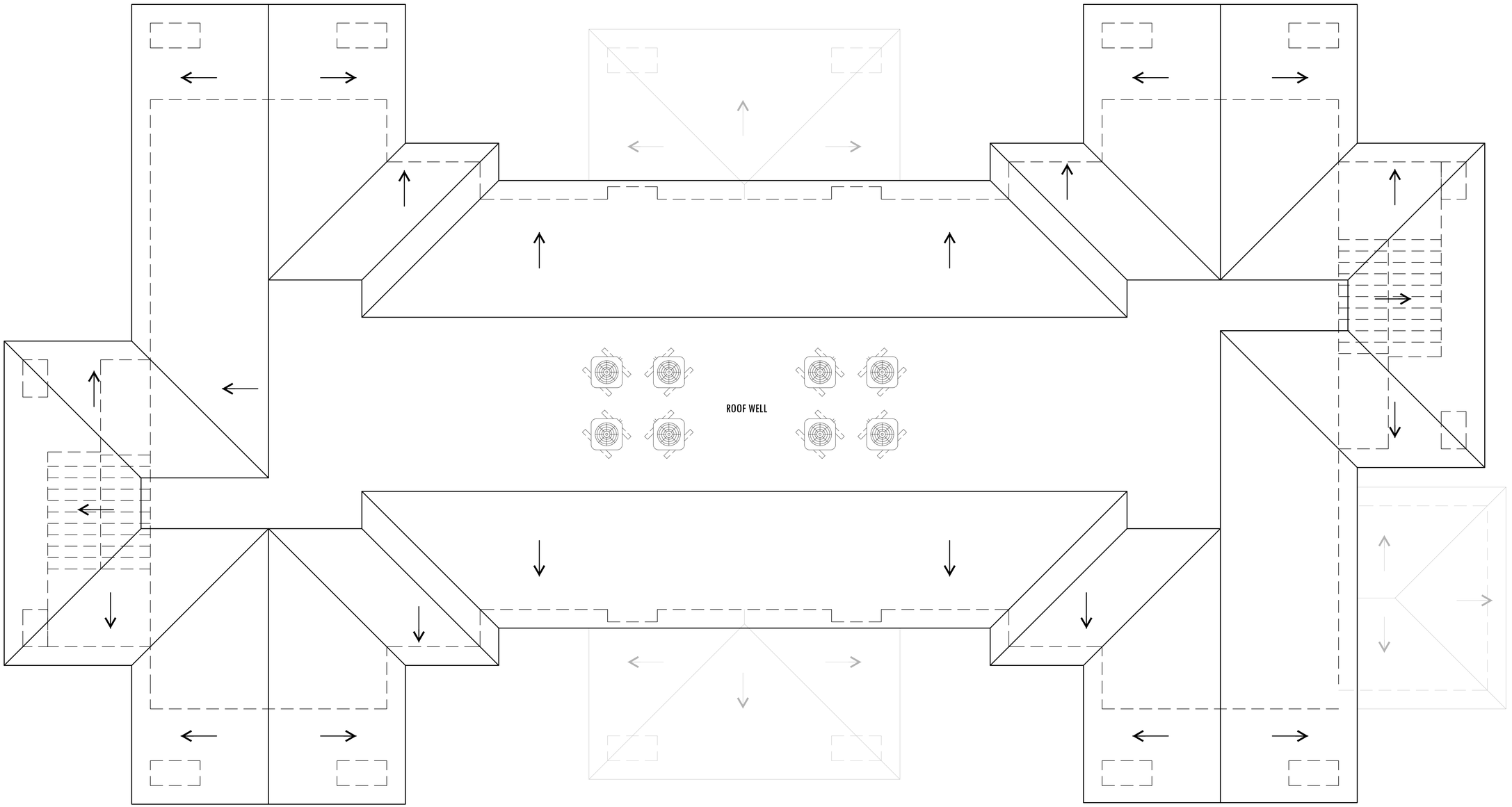
**A3.52**

CLUBHOUSE 2ND LEVEL
FLOOR PLAN

FILE: \\Orbsvr2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A352 Clubhouse_2-Level.dwg USER:roa DATE:Apr. 20 2020 TIME: 02:21 pm




## CLUBHOUSE - ROOF

SCALE: 1/4" = 1'-0"

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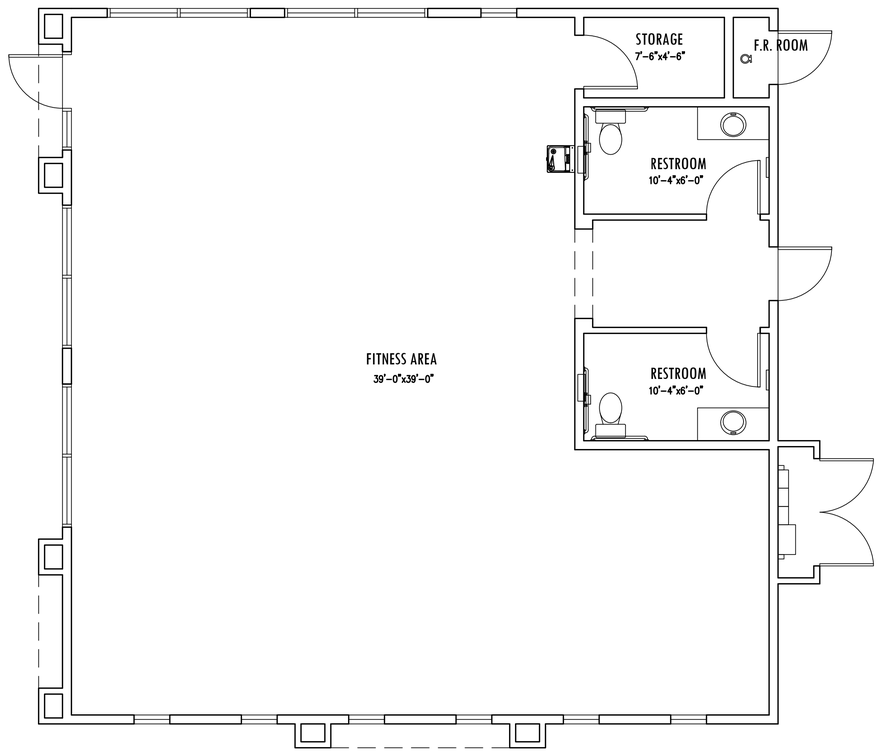
**A3.52**

CLUBHOUSE
ROOF PLAN

FILE: \\Orbsvr2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A353 Clubhouse_Roof.dwg USER:rob DATE:Apr, 20 2020 TIME: 02:21 pm




## FLOOR PLAN

1,665 S.F. GRAND TOTAL

0' 2' 4' 8'

SCALE: 1/4" = 1'-0"

# AURA FLAGSTAFF APARTMENTS

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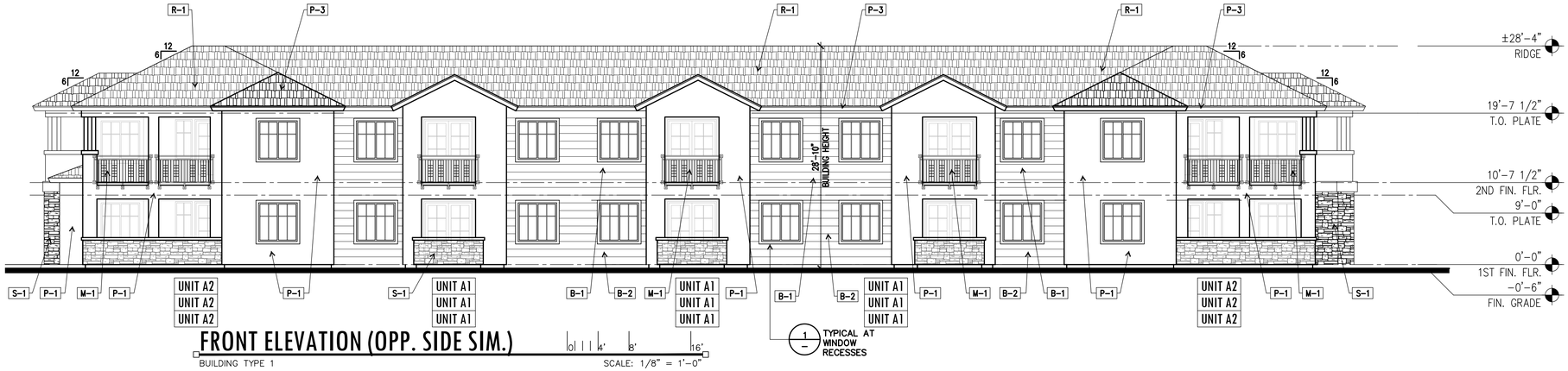
# A3.61

FITNESS
FLOOR PLAN

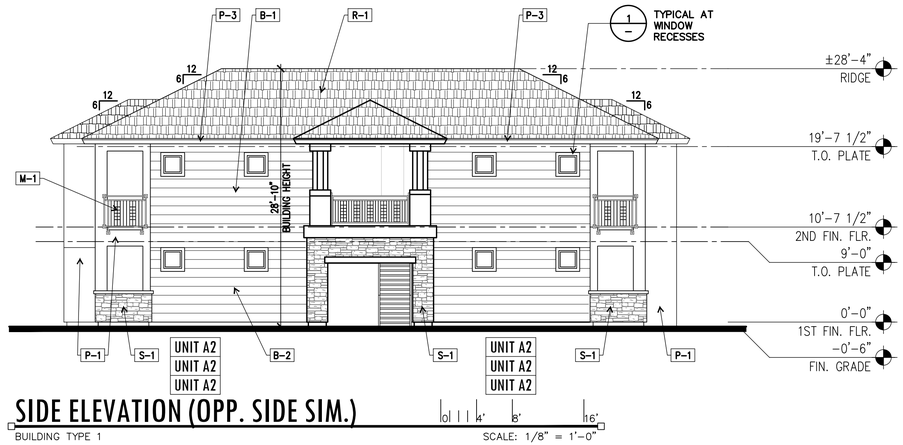
FILE: \\Orbsrv2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A361 Fitness.dwg USER: roa DATE: Apr. 20 2020 TIME: 02:21 pm




# FRONT ELEVATION (OPP. SIDE SIM.)

BUILDING TYPE 1

SCALE: 1/8" = 1'-0"




# SIDE ELEVATION (OPP. SIDE SIM.)

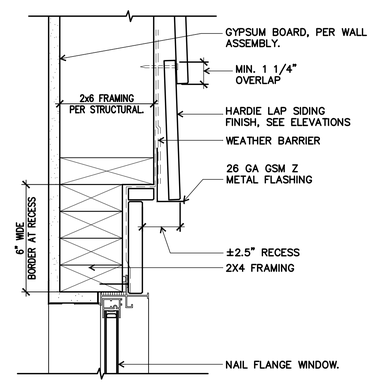
BUILDING TYPE 1

SCALE: 1/8" = 1'-0"

| MATERIAL/COLOR KEY NOTES | |
|---|---|
| B-1 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6215 WOODEN PEG<br>LRV 31 |
| B-2 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6230 CENTER RIDGE<br>LRV 18 |
| M-1 | METAL GUARD RAILING<br>DUNN EDWARDS DE6378 JET<br>LRV 9 |
| M-3 | METAL LOUVER<br>DUNN EDWARDS DE6378 JET<br>LRV 9 |
| P-1 | STUCCO FINISH<br>DUNN EDWARDS DE6214 PIGEON GRAY<br>LRV 43 |
| P-2 | STUCCO FINISH<br>DUNN EDWARDS DE6230 CENTER RIDGE<br>LRV 18 |
| P-3 | FASCIA TRIM<br>DUNN EDWARDS DE6274 FROSTBITE<br>LRV 77 |
| R-1 | GAF ROOFING SHINGLES<br>TIMBERLAND HD WEATHERED WOOD |
| S-1 | CORONADO STONE VENEER<br>20% APPALACHIAN FIELDSTONE<br>– DAKOTA BROWN<br>80% EASTERN MOUNTAIN LEDGE<br>– DAKOTA BROWN |

NOTE:
HARDY PLANK PANEL TO BE INSTALLED AS LAP SIDING

| BLDG. TYPE 1 STUCCO PERCENTAGE | | | |
|---|---|---|---|
| ELEVATION | TOTAL AREA (SF) | STUCCO (SF) | % |
| FRONT | 4,721 | 1,010 | 21.4 |
| REAR | 4,721 | 1,010 | 21.4 |
| SIDE | 1,853 | 343 | 18.5 |
| SIDE | 1,853 | 343 | 18.5 |
| TOTAL | 13,148 | 2,706 | 21 % OF STUCCO |




01 RECESSED WINDOW HEAD @ HARDY BOARD FINISH
SIMILAR AT STUCCO FINISH
SCALE: 3" = 1'-0"

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
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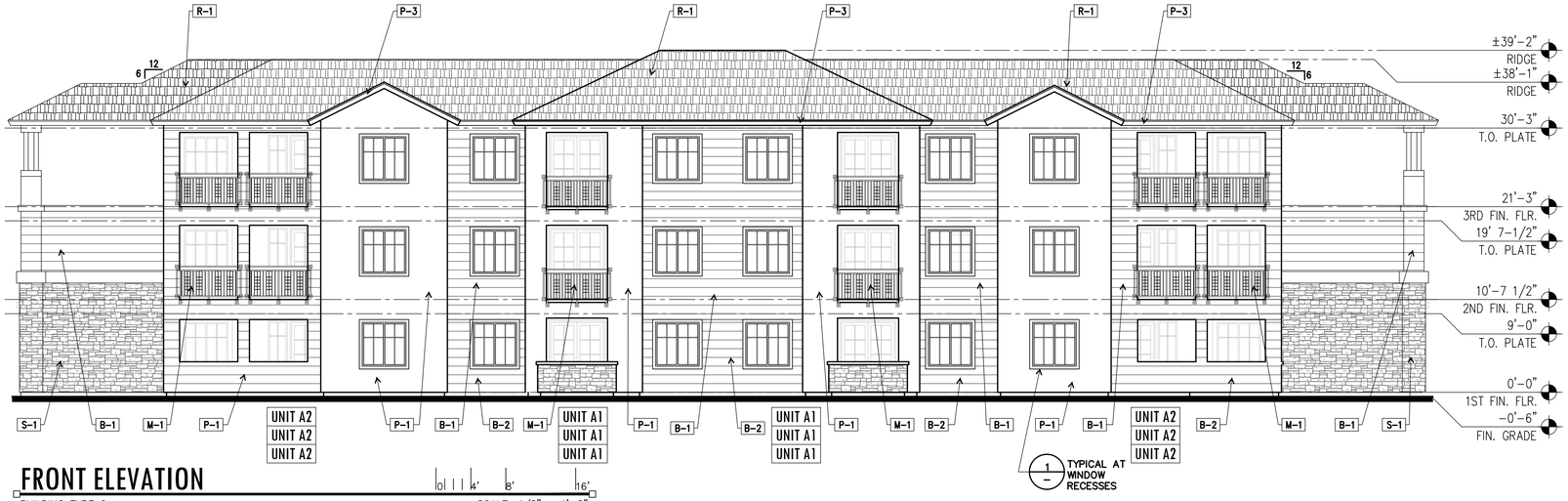
A4.10

BUILDING TYPE 1
ELEVATIONS

FILE:\\Orbsvr2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A410 Bldg Type 1 Elevs.dwg USER:rob DATE:Apr, 20 2020 TIME: 02:21 pm




# FRONT ELEVATION

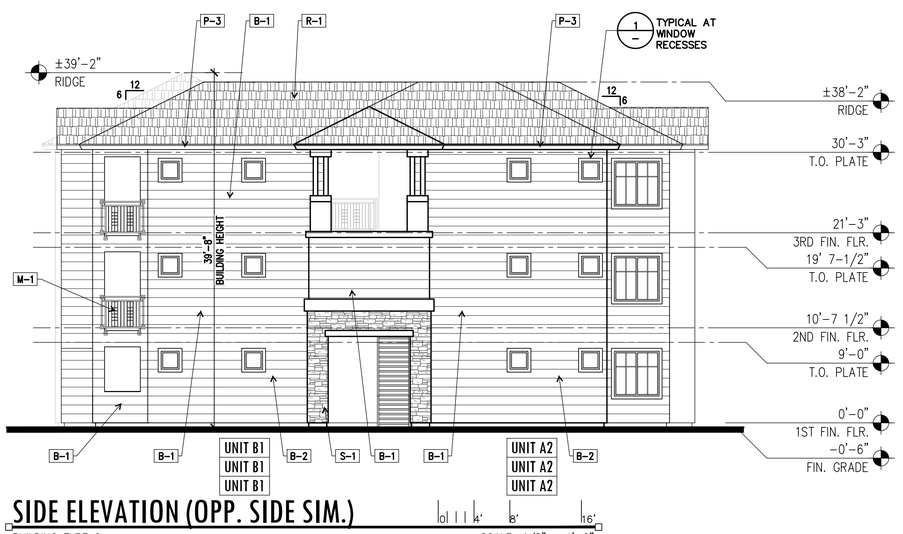
BUILDING TYPE 2

SCALE: 1/8" = 1'-0"

# REAR ELEVATION

BUILDING TYPE 2

SCALE: 1/8" = 1'-0"




# SIDE ELEVATION (OPP. SIDE SIM.)

BUILDING TYPE 2

SCALE: 1/8" = 1'-0"

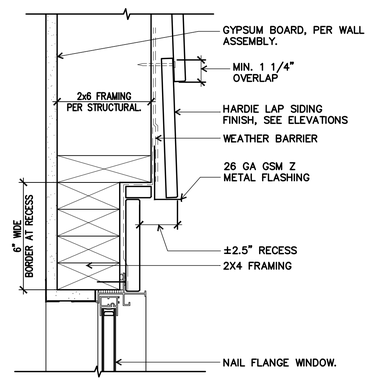
## MATERIAL/COLOR KEY NOTES

| | |
|---|---|
| B-1 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6215 WOODEN PEG<br>LRV 31 |
| B-2 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6230 CENTER RIDGE<br>LRV 18 |
| M-1 | METAL GUARD RAILING<br>DUNN EDWARDS DE6378 JET<br>LRV 9 |
| M-3 | METAL LOUVER<br>DUNN EDWARDS DE6378 JET<br>LRV 9 |
| P-1 | STUCCO FINISH<br>DUNN EDWARDS DE6214 PIGEON GRAY<br>LRV 43 |
| P-2 | STUCCO FINISH<br>DUNN EDWARDS DE6230 CENTER RIDGE<br>LRV 18 |
| P-3 | FASCIA TRIM<br>DUNN EDWARDS DE6274 FROSTBITE<br>LRV 77 |
| R-1 | GAF ROOFING SHINGLES<br>TIMBERLAND HD WEATHERED WOOD |
| S-1 | CORONADO STONE VENEER<br>20% APPALACHIAN FIELDSTONE<br>– DAKOTA BROWN<br>80% EASTERN MOUNTAIN LEDGE<br>– DAKOTA BROWN |

**NOTE:**
HARDY PLANK PANEL TO BE INSTALLED AS LAP SIDING

**BLDG. TYPE 2 STUCCO PERCENTAGE**

| ELEVATION | TOTAL AREA (SF) | STUCCO (SF) | % |
|---|---|---|---|
| FRONT | 5,808 | 1,374 | 23.7 |
| REAR | 5,806 | 1,236 | 21.3 |
| SIDE | 2,703 | 357 | 13.2 |
| SIDE | 2,703 | 357 | 13.2 |
| TOTAL | 17,020 | 3,324 | 20 % OF STUCCO |




01 RECESSED WINDOW HEAD @ HARDY BOARD FINISH
SIMILAR AT STUCCO FINISH

SCALE: 3" = 1'-0"

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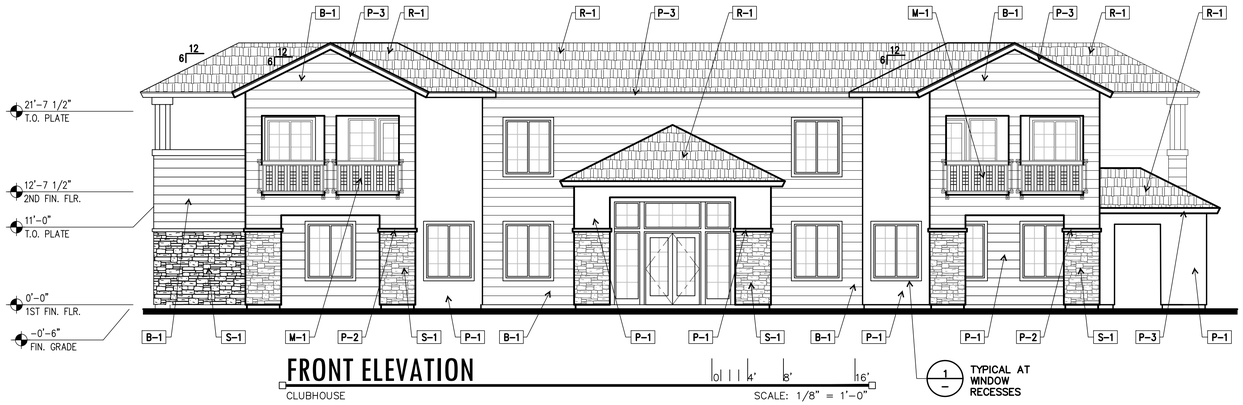
DATE: APRIL 20, 2020 ORB # 17-227

# A4.20

BUILDING TYPE 2 ELEVATIONS

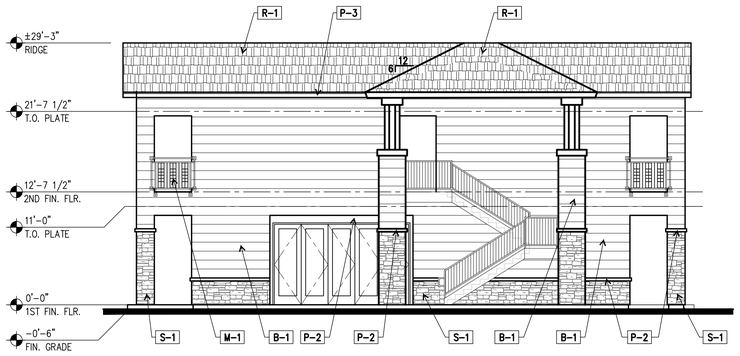
FILE:\\Orbsvr2016--vm--2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A420 Bldg Type 2 Elevs.dwg USER:roa DATE:Apr, 20 2020 TIME: 02:21 pm




## FRONT ELEVATION

CLUBHOUSE

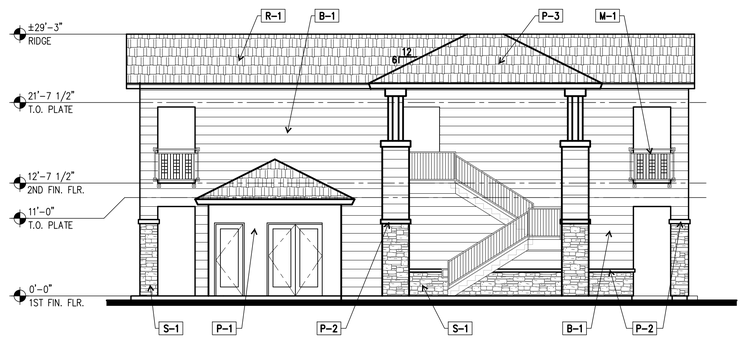
SCALE: 1/8" = 1'-0"




## SIDE ELEVATION

CLUBHOUSE

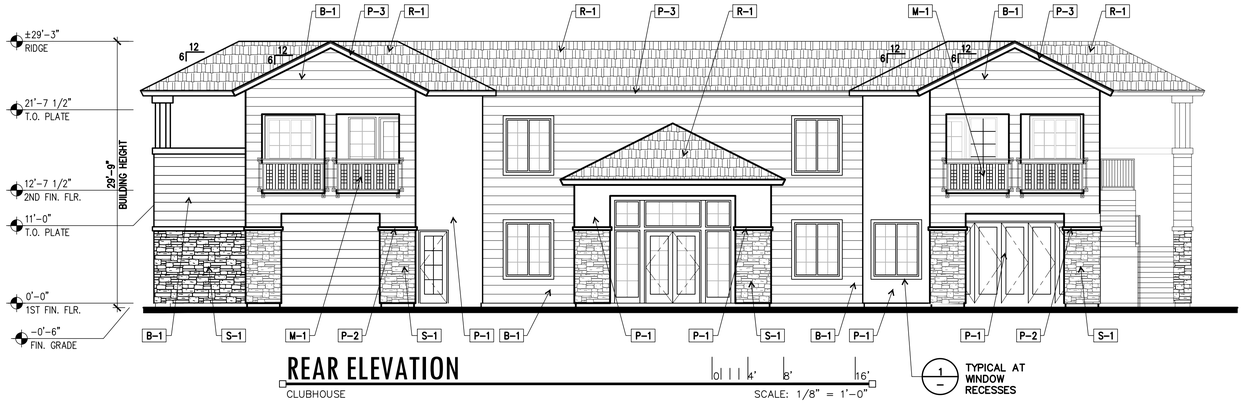
SCALE: 1/8" = 1'-0"




## SIDE ELEVATION

CLUBHOUSE

SCALE: 1/8" = 1'-0"




## REAR ELEVATION

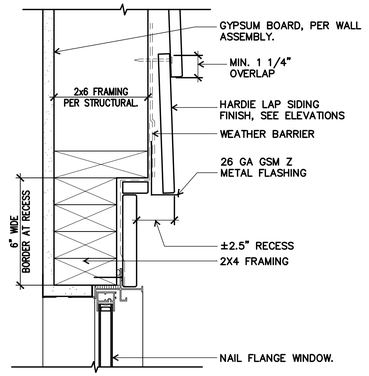
CLUBHOUSE

SCALE: 1/8" = 1'-0"

| MATERIAL/COLOR KEY NOTES | |
|---|---|
| B-1 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6215 WOODEN PEG |
| B-2 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6230 CENTER RIDGE |
| M-1 | METAL GUARD RAILING<br>DUNN EDWARDS DE6378 JET |
| P-1 | STUCCO FINISH<br>DUNN EDWARDS DE6214 PIGEON GRAY |
| P-2 | STUCCO FINISH<br>DUNN EDWARDS DE6230 CENTER RIDGE |
| P-3 | FASCIA TRIM<br>DUNN EDWARDS DE6274 FROSTBITE |
| R-1 | GAF ROOFING SHINGLES<br>TIMBERLAND HD WEATHERED WOOD |
| S-1 | CORONADO STONE VENEER<br>20% APPALACHIAN FIELDSTONE<br>– DAKOTA BROWN<br>80% EASTERN MOUNTAIN LEDGE<br>– DAKOTA BROWN |

NOTE:
HARDY PLANK PANEL TO BE INSTALLED AS LAP SIDING

| CLUB HOUSE STUCCO PERCENTAGE | | | |
|---|---|---|---|
| ELEVATION | TOTAL AREA (SF) | STUCCO (SF) | % |
| FRONT | 3,328 | 476 | 14.3 |
| REAR | 3,410 | 380 | 11.1 |
| SIDE | 1,686 | 93 | 5.5 |
| SIDE | 1,686 | 41 | 2.4 |
| TOTAL | 8,424 | 897 | 11 % OF STUCCO |




01 RECESSED WINDOW HEAD @ HARDY BOARD FINISH
SIMILAR AT STUCCO FINISH

SCALE: 3" = 1'-0"

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
FLAGSTAFF, ARIZONA 86001


The Office of Rich Barber Architecture, LLC
ORB
WorldHQ@ORBArch.com
REGISTERED ARCHITECT
CERTIFICATE NO.
15213
Rich Barber
04/20/20
ARIZONA, U.S.A.
Expires 3/31/2023

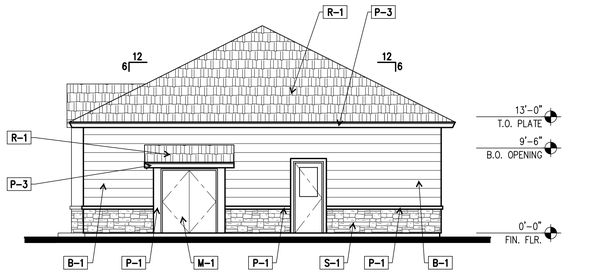

REVISIONS

DATE: APRIL 20, 2020 ORB # 17-227

# A4.50

CLUBHOUSE ELEVATIONS

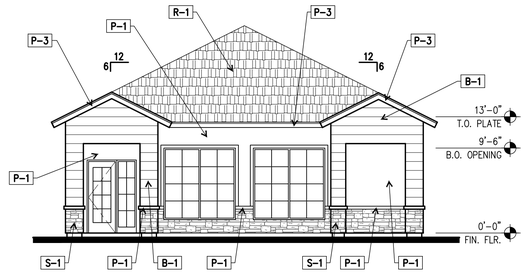

FILE: \\Orbsvr2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A450 Clubhouse Elevs.dwg USER:roo DATE:Apr. 20 2020 TIME: 02:21 pm




## REAR ELEVATION

FITNESS

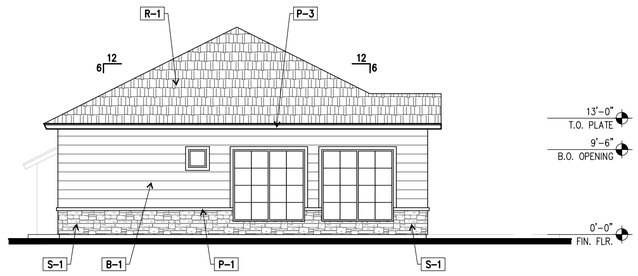
SCALE: 1/8" = 1'-0"




## FRONT ELEVATION

FITNESS

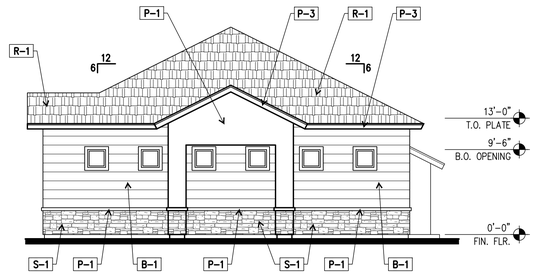
SCALE: 1/8" = 1'-0"




## SIDE ELEVATION

FITNESS

SCALE: 1/8" = 1'-0"




## SIDE ELEVATION

FITNESS

SCALE: 1/8" = 1'-0"

| MATERIAL/COLOR KEY NOTES | |
|---|---|
| B-1 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6215 WOODEN PEG |
| B-2 | HARDIE PLANK PANEL FINISH<br>DUNN EDWARDS DE6230 CENTER RIDGE |
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| R-1 | GAF ROOFING SHINGLES<br>TIMBERLAND HD WEATHERED WOOD |
| S-1 | CORONADO STONE VENEER<br>20% APPALACHIAN FIELDSTONE<br>– DAKOTA BROWN<br>80% EASTERN MOUNTAIN LEDGE<br>– DAKOTA BROWN |

NOTE:
HARDY PLANK PANEL TO BE INSTALLED AS LAP SIDING

| FITNESS STUCCO PERCENTAGE | | | |
|---|---|---|---|
| ELEVATION | TOTAL AREA (SF) | STUCCO (SF) | % |
| FRONT | 729 | 137 | 18.8 |
| REAR | 766 | 41 | 5.4 |
| SIDE | 851 | 140 | 16.5 |
| SIDE | 786 | 46 | 5.9 |
| TOTAL | 2,281 | 224 | 10 % OF STUCCO |

# AURA FLAGSTAFF APARTMENTS

151 W HIGH COUNTRY TRAIL
FLAGSTAFF, ARIZONA 86001


Office of Rich Barber Architecture, LLC
ORB
WorldHQ@ORBArch.com


REGISTERED ARCHITECT
CERTIFICATE NO.
15213
Rich Barber
04/20/20
Date Signed
ARIZONA, U.S.A.
Expires 3/31/2023

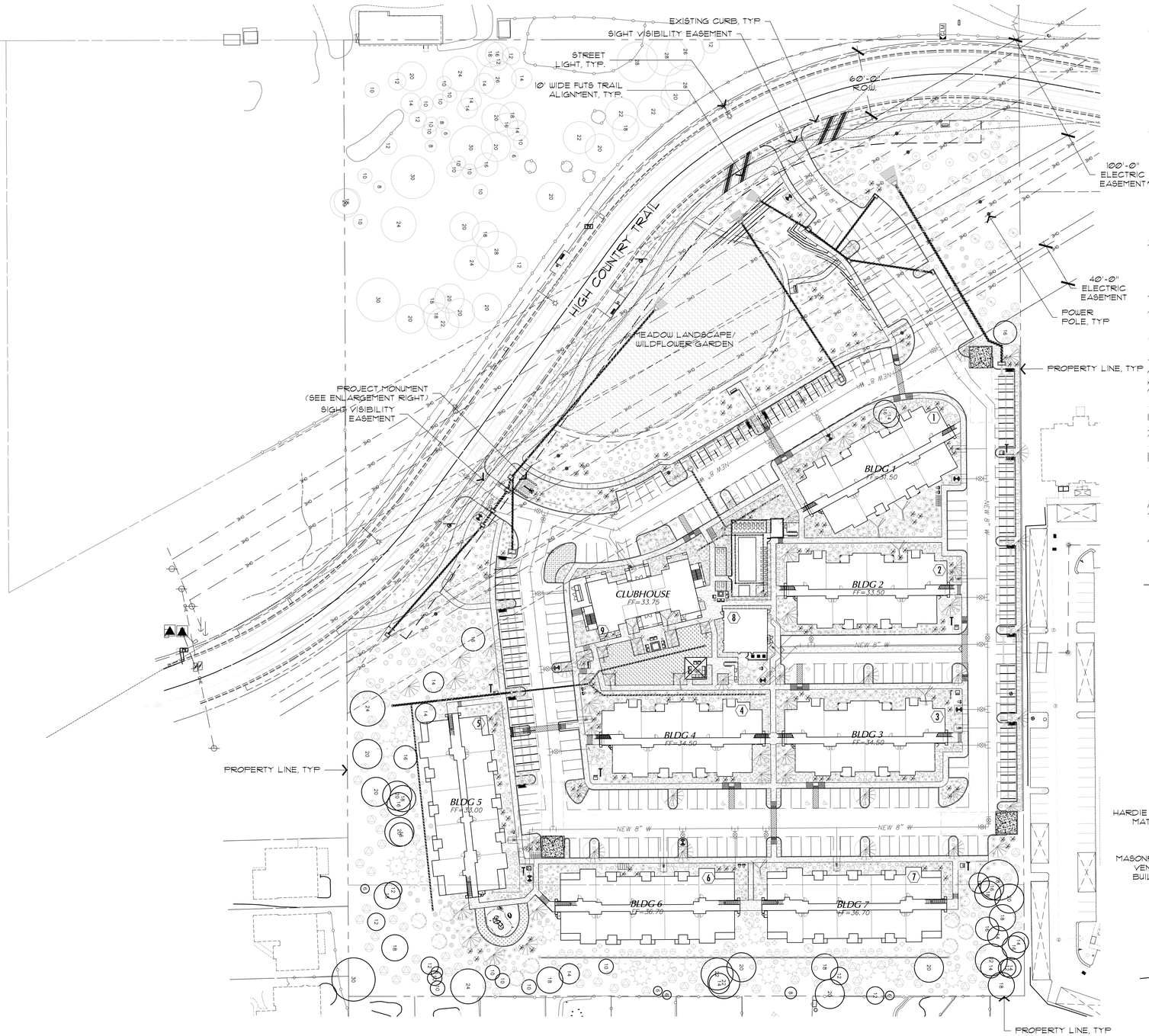
REVISIONS

DATE: APRIL 20, 2020 ORB # 17-227

# A4.60

FITNESS BUILDING ELEVATIONS


FILE: \\Orbsvr2016-vm-2\e\data\Orb\ORB Job Files\17-227_TRG_Flagstaff Apartments\CAD Files\Preliminary\17227 A460 Fitness Elevs.dwg USER:roa DATE:Apr. 20 2020 TIME: 02:21 pm

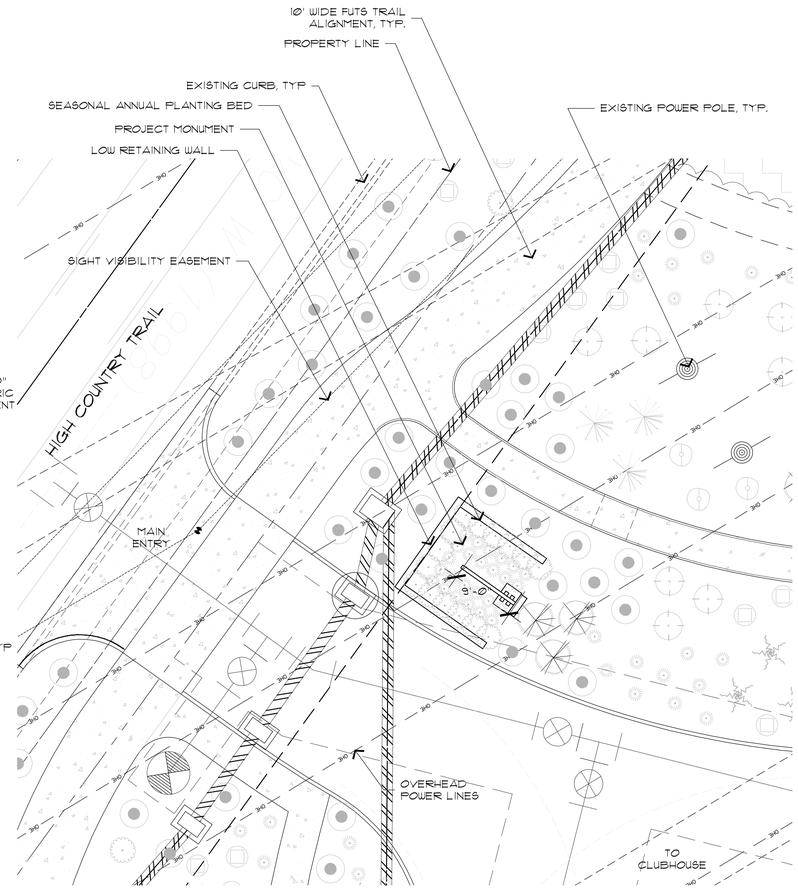



## PRELIMINARY SIGNAGE PLAN

SCALE: 1"=50'-0"

0 25' 50' 100' NORTH

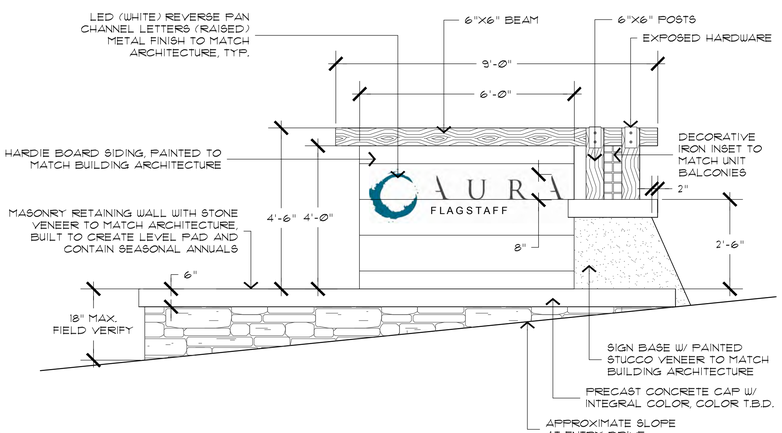
Call at least two full working days before you begin excavation. ARIZONA 811 Dial 8-1-1 or 1-800-STAKE-IT (782-5348) In Maricopa County: (602)263-1100




## PROJECT MONUMENT ENLARGEMENT PLAN

SCALE: 1"=10'-0"

0 5' 10' 20' NORTH




NOTE: FINAL SIGNAGE DESIGN TO BE SUBMITTED AND APPROVED UNDER SEPARATE PERMIT AND REVIEW

## PRELIMINARY ELEVATION

SCALE: 1/2"=1'-0"

0 6" 1' 2' 4'

COLLABORATIVE DESIGN STUDIO

COLLABORATIVE V
DESIGN STUDIO INC.
7116 EAST 1ST AVE.,
SUITE 103
SCOTTSDALE, ARIZONA
85251
OFFICE: 480-347-0590
FAX: 480-656-6012

Registered Landscape Architect
CERTIFICATE NO.
46497
MATTHEW PAUL DRASER
ARIZONA, U.S.A.
4.20.2020

EXPIRES 06 / 30 / 2022

# LANDSCAPE IMPROVEMENTS
# AURA FLAGSTAFF

151 W. High Country Trail Flagstaff, Arizona 86001

PRELIMINARY SIGNAGE PLAN

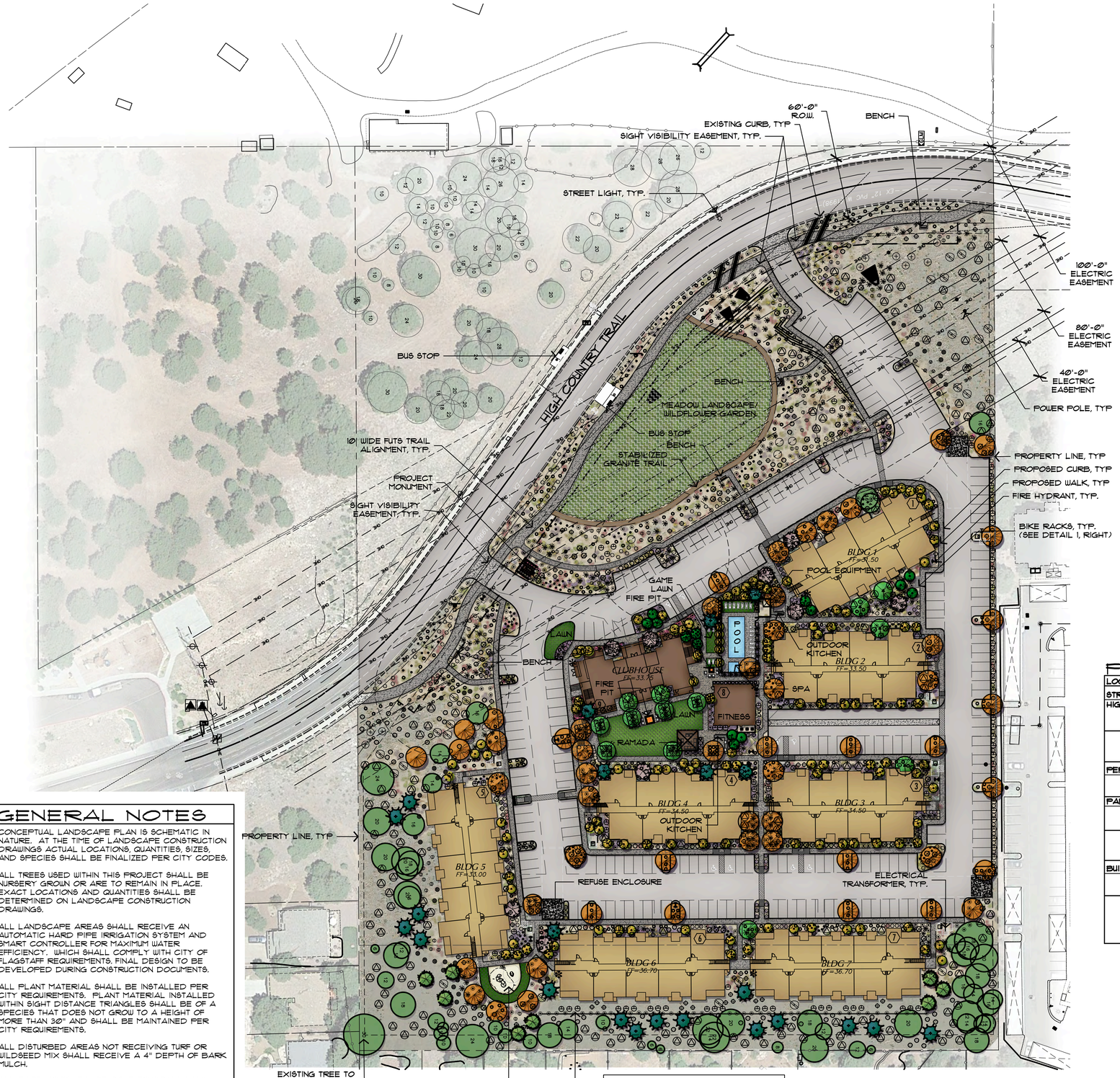
PRELIMINARY
NOT FOR
CONSTRUCTION

| | |
|---|---|
| DESIGNED BY: | PV/SH |
| DRAWN BY: | SH |
| CHECKED BY: | PV / MD |
| DATE: | AUGUST 21, 2018 |
| REVISIONS: | CITY COMMENTS JANUARY 24, 2019 |
| | CITY COMMENTS FEBRUARY 19, 2019 |
| | CITY COMMENTS JANUARY 7, 2020 |
| | CITY COMMENTS APRIL 20, 2020 |

AURA FLAGSTAFF
SITE PLAN SUBMITTAL

SIGN-1

1 of 1




NOTE: THERE IS NO OASIS ZONE (Ø SF) PROPOSED ON THIS PROJECT

## LANDSCAPE PLAN

SCALE: 1"=50'-0"

0 25' 50' 100' NORTH

Call at least two full working days before you begin excavation. ARIZONA 811 Dial 8-1-1 or 1-800-STAKE-IT (782-5348) In Maricopa County: (602)263-1100

## GENERAL NOTES

1. CONCEPTUAL LANDSCAPE PLAN IS SCHEMATIC IN NATURE. AT THE TIME OF LANDSCAPE CONSTRUCTION DRAWINGS ACTUAL LOCATIONS, QUANTITIES, SIZES, AND SPECIES SHALL BE FINALIZED PER CITY CODES.
2. ALL TREES USED WITHIN THIS PROJECT SHALL BE NURSERY GROWN OR ARE TO REMAIN IN PLACE. EXACT LOCATIONS AND QUANTITIES SHALL BE DETERMINED ON LANDSCAPE CONSTRUCTION DRAWINGS.
3. ALL LANDSCAPE AREAS SHALL RECEIVE AN AUTOMATIC HARD PIPE IRRIGATION SYSTEM AND SMART CONTROLLER FOR MAXIMUM WATER EFFICIENCY, WHICH SHALL COMPLY WITH CITY OF FLAGSTAFF REQUIREMENTS. FINAL DESIGN TO BE DEVELOPED DURING CONSTRUCTION DOCUMENTS.
4. ALL PLANT MATERIAL SHALL BE INSTALLED PER CITY REQUIREMENTS. PLANT MATERIAL INSTALLED WITHIN SIGHT DISTANCE TRIANGLES SHALL BE OF A SPECIES THAT DOES NOT GROW TO A HEIGHT OF MORE THAN 30" AND SHALL BE MAINTAINED PER CITY REQUIREMENTS.
5. ALL DISTURBED AREAS NOT RECEIVING TURF OR WILDSEED MIX SHALL RECEIVE A 4" DEPTH OF BARK MULCH.
6. ALL EARTHWORK WILL BE DONE TO DRAIN AWAY FROM SIDEWALKS AND STRUCTURES.
7. ADDITIONAL PLANT MATERIAL MAY BE INTRODUCED AS DIFFERENT VARIETIES BECOME AVAILABLE THROUGH LOCAL NURSERIES AND IF THEY ARE CONSISTENT WITH THE OVERALL THEME OF THIS PROJECT.

## PLANT SCHEDULE

| SYMBOL | BOTANICAL NAME | COMMON NAME | SIZE | QTY. | COMMENTS |
|---|---|---|---|---|---|
| | **TREES (DECIDUOUS)** | | | | |
| | Acer glabrum | Rocky Mountain Maple | 1" Cal. Min. 15 Gal. Min. | 54 | Standard-trunk Dense Canopy |
| | Malus species | Flowering Crabapple | 2" Cal. Min. 24" Box Min. | 9 | Standard-trunk Dense Canopy |
| | Populus tremuloides | Quaking Aspen | 1" Cal. Min. 15 Gal. Min. | 120 | Standard-trunk Dense Canopy |
| | Pyrus calleryana | Flowering Pear | 2" Cal. Min. 24" Box Min. | 13 | Standard-trunk Dense Canopy |
| | **TREES (EVERGREEN)** | | | | |
| | Pinus nigra | Austrian Pine | 2" Cal. Min. 24" Box Min. | 23 | Standard-trunk Dense Canopy |
| | Pinus ponderosa | Ponderosa Pine | 2" Cal. Min. 24" Box Min. | 14 | Standard-trunk Dense Canopy |
| | Pseudotsuga menziesii | Rocky Mountain Douglas Fir | 2" Cal. Min. 24" Box Min. | 8 | Standard-trunk Dense Canopy |
| | Trunk Diameter at Breast Height | | | | |
| | Existing Tree To Remain & Be Protected During Construction (Typ.) | | | | |
| | **+ SHRUBS (DECIDUOUS)** | | | | |
| | Artemisia ludoviciana | Prairie Sage | 1 Gal. | 12 | As Per Plan |
| | Berberis species | Native Barberry | 5 Gal. | 42 | As Per Plan |
| | Caragana species | Mountain Mohagany | 5 Gal. | 7 | As Per Plan |
| | Potentilla fruticosa | Bush Cinquefoil | 5 Gal. | 66 | As Per Plan |
| | Rhus glabra | Smooth Sumac | 5 Gal. | 10 | As Per Plan |
| | Symphoricarpos albus | Snowberry | 5 Gal. | 24 | As Per Plan |
| | **+ SHRUBS (EVERGREEN)** | | | | |
| | Arctostaphylos species | Manzanita | 5 Gal. | 151 | As Per Plan |
| | Berberis fremontii | Fremont Barberry | 5 Gal. | 143 | As Per Plan |
| | Juniperus chinensis | Chinesee Juniper | 5 Gal. | 94 | As Per Plan |
| | Juniperus horizontalis | Juniper | 5 Gal. | 425 | As Per Plan |
| | Mahonia aquifolium | Oregon Grape Holly | 5 Gal. | 274 | As Per Plan |
| | Pinus mugo | Mugo Pine | 5 Gal. | 146 | As Per Plan |
| | Yucca baccata | Banana Yucca | 5-Gal. | 53 | As Per Plan |
| | **+ GROUNDCOVERS** | | | | |
| | Lonicera japonica 'Halliana' | Hall's Honeysuckle | 1 Gal. | 374 | As Per Plan |
| | Teucrium chamaedrys | Germander | 1 Gal. | 370 | As Per Plan |
| | **+ VINES** | | | | |
| | Hedera species | Ivy | 15 Gal. | 17 | Trained to Fence/Wall |
| | **+ GRASSES** | | | | |
| | Bouteloua gracilis | Blue Grama | 1 Gal. | 297 | As Per Plan |
| | Muhlenbergia rigens | Deer Grass | 1 Gal. | 276 | As Per Plan |
| | **MISCELLANEOUS** | | | | |

BARK MULCH - COLOR: HIGH DESERT BROWN - 4" DEPTH IN ALL SPECIFIED PLANTING AREAS (TYP.)

ARTIFICIAL TURF WITH PERMEABLE BASE WITH 4" EXTRUDED CONCRETE HEADER - 5,245 SQ. FT. (1% OF TOTAL SITE AREA)

NATIVE GRASS AND WILDFLOWER SEED MIX - 22,675 SQ. FT. (REFERENCE NATIVE GRASS & WILDFLOWER SEED MIX MATRIX)

** THERE IS NO OASIS ZONE PROPOSED ON THIS PROJECT

## GRASS & WILDFLOWER MIX

| LBS/AC. | BOTANICAL NAME | COMMON NAME |
|---|---|---|
| 3 | Bouteloua curtipendula | Sideoats Grama |
| 2 | Erigeron divergens | Fleabane |
| 2 | Festuca arizonica | Arizona Fescue |
| 2 | Hilaria jamesii | Galleta Grass |
| 4 | Lupinus argentus | Silvery Lupine |
| 2 | Oryzopsis hymenoides | Indian Rice Grass |
| 4 | Penstemon pinifolius | Pineleaf Penstemon |

SEEDLING RATE: 19 LBS / ACRE

## PLANT QUANTITY SCHEDULE

| LOCATION | TREES (ON AVERAGE) | SHRUBS (ON AVG.) | GROUNDCOVER |
|---|---|---|---|
| STREET BUFFER | 1 PER 25 L.F. | 2 PER TREE | 2 PER TREE |
| HIGH COUNTRY TRAIL | | | |
| REQUIRED | 35 (859 L.F./25) | 70 | 70 |
| PROVIDED | 38 | 415 | 98 |
| * NOTE: | DUE TO CONFLICTS WITH EXISTING OVERHEAD POWER EASEMENT AND SIGHT VISIBILITY EASEMENTS REQUIRED TREES COUNTED HEREIN HAVE BEEN DISPERSED THROUGHOUT THE SITE | | |
| PERIPHERAL BUFFER | 1 PER 25 L.F. | 2 PER TREE | 2 PER TREE |
| REQUIRED | 69 (1,708 L.F./25) | 137 | 137 |
| PROVIDED | 94 (86 Protected + 8 Proposed) | 243 | 144 (98 1 Gal. + (23 5 Gal x2) |
| PARKING AREA | 2 PER 8 SPACES | 2 PER TREE | 2 PER TREE |
| REQUIRED | 61 ((241 SURFACE SPACES/8)X2) | 122 | 122 |
| PROVIDED | 66 | 246 | 164 |
| ** NOTE: | DUE TO CONFLICTS WITH PARKING SPACES LOCATED UNDER EXISTING OVERHEAD POWER EASEMENT, A PORTION OF THE REQUIRED TREES COUNTED HEREIN HAVE BEEN DISPERSED THROUGHOUT THE SITE | | |
| BUILDING FOUNDATION | 1 PER 25 L.F. | 2 PER TREE | 2 PER TREE |
| REQUIRED | 160 (3,987 L.F./25) | 319 | 319 |
| PROVIDED | 172 (43 Protected + 129 Proposed) | 527 | 384 |
| *** NOTE: | PROTECTED TOTALS ARE BASED ON CREDITS GAINED BY CALCULATING THE TRUNK DIAMETER AT BREAST HEIGHT OF PROTECTED TREES SOUTH OF HIGH COUNTRY TRAIL (129), NOT TOTAL NUMBER OF TREES PROTECTED (60) ACCORDING TO FLAGSTAFF ZONING CODE DIVISION 10-50.60 LANDSCAPE STANDARDS (TABLE 10-50.60.050.A | | |

## PROJECT DATA

PROJECT OWNER:
AUZA FLAGSTAFF LLC
3378 SOUTH 16TH AVE.
YUMA, AZ 85365
CONTACT: SHIRLEY AUZA
SHIRLEY.AUZA@AOL.COM

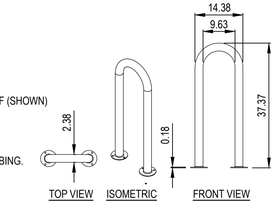
PROJECT DEVELOPER:
TRINSIC RESIDENTIAL GROUP
2944 M. 44TH STREET #160
PHOENIX, AZ 85018
CONTACT: TODD GOSSELINK
TGOSSELINK@TRINSICRES.COM

LOT AREA: 11.01 AC
CURRENT ZONING: E.R.
PROPOSED ZONING: M.R.

ANOVA

☑ SELECT DESIRED MODEL
☑ 3 BICYCLE METRO BIKE RACK LBR3PSURF (SHOWN)
☑ BRONZE

**FINISH:** FUSIONGUARD® POWDER COAT
**MATERIAL:** 2.38" OD x 10-GAUGE WALL STEEL TUBING.
**UNIT WEIGHT:** 25 lbs
**MOUNTING OPTIONS:** SURFACE MOUNT.
**ASSEMBLY REQUIRED**
**5 YEAR SATISFACTION GUARANTEE INCLUDING COVERAGE FOR FADING, RUSTING, CHIPPING AND CRACKING**




NOTES:
1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. ALL DIMENSIONS ARE CONSIDERED TRUE AND REFLECT MANUFACTURER'S SPECIFICATIONS.
3. CONTRACTOR'S NOTE: FOR PRODUCT AND COMPANY INFORMATION VISIT www.CADdetails.com/info REFERENCE NUMBER 928-106.

1 3 BICYCLE METRO BIKE RACK WITH POWDER COAT FINISH AND SURFACE MOUNT — MODEL: LBR3PSURF


COLLABORATIVE DESIGN STUDIO

COLLABORATIVE V
DESIGN STUDIO INC.
7116 EAST 1ST AVE.,
SUITE 103
SCOTTSDALE, ARIZONA
85251
OFFICE: 480-347-0590
FAX: 480-656-6012


Registered Landscape Architect CERTIFICATE NO. 46497 MATTHEW PAUL DRAKER ARIZONA, U.S.A. EXPIRES 06 / 30 / 2022

EXPIRES 06 / 30 / 2022

# LANDSCAPE IMPROVEMENTS
# AURA FLAGSTAFF
151 W. High Country Trail Flagstaff, Arizona 86001

PRELIMINARY NOT FOR CONSTRUCTION

DESIGNED BY: PV/SH
DRAWN BY: SH
CHECKED BY: PV / MD
DATE: AUGUST 21, 2018
REVISIONS: CITY COMMENTS JANUARY 24, 2019; CITY COMMENTS FEBRUARY 19, 2019; CITY COMMENTS JANUARY 7, 2020; CITY COMMENTS APRIL 20, 2020

AURA FLAGSTAFF
SITE PLAN SUBMITTAL

LANDSCAPE PLAN

L1.10

1 of 1

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Steve Camp, Regulatory Compliance Section Manager

**Co-Submitter:** Jolene Montoya

**Date:** 03/29/2021

**Meeting Date:** 04/06/2021

---

**TITLE:**

**Consideration and Adoption of Ordinance No. 2021-08 and Resolution No. 2021-13:** An ordinance amending the interceptors types, capacity, location, and maintenance for the regulation of fats, oils, and grease coming into Flagstaff's water reclamation plants; and a resolution adopting the Fats, Oil, and Grease Manual.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:

1) Read Ordinance No. 2021-08 by title only for the first time
2) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)
3) Read Resolution No. 2021-13 by title only
4) City Clerk reads Resolution No. 2021-13 by title only (if approved above)

At the April 20, 2021 Council Meeting:

5) Read Ordinance No. 2021-06 by title only for the final time
6) City Clerk reads Ordinance No. 2021-06 by title only (if approved above)
7) Adopt Ordinance No. 2021-06
8) Adopt Resolution No. 2021-13

**Executive Summary:**

Water Services is proposing adoption by resolution of a Fats, Oils, and Grease (FOG) manual. Adoption of the FOG manual includes changes to Flagstaff City code 7-02-001-0014 and will help to clarify sizing and maintenance of oil-water interceptors. The FOG manual will provide a much-needed guide for City staff and customers in the food handling industry, such as commercial restaurants and other commercial facilities that require an interceptor. The manual will set the expectations for sizing, installation, and maintenance criteria for oil/water and lint separators. Additionally, the manual will allow enforcement of substandard interceptors that can cause blockages in City sewer lines and sewer overflows. Scavenger wastes include grease and septage disposed at the Wildcat Hill Water Reclamation Plant (WRP). Flagstaff Water Services has reached out to the food services industries and scavenger waste haulers by direct Email, a notice published in the Arizona Daily Sun, published information on the Flagstaff Water Services' website, and a presentation to the Water Commission. Staff also had an on-line public meeting to answer public questions/comments.

**Financial Impact:**

Adoption of the FOG manual and amendments to Flagstaff City Code Section 7-02-001-0014 will not require any additional costs to Water Services.

**Policy Impact:**

The City of Flagstaff has a FOG program to minimize grease and oil generated from restaurants and food establishments from clogging and impeding flow in the City sewage collection system, which can and does lead to sanitary sewer overflows of raw sewage coming out of manholes. The City requires interceptors to collect and remove grease from these businesses for waste streams prior to reaching the City collection system. The interceptors must be designed and operated correctly to be effective. They require periodic pump-outs and inspections as part of a regular maintenance program. The City has a voluntary electronic reporting system to verify interceptors have been properly pumped and maintained. All businesses using the system have been found to be in compliance during the investigation of sanitary sewer overflows. Other businesses, not using the electronic reporting system, were inspected after a sanitary sewer overflow and were found to have grease making its way to the sewage collection system.

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

**The FOG Manual and amendment to Flagstaff City Code Section 7-02-001-0014 support the Priority Based Budget Key Community Priorities and Objectives**

Sustainable, Innovative Infrastructure - Deliver outstanding services to residents through a healthy, well maintained infrastructure system

The FOG manual helps the Water Services Division keep grease and food wastes out of the sewer collection system, which prevents sanitary sewer overflows and additional stress to the water reclamation plants.

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

Water Services provided a presentation on the FOG manual and amendments to Flagstaff City Code Section 7-02-001-0014 during a Work Session on January 12, 2021

---

**Attachments:**

Ord. 2021-08
Res. 2021-13
Exhibit A - FOG Manual
Proposed Code Changes for FOG Manual

**ORDINANCE NO. 2021-08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING FLAGSTAFF CITY CODE TITLE 7, HEALTH AND SANITATION, CHAPTER 7-02, WASTEWATER REGULATIONS BY REPLACING SECTION 7-02-0001-0014 WITH NEW LANGUAGE REGULATING INTERCEPTORS; TYPES, CAPACITY, LOCATION, AND MAINTENANCE; ESTABLISHING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City of Flagstaff maintains and operated water reclamation plants; and

WHEREAS, it is important to keep the operations of Flagstaff's water reclamation plants in good working order and condition; and

WHEREAS, limitations of the types of waste that can be discharged into the Flagstaff's water reclamation plants already exist; and

WHEREAS, from time to time it becomes necessary and prudent to make amendments to the limitations of types of waste, and permitting of waste that can be discharged in the Flagstaff's water reclamation plants; and

WHEREAS, said amendments to Flagstaff City Code Section 7-02-001-0014 regulating the type, capacity, location and maintenance interceptors for the management of fats, oils and grease are now deemed necessary and prudent to protect the good working order and condition of the Flagstaff water reclamation plants.

**ENACTMENTS:**

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

SECTION 1. That the following language be deleted from Flagstaff City Code Section 7-02-001-0014:

~~7-02-001-0014 INTERCEPTORS; TYPE, CAPACITY, LOCATION, MAINTENANCE~~

~~A. A City approved interceptor is required for any business whose discharge can be determined by the City to interfere with the POTW or the wastewater collection system. If a blockage is found in the collection system and it can be determined by the City to be caused by a particular user's discharge, then the City can require the user to install a City approved interceptor, at the user's expense, to catch the substance causing the blockage. If any interceptor is determined by the City to be inadequate in size or design, the City may require the user to install or upgrade such interceptor at the user's expense.~~

~~B. A City approved grease interceptor is required for any restaurant or other business that performs cooking. Grease interceptor sizing is to be as provided in the Uniform Building Code,~~

~~Appendix H4 with the minimum size for such interceptors required for restaurants to be seventy (70) pounds. All piping from sinks, floor drains, kettles, dishwashing machines, etc. into which grease may be disposed must be connected through such interceptor. Grease interceptors may not be installed in any part of a building where food is handled.~~

~~An exemption of the minimum grease trap sizing will be considered for a business based on type of food preparation that is done on site. This exemption must be approved by the Division and the Director. The business must serve food that is commonly known to be low in potential grease generation and the waste stream discharge must produce less than one hundred (100) mg/L of oil and grease as determined by the City. After an exemption is granted to a business, if the business changes food service, generates greater than one hundred (100) mg/L of oil and grease, or causes an interference or blockage to the sewer collection system due to grease, the business will be required to install a properly sized grease trap in accordance with subsection (A) of this section.~~

~~C. A City approved oil interceptor is required for any business that performs automotive repairs or service. (See standard drawing for size and other specifications.)~~

~~D. A City approved lint interceptor is required for any business with six (6) or more residential size washing machines or any amount of industrial size washing machines. An industrial size washing machine is one that has a tub three and one-half (3.5) cubic feet or larger and/or an American Household Appliance Manufacturers Association ("AHAMA") capacity of twenty-five (25) pounds or more. Residential machines will be any washing machine with less capacity than industrial machines. (See standard drawing for lint interceptor size and other specifications.)~~

~~E. A City approved sand interceptor is required for any business with facilities for washing vehicles. (See standard drawing for size and other specifications.)~~

~~F. All interceptors shall be of a type and capacity approved by the Director and shall be located so as to be readily and easily accessible for cleaning and inspection.~~

~~G. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers. When bolted covers are required they shall be gastight and watertight.~~

~~H. Where installed, all interceptors shall be maintained by the owner and/or user at his or her own expense. The interceptor must be kept in continuously efficient operation at all times and a written record of maintenance performed on such interceptor shall be kept by the user on a form provided by the City.~~

~~I. The City shall periodically inspect such interceptors and/or records to ensure they are being kept in efficient operation. A cleaning schedule will be set by the City if it is necessary to prevent the entry of harmful substances into the collection system.~~

SECTION 2. That the following language replace the deleted language Flagstaff City Code Section 7-02-001-0014:

7-02-001-0014 INTERCEPTORS; TYPE, CAPACITY, LOCATION, MAINTENANCE

A. The City of Flagstaff has adopted a Fats, Oils, and Grease (FOG) Discharge Manual for

regulatory compliance. A copy of this plan will be posted on the Division website and is maintained by the City Clerk as a public record. The manual describes: (A) Owner pretreatment requirements; (B) Installation, operation, and maintenance standards; (C) Participating Pumper Program; (D) Plan Review Process; (E) Waiver Process.

B. A City approved grease interceptor is required for a Food Service Establishment (FSE). An FSE is defined as an operation that stores, prepares, serves, vends, or otherwise provides food for human consumption at the retail level. Grease interceptor sizing is to be in accordance with the City's FOG Discharge Manual.

C. A City approved sand/oil interceptor is required for any business that performs automotive repairs or service facilities that wash vehicles, or business where oily and flammable liquid wastes are produced A two week notice is required for an inspection if contents will be taken to a City owned facility.

D. A City approved lint interceptor is required for any business with more than 1 residential size washing machines or any amount of industrial size washing machines. An industrial size washing machine is one that has a tub three and one-half (3.5) cubic feet or larger and/or an American Household Appliance Manufacturers Association ("AHAMA") capacity of twenty-five (25) pounds or more. Residential machines will be any washing machine with less capacity than industrial machines.

E. If a blockage is found in the collection system and it can be determined by the City to be caused by a particular user's discharge, then the City can require the user to install a City approved interceptor, at the user's expense, to catch the substance causing the blockage. If any interceptor is determined by the City to be inadequate in size or design, the City may require the user to install or upgrade such interceptor at the user's expense.

F. All interceptors shall be of a type and capacity approved by the Director and shall be located to be readily and easily accessible for cleaning and inspection.

G. Sand/oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable and accessible covers. When bolted covers are required, they shall be gastight and watertight.

H. All interceptors shall be maintained by the owner and/or user at his or her own expense. The interceptor must always be kept in continuously efficient operation and a record of maintenance performed on such interceptor shall be kept by the user on a form (or other means) provided by the City.

I. The City shall periodically inspect such interceptors and/or records to ensure they are being kept in efficient operation. A cleaning schedule will be set by the City.

SECTION 4. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 5. 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 6. 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 7. 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 20th day of April, 2021.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

**RESOLUTION NO. 2021-13**

**A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, ADOPTING THE CITY OF FLAGSTAFF'S WATER SERVICES DIVISION FATS, OILS AND GREASE DISCHARGE CONTROL MANUAL**

**RECITALS:**

WHEREAS, the City of Flagstaff maintains and operates water reclamation plants; and

WHEREAS, it is important to keep the operations of Flagstaff's water reclamation plants in good working order and condition; and

WHEREAS, the City of Flagstaff's Water Services Division Fats, Oils and Grease Discharge Control Manual provides guidance limitations of the types of waste that can be discharged into the Flagstaff's water reclamation plants already exist; and

WHEREAS, from time to time it becomes necessary and prudent to make amendments to the City of Flagstaff's Water Services Division Fats, Oils and Grease Discharge Control Manual; and

WHEREAS, said amendments to the City of Flagstaff's Water Services Division Fats, Oils and Grease Discharge Control Manual have been made and the said manual is attached hereto and is intended to be incorporated into this resolution.

**ENACTMENTS:**

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

SECTION 1. The Fats, Oils and Grease Discharge Control Manual attached hereto as Exhibit A is hereby adopted as the City of Flagstaff's Water Services Division Fats, Oils and Grease Discharge Control Manual.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 20th day of April, 2021.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
Fats, Oil, and Grease Discharge Control Manual

CITY OF

# FLAGSTAFF

SERVICE AT A HIGHER ELEVATION

# Fats, Oils and Grease (FOG)

## Discharge Control Manual

April 2021

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# Section 1: Purpose and General Provisions

## 1.1 Statement of Purpose

The purpose of this manual is to enhance beneficial public use of the City of Flagstaff, AZ sewer facilities, prevent blockages of sewer lines resulting from discharges of fats, oils, grease (FOG) and other constituents to the sewer facilities. This manual specifies appropriate FOG requirements for Food Service Establishments (FSEs) and/or property owners where they are located and supports such entities in implementing a cost-effective FOG abatement program. The manual establishes quantity and/or quality standards on all wastewater and/or waste discharges containing FOG as these cause or contribute to the occurrence of sanitary sewer overflows (SSOs), affect treatment plant operations, and increase publicly owned treatment works costs.

In accordance with Title 40, Code of Federal Regulations (40 CFR), Part 403 and the Flagstaff City Code, Chapter 7-02 Wastewater Regulations, Section 7-02-001-0014, as amended, the City of Flagstaff (hereafter called City) is authorized to determine the compliance status of all FSE/property owners with respect to their discharge of FOG (either vegetable or animal origin) either directly or indirectly into the City's wastewater collection system.

The following rules reflect requirements of the State and Federal government, including the Flagstaff City Code, Chapter 7-02 Wastewater Regulations, Secion 7-02-001-0014, as amended, and the City's Arizona Pollution Discharge Elimination System (AZPDES) permit issued by the State of Arizona Department of Environmental Quality (ADEQ). The purpose of these rules is to set forth uniform requirements for users of the City's wastewater collection and treatment system in order to enable the City to comply with all applicable State and Federal laws required by the Federal Water Pollution Control Act, as amended, and by requiring commercial and industrial users to comply with the General Pretreatment Regulations in 40 CFR Part 403, as amended.

## 1.2 Applicability

The following regulations apply to all food service establishments (FSEs) and properties where FSEs are located, both commercial and/or industrial, having any type of process providing food and/or drink for consumption or manufacturing process that includes the use of or discharge of FOG.

Any pretreatment systems or grease interceptors used to treat FOG shall be approved by the City and shall be designed, constructed, installed and maintained such that they comply with all applicable Federal, State and/or City discharge limits and with all City policies and rules, as amended.

## 1.3 Disclaimer

Any reference contained in this Manual to a specific product, type of product, process or service does not constitue or imply an endorsement by the City of that specific product, type of product, process or service.

# Section 2: Definitions

2.1 **Best Management Practices (BMP);** Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the introduction of pollutants, including Fats, Oils and Grease (FOG) to the sewer facilities.

2.2 **Change in Operations**; Any change in the ownership, food types, operational procedures, pretreatment devices or plumbing at an FSE/property.

**2.3 Commissary;** a base of operations for all mobile food establishments.

2.4 **Discharger;** Any establishment that discharges or causes a discharge of wastewater directly or indirectly to a public sewer.

2.5 **Effluent**; Any liquid outflow from the food service establishment that is discharged to the sewer.

2.6 **ERP**; the City's approved enforcement response plan.

2.7 **Fats, Oils and Grease (FOG)**; organic polar compounds derived from animal and/or plant sources as detectable in cooking oils, food scraps containing grease, butter or oil, lard or tallow, meat fat, grease and juices, gravies, sauces, shortening and dairy products.

2.8 **Food Service Establishment (FSE)**; Facilities maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, or otherwise handling food for sale to other entities, or for consumption by the public, its members, residents, students or employees, and which has any process or device that uses or produces FOG, or grease, vapors, steam, fumes, smoke or odors, including any real property on which the FSE is located.

2.9 **Food Waste Disposer, Food Grinder or Garbage Grinder (FWD)**; Any device installed in the plumbing or sewage system for the purpose of grinding food waste or food preparation waste.

2.10 **Grab Sample**; A sample taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.

2.11 **Gravity Grease Interceptor (GGI)**; A multi-compartmental plumbing apparatus or appliance, constructed in differing sizes, installed underground and outside the FSE, connected to a sanitary drainage system to intercept FOG from a wastewater discharge and is identified by liquid volume, thirty-minute retention time, baffle(s), a minimum of two compartments, and gravity separation.

2.12 **Grease interceptor**; Any gravity grease interceptor, hydromechanical grease interceptor or other mechanism, device, or process, which attaches to, or is applied to, wastewater plumbing fixtures and lines, the purpose of which is to trap or collect FOG prior to it being discharged into the sewer system. Grease interceptors may also include any other proven physical method to reduce FOG subject to the approval of the City.

2.13 **Hot Spots**; Public sewer lines or lift stations that have experienced sanitary sewer overflows or that must be cleaned or maintained frequently to avoid blockages of the public sewer system.

2.14 **Hydromechanical Grease Interceptor (HGI)**; A plumbing apparatus or appliance typically installed inside an FSE in a sanitary drainage system to intercept FOG from the wastewater discharge, and is identified by flow rate, separation and retention efficiency. The design incorporates air entrainment, hydromechanical separation, interior baffling, and/or barriers in combination or separately, and one of the following:

Type A: External flow control, with air intake (vent): directly connected;
Type B: External flow control, without air intake (vent): directly connected;
Type C: Without external flow control, directly connected;
Type D: Without external flow control, indirectly connected.

2.15 **Interference**; Any discharge which, alone or in conjunction with discharges from other sources, inhibits or disrupts the City sewer system, treatment processes or operations; or is a cause of

violation of the City's NPDES permit or discharge requirements or prevents lawful biosolids use or disposal.

2.16 **IPC**; International Plumbing Code

2.17 **Jetting**; high pressure water or steam used for cleaning or unblocking piping

2.18 **Limited Food Preparation Establishment**; An FSE/property engaged only in reheating, hot holding or assembly of ready to eat food products with no wastewater discharge. A limited food preparation establishment does not include any operation that changes the form, flavor, or consistency of food, nor are any clean-up processes performed.

2.19 **Manifest**; The receipt which is retained by the generator of wastes for disposing of recyclable wastes or liquid wastes as required by the City.

2.20 **MS4**; Municipal Separate Storm Sewer System.

2.21 **New Construction**; Any structure planned or under construction for which a sewer connection permit has not been issued.

2.22 **NPDES**; National Pollutant Discharge Elimination System; the permit issued to control the discharge of liquids or other substances to surface waters of the United States as detailed in Public Law 92-500, Section 402.

2.23 **Participating Pumper;** A scavenger waste hauler meeting the criteria of the Particpating Pumper Program in the event one is established by City.

2.24 **Person**; Any individual, partnership, firm, association, corporation or public agency, including the State of Arizona and the United States of America.

2.25 **POTW**; Publicly Owned Treatment Works. Inclusive term for a treatment plant and collection infrastructure involved in delivering and treating domestic sewage.

2.26 **Property Owner**; The legal owner of the physical space at which an FSE is located.

2.27 **Public Sewer**; A sewer owned and operated by the City, or other local public agency, which is tributary to the City sewer facilities.

2.28 **Pumper**; A scavenger waste hauler who removes and disposes of FOG from grease interceptors, or performs activities that may discharge FOG to the public sewer (i.e., FSE line maintenance , or jetting).

2.29 **Remodeling**; Changes at an FSE/property involving any one or combination of the following: (1) any change in plumbing; (2) any increase in the net public seating area; (3) any change in the size of the facility and/or kitchen area; or (4) any change in the size or type of food preparation equipment; (5) changing and/or replacing any grease interceptor.

2.30 **Sample Point**; A location approved by the City, from which wastewater can be collected that is representative in content and consistency of the entire flow of wastewater being sampled.

2.31 **Sampling Facilities/Inspection Port**; Structure(s) provided at the user's expense for the City or user to measure and record wastewater constituent mass, concentrations, collect a representative sample, or provide access to plug/terminate the discharge.

2.32 **Scavenger Waste Permit**; A permit issued by the City, subject to the requirements and conditions established by the City, authorizing a pumper to perform FOG abatement activities within the City's jurisdiction.

2.33 **Sewer Facilities or System**; Any and all facilities used for collecting, conveying, pumping, treating, and disposing of wastewater and sludge.

2.34 **Sludge**; Any solid, semi-solid or liquid decant, subnate or supernate from a manufacturing process, utility service, or pretreatment facility.

2.35 **SSO**; Sanitary Sewer Overflow

2.36 **Waste**; Sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation or of human or animal nature, including such wastes placed within containers of whatever nature prior to and for the purpose of disposal.

2.37 **Waste Hauler**; Any person carrying on or engaging in vehicular transport of waste as part of, or incidental to, any business for that purpose.

2.38 **Waste Minimization Practices**; Plans or programs intended to reduce or eliminate discharges to the sewer system or to conserve water, including, but not limited to, product substitutions, housekeeping practices, inventory control, employee education, and other steps as necessary to minimize wastewater produced.

2.39 **Wastewater**; The liquid and water-carried wastes of the community and all constituents thereof, whether treated or untreated, discharged into or permitted to enter a public sewer.

## Section 3: Prohibitions

3.1 No person (FSE owner/operator) shall discharge or cause to be discharged into the sewer system FOG that may accumulate and cause obstruction to the flow or contribute to blockages in the sewer system or at the sewer lateral that connects the FSE/property to the sewer system.

3.2 No person (FSE owner/operator) shall discharge wastewater with temperatures in excess of one hundred forty (140°F) to any grease interceptor. When needed, a cold water regulator must be installed prior to the grease interceptor in order to achieve temperatures below 140°F.

3.3 No person (FSE owner/operator) shall use any additives (including but not limited to enzymes, bacteria, solvents, surfactants, caustics, acids or emulsifiers) for the purpose of emulsifying FOG or passing FOG through a grease interceptor.

3.4 No person (FSE owner/operator) shall dispose of waste cooking oil into any drainage pipe. All waste cooking oils shall be collected and stored properly in receptacles such as barrels or drums for recycling or other acceptable methods of disposal.

3.5 Wastes from toilets, urinals, or any other restroom area fixture/drain containing fecal materials is prohibited from being discharged to a grease interceptor and must be discharged directly to the sanitary sewer system.

3.6 Food waste disposers/garbage grinders (FWD) are prohibited.

3.7 Discharge of waste (including FOG and solid materials removed from grease interceptors), passive or actively (also known as “jetting”), to the sewer system is prohibited. FSE/property owners will be held financially responsible for jetting activities occurring on their property that discharge FOG or cause SSOs or other downstream obstructions to the sanitary sewer.

3.8 Unless approved by the City, FOG removed from grease interceptors is prohibited from remaining at the FSE/property owner’s site. FSE owner/operators shall have waste hauled offsite as part of their operation and maintenance requirements.

3.9 FOG-laden wash water from any clean-up process at an FSE/property is prohibited from being discharged to the MS4.

3.10 Owner/operators of mobile restaurants, food stands and coffee kiosks are prohibited from discharging any cooking process or clean-up wastewater to the MS4. Any wastewater must be discharged to a grease interceptor at the restaurateur's commissary. The activities of "stacking" and/or "decanting" are prohibited. Any person (pumper, property owner or FSE operator) engaging in such practices shall be subject to the enforcement provisions in Section 9 of this manual.

3.11 Discharging **G**rey water from inside a vacuum truck (decanting) into a grease interceptor, public sewer or MS4 is prohibited.

3.12 Flushing previous contents from a vactor truck into the next grease interceptor serviced in order to transport less material in the truck (stacking) is prohibited.

## Section 4: Owners/Operators of FSEs Shall Meet the Following Pretreatment Requirements

4.1 Unless granted a waiver (see Section 9), all FSEs/Property Owners are required to install, operate and maintain an approved and adequately sized grease interceptor capable of maintaining compliance with the objectives of this manual. The grease interceptor shall be adequate to separate and remove FOG contained in wastewater discharges from FSE/property prior to discharge to the sewer system and enable the FSE/property owner to sustain a realistic and manageable site specific FOG abatement maintenance program as defined and set by the City.

4.2 Unless otherwise approved by the City, all fixtures, equipment, and drain lines located in the food preparation, alcohol service, clean-up and food service areas of an FSE/property shall be connected to a grease interceptor. Fixtures required to connect to a grease interceptor shall include but are not limited to pot sinks, pre-rinse sinks, hand sinks, prep sinks, dishwashers, soup kettles, braising pans, wok ranges, mop sinks, floor sinks, floor drains, and wastewater generated from exhaust fan hood cleaning operations.

4.3 Grease interceptors shall be subject to the requirements of section 5 of this manual and sized and selected in accordance with Appendix A: Grease Interceptor Sizing and Selection.

4.4 Commisary's must have a grease interceptor sized to handle the loading from their own kitchen operations as well as all permitted mobile food trucks that are approved for discharge at their specific location. The grease interceptor shall be determined in accordance with Appendix A: Grease Interceptor Sizing and Selection.

4.5 On or after the effective date of this manual the City may require an existing FSE/property owner to install, operate and maintain a new grease interceptor that complies with the requirements of this manual or to modify, repair or replace a non-compliant grease interceptor within 90 days of written notification by the City when any one or more of the following conditions exist:

4.5.1 The facility is found to be contributing FOG to the collection or POTW systems;

4.5.2 The facility does not have a grease interceptor;

4.5.3 The facility has an undersized or defective grease interceptor;

4.5.4 Remodeling of the food service areas, kitchen waste plumbing or seating capacity is performed, which requires a building and/or plumbing permit to be issued by the City;

4.5.5 The facility changes their menu;

4.5.6 The existing facility is sold or undergoes a change of ownership; and/or

4.5.7 The existing facility does not have plumbing connections to a grease interceptor in compliance with the requirements of current building codes or with this manual.

4.6 No landscaping or obstructions are allowed within three (3) feet of any access points or manhole covers of any grease interceptor located outside the FSE. Any grease interceptor located inside the facility must be free from obstructions or barriers to access.

## Section 5: Installation, Operation and Maintenance Standards for Grease Interceptors

5.1 Unless otherwise approved, GGIs shall not be installed. When approved by the City for installation (see Appendix B: Alternate Grease Interceptor Approval Request Form), GGIs shall be designed and tested in accordance with IAPMO/ANSI Z1001. GGIs shall be made from materials that are compatible with a pH of 3. GGIs made from materials that are subject to corrosion such as concrete or steel, shall be lined or coated with a durable material approved by the City that is compatible with a pH of 3 and that cannot be easily penetrated, scraped away or removed. Acid Resistant Enamel (A.R.E) coatings are not acceptable. GGIs shall have inlet and outlet connections inside the tank, that are open-topped and extend at least five (5) inches above the liquid surface, allowing for visual inspection of influent and effluent. Inlet fittings shall extend below the liquid surface and outlet fittings shall extend to within 12 inches of the floor of the tank. Installation of GGIs shall be in accordance with manufacturers installation instructions. Sizing of GGIs shall be in accordance with Appendix A: Grease Interceptor Sizing and Selection.

5.2 Unless otherwise approved, AGRUs shall not be installed. When approved for installation (see Alternate Grease Interceptor Approval Request Form), AGRUs must be designed and tested in accordance with ASME A112.14.4 and/or CSA B481.5. Installation shall be in accordance with manufacturers installation instructions. Sizing of AGRUs shall be in accordance with Appendix A: Grease Interceptor Sizing and Selection.

5.3 HGIs must be designed and tested in accordance with ASME A112.14.3, PDI G101 and/or CSA B481.1. HGIs shall be made from materials that are compatible with a pH of 3. HGIs made from materials that are subject to corrosion such as steel, shall be lined or coated with a durable material approved by the City that is compatible with a pH of 3 and that cannot be easily penetrated, scraped away or removed. Acid Resistant Enamel coatings (A.R.E) are not acceptable. Installation of HGIs shall be in accordance with manufacturers installation instructions. Sizing of HGIs shall be in accordance with Appendix A: Grease Interceptor Sizing and Selection.

5.4 Grease interceptor covers shall be secured in place at all times with tamperproof fasteners or shall be constructed of cast iron frame and cover weighing at least 70 pounds. When buried, covers shall be flush with grade. For indoor buried installations, covers shall be rated for pedestrian traffic and be installed in accordance with manufacturers instructions. For outdoor installations in non-vehicle traffic areas, covers shall be rated for light duty (2,500 – 16,000 lbs). For outdoor installations in vehicle traffic areas, covers shall meet AASHTO M306 H20/HS20.

5.5 Modification of a grease interceptor or components of a grease interceptor is not allowed unless approved by the City.

5.6 All grease interceptor's shall be maintained in efficient and proper working operation at all times by the owner at the owner's expense and shall include removal of both floatable solids, FOG and settleable solids collected in the grease interceptor along with cleaning the walls and baffles of the device. The maintenance frequency shall be established such that FOG or food solids do not leave the grease interceptor and enter the sanitary sewer collection system.

5.7 Self-cleaning by the owner and/or operator of an establishment is not allowed unless approved by the City (see Appendix C: Alternate Maintenance Approval Request). Only hydromechanical grease interceptors (HGI) with a liquid volume of less than 100 gallons may be considered for self-cleaning. When approved, the owner and/or operator of an establishment shall comply with the requirements for cleaning and disposal in accordance with Appendix C.

5.8 Frequency of cleaning will be determined on an individual basis by the City based on Appendix A: Grease Interceptor Sizing and Selection. The pumpers, FSEs and property owners are responsible for requesting a FOG inspection for changes or alterations to the cleaning schedule. Such changes/alterations must be approved by the City before being enacted. If no maintenance frequency has been set by the City, the following minimum service frequencies shall apply:

5.8.1 The maximum amount of time between pump outs for a grease interceptor with liquid volume less than 100 gallons shall be no more than 30 days.

5.8.2 The maximum amount of time between pump outs for a grease interceptor with liquid volume between 100 and 500 gallons shall be no more than 60 days.

5.8.3 The maximum amount of time between pump outs for a grease interceptor with liquid volume greater than 500 gallons shall be no more than 90 days.

5.9 When cleaning a grease interceptor, the following shall apply:

5.9.1 Remove cover(s)

5.9.2 Remove all fats, oils, and grease (FOG), solids, food debris, and wastewater

5.9.3 Scrub and spray off all internal surfaces from the build-up of FOG or other residual materials

5.9.4 Inspect all internal components, replace anything missing or broken and ensure flow control device is installed if applicable

5.9.5 Refill with fresh water

5.9.6 Replace cover(s)

5.9.7 Enter the required information on the maintenance log

5.9.8 Fill out and submit Appendix D: Pump-out Report to the City.

5.10 FOG or solids that have accumulated in the grease interceptor shall not be allowed to pass into any sewer lateral, sewer system, MS4 or public right of way during maintenance activities (i.e. jetting). The FSE/property owner shall be responsible for the proper removal and disposal, by appropriate and legal means, of the captured material and shall maintain records of the dates, amounts and means of disposal, all of which are subject to review by the City at any time.

5.11 It is the FSE/property owner's responsibility for performing routine self-inspection of grease interceptors on premises to ensure they are in proper functioning order.

5.12 It is the responsibility of the FSE/property owner for opening and closing a grease interceptor or for assisting City staff in performing same for inspection purposes.

5.13 Written documentation via a standardized manifest or invoice shall be kept at the FSE premises and/or be readily available for a period of at least two (2) years for inspection by the City.

5.13.1 In the event that the City implements an electronic or web-based reporting system, all Pump-Out reports shall be submitted on this system.

5.13.2 The FSE shall be responsible for any fees associated with an electronic or web-based reporting system.

5.14 When temporarily closing or for future TI space installations, grease interceptors shall be pumped out in accordance with section 5.9 of this manual and refilled with water.

5.15 When permanently closing or transferring ownership, the FSE/property owner shall have the grease interceptor cleaned in accordance with section 5.9 of this manual and refilled with water.

5.16 When abandoning a grease interceptor in place, the following shall apply:

5.16.1 A grease interceptor that has been abandoned or has been discontinued otherwise from further use, or to which no waste or soil pipe from a plumbing fixture is connected, shall have the FOG and solids removed therefrom and be completely filled with earth, sand, gravel, concrete, or other approved material.

5.16.2 The top cover(s) over the grease interceptor shall be removed before filling, and the filling shall not extend above the top of the vertical portions of the sidewalls or above the level of the outlet pipe until inspection has been called and the grease interceptor has been inspected. After such inspection, the grease interceptor shall be filled to the level of the top of the ground.

5.16.3 The final condition of an abandoned in place grease interceptor shall be approved by the city.

## Section 6: Participating Pumper Program (PPP)

In the event the City implements a Participating Pumper Program, the following shall apply:

6.1 Contractors providing services for grease interceptor pump-out within the City service boundaries shall meet specified maintenance criteria established by the City which may, at a minimum, be more stringent but not exclusive of those for a regionally established Pumper Program.

6.2 Commercial, institutional and industrial FOG generators in the City should use a Participating Pumper for maintenance and cleaning. Participating Pumpers have signed written agreements with the city that standardize grease interceptor maintenance practices, disposal criteria and reporting requirements.

6.3 When FOG generators use a registered Participating Pumper, the pumper assumes responsibility for submitting the required and completed Pump-Out Report to the City and submitting the advance schedule notice, including any fees associated with an electronic or web-based system.

6.3.1 FSE/property owners that choose not to use a Participating Pumper, shall be responsible for all maintenance, cleaning, recording, and reporting requirements, including submission of Pump-out Reports and any fees associated with an electronice or web-based system.

6.4 Contractors providing services for grease interceptor pump-out within the City service boundaries must be registered with the City and shall meet the standards set forth by the Industrial Pretreatment section when the program is implemented. At a minimum, the following shall apply:

6.4.1 Submit a list of facilities pumped out for baseline data collection;

6.4.2 Adhere to the City pump-out schedule, performing service within five (5) business days of the FSEs scheduled service date;

6.4.3 Notify the City of changes to any facility accounts within five (5) calendar days;

6.4.4 Consistently notify the City of the weekly/monthly pump-out schedule and of any unscheduled changes at least the day prior to scheduled service;

6.4.5 Accurately complete the FOG Pump-Out Report form and submit to the City and the FSE/property owner within five (5) business days;

6.4.6 Perform FOG abatement activities that meet City standards in accordance with section 5.9 of this manual.

6.5 Failure to consistently meet the performance standards outlined in the Participating Pumper Program shall result in termination of the pumper from the program.

6.6 If the City implements an electronic data submission system, all pumpers providing grease interceptor maintenance activities within the City service boundaries shall be required to utilize such system for any required reporting form and/or data submissions.

## Section 7: Plan Review Process

7.1 FSE/property owner plan submittal must include but is not limited to:

7.1.1 A detailed sewer waste line plumbing plan

7.1.2 Isometric drawing with pipe sizes, floor plans, fixture and drain detail

7.1.3 The grease interceptor sizing worksheet from Appendix A: Grease Interceptor Sizing and Selection

7.1.4 Available seating capacity

7.1.5 Menu

7.1.6 FSE owner's name & contact information.

7.2 Plans submitted without all required materials will be deemed incomplete and shall be returned without grease interceptor approval.

## Section 8: Waiver Process

8.1 An FSE/property owner may obtain a waiver from the requirement to install a grease interceptor under the following conditions:

8.1.1 The FSE/property owner is a Limited Food Preparation Establishment (single service kitchen with no food preparation) (heat/serve only) and uses only disposable service items and has no clean-up operations;

8.2 In the event that the FSE/property owner does not satisfy the conditions set forth in Section 9.1 at any time, the waiver shall be denied/revoked.

8.2.1 In the event that a waiver is denied or revoked an FSE/Property Owner is required to install, operate and maintain an approved and adequately sized grease interceptor capable of maintaining compliance with the objectives of this manual.

## Section 9: Enforcement

9.1 Failure to comply with the provisions of this Manual is considered a violation of Flagstaff City Code, Chapter 7-02 Wastewater Regulations, and enforcement of this Manual shall be in accordance with the City's Enforcement Response Plan, Chapter 7-01.

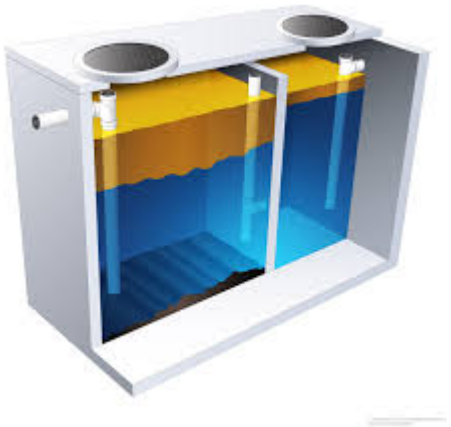
# Appendix A: Grease Interceptor Sizing and Selection

The following shall apply to the sizing and selection of grease interceptors.

## Gravity Grease Interceptors (GGI)

Unless otherwise approved, GGIs shall not be installed. When approved by the City for installation (see Alternate Grease Interceptor Approval Request Form), GGIs shall be made from materials that are compatible with a pH of 3. GGIs made from materials that are subject to corrosion such as concrete or steel, shall be lined or coated with a durable material approved by the City that is compatible with a pH of 3 and that cannot be easily penetrated, scraped away or removed. Acid Resistant Enamel (A.R.E) coatings are not acceptable.

The required capacity of gravity grease interceptors in total liquid volume, shall be determined by multiplying the peak drain flow into the interceptor in gallons per minute by a retention time of 30 minutes.



## Automatic Grease Removal Units (AGRU)

When approved for installation (see Alternate Grease Interceptor Approval Request Form), AGRUs must be designed and tested in accordance with ASME A112.14.4 and/or CSA B481.5. Sizing shall be in accordance with Hydromechanical Grease Interceptor Sizing Step 1: Size by Flow Rate. Step 2: Size by Grease Production shall not apply to AGRUs.

## Hydromechanical Grease Interceptors

HGIs must be designed and tested in accordance with ASME A112.14.3, PDI G101 and/or CSA B481.1. HGIs shall be made from materials that are compatible with a pH of 3. HGIs made from materials that are subject to corrosion such as steel, shall be lined or coated with a durable material approved by the City that is compatible with a pH of 3 and that cannot be easily penetrated, scraped away or removed. Acid Resistant Enamel coatings (A.R.E) are not acceptable. HGI sizing shall be in accordance with Step 1: Size by Flow Rate and Step 2: Calculate Grease Capacity.

### *Step 1: Size by Flow Rate*

The minimum flow rate for a passive HGI may be calculated by either using pipe diameter or fixture volume using either a one-minute or two-minute drainage period. Use a one-minute drainage period when the interceptor is installed within 20 feet of directly connected fixtures and/or has indirectly connected fixtures. When the interceptor will be installed exterior to the building beyond 20 feet of the connected fixtures use a two-minute drainage period.

Fixture Volume Sizing

Use the following formula for sizing fixtures by volume with a 75% fill factor:

$$\left[\frac{L \times W \times H}{231}\right] \times 0.75 = \text{Fixture Capacity Gallons}$$

Fixture Capacity Gallons x 1 = one-minute drainage period (GPM)
Fixture Capacity Gallons x 0.5 = two-minute drainage period (GPM)

Example: three-compartment sink with each compartment being 18 x 24 x 12 inches

18 x 24 x 12 = 5184 cubic inches ($in^3$)
5184 / 231 = 22.44 fixture capacity gallons
22.44 x 3 = 67.3 total fixture capacity gallons (three bowls)
67.3 x 0.75 = 50.4 total fixture capacity after loading factor (75%)
50.4 x 1 = 50 GPM one-minute drainage period
50.4 x 0.5 = 25 GPM two-minute drainage period

To determine the minimum required flow rate for the HGI, calculate the capacity of each fixture that will be connected and add the volumes together and use the appropriate drainage period. An appropriate HGI must be certified to meet the minimum flow rate as calculated. Multiple HGIs may be used separately or combined to meet the flow rate requirement.

It is advisable to use a one-minute drainage period when the HGI will be installed in the kitchen area near the fixtures being serviced. It is essential to use a one-minute drainage period when an indirectly connected fixture is connected to the grease interceptor. A two-minute retention time assumes only directly connected fixtures are routed to the interceptor. A two-minute drainage period will negatively affect the total time for draining fixtures and is often a complaint of owners.

Pipe Diameter Sizing

When the final configuration of kitchen fixtures in an establishment is unknown or to allow for the addition of fixtures in the future, the minimum interceptor volume may be determined by the diameter of the drainage pipe leading from the establishment according to Table 1:

Table 1

| Pipe Size (inches) | Full-Pipe Flow (GPM)[1] | One-minute drainage period (GPM) | Two-minute drainage period (GPM) |
|---|---|---|---|
| 2 | 20 | 20 | 10 |
| 3 | 60 | 75 | 35 |
| 4 | 125 | 125 | 75 |
| 5 | 230 | 250 | 125 |
| 6 | 375 | 400 | 200 |
| 8 | 426 | 500 | 250 |

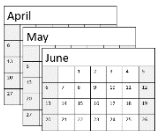
1. 1/4 inch per foot based on Manning's formula with friction factor N = 0.012

When using pipe diameter sizing and the interceptor is installed inside the kitchen near the fixtures being serviced, it is advisable to use a one-minute drainage period to ensure the drainage time is not a nuisance. When installed in the kitchen near the fixtures being serviced and there is an indirectly connected fixture it is essential to use a one-minute drainage period. When installed exterior to the building, where the developed length of piping can be quite long, a two-minute drainage period will provide a satisfactory result in drainage times.

## *Step 2: Calculate Grease Capacity*

Once the minimum flow rate has been established in Step 1, calculate the minimum grease storage capacity for the HGI required for the desired pump-out frequency as follows:

Grease Factor X Meals or Customers per day X Days between pump-outs = Grease Capacity Required



To determine the correct grease factor, using Table 2, select the menu type (1 through 30), then the correct column (A through D) for whether there is a fryer and whether the establishment uses disposable or washable plates, glasses, knives, forks and spoons (flatware).

Table 2

| Type | Menu | Grease Factor -> | without Fryer without flatware | without fryer with flatware | with fryer without flatware | with fryer with flatware |
|---|---|---|---|---|---|---|
| | | | A | B | C | D |
| 1 | Bakery | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 2 | Bar and Grille | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 3 | Barbeque | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 4 | Breakfast Bar - Hotel | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 5 | Buffet | | 0.035 | 0.0455 | 0.058 | 0.075 |
| 6 | Burger and fries, fast food | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 7 | Cafeteria | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 8 | Caterer | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 9 | Chinese | | 0.035 | 0.0455 | 0.058 | 0.075 |
| 10 | Coffee shop | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 11 | Convenience Store | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 12 | Deep fried Chicken / seafood | | 0.035 | 0.0455 | 0.058 | 0.075 |
| 13 | Deli | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 14 | Family Restaurant | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 15 | Frozen Yogurt | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 16 | Greek | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 17 | Grocery Bakery | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 18 | Grocery Deli | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 19 | Grocery Meat Department | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 20 | Ice Cream | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 21 | Indian | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 22 | Italian | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 23 | Mexican, fast food | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 24 | Mexican, full fare | | 0.035 | 0.0455 | 0.058 | 0.075 |
| 25 | Pizza | | 0.025 | 0.0325 | 0.035 | 0.0455 |
| 26 | Religious Institution | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 27 | Sandwich shop | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 28 | Snack Bar | | 0.005 | 0.0065 | 0.025 | 0.0325 |
| 29 | Steak and seafood | | 0.035 | 0.0455 | 0.058 | 0.075 |
| 30 | Sushi | | 0.005 | 0.0065 | 0.025 | 0.0325 |

**Example:** Fast food burgers and fries, with fryer, with disposable flatware, serving 300 meals per day

Grease factor from Table 3: 6C = 0.035 pounds per meal
Average meals per day = 300

| Grease Storage Capacity Calculation | Daily[1] | 90 days |
|---|---|---|
| Grease Produced (lbs) | 10.5 | 945 |

[1]multiply average meals per day times grease factor for daily, then times 90 days for total amount produced per quarter

The correctly sized and selected grease interceptor will have the minimum flow rate determined in Step 1 and the grease storage capacity calculated in Step 2. Multiple grease interceptors may be installed to satisfy the minimum flow rate requirement, the minimum grease storage capacity, or both.

Grease interceptors certified to meet a Rated Grease Capacity or the minimum requirements of ASME A112.14.3, CSA B481, and/or PDI G101, shall have the flow rates and minimum grease storage capacities as listed in Table 3:

Table 3

| HGI Flow Rate | Minimum Grease Storage Capacity[2] (lbs) |
|---|---|
| 20 | 40 |
| 25 | 50 |
| 35 | 70 |
| 50 | 100 |
| 75 | 150 |
| 100 | 200 |
| 2. Minimum grease capacity as required by ASME A112.14.3, PDI G101 and CSA B481 | |

Grease interceptors with grease storage capacities exceeding the minimum requirements in Table 3, shall be reviewed and approved by the City when the manufacturer can demonstrate by third-party test reports, including the incremental test data, that the interceptor(s) has the grease storage capacity specified. Upon approval, HGIs with proven higher grease storage capacities may be used to satisfy the sizing and selection requirements of this two-step sizing method.

## Grease Interceptor Sizing and Selection Worksheet, Page 1

Table 4

| Qty | Fixture Type | Actual L | Actual W | Actual H | Fixture[3] Capacity (gallons) | Flow[4] Rate GPM | Total[5] GPM |
|---|---|---|---|---|---|---|---|
| | Multi-Compartment Four Bowls | | | | | | |
| | Multi-Compartment Three Bowls | | | | | | |
| | Multi-Compartment Two Bowls | | | | | | |
| | Prep Sink Two Bowls | | | | | | |
| | Prep Sink One Bowl | | | | | | |
| | Pre-Rinse Sink One Bowl | | | | | | |
| | Dump Sink One Bowl | | | | | | |
| | Bar Sink One Bowl | | | | | | |
| | Soup Kettle Large | | | | 100 | 100 | |
| | Soup Kettle Medium | | | | 50 | 50 | |
| | Soup Kettle Small | | | | 20 | 20 | |
| | Clothes Washer | | | | | 2 | |
| | Dipper Well (circulating water) | | | | | 3 | |
| | Dishwasher - Conveyer type | | | | | 5 | |
| | Dishwasher - Rack type | | | | | 2 | |
| | Hand Sink | | | | | 3 | |
| | Ice Machine (with drain) | | | | | 1 | |
| | Mop Basin | | | | | 10 | |
| | Warming Table (with drain) | | | | | 1 | |
| | Wok Range | | | | | 12 | |
| | Floor Drain | | | | | | |
| | Floor Drain Emergency | | | | | | |
| | Floor Sink | | | | | | |
| | | | | **Grand Total[6]:** | | | |

[3]((L*W*H)/231)*(number of bowls)*0.75 = Total Fixture Capacity (gallons)
[4]Total Fixture Capacity*1.0 = Flow Rate (GPM)
[5]Flow Rate*Qty = Total GPM
[6]Grand Total GPM*1.0 = One-minute Drainage Period
Grand Total GPM*0.50 = Two-minute Drainage Period

# Grease Interceptor Sizing and Selection Worksheet, Page 2

1. ☐ Interior Installation ☐ Exterior Installation
2. Are there indirectly connected fixtures routed to the HGI? ☐ Yes ☐ No
3. Will the HGI be installed within 20 feet of the fixtures? ☐ Yes ☐ No

Note: for interior installations, if the answer to either question 2 or 3 is YES, use a one-minute drainage period, otherwise use a two-minute drainage period. For exterior installations use a two-minute drainage period.

**Step 1: Calculate Flow Rate**

1. Total Fixture Volume (Table 4): _____ Flow Rate GPM (one or two-minute): _____
2. OR, Pipe Diameter (Table 1): _____ Flow Rate GPM (one or two-minute): _____

**Step 2: Calculate Grease Capacity**

1. Grease Factor (Table 2):_____
2. Average meals per day = _____

| Grease Storage Capacity Calculation | Daily* | 90 days |
|---|---|---|
| Grease Produced (lbs) | | |

*multiply average meals per day times the number of days open per period times the grease factor for grease produced per period

**Note: The correctly sized and selected HGI(s) will have the minimum required flow rate determined in Step 1 and the minimum calculated grease storage capacity determined in Step 2.**

3. Make and model of the HGI selected: _____
4. Is the material of construction compatible with a pH of 3? ☐ Yes ☐ No
5. If the answer to number 4 Is "no", what material is the tank lined or coated with*:

   _____

   *must provide evidence that the liner or coating is compatible with a pH of 3 and that it cannot be easily penetrated, scraped off or removed. Acid Resistant Enamel Coatings (A.R.E) are not allowed.

6. Flow rate (GPM): _____ Proven grease capacity (lbs): _____

Please submit the completed Grease Interceptor Sizing and Selection Worksheet to the Utility for approval along with any other required documents.

Applicant Name: _____ Phone: _____

Company: _____ Email: _____

Name of Establishment: _____

Signature of Applicant: _____ Date: _____

# Appendix B: Alternate Grease Interceptor Approval Request

## Gravity Grease Interceptor (GGI)

1. Peak flow rate for connected fixtures (Worksheet, Page 1): _____
2. Size of GGI* (gallons): _____

   *multiply peak flow rate of connected fixtures times 30 minutes
3. What material is the GGI made from? _____
4. Is the material compatible with a pH of 3? ☐ Yes ☐ No
5. If the answer to number 4 Is "no", what material is the tank lined or coated with*:

_____

*must provide evidence that the liner or coating is compatible with a pH of 3 and that it cannot be easily penetrated, scraped off or removed. Acid Resistant Coatings (A.R.E) are not allowed.

Reason for request: _____

_____

_____

## Automatic Grease Removal Unit (AGRU)

1. Describe the fixtures to be connected: _____

   _____

   _____
2. Total Fixture Volume (Table 5): _____ Flow Rate GPM (one minute): _____
3. Make and Model of the AGRU proposed: _____

Reason for request: _____

_____

_____

Please submit the completed Grease Interceptor Sizing and Selection Worksheet to the Utility for approval along with any other required documents.

Applicant Name: _____ Phone: _____

Company: _____ Email: _____

Name of Establishment: _____

Signature of Applicant: _____ Date: _____

# Appendix C: Alternate Maintenance Approval Request

Self-cleaning by the owner and/or operator of an establishment is not allowed unless approved by the City. Only hydromechanical grease interceptors (HGI) with a liquid volume of less than 100 gallons may be considered for self-cleaning. When approved, the owner and/or operator of an establishment shall comply with the following requirements for maintenance on a weekly basis, at minimum, or more often as necessary as required by the City:

- Remove cover(s)
- Remove all fats, oils, and grease (FOG), solids, food debris, and wastewater
- Scrub and spray off all internal surfaces from the build-up of FOG or other residual materials
- Place all removed materials in garbage bag or other sealable container (not glass) along with an absorbent material (i.e. kitty litter) and dispose of in trash receptacle
- Inspect all internal components, replace anything missing or broken and ensure flow control device is installed
- Refill with fresh water
- Replace cover(s)
- Enter the required information on the maintenance log

At least once per quarter, the grease interceptor(s) shall be cleaned by a scavenger waste hauler, documented by a manifest, reported in the maintenance log, and all records maintained for the previous three (2) years.

Make and model of HGI: _____

Flow Rate: _____ Grease Storage Capacity: _____

Grease Factor (Table 2): _____ Average Meals per day: _____

Grease Produced per day*: _____ Cleaning frequency**: _____days
*multiply Grease Factor times Average Meals per day
**Divide HGI grease storage capacity by Grease Produced per day

**Reason for request**: _____

_____

_____

Please submit the completed Grease Interceptor Sizing and Selection Worksheet to the Utility for approval along with any other required documents.

Applicant Name: _____ Phone: _____

Company: _____ Email: _____

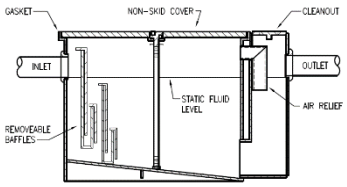
Name of Establishment: _____

Signature of Applicant: _____Date: _____

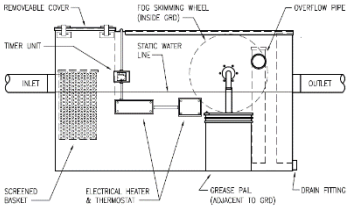
# Appendix D: Pump-out Report

Business Name _____ Store # _____ Phone _____

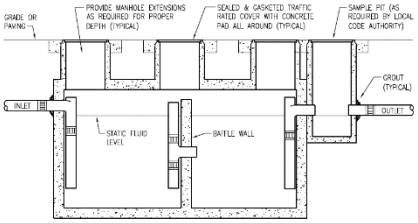
Address _____ City _____ State _____ Zip _____




Hydromechanical (HGI)




Automatic (AGRU)




Gravity (GGI)

| | GRD #1<br>☐ HGI ☐ AGRD ☐ GGI | GRD #2<br>☐ HGI ☐ AGRD ☐ GGI | GRD #3<br>☐ HGI ☐ AGRD ☐ GGI |
|---|---|---|---|
| Location | | | |
| FOG Layer (inches) | | | |
| Solids Layer (inches) | | | |
| Total Gallons | | | |
| FOG Leaving Inpection Port/Tee | ☐ Yes ☐ No | ☐ Yes ☐ No | ☐ Yes ☐ No |
| GRD Condition<br>(check only if it applies) | ☐ Needs Repair | ☐ Needs Repair | ☐ Needs Repair |

Explanation/Notes

_____

_____

Certification: I hereby certify that all information provided herein is true and correct to the best of my knowledge. The Grease Removal Device(s) serving this establishment was inspected and completely cleaned of residual fats, oils, and grease, food debris and other materials present.

Name (printed): _____ Date: _____

Signed: _____

**Submit completed report to the City within 10 days of Pump-out**

# Appendix E: Participating Pumper Program Registration

In the event that the City establishes a Participating Pumper Program (PPP), permited scavenger waste haulers that wish to participate must complete and submit this registration. The PPP manages the companies that properly pump, haul and dispose of grease interceptor waste for commercial and institutional food service establishments. To participate in the program, all pumpers must fill out and turn in this application to the City of Flagstaff, Water Services, 2323 N. Walgreen Street, Flagstaff, AZ 86004, Attn: Industrial Pretreatment.

Participating Pumper Program Requirements:

1. Submit a list of facilities pumped out for baseline data collection;
2. Adhere to the City pump-out schedule, performing service within five (5) business days of the FSEs scheduled service date;
3. Notify the City of changes to any facility accounts within five (5) calendar days;
4. Consistently notify the City of the weekly/monthly pump-out schedule and of any unscheduled changes at least the day prior to scheduled service;
5. Perform FOG abatement activities that meet City standards;
6. Accurately complete Appendix D: FOG Pump-Out Report form for each pump-out performed and submit to the City and the FSE/property owner within five (5) business days;
7. If the City implements an electronic data submission system, all contractors providing grease interceptor maintenance activities within the City service boundaries shall be required to utilize such system for any required reporting form and/or data submissions and to adhere to minimum standards set by the City;
8. Pumpers will satisfactorily dispose of pumpout waste in accordance with all applicable local, state, and federal regulations. Decanting or stacking, which involves returning wastewater from a grease hauler truck back into the grease interceptor or directly to the sewer after it has been pumped out, is never permitted;
9. It shall be the responsibility of the Pumping Company to update the City with any new contact information, signatory, authorized representative or waste disposal site within 10 days;
10. Failure to consistently meet the requirements of this permit and the performance standards outlined in Section 6 of this manual shall result in pumper permit termination.

**Company Information**

| Company Name | Primary Contact | | |
|---|---|---|---|
| Mailing Address | City | State | Zip |
| Phone No. | Fax No. | Email | |

**Authorized Representative Statement**

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Name (printed): _____ Date: _____

Signed: _____

City Approval: _____ Date: _____

# CHAPTER 7-02

# WASTEWATER REGULATIONS

## 7-02-001-0014 INTERCEPTORS; TYPE, CAPACITY, LOCATION, MAINTENANCE

A. The City of Flagstaff has adopted a Fats, Oils, and Grease (FOG) Discharge Manual for regulatory compliance, A copy of this plan will be posted on the Division website and is maintained by the City Clerk as a public record. The manual describes: (A) Owner pretreatment requirements; (B) Installation, operation, and maintenance standards; (C) Participating Pumper Program; (D) Plan Review Process; (E) Waiver Process.

B. A City approved grease interceptor is required for a Food Service Establishment (FSE). An FSE is defined as an operation that stores, prepares, serves, vends, or otherwise provides food for human consumption at the retail level. Grease interceptor sizing is to bein accordance with the City's FOG Discharge Manual. C. A City approved sand/oil interceptor is required for any business that performs automotive repairs or service facilities that wash vehicles, or business where oily and flammable liquid wastes are produced A two week notice is required for an inspection if contents will be taken to a City owned facility.

D. A City approved lint interceptor is required for any business with more than 1 residential size washing machines or any amount of industrial size washing machines. An industrial size washing machine is one that has a tub three and one-half (3.5) cubic feet or larger and/or an American Household Appliance Manufacturers Association ("AHAMA") capacity of twenty-five (25) pounds or more. Residential machines will be any washing machine with less capacity than industrial machines.

E . If a blockage is found in the collection system and it can be determined by the City to be caused by a particular user's discharge, then the City can require the user to install a City approved interceptor, at the user's expense, to catch the substance causing the blockage. If any interceptor is determined by the City to be inadequate in size or design, the City may require the user to install or upgrade such interceptor at the user's expense.

F. All interceptors shall be of a type and capacity approved by the Director and shall be located to be readily and easily accessible for cleaning and inspection.

G. Sand/oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable and accessible covers. When bolted covers are required they shall be gastight and watertight.

H. All interceptors shall be maintained by the owner and/or user at his or her own expense. The interceptor must always be kept in continuously efficient operation and a record of maintenance performed on such interceptor shall be kept by the user on a form (or other means) provided by the City.

I. The City shall periodically inspect such interceptors and/or records to ensure they are being kept in efficient operation. A cleaning schedule will be set by the City. (Ord. 1693, Rep&ReEn, 05/07/1991; Ord. 1876, Amended, 06/20/1995; Ord. 1896, Amended, 11/21/1995; Ord. 2000-23, Amended, 10/03/2000; Ord. 2015-09, Amended, 06/02/2015; Ord. 2018-32, Amended, 12/04/2018. Formerly 7-02-001-0016)

**12. B.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

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| **To:** | The Honorable Mayor and Council |
| **From:** | Steve Camp, Regulatory Compliance Section Manager |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

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**TITLE:**

**Consideration and Adoption of Ordinance No. 2021-07:** An ordinance amending Flagstaff City Code Section 7-02-001-0042 regulating scavenger waste, grease haulers and scavenger waste permits.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:

1) Read Ordinance No. 2021-07X by title only for the first time
2) City Clerk reads Ordinance No. 2021-07 by title only (if approved above)

At the April 20, 2021 Council Meeting:

3) Read Ordinance No. 2021-07 by title only for the final time
4) City Clerk reads Ordinance No. 2021-07 by title only (if approved above)
5) Adopt Ordinance No.2021-07

**Executive Summary:**

Water Services is proposing changes to Flagstaff City code 7-02-001-0042 regarding septic tank and scavenger waste haulers. Scavenger wastes include grease and septage disposed at the Wildcat Hill Water Reclamation Plant (WRP). These changes include additional requirements in the permitting process to help prevent wastes from outside Coconino County from entering the Wildcat Hill Water Reclamation Plant, require participation in an electronic reporting program to verify the origin and volume of the generation of the waste, and to strengthen code to prohibit any bypass to the grease or septage receiving station. Flagstaff Water Services has reached out to the food services industries and scavenger waste haulers by direct Email, a notice published in the Arizona Daily Sun, published information on the Flagstaff Water Services' website, and a presentation to the Water Commission. Staff also had an on-line public meeting to answer public questions/comments.

**Financial Impact:**

None

**Policy Impact:**

None

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

The changes to the scavenger waste program support the Priority Based Budget Key Community Priorities and Objectives Sustainable, Innovative Infrastructure - Deliver outstanding services to residents through a healthy, well-maintained infrastructure system by keeping materials that can be detrimental to the water reclamation plants out of the plant.

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

A presentation was made to Council during the Work Session on January 12, 2021

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**Attachments:** Ord. 2021-07
Scavenger Waste Code Changes

**ORDINANCE NO. 2021-07**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING FLAGSTAFF CITY CODE TITLE 7, HEALTH AND SANITATION, CHAPTER 7-02, WASTEWATER REGULATIONS BY REPLACING SECTION 7-02-0001-0042 WITH NEW LANGUAGE REGULATING SCAVENGER WASTE AND GREASE HAULERS, AND ADDING SECTION 7-02-0001-0042.1 WITH NEW LANGUAGE REGULATING SCAVANEGER WASTE DISCHARGE PERMITS; ESTABLISHING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City of Flagstaff maintains and operated water reclamation plants; and

WHEREAS, it is important to keep the operations of Flagstaff's water reclamation plants in good working order and condition; and

WHEREAS, limitations of the types of waste that can be discharged into the Flagstaff's water reclamation plants already exist; and

WHEREAS, from time to time it becomes necessary and prudent to make amendments to the limitations of types of waste, and permitting of waste that can be discharged in the Flagstaff's water reclamation plants; and

WHEREAS, said amendments to Flagstaff City Code Section 7-02-001-0042 regulating limitations on scavenger waste and grease haulers as well as scavenger waste permits are now deemed necessary and prudent to protect the good working order and condition of the Flagstaff water reclamation plants.

**ENACTMENTS:**

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

SECTION 1. That the following language be deleted from Flagstaff City Code Section 7-02-001-0042:

~~7-02-001-0042 SEPTIC TANK AND SCAVENGER WASTE HAULERS~~

~~A. Authorized Waste Haulers. Only those persons or companies whose principal source of business is within Coconino County shall be authorized to discharge scavenger wastes into the sewerage system.~~

~~B. Permit to Discharge. All authorized persons or companies, as defined in subsection (A) of this section, wishing to discharge scavenger wastes into the sewerage system must first obtain a scavenger waste discharge permit from the Finance Director. Permit applications shall include information on the company ownership, locations, identification, license number of all trucks to~~

~~be used for delivery of waste to City sewerage facilities and any other pertinent information as may be desired by the City. It shall also include truck capacity and other information pertinent to discharge to the sewerage system. Permit applications shall be signed by a responsible owner or manager of the company applying for permission to discharge. All waste haulage equipment operated by companies with permits shall be registered with the Finance Director and shall be identifiable by display of the license plate number.~~

~~1. The permit provided for in this section shall be issued by the Finance Director to all applicants who comply with the terms and conditions set forth in this section upon the payment of a permit fee, as follows:~~

~~a. For each vehicle utilized for the transportation of wastes for disposal into the sewerage system: five dollars ($5.00).~~

~~b. The permit issued as provided for in this section shall expire one (1) year after the date of issue. It shall be the responsibility of the hauler to seek renewal of their permit annually, at least thirty (30) days prior to the expiration date of the previous permit.~~

~~c. Revocation of Permit. Noncompliance with any part of this section or subsequent regulations shall subject the permit holder to revocation of permit to utilize the services of the City sewerage system for disposal of scavenger wastes. Reissuance of permit to discharge after revocation shall be at the discretion of the Director and may be subject to such conditions as he/she deems appropriate.~~

~~C. Regulations. The Director may establish such regulations as are deemed necessary to control the discharge of scavenger wastes so as to prevent incidences of overloading, interference or pass-through at the water reclamation plant and/or interference, damage, etc., to the wastewater collection systems. All discharges shall comply with the Prohibited Substances restrictions set forth in Section 7-02-001-0007. The water reclamation plant does not accept hazardous waste as defined by the Resource Conservation and Recovery Act and the Code of Federal Regulations.~~

~~D. Each load to be discharged into the City wastewater system, shall be manifested in a form and format provided by the City of Flagstaff.~~

~~E. Provisions of Services. Normal wastes from septic tanks, sewage treatment plants, etc., may be discharged routinely. Permission to discharge other wastes that are not readily biodegradable or are not known to be compatible to the operations of water reclamation plants shall be refused. Special request must be made to the Director prior to discharge of any materials of questionable acceptability. Some specific reasons for refusal of service shall include:~~

~~1. Material deleterious to treatment plant operation or operators such as oils, greases, gasoline, toxics, volatile solvents, sand, metallic particles, or paints.~~

~~2. Materials which would cause unusual expense in handling and treatment (i.e., blood, etc.), unless prior arrangements have been made for the payment of additional cost of service.~~

~~3. Materials which would inhibit the performance of the treatment plant such as acids, plating wastes, or toxic materials.~~

~~F. Fees and Charges. Fees and charges for treatment of formal scavenger wastes shall be based on the costs of providing such services and on the expected overall average characteristics of such discharges, which shall be designated as five thousand four hundred (5,400) mg/L BOD and twelve thousand (12,000) mg/L SS.~~

~~G. The waste hauler will be financially responsible for any damage to, or interference with the POTW, or for any expense to the City (including testing) caused by the discharge from the hauler. The waste hauler and/or generator will be charged for all expenses in monitoring and handling their discharge.~~

~~H. Waste haulers may not discharge unless a plant operator is present and has approved the discharge. The operator may refuse to accept any discharge if it is suspected to contain wastes which are considered unacceptable to the City water reclamation plants.~~

~~I. The waste hauler shall have sampling outlets (approved by the Division) on each truck for proper sampling of contents. The waste hauler shall be subject to random sampling/monitoring by the City.~~

~~J. Waste haulers will position their trucks at the direction of the plant operator to prevent spills. Any traces of the hauler's discharge must be removed by the hauler immediately.~~

~~K. The discharge of scavenger wastes shall be permitted only at the locations and during such hours as shall be established by the Water Services Director. The discharge of scavenger wastes to the sewerage system at any other location is forbidden.~~

~~L. Septic tank and scavenger waste haulers shall be subject to the enforcement guides set forth in Section 7-02-001-0019.~~

~~M. Provision of false information by either the generator or the hauler shall also be considered a violation of this Code and subject to the provisions of Sections 7-02-001-0017 and 7-02-001-0019. (Ord. 1693, 05/07/1991; Ord. 2003-04, Amended, 04/04/2003; Ord. 2018-32, Amended, 12/04/2018. Formerly 7-02-001-0040)~~

SECTION 2. That the following language replace the deleted language Flagstaff City Code Section 7-02-001-0042:

7-02-001-0042 SCAVANGER WASTE AND GREASE HAULERS

A. Scavenger Waste is defined as sewage or human excreta that is removed from a septic tank or other on-site wastewater treatment facility, privy, sewage vault, river can, rocket can, or fixed or transportable chemical toilet or other similar units.

B. Grease is defined as Fats, Oils and Grease (FOG); organic polar compounds derived from animal and/or plant sources as detectable in cooking oils, food scraps containing grease, butter or oil, lard or tallow, meat fat, grease and juices, gravies, sauces, shortening and dairy products.

C. Authorized Scavenger Waste Haulers. Only scavenger wastes generated within Coconino County shall be authorized to discharge into the sewerage system.

1. The Water Services Director shall require haulers of scavenger waste to obtain a scavenger waste discharge permit.

2. Septage haulers shall not discharge mixed loads of grease and septic tank or scavenger waste or any other type of waste. Scavenger waste haulers may discharge loads only at locations designated by the Director and at such times as are established by the Director. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the scavenger waste hauler to provide a waste analysis of any load prior to discharge. The discharge of hauled septic tank waste is subject to all other requirements of this chapter.

3. The Director shall establish hours for operation and acceptance for discharging of scavenger waste. The hours of operation shall be available on the Flagstaff Water Services web site and posted at the entrance gate of the water reclamation plant.

4. Septage haulers are required to weigh in before and after discharging to the water reclamation plant or POTW, provided a scale is available.

5. Discharge of scavenger waste at hours other than those established by the Director shall be at the discretion of the plant operator and will be subject to a fee set forth in section 3-10-001-00086. Scavenger waste haulers must provide a completed City waste-tracking or manifest form for every load, prior to entering the water reclamation plant. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, names, addresses and phone number of sources of waste, and volume and characteristics of waste. Scavenger waste haulers shall maintain records of all waste-tracking or manifest forms for at least five (5) years.

D. Authorized Grease Haulers. Grease will only be accepted for discharge into the designated grease receiving station from generators that have written acceptance by the Director and will be subject to the following conditions:

1. The Director shall require grease haulers to obtain a scavenger waste discharge permit.

2. Grease haulers shall not discharge mixed loads of grease and septic tank or scavenger waste or any other type of waste. Grease haulers may discharge loads only at locations designated by the Director and at such times as are established by the Director. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the grease hauler to provide a waste analysis of any load prior to discharge. The discharge of hauled grease is subject to all other requirements of this chapter.

3. The Director shall establish hours for operation and acceptance for discharging of grease. The hours of operation shall be available on the Flagstaff Water Services web site and posted at the entrance gate of the water reclamation plant.

4. Grease haulers are required to weigh in before and after discharging to the water reclamation plant or POTW, provided a scale is available.

5. Discharge of grease at hours other than those established by the Director shall be at the discretion of the plant operator and will be subject to a fee set forth in section 3-10-

001-0008.

6. Grease haulers must provide a completed City waste-tracking or manifest form for every load, prior to entering the water reclamation plant. This form shall include, at a minimum, the name and address of the grease hauler, permit number, truck identification, names, addresses and phone number of sources of waste, and volume and characteristics of waste. Grease haulers shall maintain records of all waste-tracking or manifest forms for at least five (5) years.

SECTION 3. That the following language be under new Flagstaff City Code Section 7-02-001-0042.1:

7-02-001-0042.1 SCAVENGER WASTE DISCHARGE PERMITS

A. All authorized persons or companies, as defined in section 7-02-001-0042, wishing to discharge scavenger wastes or grease must first obtain a scavenger waste discharge permit for each vehicle that will haul scavenger waste or grease from the Director. Vehicle permit applications shall be provided by the City and must include the following information:

1. Business Name

2. Business Phone Number

3. Name of Business Owner or Responsible Party

4. Business Physical Location

5. Business Mailing Address

6. Business Email Address

7. Name(s) of Operator(s)

8. Operator Phone Number(s)

9. Vehicle Information

    a. Year/Make/Model

    b. License Plate Number/State

    c. Tank Capacity

    d. Type of Hauled Waste(s)

    e. ADEQ License Number

10. Any additional information as required to meet applicable Federal and/or State regulations or as deemed necessary to prevent incidences of overloading, interference or pass-through at the water reclamation plant and/or interference, damage, etc., to the wastewater collection systems.

B. The permit provided for in this section shall be issued by the Director to all applicants who comply with the terms and conditions set forth in this section as follows:

1. For each vehicle utilized for the transportation of scavenger wastes or grease for disposal into the sewerage system, payment or prorated portion of the annual fee as established per City Code Section 3-10-001-0008 License Fees.

2. Once permits are obtained, all waste haulage equipment operated by companies with permits shall be registered with the Management Services Division and shall submit documentation that fee has been paid and shall be identifiable by display of the license plate number.

3. The permit issued as provided for in this section shall expire January 2nd of each year and not more than one (1) year after the date of issue. It shall be the responsibility of the hauler to seek renewal of their permit, at least thirty (30) days prior to the expiration date.

4. Noncompliance with any part of this section or subsequent regulations shall subject the permit holder to revocation of permit to utilize the services of the City sewerage system for disposal of scavenger wastes or grease. Reissuance of permit to discharge after revocation shall be at the discretion of the Director and may be subject to such conditions as deemed appropriate.

5. The Director may establish regulations as are deemed necessary to control the discharge of scavenger wastes so as to prevent incidences of overloading, interference or pass-through at the water reclamation plant and/or interference, damage, etc., to the wastewater collection systems. All discharges shall comply with the Prohibited Substances restrictions set forth in Section 7-02-001-0007.

6. The water reclamation plant does not accept hazardous waste as defined by the Resource Conservation and Recovery Act and the Code of Federal Regulations.

7. The waste hauler will be financially responsible for any damage to, or interference with the Publicly Owned Treatment Works (POTW), or for any expense to the City (including testing) caused by the discharge from the hauler. The waste hauler and/or generator will be charged for all expenses in monitoring and handling their discharge.

8. Waste haulers may not discharge unless a plant operator is present and has approved the discharge. The operator may refuse to accept any discharge if it is suspected to contain wastes which are considered unacceptable to the City water reclamation plants.

9. The waste hauler shall have sampling taps or outlets (as approved by the Water Services Division) on each truck for proper sampling of contents. The waste hauler shall be subject to random sampling/monitoring by the City.

10. Waste haulers will position their trucks at the direction of the plant operator to prevent spills. Any traces of the hauler’s discharge must be removed by the hauler immediately.

11. Waste haulers shall not bypass any control device while discharging to the City

Water Reclamation Plant or POTW.

12. Waste haulers cleaning trucks at the water reclamation plant shall be subject to a truck clean out fee set forth in section 3-10-001-0008. Truck cleanout shall be empty prior to clean out. Septic tank and scavenger waste haulers shall be subject to the enforcement guides set forth in Section 7-02-001-0019.

13. Provision of false information by either the generator or the hauler shall also be considered a violation of this Code and subject to the provisions of Sections 7-02-001-0017 and 7-02-001-0019.

C. The Director may revoke a permit for any of the following actions or inactions by the permittee:

1. Disposing hauled waste at any location not designated or approved by the Director.

2. Misrepresenting or failing to fully disclose all relevant facts in the waste hauler discharge permit application.

2. Falsifying information provided on waste tracking forms or waste disposal manifests.

4. Failure to provide a waste tracking form or waste disposal manifest.

5. In the event that the City implements an electronic or web-based a waste tracking form or waste disposal manifest reporting system, all reports shall be submitted on this system. 6. The hauler shall be responsible for any fees associated with an electronic or web-based reporting system.

7. Tampering with samples collected from waste loads.

8. Refusing to allow the Director timely access to the facility premises or records.

9. Failing to meet effluent requirements.

10. Failing to pay fines or penalties.

11. Failing to pay waste disposal charges.

12. Failing to complete a waste hauler discharge permit application.

13. Violating any general or specific permit condition or requirement, or any terms of the waste hauler discharge permit or this section.

SECTION 4. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 5. 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 6. 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 7. 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 20th day of April, 2021.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

**7-02-001-0042.1 SCAVENGER WASTE AND GREASE HAULERS**

A. Scavenger Waste is defined as sewage or human excreta that is removed from a septic tank or other on-site wastewater treatment facility, privy, sewage vault, river can, rocket can, or fixed or transportable chemical toilet or other similar units.

B. Grease is defined as Fats, Oils and Grease (FOG); organic polar compounds derived from animal and/or plant sources as detectable in cooking oils, food scraps containing grease, butter or oil, lard or tallow, meat fat, grease and juices, gravies, sauces, shortening and dairy products.

C. Authorized Scavenger Waste Haulers. Only scavenger wastes generated within Coconino County shall be authorized to discharge into the sewerage system.

1. The Water Services Director shall require haulers of scavenger waste to obtain a scavenger waste discharge permit.

2. Septage haulers shall not discharge mixed loads of grease and septic tank or scavenger waste or any other type of waste. Scavenger waste haulers may discharge loads only at locations designated by the Director and at such times as are established by the Director. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the scavenger waste hauler to provide a waste analysis of any load prior to discharge. The discharge of hauled septic tank waste is subject to all other requirements of this chapter.

3. The Director shall establish hours for operation and acceptance for discharging of scavenger waste. The hours of operation shall be available on the Flagstaff Water Services web site and posted at the entrance gate of the water reclamation plant.

4. Septage haulers are required to weigh in before and after discharging to the water reclamation plant or POTW, provided a scale is available.

5. Discharge of scavenger waste at hours other than those established by the Director shall be at the discretion of the plant operator and will be subject to a fee set forth in section 3-10-001-0008

6. Scavenger waste haulers must provide a completed City waste-tracking or manifest form for every load, prior to entering the water reclamation plant. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, names, addresses and phone number of sources of waste, and volume and characteristics of waste. Scavenger waste haulers shall maintain records of all waste-tracking or manifest forms for at least five (5) years.

D. Authorized Grease Haulers. Grease will only be accepted for discharge into the designated grease receiving station from generators that have written acceptance by the Director and will be subject to the following conditions:

1. The Director shall require grease haulers to obtain a scavenger waste discharge permit.

2. Grease haulers shall not discharge mixed loads of grease and septic tank or scavenger waste or any other type of waste. Grease haulers may discharge loads only at locations designated by the Director and at such times as are established by the Director. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the grease hauler to provide a waste analysis of any load prior to discharge. The discharge of hauled grease is subject to all other requirements of this chapter.

3. The Director shall establish hours for operation and acceptance for discharging of grease. The hours of operation shall be available on the Flagstaff Water Services web site and posted at the entrance gate of the water reclamation plant.

4. Grease haulers are required to weigh in before and after discharging to the water reclamation plant or POTW, provided a scale is available.

5. Discharge of grease at hours other than those established by the Director shall be at the discretion of the plant operator and will be subject to a fee set forth in section 3-10-001-0008.

6. Grease haulers must provide a completed City waste-tracking or manifest form for every load, prior to entering the water reclamation plant. This form shall include, at a minimum, the name and address of the grease hauler, permit number, truck identification, names, addresses and phone number of sources of waste, and volume and characteristics of waste. Grease haulers shall maintain records of all waste-tracking or manifest forms for at least five (5) years.

**7-02-001-0042.2 SCAVENGER WASTE DISCHARGE PERMITS.**

A. All authorized persons or companies, as defined in section 7-02-001-0042, wishing to discharge scavenger wastes or grease must first obtain a scavenger waste discharge permit for each vehicle that will haul scavenger waste or grease from the Director. Vehicle permit applications shall be provided by the City and must include the following information:

1. Business Name

2. Business Phone Number

3. Name of Business Owner or Responsible Party

4. Business Physical Location

5. Business Mailing Address

6. Business Email Address

7. Name(s) of Operator(s)

8. Operator Phone Number(s)

9. Vehicle Information

    a. Year/Make/Model

    b. License Plate Number/State

    c. Tank Capacity

    d. Type of Hauled Waste(s)

    e. ADEQ License Number

10. Any additional information as required to meet applicable Federal and/or State regulations or as deemed necessary to prevent incidences of overloading, interference or pass-through at the water reclamation plant and/or interference, damage, etc., to the wastewater collection systems.

B. The permit provided for in this section shall be issued by the Director to all applicants who comply with the terms and conditions set forth in this section as follows:

1. For each vehicle utilized for the transportation of scavenger wastes or grease for disposal into the sewerage system, payment or prorated portion of the annual fee as established per City Code Section 3-10-001-0008 License Fees.

2. Once permits are obtained, all waste haulage equipment operated by companies with permits shall be registered with the Management Services Division and shall submit documentation that fee has been paid and shall be identifiable by display of the license plate number.

3. The permit issued as provided for in this section shall expire January 2nd of each year and not more than one (1) year after the date of issue. It shall be the responsibility of the hauler to seek renewal of their permit, at least thirty (30) days prior to the expiration date.

4. Noncompliance with any part of this section or subsequent regulations shall subject the permit holder to revocation of permit to utilize the services of the City sewerage system for disposal of scavenger wastes or grease. Reissuance of permit to discharge after revocation shall be at the discretion of the Director and may be subject to such conditions as deemed appropriate.

5. The Director may establish regulations as are deemed necessary to control the discharge of scavenger wastes so as to prevent incidences of overloading, interference or pass-through at the water reclamation plant and/or interference, damage, etc., to the wastewater collection systems. All discharges shall comply with the Prohibited Substances restrictions set forth in Section 7-02-001-0007.

6. The water reclamation plant does not accept hazardous waste as defined by the Resource Conservation and Recovery Act and the Code of Federal Regulations.

7. The waste hauler will be financially responsible for any damage to, or interference with the Publicly Owned Treatment Works (POTW), or for any expense to the City (including testing) caused by the discharge from the hauler. The waste hauler and/or generator will be charged for all expenses in monitoring and handling their discharge.

8. Waste haulers may not discharge unless a plant operator is present and has approved the discharge. The operator may refuse to accept any discharge if it is suspected to contain wastes which are considered unacceptable to the City water reclamation plants.

9. The waste hauler shall have sampling taps or outlets (as approved by the Water Services Division) on each truck for proper sampling of contents. The waste hauler shall be subject to random sampling/monitoring by the City.

10. Waste haulers will position their trucks at the direction of the plant operator to prevent spills. Any traces of the hauler's discharge must be removed by the hauler immediately.

11. Waste haulers shall not bypass any control device while discharging to the City Water Reclamation Plant or POTW.

12. Waste haulers cleaning trucks at the water reclamation plant shall be subject to a truck clean out fee set forth in section 3-10-001-0008. Truck cleanout shall be empty prior to clean out. Septic tank and scavenger waste haulers shall be subject to the enforcement guides set forth in Section 7-02-001-0019.

13. Provision of false information by either the generator or the hauler shall also be considered a violation of this Code and subject to the provisions of Sections 7-02-001-0017 and 7-02-001-0019.

C. The Director may revoke a permit for any of the following actions or inactions by the permittee:

1. Disposing hauled waste at any location not designated or approved by the Director.

2. Misrepresenting or failing to fully disclose all relevant facts in the waste hauler discharge permit application.

3. Falsifying information provided on waste tracking forms or waste disposal manifests.

4. Failure to provide a waste tracking form or waste disposal manifest.

5. In the event that the City implements an electronic or web-based a waste tracking form or waste disposal manifest reporting system, all reports shall be submitted on this system.

6. The hauler shall be responsible for any fees associated with an electronic or web-based reporting system.

7. Tampering with samples collected from waste loads.

8. Refusing to allow the Director timely access to the facility premises or records.

9. Failing to meet effluent requirements.

10. Failing to pay fines or penalties.

11. Failing to pay waste disposal charges.

12. Failing to complete a waste hauler discharge permit application.

13. Violating any general or specific permit condition or requirement, or any terms of the waste hauler discharge permit or this section.

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Steve Camp, Regulatory Compliance Section Manager

**Co-Submitter:** Jolene Montoya

**Date:** 03/29/2021

**Meeting Date:** 04/06/2021

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**TITLE:**

**Consideration and Adoption of Ordinance No. 2021-10 and Resolution No. 2021-14:** An ordinance amending multiple portions Chapter 7-02 with respect to local limits for significant industrial users of the water reclamation system, and a resolution amending the Enforcement Response Plan.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:

1) Read Ordinance No. 2021-10 by title only for the first time
2) City Clerk reads Ordinance No. 2021-10 by title only (if approved above)
3) Read Resolution No. 2021-14 by title only
4) City Clerk reads Resolution No. 2021-14 by title only (if approved above)

At the April 20, 2021 Council Meeting:

5) Read Ordinance No. 2021-10 by title only for the final time
6) City Clerk reads Ordinance No. 2021-10 by title only (if approved above)
7) Adopt Ordinance No. 2021-10
8) Adopt Resolution No. 2021-14

**Executive Summary:**

This change will impact the permitted industrial users within City limits by updating the standards for discharge, changing sampling requirements, and other miscellaneous updates. The United States Environmental Protection Agency (USEPA) recommends that pre-treatment programs reevaluate their local limits every 5 years. This 5-year recommendation coincides with the Arizona Pollutant Discharge Elimination System (AZPDES) permit issued by the state Arizona Department of Environmental Quality (ADEQ) to our water reclamation plants.

Water Services contracted with Brown and Caldwell in 2020 to complete a local limit study for the Pretreatment Program. The proposed standards for discharge are taken from this study and will be used to issue revised discharge permits to our significant industrial users (SIU). Included in the local limit code change is a requirement for SIUs to conduct self-monitoring in the 1st and 3rd quarters of the year. SIUs are currently conducting self-monitoring in the 2nd and 4th quarters. This change will allow SIUs to conduct any required confirmation sampling within the same calendar year. If an SIU collects a sample in the 4th quarter that exceeds a local limit, there may not be sufficient time to collect a confirmation sample within the same calendar year.

The change to the local limits will also require a slight change to the Council-approved Enforcement Response Plan (ERP). Sewer rates are set up in code with different classes, depending on the user.

Users with a higher Biological Oxygen demand (BOD) and Total Suspended Solids (TSS) have a class with a higher rate. This higher rate is based on the costs the wastewater plant encounters to treat these wastes. However, some of these BOD and TSS limits are above our already existing local limits. City Code also allows the use of surcharges to be assessed to a user that exceeds the local limits. A change in the ERP is necessary to allow staff the flexibility to not enforce exceedances to Local Limits of BOD and TSS. All other local limits will remain in the ERP as approved.

Flagstaff Water Services has conducted outreach to the permitted SIUs and the general public through individual email, information included in customer water bills, a notice published in the Arizona Daily Sun, information published on Flagstaff Water Services website, and in a presentation to the Water Commission. Staff also conducted public on-line meetings with potentially impacted customers. One meeting was held with the permitted SIUs and a second meeting was presented to the general public. These recommended code changes will serve to protect our water reclamation plants, bring clarity to the City Code, and ensure staff's consistency in administering the program.

**Financial Impact:**

None.

**Policy Impact:**

None.

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

The changes to the industrial pre-treatment program support the Priority Based Budget Key Community Priorities and Objectives: Sustainable, Innovative Infrastructure - Deliver outstanding services to residents through a healthy, well-maintained infrastructure system by protecting our wastewater collection system and water reclamation plants from materials that can interfere with the function of both systems.

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

A presentation was made to Council during the Work Session on March 30, 2021.

---

**Attachments:** Ord. 2021-10
Res. 2021-14
Enforcement Response Plan

**ORDINANCE NO. 2021-10**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING FLAGSTAFF CITY CODE TITLE 7, HEALTH AND SANITATION, CHAPTER 7-02, WASTEWATER REGULATIONS BY AMENDING 7-02-001-0002 DEFINITIONS; 7-02-001-0007 PROHIBITED SUBSTANCES; 7-02-001-0008 STANDARDS FOR DISCHARGE; 7-02-001-0010 INDUSTRIAL SELF-MONITORING; 7-02-001-0011 REPORTING REQUIREMENTS; 7-02-001-0016 INSPECTIONS AND MONITORING; 7-02-001-0018 PUBLIC NOTIFICATION, DEFINITION OF SIGNIFICANT VIOLATION; 7-02-001-0049 PERMITS REQUIRED FOR INDUSTRIAL USERS; 7-02-001-0050 INDUSTRIAL USER PERMITS; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City of Flagstaff maintains and operated water reclamation plants; and

WHEREAS, it is important to keep the operations of Flagstaff's water reclamation plants in good working order and condition; and

WHEREAS, limitations of the types of waste that can be discharged into the Flagstaff's water reclamation plants already exist; and

WHEREAS, from time to time it becomes necessary and prudent to make amendments to the limitations of types of waste, and permitting of waste that can be discharged in the Flagstaff's water reclamation plants; and

WHEREAS, these amendments to multiple portions of Chapter 7-02 of the Flagstaff City Code Section regulating local limits for significant industrial users of the Flagstaff water reclamation system are now deemed necessary and prudent to protect the good working order and condition of the Flagstaff water reclamation plants.

**ENACTMENTS:**

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

SECTION 1. That the language in strike-through type below be deleted, and the language in all-caps type below be added as amendments to the specific sections of the Chapter 7-02 of the Flagstaff City Code as identified below:

**7-02-001-0002 DEFINITIONS**

The general definitions found in Section 7-01 (Water Services) shall apply to this chapter. In addition, for the purposes of this chapter, the following words and terms shall have the following meanings, unless the context indicates otherwise:

DAILY COMPOSITE SAMPLE: A sample of effluent, discharge or other source of pollutants continuously collected, manually or automatically, over a normal operating day. Samples ~~should~~ SHALL be collected over A TWENTY-FOUR (24) HOUR PERIOD OR at least an eight (8) hour period during production, ~~but preferably over a twenty-four (24) hour period,~~ with one (1) sample being drawn at least once every two (2) hours. Composites should be flow proportional wherever feasible. ~~Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.~~

**7-02-001-0007 PROHIBITED SUBSTANCES**

B. The following are prohibited from the City wastewater collection system:

5. Any substance that can cause corrosive damage to the POTW or collection system and any substance with a pH of less than 6.0~~5~~ standard units (s.u.) or greater than 11.0. s.u.

6. Any liquid or vapor which causes the temperature entering the POTW to exceed one hundred four degrees (104°) Fahrenheit (40° C) or any liquid or vapor with a temperature greater than one hundred sixty degrees (160°) Fahrenheit (71° C).

7. Any toxic or radioactive substance in sufficient quantity to interfere with the POTW or collection system or to create a health or environmental hazard.

8. Any substance requiring unusual attention or expense of the City unless specifically authorized. Compensatory payments be determined by the City to be paid by the user who contributes any such authorized substance.

9. Any noxious or malodorous liquid, gas or solid which creates a public nuisance, health or environmental hazard, or inhibits entry into any part of the wastewater system for maintenance or monitoring.

10. Any water with a volume greater than twenty (20) GPM containing dyes, inks or other color-causing substances that change the typical color in the wastewater collection system.

11. Any substance causing a hazard to health or to the environment.

12. Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that cause interference or pass-through.

13. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

14. UNLESS OTHERWISE APPROVED BY THE WATER SERVICES DIRECTOR, ANY STORMWATER, SURFACE WATER, GROUNDWATER, ROOF RUNOFF, SURFACE DRAINAGE, OR UNPOLLUTED PROCESS WATERS THAT MAY CONSTITUTE INFLOW AS DEFINED HEREIN.

15~~4~~. Any combination of substances contributed by one (1) or more users which results in any of the above situations.

16~~5~~. The following pesticides are expressly prohibited from discharge into the City sewer system: 4,4'-DDD; 4,4'-DDE; 4,4'-DDT; ALDRIN, and Heptachlor.

**7-02-001-0008 STANDARDS FOR DISCHARGE**

B. The following specific limits shall apply to all industrial user discharges and may be modified, with prior notice to the industrial user and an opportunity to respond, to comply with applicable State and/or Federal regulations.

| **Parameter Maximum** | **(mg/L)** |
|---|---|
| **Inorganics** | |
| Lead | 0.0841 |
| Copper | 0.2015 |
| Zinc | 1.403.0 |
| Mercury | 0.017 BMP (interim) |
| Cyanide (total) | 0.24 |
| Arsenic | 0.1831 |
| Silver | 0.30 |
| Selenium | 0.015 |
| Sulfides | 5.04.5 |
| HEM [a] | (152 mg/L) *(Qmax)= lb/day load (interim) |
| **Volatile Organic Compounds** | |
| Methylene Chloride | 4.1 |
| Toluene | 0.14 |
| Benzene | 0.102 |
| Total Trihalomethanes | 0.32 alert |
| Bromodichloromethane | 0.08 alert |
| Bromoform | 0.08 alert |
| Chloroform | 0.08 alert |
| Dibromochloromethane | 0.08 alert |
| Bromide | 0.505 |
| **Semivolatile Organic Compounds** | |
| Bis(2-ethylhexyl) phthalate (BEHP) | Best management practices (BMP) |
| **Pesticides** | |
| Aldrin | Prohibited |
| **Conventional Pollutants** | |
| BOD | 1,000 mg/L (surcharges if >400 mg/L) |
| TSS | 1,200 mg/L (surcharges if >450 mg/L) |
| Total Nitrogen | 173 mg/L |
| pH | 6.05<pH≤11.0 |

| **Parameter Maximum** | **(mg/L)** |
|---|---|
| AMMONIA | 173 |
| TOTAL KJELDAHL NITROGEN (TKN) | 173 |
| NITRATE/NITRITE | 10 |

* LBS/DAY = POLLUTANT CONCENTRATION IN MG/L X 8.34 (POUNDS/GALLON) X FLOW IN MILLION GALLONS PER PERIOD

C. The City may set limits based on mass measurements of pollutants for a particular substance or a particular user if it is necessary for adequate regulation. Discharge limits be set in order to meet any limits set for sludge disposal.

D. Industrial users meet the requirements of the U.S. Code of Federal Regulations, 40 CFR 403 and the amendments thereof. No discharge may exceed any Federal categorical standard or cause the POTW to exceed its AZPDES OR APP Permit. The City may request approval to modify a Federal categorical standard, according to 40 CFR 403.

E. Dilution may not be used to meet a standard or limit unless it is expressly authorized by the categorical standard set by the EPA or by the City.

F. Bypass Prohibition.

1. Notice of Bypass to Occur.

a. If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the ~~Utilities~~ WATER SERVICES Director, if possible, at least ten (10) days before the date of the bypass.

b. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Water Services Director within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

2. Prohibition of Bypass. Bypass is prohibited, and the Water Services Division may take enforcement action against an industrial user for a bypass unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass;

c. The user submitted notices as required above.

G. O&M Requirements.

1. Industrial users required to install suitable pretreatment facilities to treat waste streams which do not meet City discharge limits shall provide necessary maintenance on such equipment to ensure their continued and efficient operation. ~~Such facilities shall be attended by a person who has obtained certification as a wastewater operator by ADEQ at a level appropriate for the facilities being tended.~~

**7-02-001-0010 INDUSTRIAL SELF-MONITORING**

A. Significant industrial users, at the user's expense, must provide safe and convenient access for sampling by the City. A City approved manhole must be provided from which a sample that is representative of the total discharge can be taken. There must be unobstructed access to the open flow in the manhole so that a grab sample can be taken and so that sampling equipment can be set up in the manhole.

B. Sampling and analysis must be performed by significant industrial users, at their own expense, at least twice each year, in two (2) separate quarters, (~~April - June and October - December~~JANUARY – MARCH AND JULY - SEPTEMBER), and results of such sampling submitted to the City before the last day of each respective quarter or as directed by the City. ~~The City may perform such sampling for the significant industrial user if they so choose.~~

C. IF A TEST RESULT IS NOT WITHIN THE LIMITS OF THIS CHAPTER OR THE CATEGORICAL STANDARDS FROM ANY SEMIANNUAL SAMPLING, COMPLETED BY THE PERMITTED INDUSTRIAL USER, THE INDUSTRIAL USER SHALL IMMEDIATELY NOTIFY THE CITY WITHIN 24 HOURS OF BECOMING AWARE OF THE VIOLATION (I.E. ISSUANCE OF FINAL LAB REPORT) ~~If any sample that is taken by the industrial user or the City is not within the limits of this chapter or the categorical standards, then t~~The industrial user, or the City if they so choose, shall repeat the sampling within thirty (30) days of becoming aware of the violation, or more often if it is determined to be necessary by the City.

D~~C~~. ~~A minimum of four (4) grab samples, pulled at least every two (2) hours,~~ GRAB SAMPLES must be used when sampling for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. ~~For all other pollutants,~~

E. ~~t~~Twenty-four (24) hour composite samples must be obtained through flow-proportional composite sampling techniques, where feasible. The City may waive flow-proportional composite sampling for any industrial user that demonstrates that flow proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. ~~Sampling must be performed for five (5) consecutive days and be representative of the effluent being discharged on a typical production day or as directed by the City.~~

F~~D~~. The flow must be measured by the industrial user at the time that the sample is taken, according to 40 CFR 403.12.

G~~E~~. The methods of sampling must be performed in accordance with 40 CFR 136 and any other applicable Federal, State, or local requirements. ~~and t~~The sampling location and type MUST BE approved by the City. An authorized representative of the industry (see Section 7-02-001-0012) shall sign and submit with these sample results, a statement verifying the validity of the methods and location.

~~H~~F. All records of sampling, analysis and flows must be kept by the industrial user and the City for at least three (3) years. All records must be available to the City UPON REQUEST.

**7-02-001-0011 REPORTING REQUIREMENTS**

D. The significant industrial user shall report to the City ~~immediately~~ PRIOR TO any significant changes in production, including, but not limited to, production rate, product, raw materials utilized, rate of discharge, concentration of pollutants being discharged, etc.

E. If in the course of self-monitoring, a categorical OR SIGNIFICANT industrial user becomes aware of a violation of ~~their~~ THE ~~categorical~~ limits SET FORTH IN THEIR DISCHARGE PERMIT, they shall notify the City within twenty-four (24) hours of becoming aware of such.

~~F. If an industrial user subject to reporting requirements of this section monitors any pollutant more frequently than required by the City, using the procedures prescribed in Section 7-02-001-0010, the results of this monitoring shall be submitted to the City also.~~

**7-02-001-0016 INSPECTIONS AND MONITORING**

A. Any authorized employee of the Water Services Division shall, upon presentation of ~~his~~ THEIR credentials, have ~~free~~ access ~~at all reasonable hours~~ to any commercial or industrial premises connected to or disposing of any type waste to the City wastewater system for the purpose of surveillance and/or an inspection of the premises to determine the nature and quantity of wastes discharged to the City wastewater system, or for examining or copying records, required by 40 CFR 403.12(m). The COMMERCIAL/industrial user must make ~~freely~~ available to the City any and all records which would enable them to make an accurate determination of the constituents and flow of the user's waste stream.

B. ~~Servicemen, industrial pretreatment inspectors, sanitary engineers, or other designated representatives~~ AUTHORIZED EMPLOYEE of the Division, whose duty it may be to enter upon commercial or industrial premises to make inspections and collect samples or measure the quantity of wastes discharged to the City sewer, shall be provided with credentials to identify them as authorized representatives for the Division.

C. No person, except an authorized employee of the Division, shall have or exhibit any credentials of that Division. It shall be the responsibility of each employee or authorized representative of the Division, upon resignation or dismissal, to deliver and surrender at the office of the Water Services Director all credentials of the Division in his/her possession.

D. Questionnaires will be provided to all new businesses entering the City of Flagstaff to gather information pertaining to waste that may be generated by such. If any waste other than domestic is discharged from such an establishment, the City may perform an inspection of such premises at least annually or more often as necessary to determine its status of compliance with this chapter.

E. The City of Flagstaff or its designated representative shall have the authority to randomly sample industrial user waste streams and analyze for any pollutants that would be anticipated to be present for that particular user utilizing EPA approved methods. The City will review and analyze self-monitoring reports submitted by industrial users and make notification to such user of any compliance action to be taken as a result of such.

F. The information from the City's inspection and monitoring activity will be available to the administrative authority of the State and/or EPA. This information will also be made available to the general public upon request with the exception of that information protected by Section 7-02-001-0013. The City will maintain these records for a minimum of three (3) years.

~~G. The industrial user shall be financially responsible for any sampling and analysis performed by the City which is not routine as provided for in this chapter.~~

**7-02-001-0018 PUBLIC NOTIFICATION, DEFINITION OF SIGNIFICANT VIOLATION**

A. The City shall give notice of any decisions being made about the pretreatment program which may interest the public, special interest groups, or government agencies. Information about the operation or requirements of the program will be given to any party which requests it. THE WATER COMMISSION ~~An advisory committee~~ may be used for public information and input if there is an interest expressed in this.

**7-02-001-0049 PERMITS REQUIRED FOR INDUSTRIAL USERS**

All significant industrial users, as defined by Section 7-02-001-0009(A)(1), shall obtain a permit for connection and discharge OR ANY MODIFICATION THAT CHANGES THE TREATMENT, PRODUCTION, FLOW, ETC. OF THE EXISTING FACILITY. to the City's sewer system from the Director.

**7-02-001-0050 INDUSTRIAL USER PERMITS**

M. The City may change the conditions of any permit ~~from time to time as may be necessary~~ in order to comply with requirements of Federal or State regulations. AN INDUSTRIAL USER MAY PETITION THE DIRECTOR TO MODIFY THEIR PERMIT FOR MONITORING PARAMETERS OR PROCESS CHANGES. THE USER MUST SUBMIT SAMPLING REPORTS AND/OR DOCUMENTATION TO SUPPORT THEIR PETITION.

SECTION 4. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 5. 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 6. 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 7. 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 20th day of April, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**RESOLUTION NO. 2021-14**

**A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, ADOPTING THE CITY OF FLAGSTAFF'S WATER SERVICES DIVISION ENFORCEMENT RESPONSE PLAN**

**RECITALS:**

WHEREAS, the City of Flagstaff maintains and operates various water, water reclamation, reclaimed water and stormwater facilities, all hereinafter referred to as "Flagstaff Water Infrastructure"; and

WHEREAS, it is important to keep the operations of Flagstaff's Water Infrastructure in good working order and condition; and

WHEREAS, enforcement of violations of rules and regulations related to use of Flagstaff's Water Infrastructure is an indispensable aspect of maintaining the operations of Flagstaff's Water Infrastructure; and

WHEREAS, from time to time it becomes necessary and prudent to make amendments to those enforcement methods and means of the rules and regulations related to use of Flagstaff's Water Infrastructure; and

WHEREAS, said amendments to the City of Flagstaff's Water Services Division Enforcement Response Plan have been made and said enforcement plan is attached hereto and is intended to be incorporated into this resolution.

**ENACTMENTS:**

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

SECTION 1. The Enforcement Response Plan attached hereto as Exhibit A is hereby adopted as the City of Flagstaff's Water Services Division Enforcement Response Plan.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 20th day of April, 2021.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
A – Enforcement Response Plan

Exhibit A

# City of Flagstaff

## Water Services Division

## Enforcement Response Plan

2021

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## I. PURPOSE

The ERP is intended to enforce the Flagstaff City Code in an equitable and consistent manner as follows:

- To ensure compliance with Title 7, Chapter 1; Title 7, Chapter 2; Title 7, Chapter 3; and Title 12, Chapter 3 of City Code and the Small Municipal Separate Storm Sewer System (MS4) General Permit and to protect public health and safety;
- To provide guidance in enforcement responses that are appropriate to the nature and severity of the violation;
- To establish guidelines that encourage fair and uniform application of enforcement responses to varying types of violations;
- To describe the mechanism to review the appropriateness of responses; and
- Assign points to violations based on their nature and severity for which administrative penalties will be assessed.

## II. LEGAL AUTHORITY

This Enforcement Response Plan (ERP) specifies how the City of Flagstaff ("City") will investigate and respond to instances of noncompliance with the following Articles of the Flagstaff City Code:

| | |
|---|---|
| Title 7, Chapter 1: | Water Services |
| Title 7, Chapter 2: | Wastewater Regulations |
| Title 7, Chapter 3: | City Water System Regulations |
| Title 12, Chapter 3: | Illicit Discharge Detection and Elimination |

This ERP was developed in accordance with 40 CFR Section 403.8(f)(5); Flagstaff City Code, Title 7, Chapter 1, Water Services; Title 12, Chapter 3, Illicit Discharge Detection and Elimination and with the requirements of AZPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) to Water of The United States, Permit No. AZG2016-002.

## III. DEFINITIONS

In this Enforcement Response Plan, the following words and phrases shall have the following meanings, unless the context otherwise requires:

***AO or Administrative Order***: A consent order, a compliance order, or a cease and desist order issued by the City of Flagstaff.

***ADEQ***: Arizona Department of Environmental Quality.

***ARS***: Arizona Revised Statutes.

***AZPDES*:** Arizona Pollutant Discharge Elimination System.

***BMP***: Best Management Practices.

***Administrative Enforcement***: Legal, independently enforceable orders issued directly by Flagstaff officials that define the violation, provide evidence of the violation, impose Administrative Fines and/or require the RP to take corrective action within a specified time period.

***Administrative Fine***: Civil penalty assessed through Administrative Enforcement.

***CFR***: Code of Federal Regulations.

***Due Date***: Date by which report or action is to be completed.

***EPA***: U.S. Environmental Protection Agency.

***Harm Caused***: POTW process upset/inhibition/disruption of normal operation and/or adverse change in POTW effluent, adverse change in POTW sludge (bio-solids) characteristics/concentrations; a discharge into the MS4 which results in a violation of the AZPDES Stormwater Permit; and/or adverse impact on the environment.

***IDDE***: Illicit Discharge Detection and Elimination.

***MS4***: Municipal Separate Storm Sewer System

***NOV***: Notice of Violation *or* Notification of Violation issued to the responsible property and/or business owner.

***Person***: An individual, corporation, entity, or organization.

***POTW***: Publicly Owned Treatment Works.

***RP***: Responsible Party; the owner and/or operator of the property where a violation occurs.

***Show Cause Hearing:*** A formal meeting requiring the RP to appear, explain noncompliance, a show cause why more severe enforcement actions against the RP should not go forward. The meeting may also serve as a forum to discuss corrective action and compliance schedules

***SNC or Significant Non-Compliance***: (a) In order to comply with the public participation

requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards, for nondomestic users permitted to discharge wastewater, the definition of significant non-compliance shall have the same meaning as set forth by 40 CFR 403.8(f)(2)(viii) and Section 7-02-001-0020 of the Flagstaff City Code; (b) For Violations of Title 12, Chapter 3, Illicit Discharge Detection and Elimination; and Title 7, Chapter 02, Wastewater Regulations, the RP shall be determined to be in SNC if the RP accumulates four or more points at any time during the previous six (6) months preceding the end of a quarter.

***Significant Violation:*** A Significant Violation is defined as a violation with an assessed value of 4 points as defined in Section IX of this ERP.

***SWPPP***: Stormwater Pollution Prevention Plan

***WL***: Warning Letter.

***Violation***: Non-compliance with the Flagstaff City Code.

## IV. DESCRIPTION OF ENFORCEMENT ACTIONS

The following criteria will be considered when determining enforcement:

- Type of violation: minor, significant
- Severity of the violation: the duration, quality, and quantity of pollutants, and effect on public safety and the environment
- Apparent good faith of the site operator
- The potential deterrent value of the enforcement action

### INFORMAL NOTICE

1. **Inspection Report**
   ***Responsible City Authority – Pretreatment Inspector or Watershed Specialist***
   ***Timeframe – At time of inspection or within a maximum of five (5) business days of inspection***
   An Inspection Report is prepared by the Pretreatment Inspector or Watershed Specialist after a site visit. The report can include recommendations and education materials to address minor issues, before they become violations, as deemed necessary by the inspector. Educational handouts and additional documented verbal instructions may be provided with the Inspection Report.

2. **Warning Letter**
   ***Responsible City Authority – Pretreatment Inspector or Watershed Specialist***
   ***Timeframe – At time of inspection or within a maximum of five (5) business days of inspection***
   The Warning Letter is the initial documentation to address minor violations. A Warning Letter may be issued by the inspector to the on-site representative at the time of the inspection or can be used after the inspection to follow-up on minor issued addressed in the Inspection Report. No enforcement action is typically taken if the issues listed in the Warning Letter are corrected immediately or within a timeframe deemed appropriate by the inspector.

### ESCALATING ENFORCEMENT

1. **Notice of Violation or Corrective Action**
   ***Responsible City Authority – Regulatory Compliance Manager or Stormwater Manager***
   ***Timeframe – Decision to issue within 10 business days of discovery***
   A written NOV or Corrective Action may be issued if the RP fails to comply with a Warning Letter or if there is a significant violation of City Code. The NOV or Corrective Action will include a written notice on specific violations to City Code and include a timeline for correction. If the RP has corrected the violation(s) in the timeframe specified in the NOV or Corrective Action the NOV or Corrective Action will be closed. Enforcement response will be escalated if the RP has not been in contact with Flagstaff Water Services to develop an alternative, mutually acceptable plan to reach compliance or if the NOV or Corrective Action conditions have not been met. Closure of an NOV or Corrective Action shall not preclude the City from taking further enforcement action if additional information regarding the alleged violations is discovered, or if further violations occur.

2. **Administrative Order**
   ***Responsible City Authority – Water Services Director***
   An Administrative Order is an enforcement document to direct the RP to undertake and/or cease specified activities by specified deadlines. The Administrative Order may incorporate

a Cease and Desist or Stop Work Order, revocation of City issued permit, or a Show Cause Hearing. At its sole discretion, the City may also correct the deficiency or hire a contractor to correct the deficiency and require reimbursement from the RP to the City for all costs incurred in correcting the violation. The City may also assess an Administrative Fine or Civil Penalty in the Administrative Order for instances of continued noncompliance as directed in this ERP.

3. **Administrative Fines/Civil Penalties**

***Responsible City Authority – Water Services Director***

Civil penalties are punitive monetary charges assessed by the City rather than a court. The purpose of the penalty is to recover the economic benefit of noncompliance and to deter future violations. When assessing a civil penalty, the following factors are considered:

a. Type and severity of the violation
b. Number of violations cited
c. Duration of noncompliance
d. Impact of the violation on the receiving water, sludge quality, and POTW operation
e. Whether the violation threatened public health
f. Economic benefit or savings the RP gained from the noncompliance
g. Compliance history of the RP
h. Whether the RP is making a good faith effort to comply

4. **Civil Litigation**

***Responsible City Authority – City Attorney***

Civil litigation is the formal process whereby the City files a lawsuit against the RP to secure court ordered action to correct violations and to secure penalties for the violations including recovery of costs for the noncompliance. Civil litigation also includes enforcement measures which require involvement or approval of the court, such as injunctive relief.

***In emergency situations caused by violations, including imminent danger to the public health, safety, or welfare, and endangerment to City personnel or the environment, the Stormwater Manager or Regulatory Compliance Manager may escalate directly to a NOV, and recommend to the Water Services Director to go directly to an Administrative Order or Civil Litigation Action. Any violations deemed as significant will be published in the largest local newspaper, in accordance with City Code.***

## V. CROSS CONNECTION CONTROL: ENFORCEMENT RESPONSE

Investigation of noncompliance will be conducted by the Industrial Pretreatment Inspectors and/or the Industrial Pretreatment Supervisor. The methods used to investigate and to determine noncompliance may include, but are not limited to:

1. Respond to complaints received from the public;
2. On-site inspections of the nondomestic user, including scheduled and unscheduled visits;
3. Scheduled and unscheduled testing of nondomestic users' backflow assemblies;
4. Maintain database of City approved certified backflow testers;
5. Conduct surveillance of testers to verify test procedures are being followed;
6. Review water purchase records and use of water of nondomestic users;
7. Review backflow assembly test results.

The City will respond to inspections and violations of Title 7, Chapter 3, Section 001-0015, as follows:

1. Inspection Report
    a. Contact by inspector;
    b. Provide educational material of BMPs and Flagstaff City Code requirements and/or prohibitions;
2. Warning letter;
3. NOV;
4. Administrative Orders;
5. Administrative Fines;
6. Civil enforcement action, including injunctive relief and criminal prosecution.

## VI. PRETREATMENT: ENFORCEMENT RESPONSE

The City will respond to violations of Title 7, Chapters 1, 2 and 3, as follows:

8. Inspection Report (7-02-001-0016)
    a. Contact by inspector;
    b. Provide educational material of BMP and Flagstaff City Code requirements and/or prohibitions;
9. Warning letter;
10. NOV (7-01-001-0012);
11. Administrative Orders (7-01-001-0013), which may include:
    a. Modification of wastewater discharge permits;
    b. Affirmative obligations, such as increased monitoring;
    c. Prohibited actions or obligations to cease and desist;
    d. Suspension of access to the City Collection System (7-02-001-0021);
    e. Revocation of permit (7-01-001-0012.E);
12. Administrative Fines (7-01-001-0018);
13. Civil enforcement action, including injunctive relief and criminal prosecution (7-01-001-0019).

## VII STORMWATER: ENFORCEMENT RESPONSE

The City will use City Code, permits, and penalties to enforce stormwater violations. The City has separated stormwater into four general categories for violations: construction sites; illicit discharges or connections to the City's MS4; grading/drainage; and post-construction. Potential RPs for violations include property owners, contractors, developers, businesses, industries, private citizens, and other governmental agencies. The general categories for stormwater violations are:

1. **Construction Site Stormwater Control**
   Developers and contractors working in the City are required to obtain all required permits and adhere to City development processes. Under the Small MS4 General Permit, the City is required to assure all construction sites control and contain sediment and construction site materials, debris, and wastes on the construction site using stormwater control measures or BMPs, as applicable. Construction sites that disturb over one acre, as well construction sites under one acre that construction activity is part of a larger common plan of development or sale that would disturb one acre or more, are required to submit an Erosion Control Plan (ECP) that outlines which types of BMPs will be installed and where. These sites are required to install their BMPs and have the Watershed Specialist or Stormwater Project Manager inspect and approve the site prior to earthwork commencing; and must maintain BMPs through the life of the project.

2. **Illicit Discharges/Illicit Connections**
   City Code prohibits the discharge of contaminated stormwater, wastes, or wastewater to enter storm drains or receiving waters through illicit discharges or illegal connections to the storm sewer system. The purpose of this is to provide for public health and safety as required under federal and state law. An illicit discharge is defined as any discharge to a MS4 that is not composed entirely of stormwater, with the exception of allowable non-stormwater discharges and separately permitted discharges. Illicit connections are defined as any man-made conveyance that connects an illicit discharge directly to the MS4. The City is required to implement a program to minimize, detect, investigate, and eliminate illicit discharges and connections, including unauthorized non-stormwater discharges and spills, into the MS4 system.

3. **Grading/Drainage Violations**
   There are stormwater requirements for new development and redevelopment projects. Depending upon the stormwater requirements for a specific project, volume and peak flow controls must be installed prior to increasing horizontal impervious surface on a site. These projects are required to have a Rough Grading Certification signed by the Engineer of Record, Grading Contractor, Geotechnical Engineer, and Surveyor, as applicable and approved by the City prior to installing impervious surface on a site. The certification affirms that rough grading substantially performs in accordance with the approved grading plan and that the SWPPP and/or ECP measures are in place per the approved plans. Work observed includes but is not limited to: all disturbed areas, locations that will be paved; cut and fill slopes; channels, swales, Low Impact Development (LID) features, terraces, berms, all drainage facilities as indicated on the plan(s), detention basins including the completed associated outlet structure(s). Projects are also required to submit, and have approved by the City, a Final Grading Certificate and As-Built Plans prior to receiving Certificate of Occupancy.

4. **Post-Construction Best Management Practices (BMPs)/Facilities**
   The City of Flagstaff Stormwater Design Manual requires detention LID to mitigate stormwater impacts from new development and redevelopment based on certain criteria. Per the Stormwater Design Manual: “Maintenance of local on-site detention facilities shall

be the responsibility of the property owner or homeowner's association. The City shall reserve the right to periodically inspect any detention facilities to verify that regular maintenance activities are being performed."

The City will respond to inspections and violations of Title 12, Chapter 03, as follows:

14. Inspection Report:
    a. Contact by Watershed Specialist and/or Stormwater Project Manager;
    b. Provide educational material of BMP and Flagstaff City Code requirements and/or prohibitions;
15. Warning letter;
16. Corrective Action Letter;
17. Issuance of Administrative Order, which may include:
    a. Cease and Desist or Stop Work Order (SWO);
    b. Any means necessary to abate an incident to protect the public health, safety or the environment and charging all costs of such abatement to the violator;
    c. Written order to immediately remove pollutant or pollutant source or potential pollutant sources from MS4 and to restore City of Flagstaff property to conditions acceptable to the Water Services Director or his delegated representative;
    d. Affirmative obligations; i.e., increased sweeping or track out pad maintenance,
18. Administrative Fines;

## VIII. POINTS ASSESSMENT CRITERIA

### INTRODUCTION

In order to apply enforcement in an equitable and consistent manner, violation points have been developed for each classification of violation, minor or significant as determined by the Inspector or Watershed Specialist. (See Table B.) Points for violations have been assigned depending upon the severity of the violation; the potential for environmental, public, or employee harm; or facility damage that may result from a violation, and the cost of the violation to the City and its operations. Each violation by an RP shall result in points being assigned to that RP.

When an RP's total points in any two consecutive quarters equals or exceeds 4.0 points, Administrative Fines will be assessed against the RP. The fines will be assessed in the amounts specified on Table A.

### ASSESSMENT OF POINTS

1. When violations are discovered, the assessed points shall be applied to the RP.
2. Significant Non-Compliance is calculated at the end of every quarter for the six (6) months preceding the end of the quarter:

| Compliance Review Date(s) | Period of Review |
|---|---|
| April | October 1 of previous year through March 31 of current year |
| July | January 1 through June 30 of current year |
| October | April 1 through September 30 of current year |
| January | July 1 through December 31 of previous year |

3. When the total number of points equals or exceeds four (4) points in one quarter and equals or exceeds four (4) points in a consecutive quarter, the Water Services Director or his delegated representative shall assess Administrative Fines or Civil Penalties consistent with this ERP and determine other appropriate enforcement actions which may include revocation of the Permit, if applicable; publication of those in significant non-compliance; and/or termination of service or cease and desist orders.
4. If a permit or property is conveyed, points associated with that permit or property do not convey to the new permit holder or owner unless the new holder/owner is related to the previous holder/owner or unless it appears that the conveyance is an attempt to avoid enforcement.
5. A single operational upset or activity, which leads to simultaneous violations of more than one pollutant parameter, may be treated as a single violation for point assessment, provided there is no Harm Caused.

## IX. ADMINISTRATIVE FINE SCHEDULE

### ADMINISTRATIVE FINES FOR POINTS ASSESSED

As a result of significant noncompliance (SNC) determined by the Stormwater Manager or Regulatory Compliance Manager, when an RP is assessed four (4) or more points in one quarter and assessed four (4) or more points during any consecutive quarter, the Water Services Director in conjunction with the City Attorney will assess an Administrative Fine with a base value of $2500.

In addition to the base Administrative Fine, each quarter (0.25) point assessed in excess of 4 points shall be assigned a value of $156.25. For each quarter point, the following values will be applied:

**TABLE A**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 0.25 | 0.50 | 0.75 | 1.0 | 1.25 | 1.50 | 1.75 | 2.0 |
| $156.25 | $312.50 | $468.75 | $625.00 | $781.25 | $937.50 | $1,093.75 | $1,250.00 |
| | | | | | | | |
| 2.25 | 2.50 | 2.75 | 3.0 | 3.25 | 3.50 | 3.75 | 4.0 |
| $1,406.25 | $1,562.50 | $1,718.75 | $1,875.00 | $2,031.25 | $2,187.50 | $2,343.75 | $2,500.00 |

Following an SNC and the imposition of the base fine, each subsequent violation during the same consecutive two-quarter period shall be assessed a fine based on the quarter-point increment schedule. For subsequent violations, all points assessed during the two-quarter period are used to determine whether a penalty will be assessed, but the amount of the penalties are only assessed on points for which penalties were not previously assigned; i.e., no double billing for points assessed. At any time the accumulated points total less than four points for any consecutive two-quarter period, fines will not be assessed for that period.

Data used to determine compliance shall be maintained in accordance with the City's record retention policy and applicable state or federal regulations.

### RECONSIDERATION OF THE FINE

If the RP desires to dispute an assessed Administrative Fine, the RP must file a written request for the Water Services Director to reconsider the Administrative Fine along with full payment of the Administrative Fine within 15 days of being notified of the fine.

### PUBLICATION OF RP IN SIGNIFICANT NONCOMPLIANCE

The Water Services Director shall publish at least annually in a newspaper of general circulation a list of RPs which, at any time since the list was last published, were in Significant Non-Compliance.

Industrial Users found to be in Significant Non-Compliance shall be published in accordance with 40 CFR 403.8(f)(2)(viii)(A-H).

## TABLE B

Any violation of ordinance not specified in Table B may be awarded points at the discretion of the Water Services Director.

The description of the violation is for ease of reference only. For the specific violation, consult the corresponding ordinance section cited.

**Table B, Part 1: Cross Connection Control Violations**

| Code | Violation | Points | Enforcement Response | Code Reference |
|---|---|---|---|---|
| CC-1 | Incorrect installation of assembly | 0.5 | WL, NOV | §7-3-1-45.C.4 and |
| CC-2 | Incorrect size of assembly installed | 1.0 | WL, NOV | §7-3-1-45.C.4 and |
| CC-3 | Installation of by-pass or tampering with | 2.0 | WL, NOV | §7-3-1-45.F.11 |
| CC-4 | Incorrect type of assembly and/or valves installed | 1.0 | WL, NOV | §7-3-1-45.E |
| CC-5 | Installation of a non-approved assembly | 1.0 | WL, NOV | §7-3-1-45.D |
| CC-6 | Failure to install assembly after notification issued – 1st occurrence | 1.0 | WL, NOV | §7-3-1-45.C.3 and F.12 |
| CC-7 | Failure to install assembly after notification issued – 2nd occurrence | 2.0 | WL, NOV | §7-3-1-45.C.3 and F.12 |
| CC-8 | Failure to install assembly after notification issued – 3rd occurrence, discontinuance of service | 4.0 | WL, NOV, AO | §7-3-1-45.C.3 and F.12 |
| CC-9 | Failure to maintain records of tests and/or repair | 1.0 | WL, NOV | §7-3-1-45.C.3 and |
| CC-10 | Failure to conduct annual testing - 1st occurrence | 1.0 | WL, NOV | §7-3-1-45.C.3 and |
| CC-11 | Failure to conduct annual testing - 2nd | 2.0 | WL, NOV | §7-3-1-45.C.3 and |
| CC-12 | Failure to conduct annual testing – 3rd | 3.0 | NOV | §7-3-1-45.C.3 and |
| CC-13 | Failure to notify of removal | 1.0 | WL, NOV | §7-3-1-45.F.6 |
| CC-14 | Failure to conduct initial test | 1.0 | WL, NOV | §7-3-1-45.C.5 |
| CC-15 | Failure to conduct test by certified tester | 1.0 | WL, NOV | §7-3-1-45.J.4 |
| CC-16 | Failure to re-test after repair, etc., of assembly | 2.0 | WL, NOV | §7-3-1-45.J.3 |
| CC-17 | Failure to maintain system open for inspection | 2.0 | WL, NOV | §7-3-1-45.H.1 |
| CC-18 | Failure to notify after repair, relocation or | 2.0 | WL, NOV | §7-3-1-45.F.3 |

**Table B, Part 2: Pretreatment Violations**

| Code | Violation | Points | Enforcement Response | Code Reference |
|---|---|---|---|---|
| P-1 | Allow a prohibited discharge into the POTW which causes pass through or interference – 1st occurrence. | 2.0 | WL, NOV | §7-2-1-7.B.1 |
| P-2 | Allow a prohibited discharge into the POTW which causes pass through or interference – 2nd occurrence within any two consecutive quarters. | 4.0 | WL, NOV | §7-2-1-7.B.1 |
| P-3 | Allow a prohibited discharge into the POTW – 1st occurrence. | 2.0 | WL, NOV | §7-2-1-7.B |
| P-4 | Allow a prohibited discharge into the POTW – 2nd occurrence within any two consecutive quarters. | 4.0 | WL, NOV | §7-2-1-7.B |
| P-5 | Discharge from nondomestic source without a permit. | 2.0 | WL, NOV | §7-2-1-49 |
| P-6 | Discharge from nondomestic source without a permit – 2nd occurrence within any two consecutive quarters. | 4.0 | WL, NOV | §7-2-1-49 |
| P-7 | No warning of possible connection or entry point for a hazardous and/or prohibited substance to the permittee's plumbing or drainage system. | 2.0 | WL, NOV | §7-2-1-51.C |
| P-8 | Violation of Local or Categorical limit - 1st occurrence. The exception are and violation to BOD and TSS limits, which will be assessed surcharges in accordance with 7-02-001-0008.B and not be in violation of this ERP. | 1.0 | WL, NOV | §7-2-1-8.B |
| P-9 | Violation of Local or Categorical limit - 2nd occurrence within any two consecutive quarters. The exception are and violation to BOD and TSS limits, which will be assessed surcharges in accordance with 7-02-001-0008.B and not be in violation of this ERP. | 2.0 | NOV | §7-2-1-8.B |
| P-10 | Violation of Local or Categorical limit - 3rd occurrence within any two consecutive quarters. The exception are and violation to BOD and TSS limits, which will be assessed surcharges in accordance with 7-02-001-0008.B and not be in violation of this ERP. | 4.0 | NOV | §7-2-1-8.B |
| P-11 | Use of dilution to meet a standard or local limit – 1st occurrence. | 2.0 | NOV, AO | §7-2-1-8.E |
| P-12 | Use of dilution to meet a standard or local limit – 2nd occurrence within any two consecutive quarters. | 4.0 | NOV, AO | §7-2-1-8.E |
| P-13 | Tamper, damage, or destroy monitoring equipment. | 4.0 | NOV, AO Revocation of permit | §7-2-1-3 |
| P-14 | Tamper with manhole or unauthorized entry into POTW. | 2.0 | NOV, AO, CEASE and DESIST | §7-2-1-3 |

| | | | | |
|---|---|---|---|---|
| P-15 | Tamper with manhole or unauthorized entry into POTW – 2nd occurrence within any two consecutive quarters. | 4.0 | NOV, AO, CEASE and DESIST | §7-2-1-3 |
| P-16 | Tamper with pretreatment device – 1st occurrence. | 2.0 | NOV, AO, CEASE and DESIST | §7-2-1-3 |
| P-17 | Tamper with pretreatment device – 2nd occurrence within any two consecutive quarters. | 4.0 | NOV, AO, CEASE and DESIST | §7-2-1-3 |
| P-18 | Failure to provide pretreatment facilities. | 1.0 | WL, NOV | §7-2-1-08.G |
| P-19 | Failure to properly maintain pretreatment equipment – 1st occurrence. | 1.0 | WL, NOV | §7-2-1-08.G |
| P-20 | Failure to properly maintain pretreatment equipment – 2nd occurrence in any two consecutive quarters. | 2.0 | WL, NOV | §7-2-1-08.G |
| P-21 | Failure to properly maintain pretreatment equipment – 3rd occurrence in any two consecutive quarters. | 4.0 | WL, NOV | §7-2-1-08.G |
| P-22 | Failure to maintain cleaning and maintenance records – 1st occurrence. | 1.0 | WL, NOV | §7-2-1-4.I |
| P-23 | Failure to maintain cleaning and maintenance records – 2nd occurrence within any two consecutive quarters. | 2.0 | WL, NOV | §7-2-1-4.I |
| P-24 | Failure to maintain cleaning and maintenance records – 3rd occurrence within any two consecutive quarters. | 4.0 | WL, NOV | §7-2-1-4.I |
| P-25 | Failure to develop and/or implement accidental discharge/slug control plan – 1st occurrence. | 0.5 | WL | 40 CFR § 403.8(f)(2)(vi) |
| P-26 | Failure to develop and/or implement accidental discharge/slug control plan – 2nd occurrence within any two consecutive quarters. | 2.0 | WL, NOV | 40 CFR § 403.8(f)(2)(vi) |
| P-27 | Failure to develop and/or implement accidental discharge/slug control plan – 3rd occurrence within any two consecutive quarters. | 4.0 | WL, NOV | 40 CFR § 403.8(f)(2)(vi) |
| P-28 | Discharge of hauled waste into POTW without discharge permit – 1st occurrence. | 4.0 | NOV, AO, CEASE and DESIST | §7-2-1-42.B |
| P-29 | Illegal disposal of pretreatment sludge and other material. | 4.0 | NOV, AO, CEASE and DESIST | §7-2-1-6 |
| P-30 | Failure to submit sampling results to the City before the last day of a respective quarter – 1st occurrence. | 1.0 | WL, NOV | §7-2-1-10.B |
| P-31 | Failure to submit sampling results to the City before the last day of a respective quarter – 2nd occurrence within any two consecutive quarters. | 2.0 | WL, NOV | §7-2-1-10.B |
| P-32 | Failure to submit sampling results to the City before the last day of a respective quarter – 3rd occurrence within any two consecutive quarters. | 4.0 | WL, NOV | §7-2-1-10.B |
| P-33 | Failure to obtain wastewater discharge permit - discharge occurring. | 2.0 | WL, NOV | §7-2-1-49 |

| | | | | |
|---|---|---|---|---|
| P-34 | Failure to notify Water Services Director of significant changes to wastewater prior to changed discharge. | 4.0 | NOV, AO, Revocation of permit | §7-2-1-11.D |
| P-35 | Failure to provide prior notification to the Water Services Director of changed conditions. | 4.0 | NOV, AO, Revocation of permit | §7-2-1-11.D |
| P-36 | Misrepresentation or failure to fully disclose all relevant facts in wastewater discharge permit application. | 4.0 | NOV, AO, Revocation of permit | §7-2-1-50.C |
| P-37 | Falsifying self-monitoring reports. | 4.0 | NOV, AO, Revocation of permit | §7-2-1-19 |
| P-38 | Refusing to allow the Water Services Director timely access to the facility premises and records. | 4.0 | NOV, AO, Revocation of permit | §7-2-1-16.A |
| P-39 | Failure to immediately notify of potential problems. | 1.0 | WL, NOV | §7-2-1-11.B |
| P-40 | Failure to submit detailed written report within 5 days following discharge violation. | 1.0 | WL, NOV | §7-2-1-11.C |
| P-41 | Failure to post notification information of POTW in the event of an accidental discharge, non-routine discharge, or slug load which may impact the POTW. | 2.0 | WL, NOV | §7-2-1-11.B |
| P-42 | Failure to notify Water Services Director within 24 hours of becoming aware of violation – 1st occurrence. | 1.0 | WL, NOV | §7-2-1-11.E |
| P-43 | Failure to notify Water Services Director within 24 hours of becoming aware of violation – 2nd occurrence within any two consecutive quarters. | 2.0 | WL, NOV | §7-2-1-11.E |
| P-44 | Failure to notify Water Services Director within 24 hours of becoming aware of violation – 3rd occurrence within any two consecutive quarters. | 4.0 | NOV, AO | §7-2-1-11.E |
| P-45 | Failure to notify of discharge of hazardous waste. | 2.0 | WL, NOV | §7-2-1-11.G |
| P-46 | Improper test method conducted – 1st occurrence. | 0.50 | WL, NOV | §7-2-1-10.E |
| P-47 | Improper test method conducted – 2nd occurrence within any two consecutive quarters. | 1.0 | WL, NOV | §7-2-1-10.E |
| P-48 | Improper test method conducted – 3rd occurrence within any two consecutive quarters. | 2.0 | WL, NOV | §7-2-1-10.E |
| P-49 | Failure to apply for renewal of discharge permit within 90 days of permit expiration. | 2.0 | WL, NOV | §7-2-1-50.B |
| P-50 | Failure to apply for renewal of discharge permit within 90 days of permit expiration – 2nd notice. | 4.0 | WL. NOV, AO | §7-2-1-50.B |

**Table B, Part 3: Stormwater Violations**

| Code | Violation | Points | Enforcement Response | Code Reference |
|---|---|---|---|---|
| SW-1 | Discharging any substance to the public right-of-way and/or the public storm drain system that is not composed entirely of storm water – 1st occurrence (non-domestic). | 2.0 | WL, NOV | §12-03-001-0007 |
| SW-2 | Discharging any substance to the public right-of-way and/or the public storm drain system that is not composed entirely of storm water – 2nd or greater occurrence (non-domestic). | 4.0 | WL, NOV | §12-03-001-0007 |
| SW-3 | Discharging any substance to the public right-of-way and/or the public storm drain system that is not composed entirely of storm water (domestic) – 1st occurrence. | 2.0 | Provide BMP pamphlet, WL, NOV | §12-03-001-0007 |
| SW-4 | Discharging any substance to the public right-of-way and/or the public storm drain system that is not composed entirely of storm water (domestic) – 2nd or greater occurrence within any two consecutive quarters | 4.0 | NOV, AO | §12-03-001-0007 |
| SW-5 | Improper use, storage, spill, dump of material in a manner which could cause or contribute to the addition of pollutants to the storm system – 1st occurrence. | 2.0 | WL, NOV | §12-03-001-0007 |
| SW-6 | Improper use, storage, spill, dump of material from a commercial/industrial activity in a manner which could cause or contribute to the addition of pollutants to the storm system – 2nd or greater occurrence within any two consecutive quarters. | 4.0 | NOV, AO | §12-03-001-0007 |
| SW-7 | Establishment, use, maintenance, or continuance of any connection to the public storm sewer system which has caused or will likely cause a violation. | 1.0 | WL, NOV | §12-03-001-0009 |
| SW-8 | Failure to remove any connection to the public storm drain system. | 2.0 | AO | §12-03-001-0009 |
| SW-9 | Failure to clean up any release or discharge which may result in pollutant(s) entering the public storm drain system. | 1.0 | WL, NOV | §12-03-001-0014 |
| SW-10 | Failure to notify the City of discharge or release of pollutant into the public storm drain system. | 2.0 | WL, NOV | §12-03-001-0014 |
| SW-11 | Failure to implement or maintain BMP(s) (non-construction). | 1.0 | WL, NOV | Flagstaff Stormwater Management Design Manual |
| SW-12 | Failure to implement or maintain BMP(s) (construction). | 2.0 | WL, NOV, AO | Flagstaff Stormwater Management Design Manual |
| SW-13 | Discharge of exempt discharges that are determined to be a significant source of pollutants or could place the City in violation with its AZPDES Permit. | 2.0 | WL, NOV | §12-03-001-0007 |

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Jolene Montoya, Industrial Pretreat Supervisor

**Co-Submitter:** Steve Camp

**Date:** 03/29/2021

**Meeting Date:** 04/06/2021

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**TITLE:**

**Consideration and Adoption of Ordinance No. 2021-09:** An ordinance amending Section 7-03-001-0015 related to City Water Systems Cross Connection Control

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:

1) Read Ordinance No. 2021-09 by title only for the first time
2) City Clerk reads Ordinance No. 2021-09 by title only (if approved above)

At the April 20, 2021 Council Meeting:

3) Read Ordinance No. 2021-09 by title only for the final time
4) City Clerk reads Ordinance No. 2021-09 by title only (if approved above)
5) Adopt Ordinance No. 2021-09

**Executive Summary:**

This proposed change has the potential to impact most of our industrial and commercial water customers that have backflow prevention or cross-connection devices, as well as any future installation of these devices. The proposed changes are to Flagstaff City Code 7-03-001-0015. These changes will streamline code language to increase clarity and reduce redundancy. These changes will make code easier to understand and provide better guidance to the public as to the expectation of the cross-connection program. Flagstaff Water Services has conducted outreach to customers that may be impacted by the cross-connection changes and the general public through individual email, information included in customer water bills, a notice published in the Arizona Daily Sun, information published on Flagstaff Water Services website, and in a presentation to the Water Commission. Staff also conducted a public on-line meeting to address questions/comments to the cross-connection changes. These recommended code changes will serve to bring clarity to the City Code, and ensure staff's consistency in administering the program.

**Financial Impact:**

None.

**Policy Impact:**

None.

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

The changes to the cross-connection program support Priority Based Budget Key Community Priorities and Objectives: Sustainable, Innovative Infrastructure - Deliver outstanding services to residents through a healthy well-maintained infrastructure system by keeping the water distribution system safe for all customers.

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

A presentation was made to Council during the Work Session on March 30, 2021.

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**Attachments:** Ord. 2021-09

**ORDINANCE NO. 2021-09**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING FLAGSTAFF CITY CODE TITLE 7, HEALTH AND SANITATION, CHAPTER 7-03, CITY WATER SYSTEM REGULATIONS BY AMENDING THE LANGUAGE IN SECTION 7-03-001-0015, CROSS CONNECTION CONTROL; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, the City of Flagstaff maintains and operate various city water systems; and

WHEREAS, it is important to keep the operations of Flagstaff's water systems regulated for safety, security and the public health; and

WHEREAS, from time to time it becomes necessary and prudent to make amendments to the regulations related to Flagstaff's water systems to continue to maintain said systems in good working order and condition; and

WHEREAS, said amendments to Flagstaff City Code Section 7-03-001-0015 regulating cross connection controls within the city's water systems are now deemed necessary and prudent by the Flagstaff City Council.

**ENACTMENTS:**

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

SECTION 1. That the language in strike-through type below be deleted, and the language in all-caps type below be added as amendments to Flagstaff City Code Section 7-03-001-0015:

**CHAPTER 7-03**

**CITY WATER SYSTEM REGULATIONS**

**7-03-001-0015 CROSS CONNECTION CONTROL**

~~Table of Contents~~

~~A. Definitions~~

~~B. Purpose and Application~~

~~C. General Requirements~~

~~D. List of Backflow Prevention Methods~~

~~E. Backflow Prevention Methods Required~~

~~F. Installation Requirements~~

~~G. Installation of Backflow Prevention Assemblies for Fire Systems~~

~~H. Inspections~~

~~I. Permit~~

~~J. Maintenance and Testing~~

~~K. General Penalty and Fees~~

~~L. Administrative appeal~~

A. Definitions

BACKFLOW PREVENTION ASSEMBLY APPROVAL: ANY BACKFLOW PREVENTION ASSEMBLY EQUIPPED WITH TEST COCKS SHALL HAVE BEEN ISSUED A CERTIFICATE OF APPROVAL BY THE USC FOUNDATION FOR CROSS-CONNECTION CONTROL AND HYDRAULIC RESEARCH. ANY BACKFLOW PREVENTION ASSEMBLY NOT EQUIPPED WITH TEST COCKS SHALL BE CERTIFIED BY A THIRD-PARTY ENTITY UNRELATED TO THE PRODUCT'S MANUFACTURER OR VENDOR AND APPROVED BY THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ). A BACKFLOW PREVENTION ASSEMBLY NOT LISTED BY USC-FCCCHR CANNOT BE USED FOR CONTAINMENT, FIRE LINE OR LANDSCAPE PROTECTION.

BACKFLOW PREVENTION METHOD: A BACKFLOW PREVENTION METHOD MAY BE APPROVED BY THE CITY OF FLAGSTAFF IF IT IS CONTAINED IN THE MOST CURRENT EDITION OF THE USC-FCCCHR MANUAL OF CROSS-CONNECTION CONTROL.

CLOSE AS PRACTICABLE: IS THE POINT NEAREST THE SERVICE CONNECTION WHERE THE ASSEMBLY CAN BE INSTALLED. WHERE THE ASSEMBLY INSTALLATION LOCATION MAY INTERFERE WITH OBSTACLES SUCH AS DRIVEWAYS AND SIDEWALKS, THEN CLOSE AS PRACTICABLE IS THE NEAREST POINT AFTER THE OBSTACLE, BUT IN NO EVENT BEYOND THE FIRST TAP.

Compliance date: The annual date by which the annual backflow prevention assembly compliance test report must be received by the City of Flagstaff Cross Connection Control office. ~~and that the backflow assembly meets the requirements of the most current section of the Arizona Administrative Code (AAC) referencing cross connection control and the City of Flagstaff Cross Connection Control Code 7-03-001-0016. For violations of this code, the specified date by which a violation must be remedied.~~

Division: The City of Flagstaff, ~~Utilities~~ WATER SERVICES Division.

Public Water Supply System: All mains, pipes and structures owned and/or maintained by the City of Flagstaff, through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants reservoirs, storage tanks and appurtenances, collectively or separate, actually used or intended for use for the purpose of

furnishing potable water.~~Any mains, pipes or structures connected to the above listed system and supplying potable water to the customers of the City of Flagstaff~~.

Reclaimed water: Wastewater that has been sufficiently treated by the City of Flagstaff's ~~Wastewater Treatment~~WATER RECLAMATION Plants for approved use, ~~e.g., irrigation,~~ and is provided through the City of Flagstaff's reclaimed water system.

B. Purpose and Application

1. To protect the public water supplies of the City of Flagstaff from the possibility of contamination or pollution by preventing the backflow of contaminants and pollutants into the public water supply systems.

2. To promote the elimination or control of cross-connections, actual or potential, between a customer's internal water systems, plumbing fixtures, industrial piping systems, and the public water supply.

3. To provide for a continuing program of cross-connection control which will prevent the contamination or pollution of the public water supply systems.

4. To implement the requirements of the most current AAC pertaining to the cross connection control program requiring public water systems to protect against backflow, and to this end, this ordinance shall be construed and applied consistently with the requirements of ~~this~~THE MOST CURRENT AAC.

C. General Requirements

2. Rights and Responsibilities of the Division. It shall be the right and responsibility of the Division to evaluate and investigate as deemed necessary, industrial and ~~other~~ COMMERCIAL properties served by the public water supply to determine whether actual or potential hazards to the public water supply exist. Such evaluations and investigations shall be repeated as often as the Division deems necessary.

It shall also be the right and responsibility of the Division to require the installation and ~~periodic~~ ANNUAL testing of backflow prevention assemblies at any premises or property where such potential or actual hazards are found to exist.

3. Responsibility of the Consumer. The consumer, as defined by Section 7-03-001-0015~~6~~(A), shall be responsible and financially obligated for the protection of the public water supply system from the possibility of contamination or pollution due to backflow or backsiphonage of contaminants through the customer's water service connection into the public potable water system.

~~If, in the judgment of the Division, an approved backflow prevention assembly is necessary for the protection of the public water system, the Division shall give notice to the consumer to install such. The consumer, after due written notice and within the prescribed time indicated on the notice, shall install such approved assembly(ies) at their own expense. Installation of such assembly(ies) shall be in accordance with the manufacturer's instructions, and the Division's installation requirements. The consumer shall provide for the maintenance, testing, and repair of the assembly(ies) and shall provide all reports as required by the City of Flagstaff. Failure, refusal or inability on the part of the consumer to install, have tested and/or~~

~~maintain said assembly(s) or failure of the consumer to file required reports shall constitute a ground for discontinuing water service to the premises until such requirements have been satisfactorily met.~~

~~It shall be the responsibility of the consumer to make arrangements for an authorized representative of the City of Flagstaff to, upon presentation of his or her credentials, have free access at all reasonable hours to any property served by a connection to the public water distribution system of the City of Flagstaff and/or any backflow assemblies on the property and any related records for the purpose of verifying the presence or absence of actual or potential cross-connections and/or required assemblies.~~

4. Existing facilities

C. IF AN EXISTING FACILITY UNDERGOES CONSTRUCTION FOR IMPROVEMENTS OR CHANGE OF USE, THE INSTALLED BACKFLOW ASSEMBLIES WILL BE EVALUATED FOR HAZARD. IF IT IS FOUND THE CURRENT BACKFLOW ASSEMBLY(S) IS INADEQUATE PROTECTION, THE CUSTOMER WILL BE REQUIRED TO REPLACE WITH A DEVICE SUITED FOR THE HAZARD.

5. New Facilities

a. ~~All facilities constructed after the effective date of this Ordinance,~~ NEW FACILITIES shall present their plans for review by an authorized representative of the Division for determination of cross-connection hazards.
b. All backflow prevention assemblies to be installed shall be shown on all required building and engineering plans. No installation of assemblies shall be made unless these plans are reviewed and approved by an authorized representative of the Division.
C. DURING CONSTRUCTION OF NEW FACILITIES, WATER SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL THE CONTAINMENT BACKFLOW ASSEMBLY HAS BEEN TESTED.
d. All assemblies shall be inspected by an authorized representative of the Division upon installation and the consumer shall provide written verification that the assembly has been successfully tested as described in section (K~~D~~) of this Ordinance, prior to issuance of certification of occupancy. Water service may be withheld if the assembly is not installed and tested in accordance with this ordinance and Division requirements.

~~6. Backflow prevention is required~~

~~The following conditions shall warrant the installation of an approved backflow prevention assembly:~~

~~a. When the City of Flagstaff determines that the water supplied by the public water systems may be subject to contamination or pollution, an approved backflow prevention method shall be required at every service connection to a customer's water system. The customer shall install the required backflow protection within the time specified by the City of Flagstaff. In determining the time in which backflow protection shall be installed,~~

~~the City of Flagstaff shall consider the degree of hazard potential to the public water supplies.~~

~~b. The backflow prevention method required shall be determined by the City of Flagstaff. The method required by the City of Flagstaff shall be sufficient to protect against the hazard potential as stated in the most current edition of the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC-FCCCHR) Manual of Cross-Connection Control.~~

~~c. Premises with internal cross-connections which the Division determines to be non-correctable, or premises with plumbing systems so intricate that a cross-connection inspection is impossible or impractical.~~

~~d. Premises with security restrictions or other access prohibitions which make cross-connection inspections impossible or impractical.~~

~~e. Premises with an existing unprotected cross-connection or with a history of cross-connection violations.~~

~~The type of assembly required shall be determined by the Division according to the degree of hazard present as recommended by the most current USC-FCCHR Manual of Cross-Connection Control Containment and landscape assemblies shall be installed as close as possible to the service connection before the first branch line leading off the service line. Fire line backflow prevention assemblies may be installed in fire riser rooms with adequate drainage for the size of the assembly and the water pressure in that area of the system. All drains for fire risers with antifreeze and reduced pressure principle backflow prevention assemblies must go to the sanitary sewer system, not the storm drain system. In all cases, the backflow prevention assembly shall protect against the highest hazard present.~~

~~7~~6. Adoption of Public Record

The most current edition of the USC-FCCCHR Manual of Cross Connection Control.

D. List of Backflow Prevention Methods

A backflow prevention method shall be any assembly or other means designed to prevent backflow. The following are the recognized backflow prevention methods which the City of Flagstaff may require (IN ORDER OF DEGREE OF PROTECTION):

1. Air Gap (AG): The unobstructed vertical distance through the free atmosphere between the opening of the pipe or faucet supplying potable water to a tank, plumbing fixture or other device. An approved air gap shall be at least double the effective opening of the supply pipe or faucet and in no case less than one (1) inch above the flood rim.

2. Reduced Pressure Principle Assembly (RPA or RP): An assembly containing two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves, and at the same time, below the first check valve. The assembly shall include properly located test cocks and tightly closing shutoff valves located at each end of the assembly.

3. REDUCED PRESSURE PRINCIPLE DETECTOR ASSEMBLY (RPDA): AN ASSEMBLY COMPOSED OF A LINE SIZED APPROVED REDUCED PRESSURE PRINCIPLE ASSEMBLY WITH A BYPASS CONTAINING A SPECIFIC WATER METER AND AN APPROVED REDUCED PRESSURE PRINCIPLE ASSEMBLY.

4. Double Check Valve Assembly (DCVA or DC): An assembly composed of two (2) independently acting, approved check valves, including tightly closing shutoff valves located at each end of the assembly and fitted with properly located test cocks.

5. DOUBLE CHECK DETECTOR ASSEMBLY (DCDA OR DDCVA): AN ASSEMBLY COMPOSED OF A LINE SIZE APPROVED DOUBLE CHECK VALVE ASSEMBLY WITH A BYPASS CONTAINING A SPECIFIC WATER METER AND AN APPROVED DOUBLE CHECK VALVE ASSEMBLY.

~~4~~6. Pressure Vacuum Breaker Assembly (PVB): An assembly containing an independently operating, loaded check valve and an independently operating, loaded air inlet valve located on the discharge side of the check valve. The assembly shall be equipped with properly located test cocks and tightly closing shutoff valves located at each end of the assembly.

~~5~~7. Spill-resistant Pressure Vacuum Breaker (SVB): An assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly shall be equipped with a properly located resilient seated test cock, properly located bleed/vent valve and tightly closing resilient seated shutoff valves located at each end of the assembly.

~~Double Check Detector Assembly (DCDA or DDCVA): An assembly composed of a line size approved double check valve assembly with a bypass containing a specific water meter and an approved double check valve assembly.Reduced Pressure Principle Detector Assembly (RPDA): An assembly composed of a line sized approved reduced pressure principle assembly with a bypass containing a specific water meter and an approved reduced pressure principle assembly.~~

~~8. Backflow prevention method: A backflow prevention method may be approved by the City of Flagstaff if it is contained in the most current edition of the USC-FCCCHR Manual of Cross-Connection Control. The current list of approved methods shall be available for inspection at the City of Flagstaff Industrial Waste Section to any customer required to install a backflow prevention assembly.~~

~~Backflow Prevention Assembly Approval: Any backflow prevention assembly equipped with test cocks shall have been issued a certificate of approval by the USC Foundation for Cross-Connection Control and Hydraulic Research. Any backflow prevention assembly not equipped with test cocks shall be certified by a third party entity unrelated to the product's manufacturer or vendor and approved by the Arizona Department of Environmental Quality (ADEQ). A backflow prevention assembly not listed by USC-FCCCHR cannot be used for containment, fire line or landscape protection.~~

E. Backflow Prevention Methods Required

1. THE FOLLOWING CONDITIONS SHALL WARRANT THE INSTALLATION OF AN APPROVED BACKFLOW PREVENTION ASSEMBLY:

A. WHEN THE CITY OF FLAGSTAFF DETERMINES THAT THE WATER SUPPLIED BY THE PUBLIC WATER SYSTEMS MAY BE SUBJECT TO CONTAMINATION OR POLLUTION, AN APPROVED BACKFLOW PREVENTION METHOD SHALL BE REQUIRED AT EVERY SERVICE CONNECTION TO A CUSTOMER'S WATER SYSTEM. THE CUSTOMER SHALL INSTALL THE REQUIRED BACKFLOW PROTECTION WITHIN THE TIME SPECIFIED BY THE CITY OF FLAGSTAFF. IN DETERMINING THE TIME IN WHICH BACKFLOW PROTECTION SHALL BE INSTALLED, THE CITY OF FLAGSTAFF SHALL CONSIDER THE DEGREE OF HAZARD POTENTIAL TO THE PUBLIC WATER SUPPLIES.

B. THE BACKFLOW PREVENTION METHOD REQUIRED SHALL BE DETERMINED BY THE CITY OF FLAGSTAFF. THE METHOD REQUIRED BY THE CITY OF FLAGSTAFF SHALL BE SUFFICIENT TO PROTECT AGAINST THE HAZARD POTENTIAL AS STATED IN THE MOST CURRENT EDITION OF THE UNIVERSITY OF SOUTHERN CALIFORNIA FOUNDATION FOR CROSS-CONNECTION CONTROL AND HYDRAULIC RESEARCH (USC-FCCCHR) MANUAL OF CROSS-CONNECTION CONTROL.

C. PREMISES WITH INTERNAL CROSS-CONNECTIONS WHICH THE DIVISION DETERMINES TO BE NON-CORRECTABLE, OR PREMISES WITH PLUMBING SYSTEMS SO INTRICATE THAT A CROSS-CONNECTION INSPECTION IS IMPOSSIBLE OR IMPRACTICAL.

D. PREMISES WITH SECURITY RESTRICTIONS OR OTHER ACCESS PROHIBITIONS WHICH MAKE CROSS-CONNECTION INSPECTIONS IMPOSSIBLE OR IMPRACTICAL.
E. PREMISES WITH AN EXISTING UNPROTECTED CROSS-CONNECTION OR WITH A HISTORY OF CROSS-CONNECTION VIOLATIONS.

2. Whenever the following items exist or activities are conducted on premises served by the public water systems, a potential hazard to the public water supplies shall be presumed, and a backflow prevention method of the type specified herein for that item or activity must be utilized or installed at each service connection for that premise. If an activity or item is not on the following list, it shall be evaluated by the City of Flagstaff and a method of backflow prevention will be determined.

~~1~~a. Cooling tower, boiler, condenser, chiller, and other cooling systems: RP

~~2~~b. Tank, vessel, receptacle, and all other water connections, including mobile units, except emergency vehicles and private swimming pools: RP

~~3~~c. Ice maker (other than a residential service): RP

~~4~~d. Water-cooled equipment, boosters, pumps or autoclaves: RP

~~5~~e. Water treatment facilities and all water processing equipment (other than residential water softeners): RP

~~6~~f. Bottle washer, bedpan washer, garbage can washer: RP

~~7~~g. Pesticide, herbicide, fertilizer, and chemical applicators (other than typical in-home use): RP

~~8~~h. Aspirator: RP

~~9~~i. Commercial dishwashers, food processing and/or preparation equipment, carbonation equipment or other food service processes: RP

~~10~~j. Decorative fountain, baptismal, non-residential swimming pool or spa, or any location water is exposed to atmosphere: RP

~~11~~k. X-ray equipment, plating equipment, or any other photographic processing equipment: RP

~~12~~l. Auxiliary water supply and/or connections to unapproved water supply systems: RP

~~13~~m. Reclaimed water sites with potable water connections: RP on the potable meter, AG between feed line from supplemental domestic water supply to a holding tank to reclaim water lines.

~~14~~n. Recreational vehicle dump stations (sewer), or any other location where water may be exposed to bacteria, virus or gas: RP

~~15~~o. Any premises on which chemicals, oils, solvents, pesticides, disinfectants, cleaning agents, acids or other pollutants and/or contaminants are handled in a manner by which they may come in direct contact with water, or there is evidence of the potential to contact water: RP

~~16~~p. Materials and piping systems unapproved by the currently adopted City of Flagstaff Plumbing Code or Environmental Protection Agency (EPA) for potable water usage: RP

~~17~~q. Separately metered or unprotected irrigation systems, and construction water services: RP or PVB/SVB as allowed.

~~18~~r. Any premises where a cross-connection is maintained or where internal backflow protection is required pursuant to the City of Flagstaff adopted plumbing code: RP

~~19~~s. Multimetered properties with more than one (1) meter connected to another or any building three (3) stories or greater than thirty-four (34) feet in height from service level: RP

~~20.~~t. Fire systems - AWWA Classes 1 and 2 and all systems constructed of a piping material not approved for potable water pursuant to the City of Flagstaff Plumbing Code: DCVA (DC) or Double Detector CVA (DCDVA): DC RESIDENTIAL FIRE SPRINKLERS SHALL BE EXEMPT FROM THIS REQUIREMENT.

~~21~~u. Fire systems – AWWA Class 3, 4, 5, 6: RP or RP with detector

v. Fire systems which require backflow protection and where backflow protection is required on the industrial/domestic service connection that is located on the same premises, both service connections will have adequate backflow protection for the highest degree of hazard affecting either system: RP

~~22~~w. Any premise which has a source of water supply that is not accepted by the public water system or not approved by the Arizona Department of Environmental Quality: RP or AG as determined by the City of Flagstaff

~~23~~x. Any premise where an unprotected cross-connection exists or where there has previously occurred a cross connection problem within the premises: AG or RP as determined by the City of Flagstaff

~~24~~y. Any premise where there is a significant possibility that a cross-connection problem will occur and entry onto the premises is restricted to the extent that cross-connection inspections cannot be made with sufficient frequency or on sufficiently short notice to assure that unprotected cross-connections do not exist: RP or AG as determined by the City of Flagstaff

~~25~~z. Multi-use commercial property: RP

~~26~~aa. Properties with active private wells: RP

~~27~~bb. Consecutive systems, when required by the City of Flagstaff: RP

~~28~~cc. Fire hydrant/construction water: RP

~~29~~dd. Jumper connection to new water mains: RP

~~30~~ee. Post mix soda machine with a carbonator: ~~Stainless Steel~~ ~~RP~~ASSE 1022

~~31~~ff. Shampoo sink: RP

gg.. BREWERY, DISTILLERY, MEADERY, OR ALCOHOL MAKING PROCESS: RP OR AG

hh. HOSPITALS AND MEDICAL OFFICES.: RP

~~a. When two (2) or more of the activities listed above are conducted on the same premises and served by the same service connection or multiple service connections, the most restrictive backflow prevention method required for any of the activities conducted on the premises shall be required to be installed at each service connection. The order of the most restrictive to least restrictive backflow prevention methods shall be as follows:~~

~~1. Air gap (AG).~~

~~2. Reduced pressure principle assembly (RP or RPA).~~

~~3. Reduced pressure principle detector assembly (RPDA).~~

~~4. Double check valve assembly (DCVA).~~

~~5. Double check detector assembly (DCDA).~~

~~6. Pressure vacuum breaker assembly (PVB).~~

~~7. Spill resistant pressure vacuum breaker (SVB).~~

F. Installation Requirements

1. The Division shall USE THE MOST CURRENT EDITION OF THE USC-FCCCHR MANUAL OF CROSS CONNECTION CONTROL FOR LIST OF APPROVED ASSEMBLIES.~~maintain a list of approved backflow prevention assemblies, by type and manufacturer. Any consumer required by the Division to install an approved backflow prevention assembly must utilize an assembly included in such list.~~

2. Backflow prevention assemblies shall have a diameter at least equal to the diameter of the service connection.

3. Backflow prevention assemblies shall be installed and maintained by the customer, at the customer's expense and in compliance with the standards and specifications adopted by the City of Flagstaff at each service connection. The customer is responsible for notifying the City of Flagstaff Industrial ~~Waste~~ PRETREATMENT Section of any installation, repair, relocation, REMOVAL, or replacement.

4. THE APPROVED ASSEMBLY SHALL BE INSTALLED ABOVE GROUND, AS CLOSE AS PRACTICABLE, TO THE SERVICE CONNECTION BEFORE THE FIRST BRANCH LINE LEADING OFF THE SERVICE LINE, AND IN A HOT BOX WITH ELECTRICITY FOR HEAT. THE HEATED ENCLOSURE MUST BE ASSE 1060 CERTIFIED OR SIMILAR. THE ELECTRICAL FOR THE HEAT MUST BE INSTALLED IN ACCORDANCE WITH CITY APPROVED BUILDING CODE AND CITY ENGINEER STANDARD DRAWING 19-02-025. ASSEMBLIES SHALL BE INSTALLED PER MANUFACTURER'S SPECIFICATIONS WITH ADEQUATE CLEARANCES FOR TESTING AND MAINTENANCE, AND NOT INSTALLED IN A METER BOX, PIT OR VAULT.

~~A backflow prevention assembly shall be installed as close as practicable to the service connection outside the building unless it is for a fire line.~~

A. WHERE CONTAINMENT AT THE PROPERTY LINE CANNOT BE ACHIEVED OR IS WAIVED BASED ON EXTENUATING CIRCUMSTANCES, INSTALLATION WITHIN A BUILDING CAN BE COMPLETED, ~~A waiver may be granted by the Industrial Waste Manager for the retrofit installation of a backflow prevention assembly inside the building~~ provided a City of Flagstaff Attorney approved "Backflow Prevention Assembly Hold Harmless Agreement" is signed by the property owner and notarized. This document must be received and approved the City of Flagstaff Industrial ~~Waste Manager~~ PRETREATMENT SUPERVISOR prior to the installation of the backflow prevention assembly. THE INTERIOR INSTALLATION OF A BACKFLOW ASSEMBLY MUST BE DONE AS CLOSE AS PRACTICABLE TO THE INCOMING WATER LINE.

B. INTERNAL INSTALLATIONS SHALL HAVE CLEARANCE ON ALL SIDES AND ENDS FOR TESTING AND MAINTENANCE. RP AND DC ASSEMBLIES MUST HAVE 12" BOTTOM CLEARANCE FROM LOWEST POINT ON THE ASSEMBLY (I.E. RELIEF VALVE ON RP STYLE).

~~c. RP's for fire line assemblies may be installed inside a fire riser room provided they have an adequate drain for a full port discharge for the size of the assembly per the manufacturer's specifications into the sanitary sewer system, not the storm water system. If a drain cannot be provided that can contain a full port discharge to the~~

~~sanitary sewer system from a fire line with chemical additives such as anti-freeze or glycerin, the assembly must be installed outside the building in an insulated enclosure with electricity for a heat source for freeze protection and a check valve must be installed in the system to prevent the discharge of antifreeze onto the ground.~~
~~The assembly shall be in an accessible location approved by the Division and protected from freezing. The RP, RPDA, DC, DCDA, PVB and SVB shall be installed above ground and per City of Flagstaff standard details. Backflow prevention assemblies shall not be installed in a meter box, pit or vault.~~

~~A double check valve assembly may be installed, upon approval of the Division, below ground in a vault which meets standard specifications established by the City.~~

5. When a customer requires a continuous water supply, two backflow prevention assemblies shall be installed parallel to one another at the service connection to allow a continuous water supply during testing, repair and/or maintenance of the backflow prevention assemblies. When backflow prevention assemblies are installed parallel to one another, the sum of the cross-sectional diameters of the assemblies shall be at least equal to the cross-sectional diameter of the service connection or service line piping at the point of installation and the assemblies shall be of the same type.

6~~5~~. For an AG installation all piping installed between the user's connection and the receiving tank shall be entirely visible unless otherwise approved in writing by the City of Flagstaff Industrial ~~Waste~~ PRETREATMENT Section.

~~6. It shall be unlawful for any person to bypass or remove a backflow prevention method without the approval of the Division.~~

7. Any property with more than one water service connection shall install backflow prevention assemblies on each service connection to the property, unless otherwise designated by the Division.

8. Fiberglass insulation cannot be wrapped or otherwise placed around a backflow prevention assembly as a form of freeze protection as it allows condensation to occur and subsequent degradation of the backflow prevention assembly. There must be adequate air flow around the backflow prevention assembly to prevent the formation of condensation on the assembly OR FOR A PURGE EVENT BY A RP RELIEF VALVE.

9. All test cocks and relief ports on a backflow prevention assembly must be accessible for testing and for release of water from the relief port during a discharge event.

10. PVB, AVB, OR RP BACKFLOW ASSEMBLIES ARE APPROVED FOR IRRIGATION SYSTEMS. VALVES SHALL NOT BE INSTALLED DOWNSTREAM FROM AN AVB. IF CHEMICALS WILL BE USED, A RP ASSEMBLY IS REQUIRED. ~~A PVB or SVB assembly may be installed for use on a landscape water irrigation system if:a. The water use beyond the assembly is for irrigation purposes only.~~

~~b. The PVB/SVB is installed in accordance with the manufacturer's specifications.~~

~~c. The irrigation system is designed and constructed to be incapable of inducing backpressure.~~

~~d. Chemigation, an injection of chemical pesticides and fertilizers, is not used or provided for in the irrigation system.~~

~~e. No other source of water is available on the premises.~~

~~f. Single family residences with testable backflow prevention assemblies will not need to test the assemblies on the landscape irrigation assemblies each year. Condominiums and townhomes that are part of a Home Owners Association (HOA) do need to test the backflow prevention assemblies on the landscape irrigation system each year.~~

~~If the criteria are not met, then an RP assembly is required.~~

~~11. No person shall alter, modify, bypass or remove a backflow prevention method without the approval of the City of Flagstaff Industrial Waste Section.~~

~~12.~~ ~~Installation of the backflow prevention assembly must be completed within the time specified in the notice to install or within forty-five (45) days of the water meter installation. A time extension may be granted by the City of Flagstaff provided no cross-connection hazards exist at the site.~~

1~~3~~1. If a customer fails to install a backflow prevention assembly pursuant to this article, the City of Flagstaff shall discontinue water service and assess a compliance fee pursuant to this article.

1~~4~~2. ~~All backflow prevention assemblies shall be installed with a y-strainer or fire line strainer unless the manufacturer states that the assembly cannot have one. The y-strainer or fire line strainer shall be installed directly upstream of the assembly.~~IF, IN THE JUDGMENT OF THE DIVISION, AN APPROVED BACKFLOW PREVENTION ASSEMBLY IS NECESSARY FOR THE PROTECTION OF THE PUBLIC WATER SYSTEM, THE DIVISION SHALL GIVE NOTICE TO THE CONSUMER TO INSTALL SUCH. THE CONSUMER, AFTER DUE WRITTEN NOTICE AND WITHIN THE PRESCRIBED TIME INDICATED ON THE NOTICE, SHALL INSTALL SUCH APPROVED ASSEMBLY(IES) AT THEIR OWN EXPENSE. INSTALLATION OF SUCH ASSEMBLY(IES) SHALL BE IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS, AND THE DIVISION'S INSTALLATION REQUIREMENTS. INSTALLATION OF THE BACKFLOW PREVENTION ASSEMBLY MUST BE COMPLETED WITHIN THE TIME SPECIFIED IN THE NOTICE TO INSTALL OR WITHIN FORTY-FIVE (45) DAYS OF THE WATER METER INSTALLATION. A TIME EXTENSION MAY BE GRANTED BY THE CITY OF FLAGSTAFF PROVIDED NO CROSS-CONNECTION HAZARDS EXIST AT THE SITE.

1~~5~~3. A backflow prevention assembly for containment or landscape may need to have a pressure reducing valve upstream of it if the water line pressure is higher than 80 psi. This does not apply to fire lines.

G. Installation of Backflow Prevention Assemblies for Fire Systems

~~Fire Systems~~

1. Fire protection systems may consist of sprinklers, hose connections, and hydrants for commercial, industrial or residential structures and services. Sprinkler systems may be dry or

wet, open or closed. Systems consisting of fixed-spray nozzles may be used indoors or outdoors for protection of flammable-liquid and other hazardous processes. It is standard practice, especially in cities, to equip automatic sprinkler systems with fire department pumper connections.

2. A meter (compound, detector check) should not ~~normally~~ be permitted as part of a backflow prevention assembly. An exception may be made if the meter and backflow prevention assembly are specifically designed for that purpose.

3. For cross-connection control, fire protection systems shall be classified ~~on the basis of~~ BASED ON water source and arrangement of supplies as follows:

a. Class 1: Direct connections from public water mains only; no pumps, tanks or reservoirs; no physical connection from other water supplies; no antifreeze or other additives of any kind; all sprinkler drains discharging to atmosphere, dry wells or other safe outlets.

b. Class 2: Same as class 1, except that booster pumps may be installed in the connections from the street mains. It is necessary to avoid drafting so much water that pressure in the water main is reduced below twenty (20) psi.

c. Class 3: Direct connection from public water supply main plus one (1) or more of the following: elevated storage tanks; fire pumps taking suction from above-ground covered reservoirs or tanks; and pressure tanks (all storage facilities are filled or connected to public water only, the water in the tanks to be maintained in a potable condition). ~~Otherwise, Class 3 systems are the same as class 1.~~ Class 3 systems will ~~generally~~ require minimum protection (approved double check valves) to prevent stagnant waters from backflowing into the public potable water system.

d. Class 4: Directly supplied from public mains ~~similar to~~ LIKE classes 1 and 2, and with an auxiliary water supply on or available to the premises; or an auxiliary supply may be located within seventeen hundred (1,700) feet of the pumper connection. Class 4 systems will ~~normally~~ require backflow protection at the service connection. The type (air gap or reduced pressure) will ~~generally~~ depend on the quality of the auxiliary supply.

e. Class 5: Directly supplied from public mains, and interconnected with auxiliary supplies, such as: pumps taking suction from reservoirs exposed to contamination, or rivers and ponds; driven wells, mills or other industrial water systems; or where antifreeze or other additives are used. Class 4 and 5 systems ~~normally would~~ WILL need maximum protection (air gap or reduced pressure) to protect the public water system.

f. Class 6: Combined industrial and fire protection systems supplied from the public water mains only, with or without gravity storage or pump suction tanks. Class 6 system protection would depend on the requirements of both industry and fire ~~protection, and~~ PROTECTION AND could only be determined by a survey of the premises.

4.. Installation of assembly

A. When a backflow assembly is required for a water service connection supplying water only to a fire system, the assembly shall be installed on the service line in compliance with standard specifications adopted by the city. Installation of DC or DCDVA may be

allowed on fire systems with the City of Flagstaff approval provided both the manufacturer's specifications and USC approval allow such an installation. ~~If an RP is needed for a fire line system and the RP is inside a structure, that room must have a drain large enough to contain the full port discharge volume for that size of assembly with that areas water pressure. The drain must go to the sanitary sewer and not the storm sewer.~~ RP'S FOR FIRE LINE ASSEMBLIES MAY BE INSTALLED INSIDE A FIRE RISER ROOM PROVIDED THEY HAVE AN ADEQUATE DRAIN FOR A FULL PORT DISCHARGE FOR THE SIZE OF THE ASSEMBLY PER THE MANUFACTURER'S SPECIFICATIONS INTO THE SANITARY SEWER SYSTEM, NOT THE STORM WATER SYSTEM. IF A DRAIN CANNOT BE PROVIDED THAT CAN CONTAIN A FULL PORT DISCHARGE TO THE SANITARY SEWER SYSTEM FROM A FIRE LINE WITH CHEMICAL ADDITIVES SUCH AS ANTI-FREEZE OR GLYCERIN, THE ASSEMBLY MUST BE INSTALLED OUTSIDE THE BUILDING IN AN INSULATED ENCLOSURE WITH ELECTRICITY FOR A HEAT SOURCE FOR FREEZE PROTECTION AND A CHECK VALVE MUST BE INSTALLED IN THE SYSTEM TO PREVENT THE DISCHARGE OF ANTIFREEZE ONTO THE GROUND.

5. ALL BACKFLOW ASSEMBLIES INSTALLED ON FIRE SPRINKLER SYSTEMS SHALL HAVE A CHAIN WITH A PADLOCK FROM THE FIRST O.S. & Y. VALVE TO THE SECOND O.S. & Y. VALVE, OR AN OPERABLE ALARM SYSTEM OR BOTH.

6. FOR LOOPED FIRE LINES, A DC OR RP BACKFLOW PREVENTION ASSEMBLY IS REQUIRED ON BOTH ENDS OF A PRIVATE WATER MAIN THAT IS CONNECTED TO THE PUBLIC WATER SERVICES AT TWO OR MORE LOCATIONS.

H. REMOVAL REQUIREMENT

1. IT SHALL BE UNLAWFUL FOR ANY PERSON TO ALTER, MODIFY, BYPASS OR REMOVE A BACKFLOW PREVENTION METHOD WITHOUT THE WRITTEN APPROVAL OF THE DIVISION.
2. IF A DEVICE IS REMOVED WITHOUT THE APPROVAL OF THE CITY, THE CITY RESERVES THE RIGHT TO VISUALLY INSPECT THE PIPING TO VERIFY THERE IS A PHYSICAL SEPARATION AND/OR NO PIPING IS CONNECTED BEFORE AN EXISTING BACKFLOW ASSEMBLY.
3. THE DEVICE AND PIPING SHALL BE REMOVED AS CLOSE AS POSSIBLE TO THE MAIN SERVICE CONNECTION AND ANY PROPERTY CONNECTIONS TO MITIGATE THE POSSIBILITY OF STAGNATING WATER IN THE PIPING.
4. A DEVICE WILL NOT BE DEACTIVATED IN THE CITY'S RECORDS UNLESS THERE IS A PHYSICAL SEPARATION BETWEEN THE PIPING AND NO POSSIBILITY OF CONNECTING THE TWO ENDS. AN INSPECTION OF THE REMOVAL BY THE CITY WILL NEED TO BE COMPLETED BEFORE REMOVAL FROM THE RECORDS.

~~H~~I. Inspections

1. A customer's water system shall ALWAYS be available ~~at all times~~ during business operations for premises inspection ~~and backflow prevention assembly testing~~ by City of Flagstaff personnel AND BACKFLOW PREVENTION ASSEMBLY TESTING, IF NECESSARY. The inspection shall be conducted to determine whether any cross-connection or other hazard potentials exist and to determine compliance with this article and modifications.

2. City of Flagstaff shall inspect all new sites, assembly installations, assembly relocations, ASSEMBLY REMOVAL and assemblies that have been repaired for compliance.

3. A waived premise is a property for which the City of Flagstaff has determined there are currently no hazard potentials. All waived premises shall be inspected periodically or when there has been a change in owner/tenant or there has been a use change.

4. If a customer refuses entry to a premise for inspection during business operations, the City of Flagstaff may discontinue water service, require backflow prevention or take any steps allowed by law to gain entry to the premises.

JI. ~~Permit~~ AUTHORIZATION

1. Installation ~~permits~~ AUTHORIZATIONS for the installation of all backflow prevention assemblies required by the City of Flagstaff shall be obtained from the City of Flagstaff prior to installation. ~~A separate permit shall be obtained for each required backflow prevention assembly to be installed, including replacement or relocation.~~

2. It shall be the duty of the person doing the work ~~authorized by the permit~~ to notify the City of Flagstaff, ~~orally or~~ in writing, that the work is ready for inspection. Such notification shall be given not less than twenty-four (24) hours before the work is to be inspected and shall be given only if there is reason to believe that the work done will meet current city codes and regulations.

3. Whenever any work is being done contrary to the provisions of the city'S ADOPTED plumbing code or this article, the City of Flagstaff or an authorized representative may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done; and any such person shall forthwith stop such work until authorized by City of Flagstaff to proceed with the work.

~~4. Any City of Flagstaff employee may, in writing, suspend or revoke a permit issued under provisions of this article, whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation of any provision of the City Plumbing Code or this article.~~

K~~J.~~ Maintenance and Testing

1. The annual test compliance date shall be set by the City of Flagstaff Industrial Waste Section. The consumer shall have backflow prevention assemblies tested upon installation and at least once per year, or more frequently if deemed necessary by the Division, at the consumer's expense. ~~The customer shall arrange for repairs if the testing reveals the assembly to be defective or in unsatisfactory operating condition. If the testing reveals the assembly to be defective or in unsatisfactory operating condition, the customer shall arrange for repairs. The customer shall have performed, by an appropriately licensed contractor, any necessary repairs within 30 days or as directed by the Division, including replacement or overhaul of the assembly if necessary, which will return the assembly to satisfactory operating condition. The customer shall then have the assembly retested, within 30 days following repairs, until testing reveals no defects or unsatisfactory operating conditions.~~ If the Division determines that a health hazard exists, they may specify a more restrictive ~~repair~~ TESTING schedule. ~~All residences with fire line backflow prevention assemblies shall have the assemblies tested annually on the anniversary date. Single family residences with testable~~

~~backflow prevention assemblies will not need to test the assemblies on the landscape irrigation assemblies each year. Condominiums and townhomes that are part of a Home Owners Association (HOA) do need to test the backflow prevention assemblies on the landscape irrigation system each year.~~

2. The customer may request ~~orally or~~ in writing a change of the annual test compliance date for any assembly. No compliance date may be changed to be more than twelve (12) months after the most recent test.

3. The consumer shall be responsible for maintenance of all backflow assemblies at his/her expense. If the Division or customer learns or discovers, during the interim period between tests that an assembly is defective or in unsatisfactory operating condition, the customer shall arrange for repairs. The customer shall have any necessary repairs performed by an appropriately licensed contractor, including replacement or overhaul of the assembly, if necessary, which will return the assembly to satisfactory operating condition within 30 days of discovery. Such assembly shall be retested within 30 days following repairs, until testing reveals no defects or unsatisfactory operating conditions.

4. All testing shall be performed by an individual who holds a valid "General" Tester Certification issued by the California-Nevada American Water Works Association (Cal-Nev AWWA), the Arizona State Environmental Technical Training (ASETT) Center, or other certifying authority approved by the Division. A list of certified testers registered with the City of Flagstaff ~~shall be maintained by the City of Flagstaff Industrial Waste Section and~~ shall be available upon request to all persons required to install or maintain a backflow prevention assembly. Test procedures shall be performed as required by the ADEQ as set forth in ~~Chapter Nine of~~ the most current edition of the USC-FCCCHR Manual Cross-Connection Control. The tester shall provide a copy of the test report to the customer and to the City of Flagstaff Industrial ~~Waste~~ PRETREATMENT Section within five (5) working days from the date of the test and shall maintain a copy for their records for at least three years. ~~If the tester fails to submit a test result within 5 days from the date of the test, their name shall be removed from the tester list.~~

5. No existing backflow prevention assembly shall be altered, disconnected or replaced without prior approval of the Division.

6. ~~All backflow assemblies installed on fire sprinkler systems shall have a chain with a padlock from the first O.S. & Y. valve to the second O.S. & Y. valve, or an operable alarm system or both~~ DURING CONSTRUCTION, ANY NEW BACKFLOW ASSEMBLIES MUST BE TESTED BEFORE THE WATER IS USED FOR ANY PURPOSE, INCLUDING CONSTRUCTION USES.

7. Test cocks are to be used for testing only and shall be installed in accordance with Division requirements. Any unauthorized use of these test cocks is a violation of this code.

8. Each backflow prevention assembly shall be easily identified by displaying the following in a conspicuous manner on the assembly:

a. Manufacturer

b. Model Number

c. Serial Number

This information must also be provided to the Division by the consumer promptly upon installation.

9. The customer shall maintain records~~, on forms approved by the City of Flagstaff,~~ of the results of all tests and all servicing, repairs, or replacements of the backflow prevention assembly. A copy of the records shall be provided to the City of Flagstaff within five (5) days after completion of the activity for which the record is made.

10. The consumer shall notify and receive approval from the City of Flagstaff Fire Marshall, at least 24 hours in advance, of any maintenance or testing performed upon assemblies installed upon fire sprinkler systems which requires discontinuance of water supply to that system. Fire systems shall not be out of service for more than eight (8) consecutive hours due to testing, maintenance or repairs. The fire department shall be notified immediately of any changes in fire service status.

11. ~~City of Flagstaff may test any backflow prevention assembly at any time.~~IN LIEU OF DISCONTINUANCE OF SERVICE, CITY OF FLAGSTAFF MAY TAKE ACTION TO INSTALL, TEST, REPAIR, OR REPLACE A BACKFLOW DEVICE AT THE CUSTOMER'S POINT OF SERVICE AND BILL THE CUSTOMER FOR ALL COSTS ASSOCIATED WITH THE INSTALLATION, TEST, REPAIR, OR REPLACEMENT OF A BACKFLOW PREVENTION DEVICE.

12. The City of Flagstaff will return incomplete and erroneous test forms to the tester and customer for correction and resubmission by the compliance date. Information on submitted test forms can only be changed or modified by the tester who has signed the form and is responsible for that test. TEST REPORTS MUST HAVE A CLEAR DESCRIPTION OF THE LOCATION OF THE BACKFLOW DEVICE.

13. Test equipment shall be maintained and calibrated annually by an agency approved by the City of Flagstaff as required by the cross connection manual. A copy of the annual equipment calibration certificates shall be submitted to the City of Flagstaff Industrial ~~Waste~~ PRETREATMENT Section (OR PROCTOR) to maintain equipment registration and certification. ~~Test equipment for testing backflow prevention assemblies in the City of Flagstaff service area shall be registered with and approved by the City of Flagstaff.~~ Test equipment used on anything other than potable water backflow prevention assemblies shall not be used to test such assemblies and shall be identified as non-potable test equipment.

14. Testers shall register with the City of Flagstaff Industrial ~~Waste~~ PRETREATMENT Section (OR PROCTOR) if they are conducting backflow assembly testing in City of Flagstaff service area. Testers shall submit a current copy of their certification or recertification upon registration. ~~Testers, upon renewal of tester certification, shall be certified on all backflow prevention assemblies that may be used for service protection.~~ A City of Flagstaff registration issued to a backflow prevention assembly tester for testing backflow prevention assemblies in the City of Flagstaff service area may be revoked or suspended upon certification expiration or for improper testing, maintenance, reporting or other improper practices.

L~~K~~. ENFORCEMENT ~~General Penalty and Fees~~

1. ~~Violation of any section of this Ordinance shall constitute a misdemeanor and shall result in a fine of no less than one hundred dollars ($100.00) and not to exceed twenty-five hundred~~

~~dollars ($2,500.00) for any one offense. A separate offense shall be committed for each day of noncompliance with any of the requirements of this Ordinance.~~

2. When convicted of a violation of this Ordinance, any license previously issued to that person by the City may be revoked by the Flagstaff City Council or any proper court, if there may be reasonable relationship between the activities listed and the offense. Revocation of license shall not be considered a recovery of penalty so as to bar any other penalty being enforced.

3. The Division may deny or discontinue, after reasonable notice to the occupants thereof, the water service to anyone using the City of Flagstaff water distribution system or to any premise wherein any backflow prevention assembly or method required by these regulations is not installed, tested, maintained and repaired in a manner acceptable to the Division, or if required reports and/or records are not properly filed, or if it is found that the backflow prevention assembly or method has been removed or bypassed, or if an unprotected cross-connection exists on the premises. Reasonable notice shall be sent in writing at least two weeks prior to the disconnection, unless the Division determines that a potential for a severe health hazard exists.

4. If the Division determines that a potential for a severe health hazard exists, the Division may immediately discontinue water service without notice. Notice by telephone will be given as soon as possible and written notice will be sent within five (5) days, following discontinuance of water service. Water service to such premises shall not be restored until the consumer has corrected or eliminated such conditions or defects in conformance with these regulations and to the satisfaction of the Division.

5. Fire sprinkler systems shall not be subject to disconnection without the explicit approval of the City Fire Marshall, but will be subject to other penalties as provided for in this Ordinance.

~~L. Administrative appeal.~~

~~An administrative appeal may be taken whenever a question arises over any of the requirements of this article, and the applicant wishes to appeal the decision of the City of Flagstaff or seek a variance from the requirements of this article. The appeal may be made to the City of Flagstaff Industrial Waste Section Manager as follows:~~

~~1. The applicant shall file a written appeal on the forms provided by the City of Flagstaff Industrial Waste Section within ten (10) days from the date of the decision by the City of Flagstaff that the applicant wishes to appeal. The applicant shall set forth, in detail, and on the form provided, the basis for their request, and may attach additional documentation to the form.~~

~~2. The appeal will be heard by the hearing committee within seven (7) working days after receipt of the written appeal. Formal Arizona Rules of Evidence will not apply but any testimony or evidence offered must be relevant to the issue in question.~~

~~3. The hearing committee shall consist of at least one member of the Industrial Waste Section that is an active Cross Connection Control Specialist and one building inspector from the City of Flagstaff Community Development. If the question involves a fire line backflow~~

~~prevention assembly, a member of the City of Flagstaff Fire Department plan review team may also be present.~~

~~4. The applicant shall provide adequate information at the appeal hearing to fully describe the conditions in question and to establish the justification and basis for the applicant's request.~~

~~5. The applicant may, but is not required to, personally attend the hearing.~~

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 20th day of April, 2021.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

**12. E.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Bryce Doty, Real Estate Manager |
| **Co-Submitter:** | Dan Folke |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE:**

**Consideration and Adoption of Ordinance No. 2021-11:** An Ordinance of the City of Flagstaff amending easements on McMillan Mesa with Arizona Public Service Company (APS) and US West Wireless LLC, and approving an agreement for remediation services with APS, with conditions, providing for severability, authority for clerical corrections, and establishing an effective date; and **Consideration and Approval of Land Restoration Agreement** with APS for restoration of lands affected by easement boundary changes.

**STAFF RECOMMENDED ACTION:**

At the April 6, 2021 Council Meeting:

1) Read Ordinance No. 2021-11 by title only for the first time
2) City Clerk reads Ordinance No. 2021-11 by title only (if approved above)

At the April 20, 2021 Council Meeting:

3) Read Ordinance No. 2021-11 by title only for the final time
4) City Clerk reads Ordinance No. 2021-11 by title only (if approved above)
5) Adopt Ordinance No. 2021-11
6) Approve the Land Restoration Agreement with APS to restore lands affected by the easement boundary changes.

**Executive Summary:**

Arizona Public Service Company (APS) is requesting a change in the boundaries of its Utility Easement located on McMillan Mesa that it uses to access the Mount Elden Substation. The boundary change will enable APS to access the substation with large-scale vehicles for emergency operations and to maintain an existing control cabinet. The proposed change will result in a reduction of the easement area burdening the open space lands by approximately 2.68 square feet.

The Open Spaces Commission supports the boundary change, as long as APS pays for the costs of restoring the open space area on McMillan Mesa affected by the easement boundary changes. The restoration work among other things includes reseeding and invasive weed control measures. APS has agreed to these conditions which are memorialized in the proposed agreement.

US West Wireless, LLC, owns a separate ingress and egress easement on McMillan Mesa, that coincides with the boundaries of the APS Utility Easement. This easement will also be amended in order to align with the new APS Utility Easement boundaries.

*****The referenced ordinance is still under review by Legal and will be attached and distributed to Council next week.*****

**Financial Impact:**

None. The City will not be receiving any funds in consideration for the easement boundary changes. APS will pay for the costs of restoring the land adjacent to and surrounding the Mt. Elden Substation that are affected by the easement area boundary change.

**Policy Impact:**

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

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

Environmental Stewardship: Promote, protect & enhance a healthy, sustainable environment & its natural resources

Sustainable, Innovative Infrastructure: Deliver outstanding services to residents through a healthy, well maintained infrastructure system

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

Previous Councils approved the existing easements.

**Options and Alternatives:**

Option 1: Approve the easement amendment with APS, approve the agreement for remediation services with APS, and approve the easement amendment with US West Wireless, LLC

Option 2: Deny the easement amendment with APS, deny the agreement for remediation services with APS, and approve the easement amendment with US West Wireless, LLC.

Option 3: Provide direction for additional consideration for amending the APS easement.

**Background/History:**

In 1985, the City of Flagstaff ("The City") sold a parcel of land on McMillan Mesa to Arizona Public Service Company ("APS") for development of an electrical substation, now known as Mount Elden Sub-station. The City granted a Utility Easement allowing access to the parcel in Ordinance No. 1377 ("Original Easement"). The City and APS agreed that the easement would terminate should future road alignment concerns arise. In such a case a replacement easement would be granted.

In 2000, The City granted a revocable access easement to US West Wireless LLC across the lands described in the Original Easement ("Wireless Easement") in order to access cell tower equipment located on the Mount Elden substation property.

In 2008, The City terminated the Original Easement and granted a replacement easement ("Replacement Easement"). The Wireless Easement was never aligned with the Replacement Easement.

In 2016, voters passed Proposition 413, setting aside, preserving, and designating the land subject to and surrounding the replacement easement, among other lands, to be used as open space for passive park purposes and providing for exceptions, severability, authority for clerical corrections.

APS desires to improve access to the Mount Elden Substation to accommodate large-scale vehicles. Large-scale vehicles are required in the event of emergency substation repairs and replacement. The location of a control cabinet, constructed within the Replacement Easement, prevents access to the substation from large-scale vehicles. APS desires to amend the Replacement Easement to modify the legal description to accommodate both the existing control cabinet as well as large-scale vehicles. Staff has worked with APS since 2019 to find a permanent solution to its access issues to the substation

while ensuring that any solution is consistent with Proposition 413. APS has been cooperative in its approach and have continued to accommodate its requests to address preservation concerns.

This issue was before the Open Spaces Commission twice, which provided stipulations and conditions to address preservation. The Open Spaces Commission recommendation to approve the amended easement captures these conditions. The amended easement and agreement with APS incorporate Open Spaces Commission recommendations and adds to the conservation of McMillan Mesa in the following ways:

1. Marginally reduces overall square feet burdened by the access easement
2. Provides costs for restoration efforts adjacent to and surrounding the Mt. Elden Substation
3. Prevents unauthorized vehicle entry across the easement

Additionally, while researching easements on McMillan Mesa related to APS's easement, staff identified an access easement for wireless services which is currently aligned an older terminated APS easement. This ordinance also amends this easement to align with the current and to-be amended APS easement, further reducing lands on McMillan Mesa burdened by easements.

**Key Considerations:**

Without an amended easement, in order to provide large-scale vehicle access to the Mount Elden Substation, APS will need to move existing infrastructure at an expense estimated in excess of $100,000.

**Community Benefits and Considerations:**

The amended easements and agreement reduce open space lands burdened by easements and provide restoration services on McMillan Mesa.

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**Attachments:**

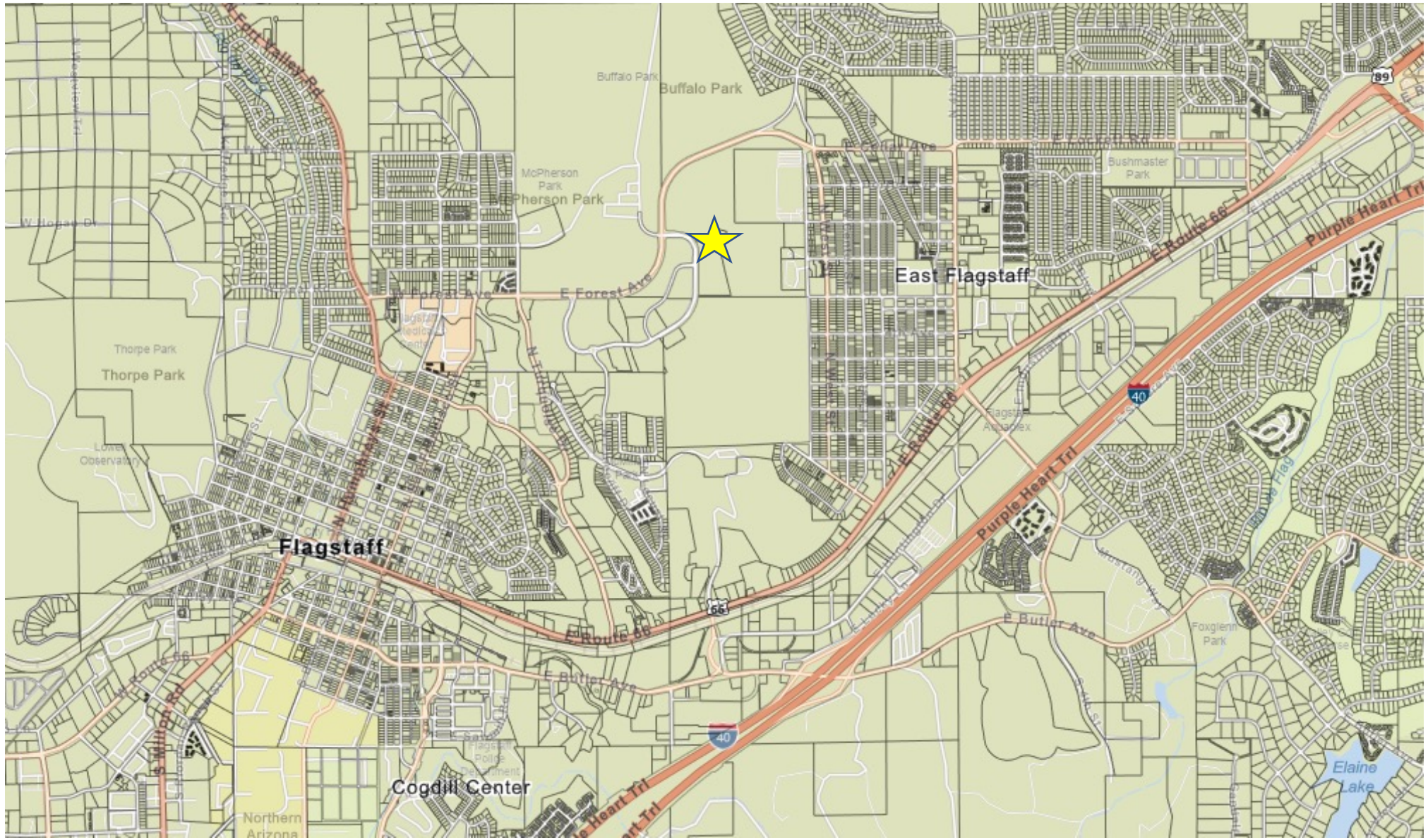
Presentation
Ord. 2021-11
Ordinance Exhibits
Open Spaces Commission Recommendation Letter
Restoration Agreement
Utility Easement Amendment

# APS Easement Amendment

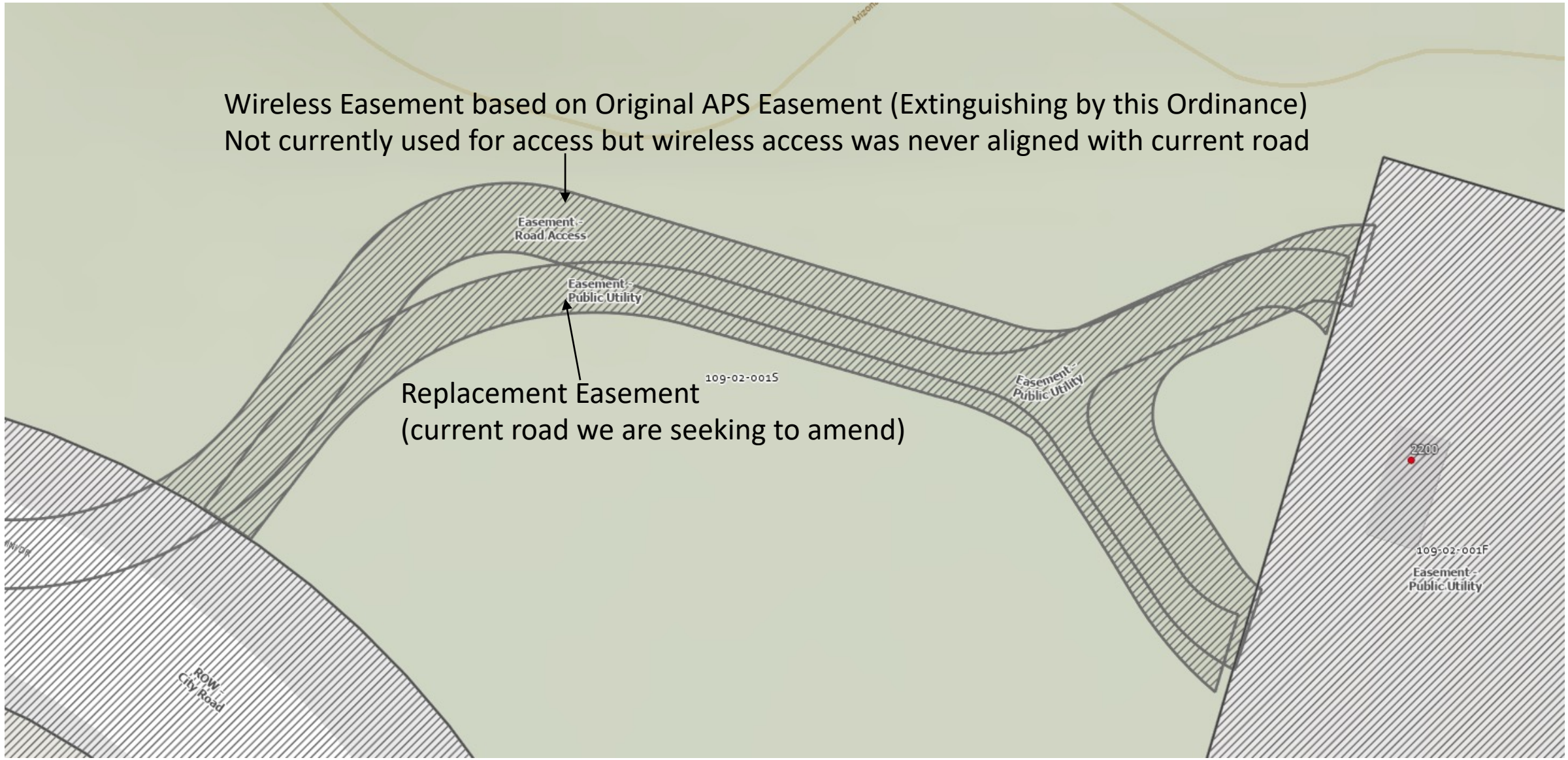
TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

# Vicinity Map

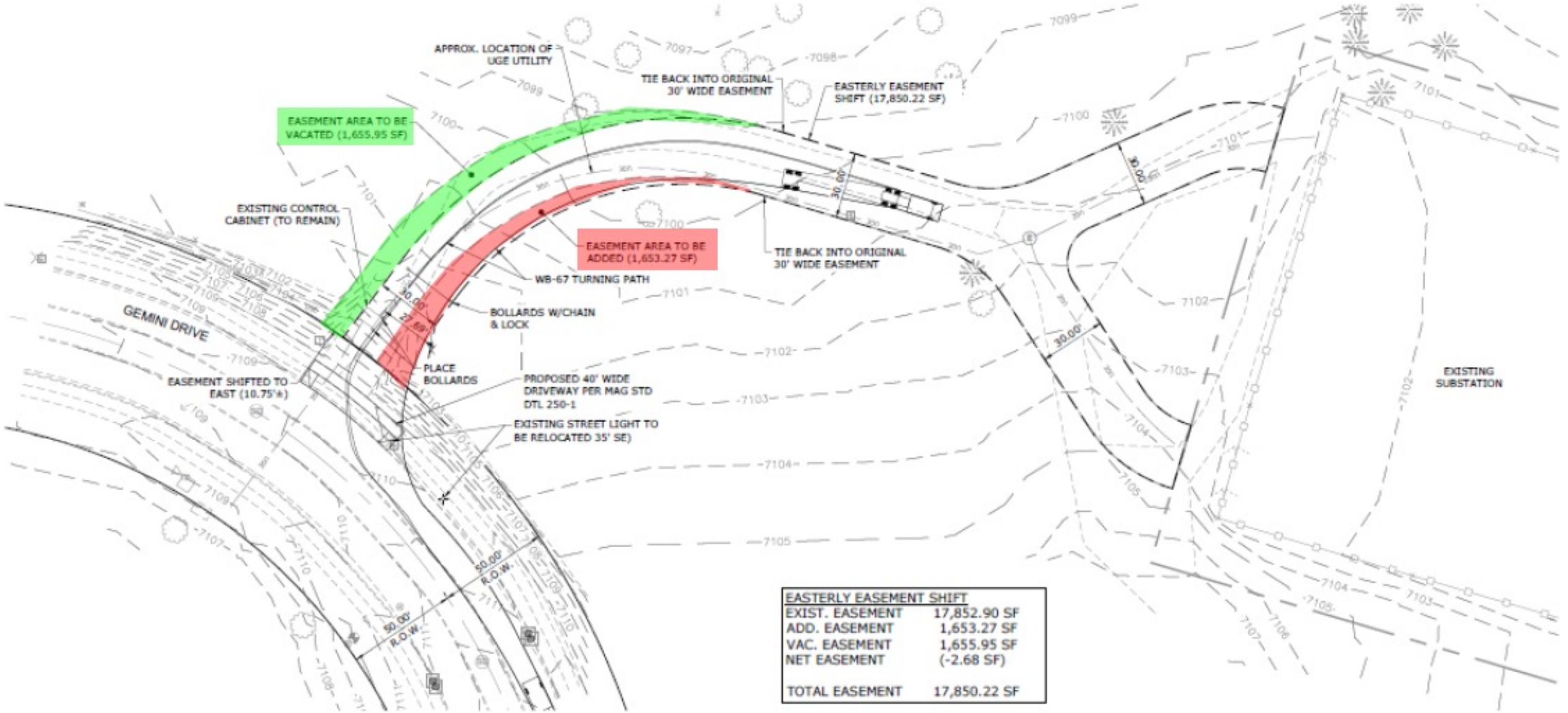


# Existing Easements



# Vicinity Map

# Easement Amendment



**ORDINANCE NO. 2021-11**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, APPROVING AMENDED EASEMENTS ON MCMILLAN MESA WITH ARIZONA PUBLIC SERVICE COMPANY (APS) AND US WEST WIRELESS LLC, APS, WITH CONDITIONS; PROVIDING FOR DELEGATION OF AUTHORITY, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, in order to accommodate large-scale vehicles to Arizona Public Service Company's Mount Elden Substation for emergency purposes, the City of Flagstaff and Arizona Public Service Company desire to amend that certain Utility Easement recorded in the official records of Coconino County on August 28, 2008 at Document No. 3498165; and

WHEREAS, in order to align existing access easements with Arizona Public Service Company's easement, The City of Flagstaff desires to amend that certain revocable ingress and egress easement ("Wireless Easement") to US West Wireless LLC recorded in the official records of Coconino County, Arizona on August 9, 2000 at Document No. 3059722.

**ENACTMENTS:**

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

SECTION 1. In General

The City of Flagstaff hereby approves the following amendments to easements:

1. First Amendment to Utility Easement attached hereto as Exhibit 1, contingent upon execution of that separate Land Restoration Agreement with Arizona Public Service Company; and
2. First Amendment to Ingress and Egress Easement attached hereto as Exhibit 2 and the easement as amended herein is accepted by City of Flagstaff.

The City Clerk shall cause the amendments to be recorded in the order set forth above.

SECTION 2. Delegation of Authority

The Mayor, City Manager, City Attorney, City Clerk, Finance Director, Real Estate Manager, or their delegates or agents, are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this ordinance.

SECTION 3. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 4. 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 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 20th day of April, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibits:

First Amendment to Utility Easement
First Amendment to Ingress and Egress Easement

**After recording, return to:**
**City Clerk**
**City of Flagstaff**
**211 W. Aspen Avenue**
**Flagstaff, AZ 86001**

# FIRST AMENDMENT TO UTILITY EASEMENT

THIS FIRST AMENDMENT TO UTILITY EASEMENT AGREEMENT is entered into by and between CITY OF FLAGSTAFF, an Arizona municipal corporation ("Grantor") and ARIZONA PUBLIC SERVICE COMPANY, an Arizona public service corporation ("Grantee").

Grantor and Grantee hereby agree to, and amend, that certain Utility Easement recorded in the official records of Coconino County on August 28, 2008 at document No. 3498165 ("the Easement"), for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, consent and agree to amend the Easement as follows:

1. The Utility Easement area is hereby modified and shall now consist of the property legally described and depicted in the attached Exhibit A.

2. This First Amendment shall be binding on the successors and assigns of the parties.

3. Except as specifically amended hereby, all terms and conditions of the Easement shall remain in full force and effect. In the event of any conflict between the terms and conditions of this First Amendment and the terms and conditions of the Easement, the terms and conditions of this First Amendment shall control

IN WITNESS WHEREOF, Grantor and Grantee have caused this Utility Easement Amendment to be executed this ____day of_____, 2021.

GRANTOR: City of Flagstaff

_____
Paul Deasy, Mayor

GRANTEE: Arizona Public Service Company

_____
BY:

STATE OF ARIZONA )
)ss
County of Coconino )

ACKNOWLEDGMENT. On this ____ day of _____ 2021, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that (s)he executed the same for the purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA )
)ss
County of Coconino )

ACKNOWLEDGMENT. On this ____ day of _____ 2021, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that (s)he executed the same for the purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

Exhibit "A"

January 13, 2021

LEGAL DESCRIPTION FOR
ELDEN SUBSTATION
INGRESS, EGRESS AND PUBLIC UTILITY EASEMENT

That part of the Southwest Quarter of Section 7, Township 21 North, Range 7 East of the Gila and Salt River Meridian, Coconino County, Arizona, more particularly described as follows:

Commencing at the Brass Cap in hand hole marking the intersection of the monument lines of Cedar Street and Gemini Drive, from which an Aluminum Cap stamped "Gemini" bears North 31°06'11" West, a distance of 1,292.81 feet;

Thence North 89°40'50" East, along the monument line of said Gemini Drive, a distance of 300.00 feet to the beginning of a tangent curve of 300.00 foot radius, concave Southerly;

Thence Easterly, along said monument line and along said curve, through a central angle of 35°02'52", a distance of 183.51 feet;

Thence North 37°07'35" East, departing said monument line, a distance of 50.04 feet to the True Point of Beginning;

Thence continuing North 37°07'35" East, a distance of 45.64 feet to the beginning of a tangent curve of 159.54 foot radius, concave Southerly;

Thence Easterly, along said curve, through a central angle of 69°21'15", a distance of 193.12 feet;

Thence South 73°31'10" East, a distance of 81.96 feet to the beginning of a tangent curve of 54.30 foot radius, concave Northerly;

Thence Easterly, along said curve, through a central angle of 40°26'41", a distance of 38.33 feet;

Thence North 66°02'25" East, a distance of 70.10 feet to the beginning of a tangent curve of 69.30 foot radius, concave Southerly;

Thence Easterly, along said curve, through a central angle of 40°26'16", a distance of 48.91 feet to a point on the Westerly line of the Elden Substation as recorded in Docket 1038, Page 837, Records of Coconino County, Arizona;

Thence South 16°28'50" West, along said Westerly line, a distance of 30.00 feet to a point on a 39.30 foot radius non-tangent curve, whose center bears South 16°28'34" West;

Thence Westerly, along said curve, through a central angle of 40°26'09", a distance of 27.74 feet;



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Thence South 66°02'25" West, a distance of 58.02 feet; to the beginning of a tangent curve of 17.05 foot radius, concave Easterly;

Thence Southerly, along said curve, through a central angle of 99°07'10", a distance of 29.50 feet;

Thence South 33°04'45" East, a distance of 58.02 feet to the beginning of a tangent curve of 39.30 foot radius, concave Northeasterly;

Thence Southeasterly, along said curve, through a central angle of 40°26'09", a distance of 27.74 feet to a point on the Westerly line of said Elden Substation;

Thence South 16°28'50" West, along said Westerly line, a distance of 30.00 feet to a point on a 69.30 foot radius non-tangent curve, whose center bears North 16°28'59" East;

Thence Northwesterly, along said curve, through a central angle of 40°26'16", a distance of 48.91 feet;

Thence North 33°04'45" West, a distance of 70.10 feet to the beginning of a tangent curve of 54.30 foot radius, concave Southwesterly;

Thence Northwesterly, along said curve, through a central angle of 40°26'41", a distance of 38.33 feet;

Thence North 73°31'10" West, a distance of 81.96 feet to the beginning of a tangent curve of 129.54 foot radius, concave Southerly;

Thence Westerly, along said curve, through a central angle of 69°21'15", a distance of 156.80 feet;

Thence South 37°07'35" West, a distance of 15.58 feet;

Thence South 11°37'38" West, a distance of 34.73 feet; to a point on a 350.00 foot radius non-tangent curve, whose center bears South 42°26'16" West;



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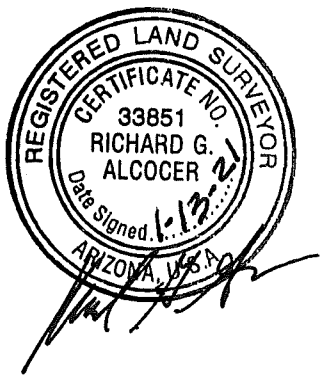
Thence Northwesterly, along said curve, through a central angle of 07°22'00", a distance of 45.00 feet to the True Point of Beginning.

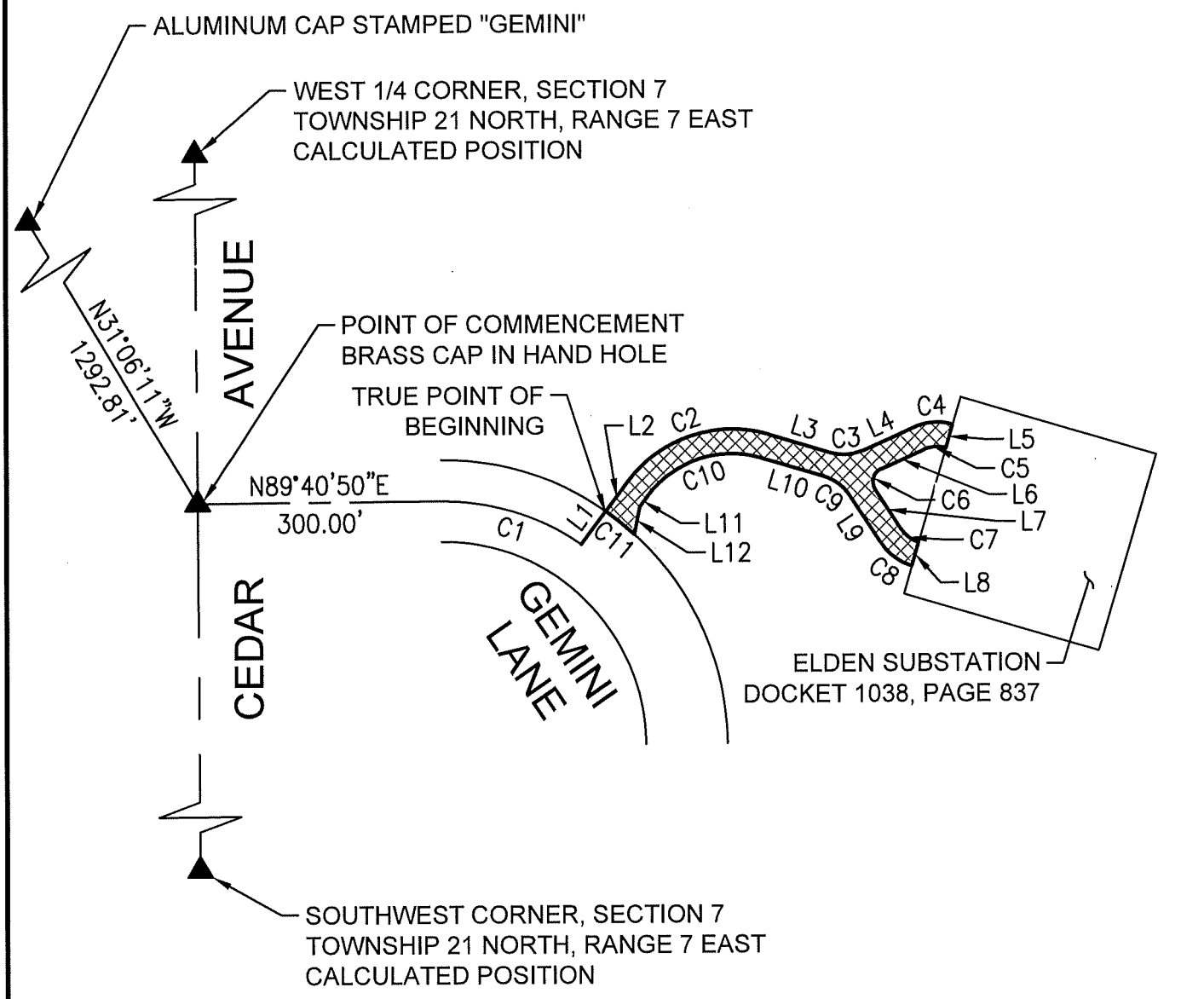
Containing 17,853 Square Feet or 0.410 Acres, more or less.






4550 N 12th Street | Phoenix AZ 85014 | 602.264.6831 | (F) 602.264.0928

CVL CONSULTANTS




Registered Land Surveyor
CERTIFICATE NO.
33851
RICHARD G.
ALCOCER
Date Signed: 1-13-21
ARIZONA U.S.A.

| | | |
|---|---|---|
| SCALE 1" = 200' | ARIZONA PUBLIC SERVICE<br>ELDEN SUBSTATION | CVL CONSULTANTS<br>CELEBRATING 60 YEARS |
| EXHIBIT | INGRESS, EGRESS &<br>PUBLIC UTILITY EASEMENT | 1 OF 3 |
| 4550 North 12th Street<br>Phoenix, Arizona 85014<br>Phone 602-264-6831<br>http://www.cvlci.com | | |

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**After recording, return to:**
**City Clerk**
**City of Flagstaff**
**211 W. Aspen Avenue**
**Flagstaff, AZ 86001**

# FIRST AMENDMENT TO INGRESS AND EGRESS EASEMENT

## RECITALS

A. Pursuant to City of Flagstaff Council Ordinance No. 1377 dated June 4, 1985, The City of Flagstaff, an Arizona Municipal Organization ("The City") granted to Arizona Public Service Company an access easement ("Original Easement") to its substation as set forth in Docket 1039, Pages 344 & 345, Records of Coconino County, Arizona.

B. Pursuant to City of Flagstaff Council Resolution No. 2000-57, The City of Flagstaff granted a revocable ingress and egress easement ("Wireless Easement") to US West Wireless LLC recorded in the official records of Coconino County, Arizona on August 9, 2000 at Document No. 3059722 across the lands described in the Original Easement

C. The City desires to amend the Wireless Easement

NOW, THEREFORE, the City, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, amends the Wireless Easement as follows:

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

Over and across that parcel of land owned by Grantor, Assessor Parcel Number 109-02-001S, as legally described and depicted in the attached "Exhibit A".

2. Grantee, its successors and assigns shall have the right and privilege to use the Wireless Easement to the extent such use is not inconsistent or in conflict with the use and rights granted by that certain Utility Easement to Arizona Public Service Company, an Arizona corporation recorded in the official records of Coconino County on August 28, 2008 at Document No. 3498165 and any amendment thereto.

3. This Amendment shall be binding on the successors and assigns of the parties.

4. Except as specifically amended hereby, all terms and conditions of the Easement shall remain in full force and effect. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Easement, the terms and conditions of this Amendment shall control

IN WITNESS WHEREOF, Grantor has caused this Easement Amendment to be executed this ____day of_____, 2021.

GRANTOR: City of Flagstaff

_____

Paul Deasy, Mayor

STATE OF ARIZONA )

)ss

County of Coconino )

ACKNOWLEDGMENT. On this ____ day of _____ 2021, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that (s)he executed the same for the purposes therein contained.

_____

Notary Public

My Commission Expires:

_____

Exhibit "A"

January 13, 2021

LEGAL DESCRIPTION FOR
ELDEN SUBSTATION
INGRESS, EGRESS AND PUBLIC UTILITY EASEMENT

That part of the Southwest Quarter of Section 7, Township 21 North, Range 7 East of the Gila and Salt River Meridian, Coconino County, Arizona, more particularly described as follows:

Commencing at the Brass Cap in hand hole marking the intersection of the monument lines of Cedar Street and Gemini Drive, from which an Aluminum Cap stamped "Gemini" bears North 31°06'11" West, a distance of 1,292.81 feet;

Thence North 89°40'50" East, along the monument line of said Gemini Drive, a distance of 300.00 feet to the beginning of a tangent curve of 300.00 foot radius, concave Southerly;

Thence Easterly, along said monument line and along said curve, through a central angle of 35°02'52", a distance of 183.51 feet;

Thence North 37°07'35" East, departing said monument line, a distance of 50.04 feet to the True Point of Beginning;

Thence continuing North 37°07'35" East, a distance of 45.64 feet to the beginning of a tangent curve of 159.54 foot radius, concave Southerly;

Thence Easterly, along said curve, through a central angle of 69°21'15", a distance of 193.12 feet;

Thence South 73°31'10" East, a distance of 81.96 feet to the beginning of a tangent curve of 54.30 foot radius, concave Northerly;

Thence Easterly, along said curve, through a central angle of 40°26'41", a distance of 38.33 feet;

Thence North 66°02'25" East, a distance of 70.10 feet to the beginning of a tangent curve of 69.30 foot radius, concave Southerly;

Thence Easterly, along said curve, through a central angle of 40°26'16", a distance of 48.91 feet to a point on the Westerly line of the Elden Substation as recorded in Docket 1038, Page 837, Records of Coconino County, Arizona;

Thence South 16°28'50" West, along said Westerly line, a distance of 30.00 feet to a point on a 39.30 foot radius non-tangent curve, whose center bears South 16°28'34" West;

Thence Westerly, along said curve, through a central angle of 40°26'09", a distance of 27.74 feet;



4550 N 12th Street | Phoenix AZ 85014 | 602.264.6831 | (F) 602.264.0928

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Thence South 66°02'25" West, a distance of 58.02 feet; to the beginning of a tangent curve of 17.05 foot radius, concave Easterly;

Thence Southerly, along said curve, through a central angle of 99°07'10", a distance of 29.50 feet;

Thence South 33°04'45" East, a distance of 58.02 feet to the beginning of a tangent curve of 39.30 foot radius, concave Northeasterly;

Thence Southeasterly, along said curve, through a central angle of 40°26'09", a distance of 27.74 feet to a point on the Westerly line of said Elden Substation;

Thence South 16°28'50" West, along said Westerly line, a distance of 30.00 feet to a point on a 69.30 foot radius non-tangent curve, whose center bears North 16°28'59" East;

Thence Northwesterly, along said curve, through a central angle of 40°26'16", a distance of 48.91 feet;

Thence North 33°04'45" West, a distance of 70.10 feet to the beginning of a tangent curve of 54.30 foot radius, concave Southwesterly;

Thence Northwesterly, along said curve, through a central angle of 40°26'41", a distance of 38.33 feet;

Thence North 73°31'10" West, a distance of 81.96 feet to the beginning of a tangent curve of 129.54 foot radius, concave Southerly;

Thence Westerly, along said curve, through a central angle of 69°21'15", a distance of 156.80 feet;

Thence South 37°07'35" West, a distance of 15.58 feet;

Thence South 11°37'38" West, a distance of 34.73 feet; to a point on a 350.00 foot radius non-tangent curve, whose center bears South 42°26'16" West;



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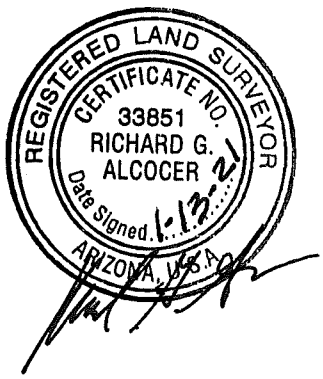
Thence Northwesterly, along said curve, through a central angle of 07°22'00", a distance of 45.00 feet to the True Point of Beginning.

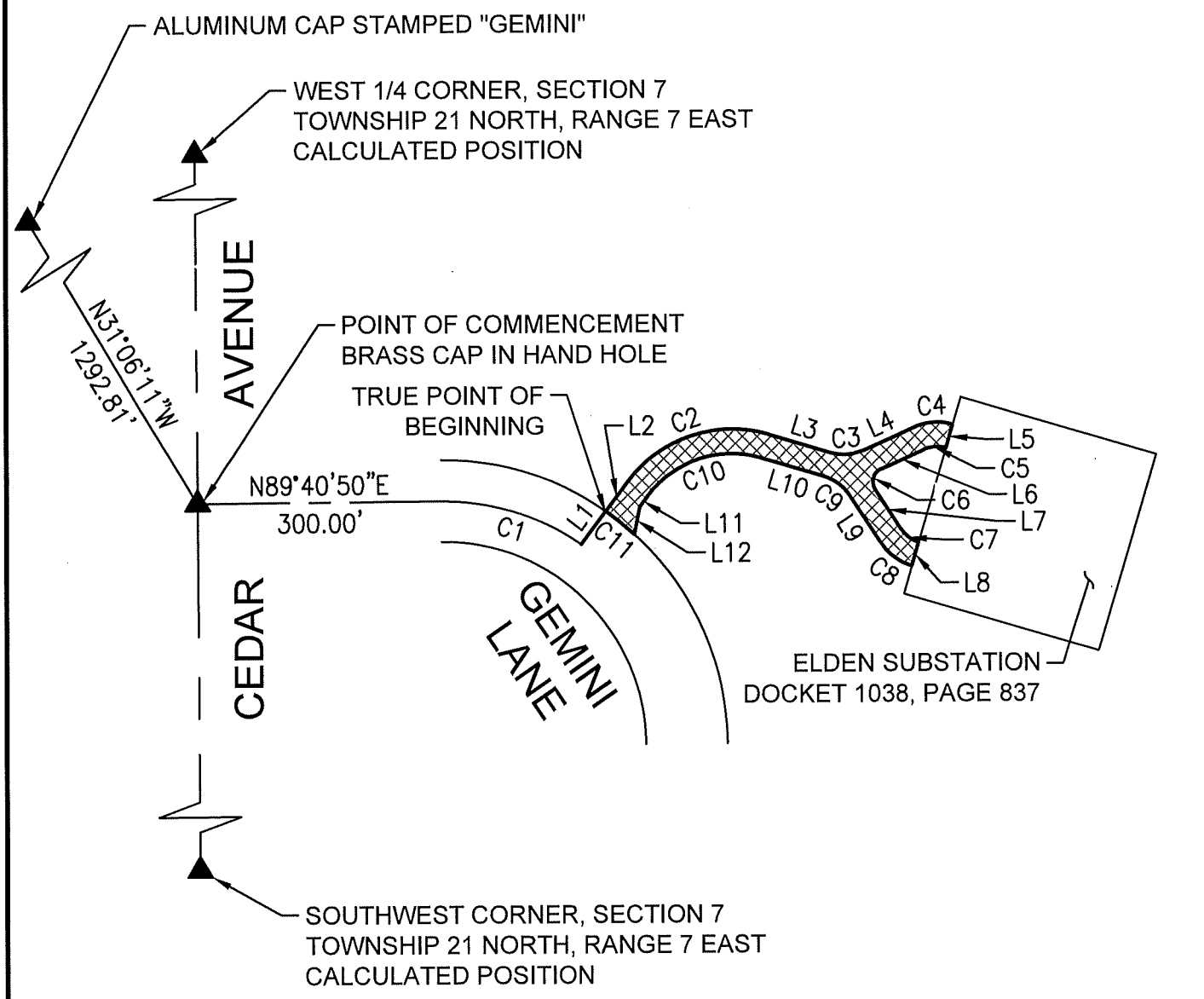
Containing 17,853 Square Feet or 0.410 Acres, more or less.






4550 N 12th Street | Phoenix AZ 85014 | 602.264.6831 | (F) 602.264.0928

CVL CONSULTANTS




Registered Land Surveyor
CERTIFICATE NO.
33851
RICHARD G.
ALCOCER
Date Signed: 1-13-21
ARIZONA U.S.A.

| | | |
|---|---|---|
| SCALE 1" = 200' | ARIZONA PUBLIC SERVICE<br>ELDEN SUBSTATION | CVL CONSULTANTS<br>CELEBRATING 60 YEARS |
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| 4550 North 12th Street<br>Phoenix, Arizona 85014<br>Phone 602-264-6831<br>http://www.cvlci.com | | |

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# City of Flagstaff

Open Spaces Commission

January 25, 2021

ATTN: Flagstaff City Council
RE: McMillan Mesa Natural Area APS Elden Substation Easement Alteration Request
Open Spaces Commission Recommendation

Dear City Council Representatives,

The City of Flagstaff is the owner of McMillan Mesa Natural Area (Figure 1), which is partially located along N. Gemini Drive, Flagstaff, AZ 86001, assessor parcel number 109-02-001S. This City property is subject to Proposition 413, which states that it is to be used as open space for passive park purposes. Furthermore, the proposition says that the City shall use the property in a manner consistent with the "Neighborwoods" category of Open Space as outlined in the Open Spaces and Greenways Plan, any other use being inconsistent with the purposes of the ordinance and the intent of the voters.

Arizona Public Service (APS) is interested in revising their easement to improve access to the Mount Elden Substation surrounded by the McMillan Mesa Natural Area. This easement revision would be for regular maintenance and emergency access. This revision would expand the easement to the west of the current switch cabinet (35.213761, -111.629540) and return a small amount of property within the easement to the Natural Area. APS has reported that this change is needed to prevent having to move the electrical cabinet (#778552) that was mistakenly constructed in the center of their easement making the current access unusable for large-scale emergencies. The cost of moving this infrastructure is approximated at $100,000.

If the City is able to work with APS to modify the easement, it needs to ensure that adjustments are consistent with Prop. 413 and add to the conservation of McMillan Mesa. With attention to this factor, the Open Spaces Commission believes that a solution can be implemented, as proposed by APS in the document "Elden Turning Radius Proposed Change WB-67" (attached), to allow for the easement to be revised while staying consistent with the intent of Prop. 413 by benefiting the Natural Area through restoration efforts (Figure 2).

Open Spaces Commission understands APS's needs related to maintaining this substation and the importance of having adequate access for maintenance and emergencies to the Elden Substation. The Open Spaces Commission, therefore, recommends the Flagstaff City Council approve this easement adjustment with the following APS agreed upon stipulations:

- APS will carry out remediation work or cover the costs associated with the identified remediation work to the City of Flagstaff for restoration efforts identified in a scope of work prepared by the Open Space program for gravel removal, seedbed preparation, herbicide treatments, seeding, and mulching for the approximate locations identified in Figure 3 (approximately 0.75 acre), and the easement area that will be returned to the Natural Area, as approved by the City.
- Restoration efforts will adhere to the Seeding Restoration Guidelines (attached) provided by the Open Space Program
- APS will install a gate with a sign indicating 'Authorized Vehicles Only' at Gemini access point for Elden Substation to prevent illegal vehicle trespass (Figure 3)

In addition, to the restoration work identified in partnership with APS, the Open Spaces Commission recognizes a second location in need of renovation (Figure 4). The land included in the general utility easement #3526098 and approximately 40 feet beyond the easement to the south, is largely disturbed and infested with knapweed, one of the City Open Space program's target invasive species. Given these impacts, the Open Spaces Commission suggests this area also be considered for repairs. We suggest that the City Open Space Program evaluate the possibility of including this area in the restoration efforts identified in Figure 3 with the additional 0.2 acres (Figure 4) funded by their approved base budget. Refurbishment of this additional acreage and the placement of a gate to prevent illegal vehicle trespass would support APS restoration efforts and could be completed more economically if a contractor was mobilized for both projects simultaneously.

In summary, Open Spaces Commission understands APS's needs related to maintaining this substation and the importance of having adequate access for maintenance and emergencies to the Elden Substation. The Commission also looks forward to working with the Open Space Program to address additional restoration efforts. The Open Spaces Commission, therefore, recommends the Flagstaff City Council approve the easement adjustment with APS.

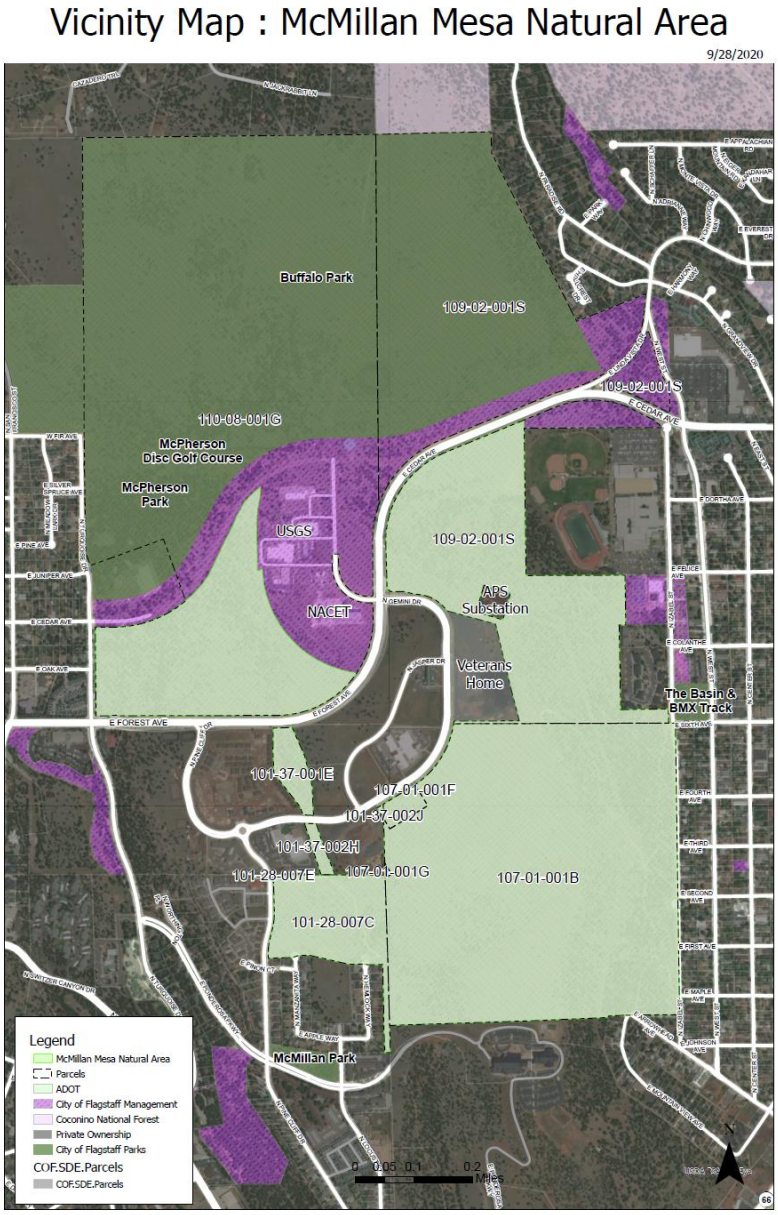



Figure 1: McMillan Mesa Natural Area Vicinity

Figure 2: McMillan Mesa Natural Area APS Restoration Areas

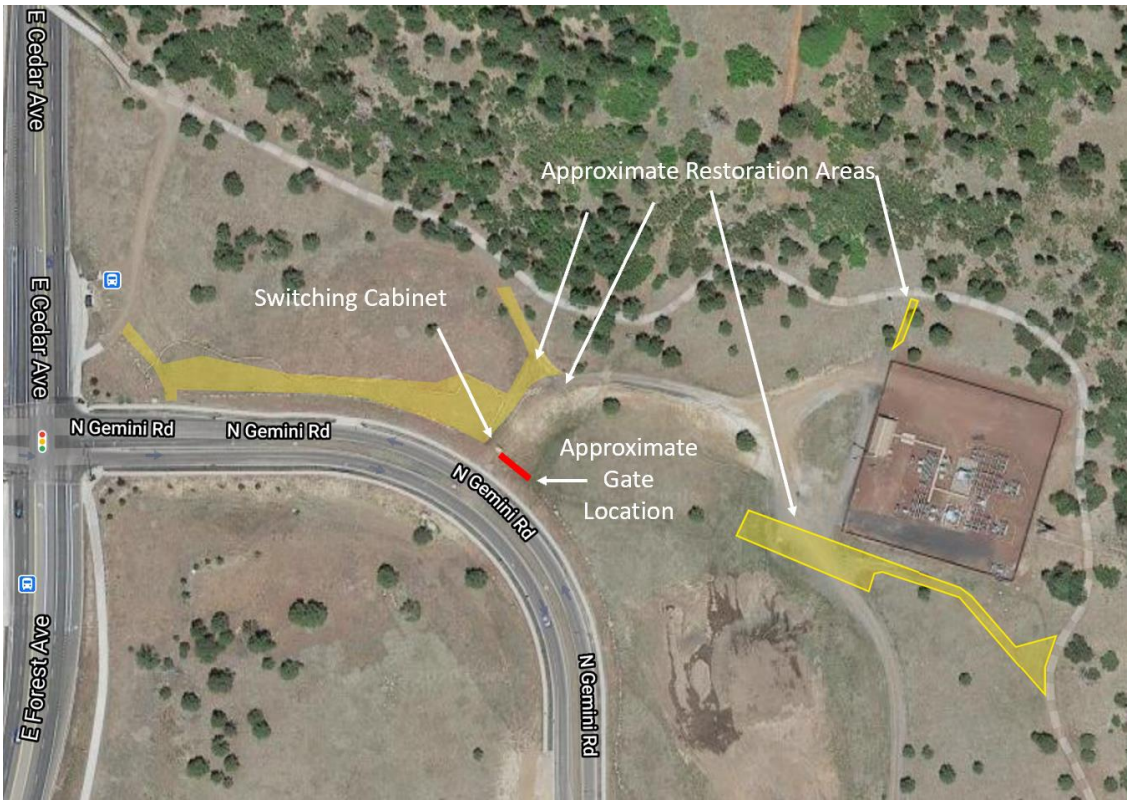



Figure 3: McMillan Mesa Natural Area APS Restoration Areas

Arizona Relay Service 7-1-1
211 West Aspen Avenue, Flagstaff, Arizona 86001
Main & TDD (928) 774-5281 • Fax (928) 779-7696

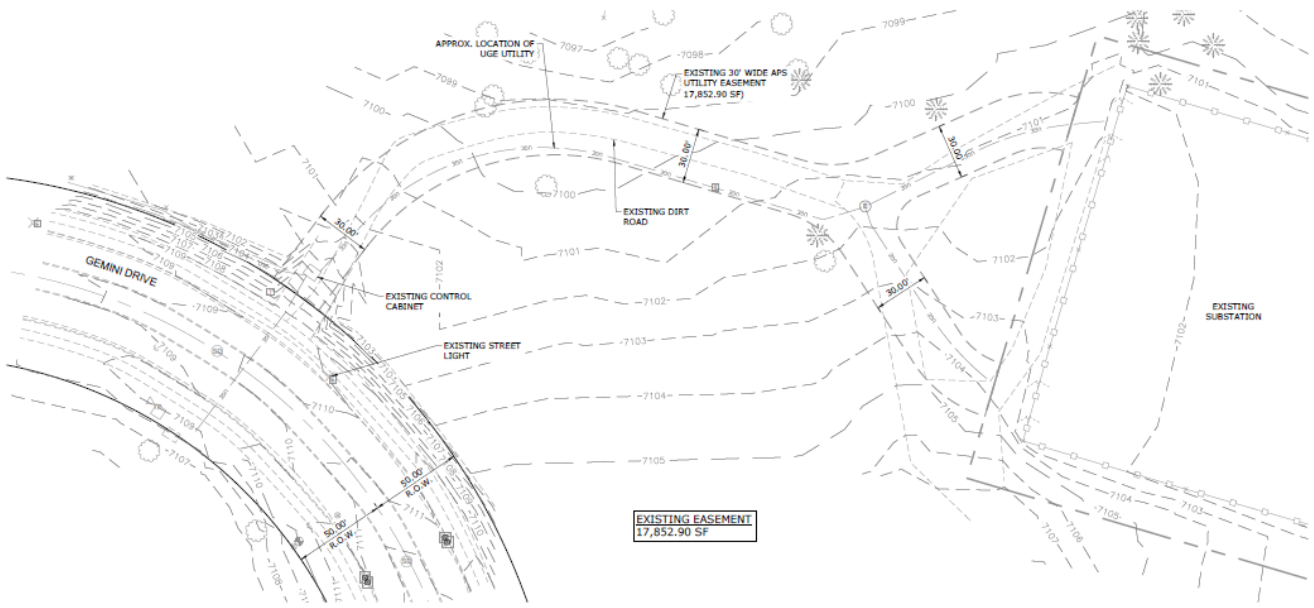
Figure 4: McMillan Mesa Natural Area Potential Open Space Program Restoration Area

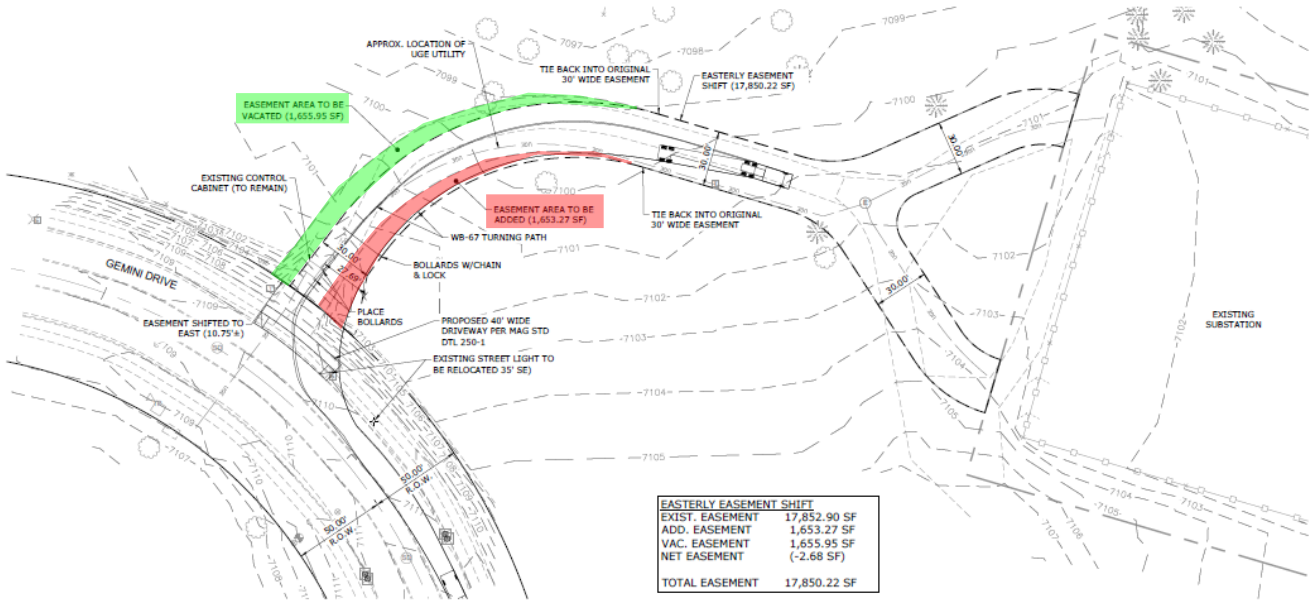
The Open Spaces Commission believes that APS is an important partner and looks forward to accommodating APS's easement revision request while restoring these small locations in the Natural Area. Thank you for considering the Commission's recommendation.

Sincerely,

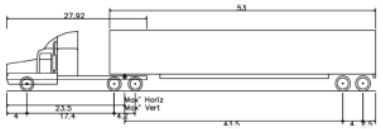
Wm. Michael Wilson
Open Spaces Commission Chair

City of Flagstaff
211 West Aspen Ave.
Flagstaff, AZ 86001



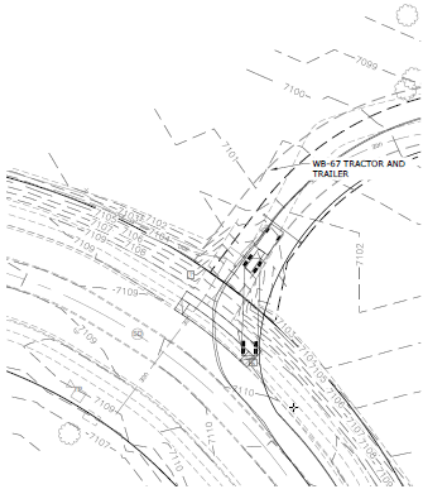




| EASTERLY EASEMENT SHIFT | |
|---|---|
| EXIST. EASEMENT | 17,852.90 SF |
| ADD. EASEMENT | 1,653.27 SF |
| VAC. EASEMENT | 1,655.95 SF |
| NET EASEMENT | (-2.68 SF) |
| TOTAL EASEMENT | 17,850.22 SF |




| WB-67 – Interstate Semi-Trailer | |
|---|---|
| Overall Length | 73.500ft |
| Overall Width | 8.500ft |
| Overall Body Height | 12.052ft |
| Min Body Ground Clearance | 1.334ft |
| Max Track Width | 8.500ft |
| Lock-to-lock time | 6.00s |
| Max Steering Angle (Virtual) | 28.40° |

AASHTO WB-67 INFORMATION




DETAIL SHOWING BOLLARD AND CHAIN PLACEMENT SO THAT ENTIRE TRACTOR/TRAILER IS OFF GEMINI DRIVE ROADWAY

SCALE: 1" = 30'

CVL
4550 N. 12TH ST. PHOENIX, AZ
PHONE: 602.264.6831
COE & VAN LOO CONSULTANTS, INC.

PROFESSIONAL ENGINEER
CVL JOB # 1-01-03603001

| NO. | DATE | REVISION | DWN | CHD | EXD | RVWD | W.A. |
|---|---|---|---|---|---|---|---|

ACCESS EASEMENT EXHIBIT
ELDEN SUBSTATION
FLAGSTAFF, COCONINO COUNTY, AZ

aps

| | |
|---|---|
| SCALE | AS NOTED |
| DATE | NOV 12, 2020 |
| DRAWN | PM |
| CHECKED | RW |
| DESIGNED | RB |
| APPROVED | |
| RECEIVED | |

E1.0
APS DRAWING NO.

SHEET 01 OF 01

This drawing is the property of Arizona Public Service Company. Use of this drawing and the specific design depicted thereon for any reason other than that related to Arizona Public Service Company is not authorized.

This is an electronic drawing, do not revise manually.

# 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, 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:
    - Little Bluestem @ 0.5 lbs./acre
    - Mutton grass @ 0.2 lbs./acre
    - Blue grama @ 0.5 lbs./acre
    - Sideoats grama @ 0.75lbs./acre
    - Prairie junegrass @ 0.2 lbs./acre
    - Arizona fescue @ 0.4 lbs./acre
    - Bottlerush squirrel tail @ 0.7 lbs./acre
    - Western wheatgrass @ 0.75 lbs./acre
- 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.).

**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:_____ | |

C:\Users\awendel\OneDrive - City of Flagstaff\APS Restoration Agreement 2-26-21.docx

Official Records of Coconino County 3824338
Patty Hansen - Recorder 09/04/2018 12:11:37 PM Pgs: 3
SIMPLIFILE LC E-RECORDING CO $7.00

**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"

Unofficial Copy

Official Records of Coconino County 3498165
Candace Owens - Recorder 08/28/2008 10:39 AM Pgs: 2
CITY OF FLAGSTAFF E $11.00

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 August21, 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: _____

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

OFFICIAL SEAL
LAURA MATTHEWS
Notary Public - State of Arizona
COCONINO COUNTY
My Comm. Expires April 24, 2012

Laura Matthews
Notary Public

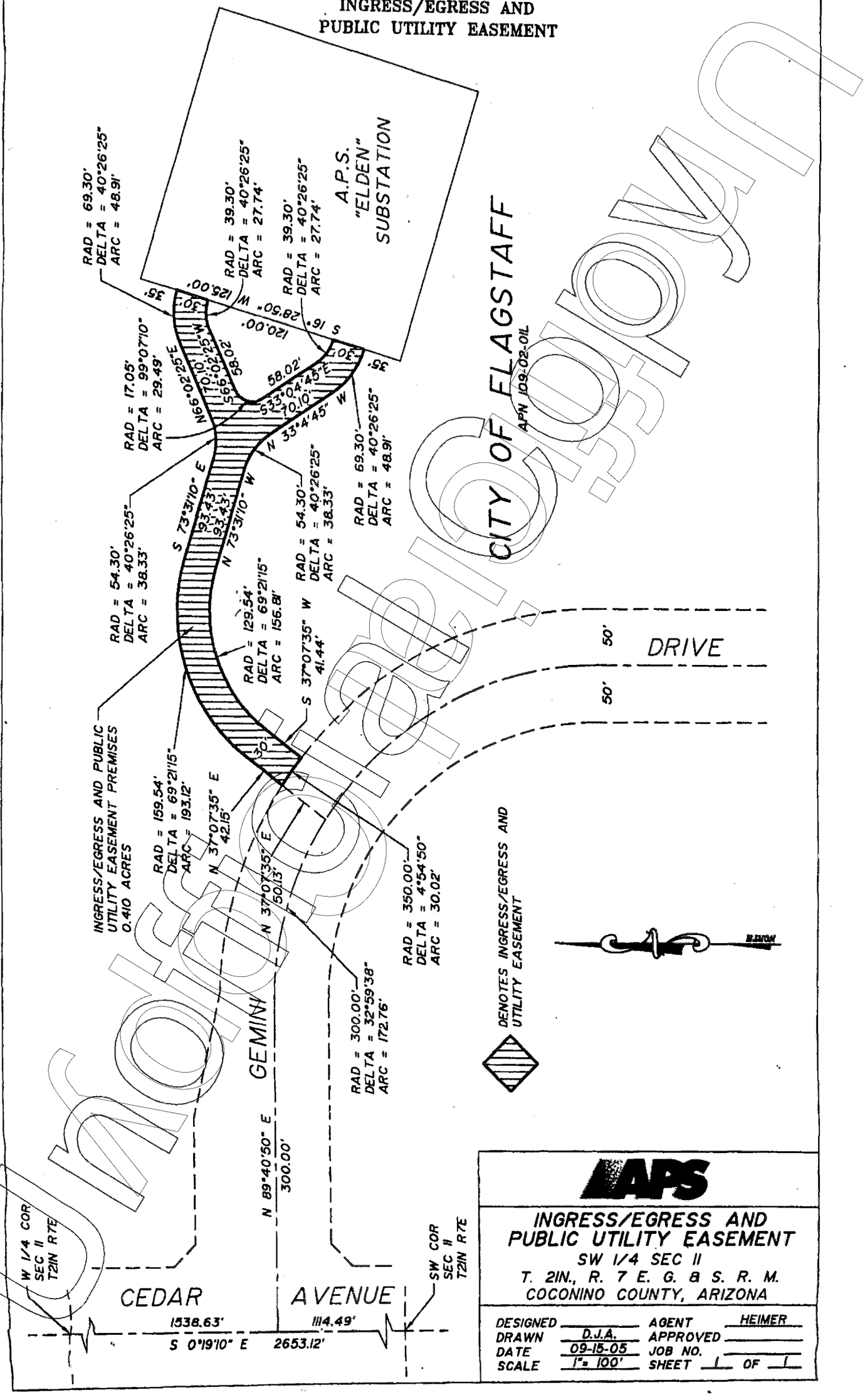
Unofficial Document

3498165 Pages: 2 of 2 08/28/2008 10:39:18 AM

3824338 Pages: 3 of 3 09/04/2018 12:11:37 PM

# EXHIBIT "A"

## SKETCH SHOWING LOCATION AND LIMITS OF INGRESS/EGRESS AND PUBLIC UTILITY EASEMENT




APS

**INGRESS/EGRESS AND PUBLIC UTILITY EASEMENT**

SW 1/4 SEC 11

T. 21N., R. 7 E. G. & S. R. M.

COCONINO COUNTY, ARIZONA

| | | | |
|---|---|---|---|
| DESIGNED | | AGENT | HEIMER |
| DRAWN | D.J.A. | APPROVED | |
| DATE | 09-15-05 | JOB NO. | |
| SCALE | 1" = 100' | SHEET | 1 OF 1 |

Unofficial Document

**Exhibit "B"**

**Project Definition** **Scope of Work**

**Client and Project Information**

| **Name of Client/Organization** | **Name of Project** | |
|---|---|---|
| City of Flagstaff.<br>Open Space Program | McMillan Mesa Invasive Plant Mitigation and Restoration | |
| **Name of Contact Person**<br>Robert Wallace | **Project Location**<br>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.**<br>**OMWS-2021** |
| **Contact's Mailing Address**<br>City of Flagstaff<br>Parks, Recreation, and Open Space<br>211 West Aspen Ave. | **City**<br>Flagstaff | **State**<br>Arizona |

| **City** | **State** | **Postal Code** | **E-mail Address of Contact Person** |
|---|---|---|---|
| Flagstaff | Arizona | 86001 | Robert.wallace@flagataffaz.gov |

**Telephone Number:**
928-213-2154

**Requesting a Quote of Services from:**

Project Description:
This project encompasses site rehabilitation, invasive plant treatment for two years prior to seeding, and reseeding 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."

YEAR 1 (2021):
Rehabilitation

- 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.

Maintenance

- Treat Class A and Class B species, and Puncturevine (*Tribulus terrestris*) 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.

YEAR 2 (2022):
Maintenance

- Treat Class A and Class B species, and Puncturevine (*Tribulus terrestris*) 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.

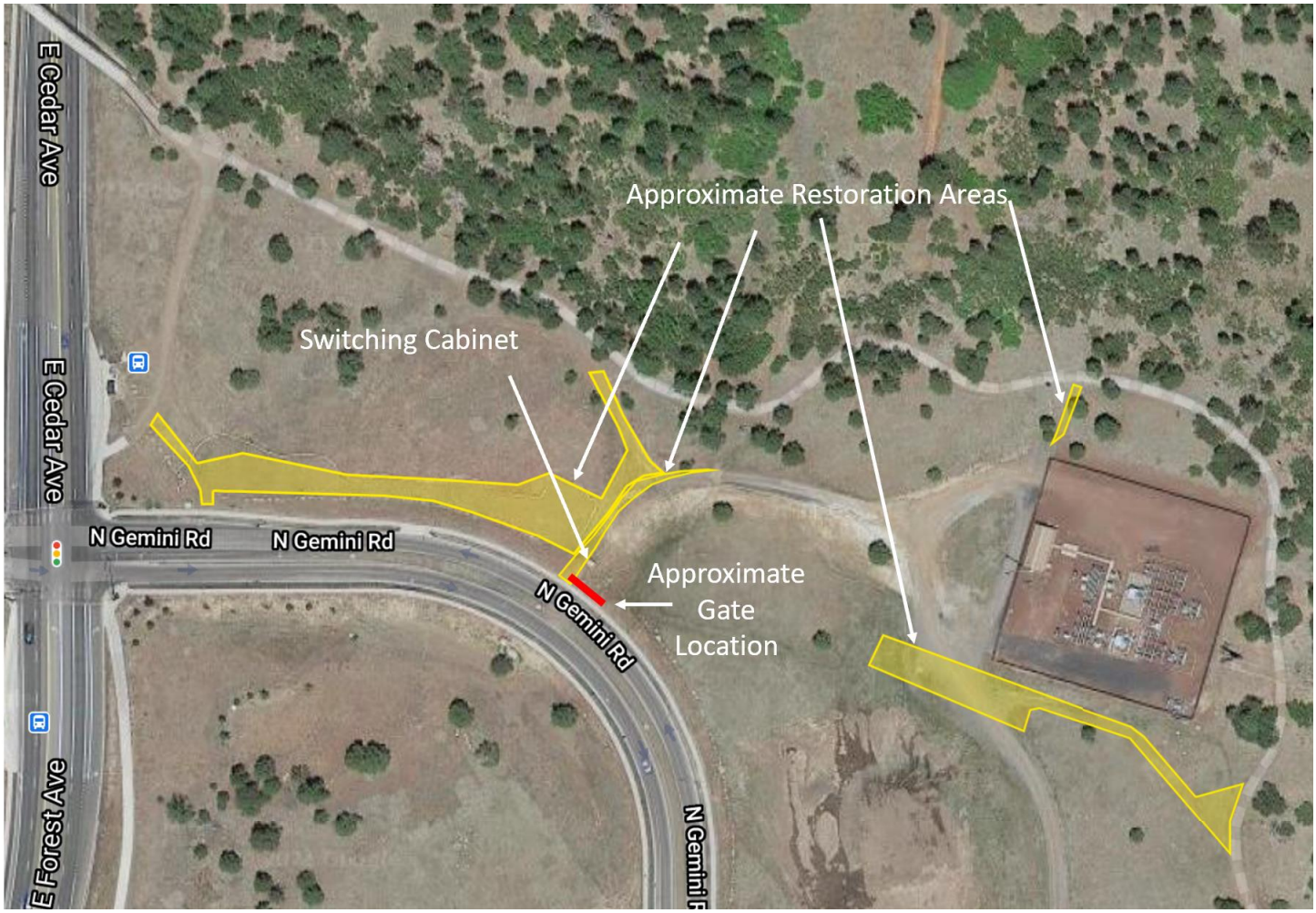
**How to be Considered:**

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:

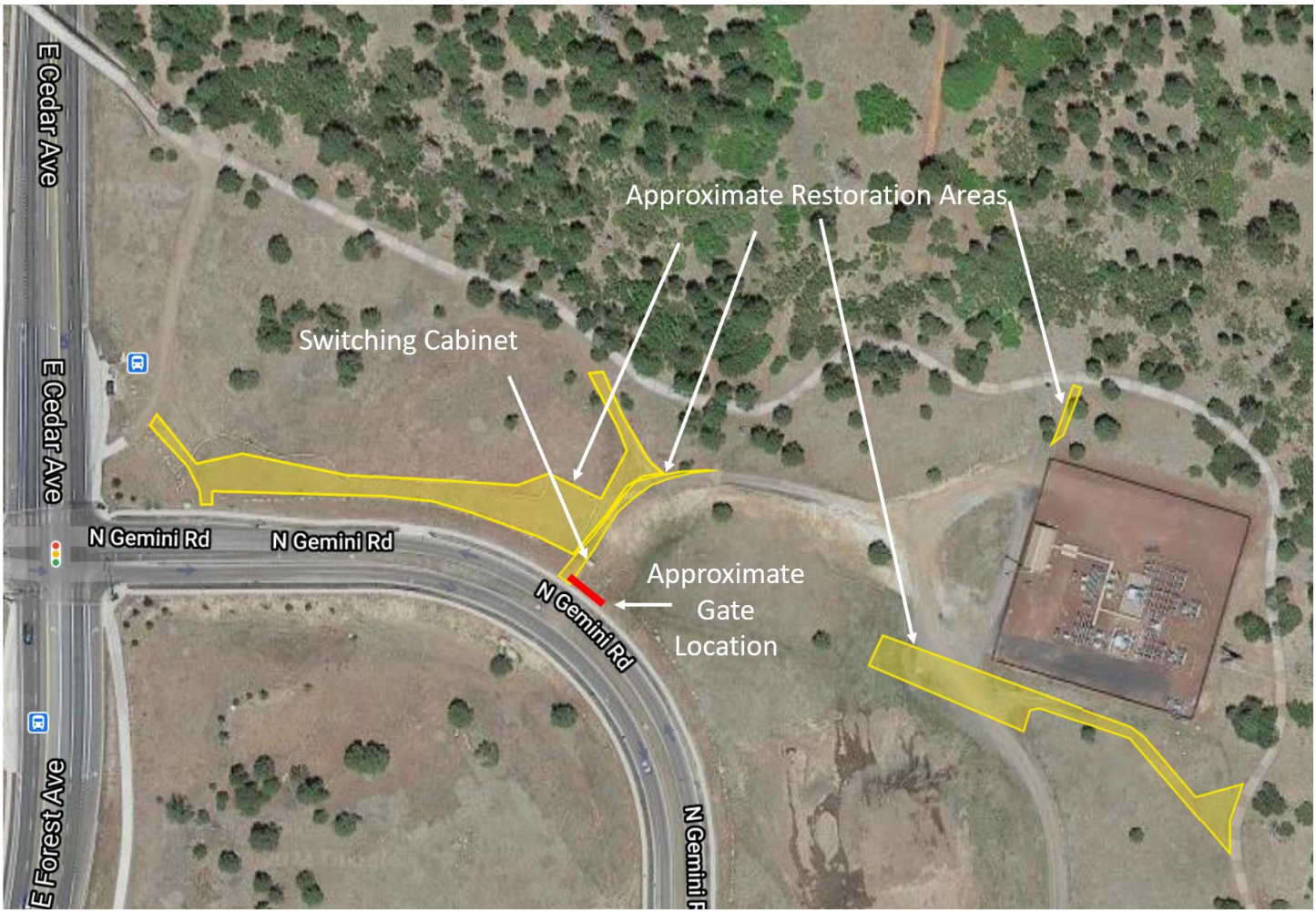
| Common Name | Species Name | lbs PLS/acre |
|---|---|---|
| Sideoats grama | Bouteloua curtipendula | 2.9 |
| Blue Grama | Bouteloua gracilis | 1.1 |
| Little Bluestem | Schizachyrium scoparium | 1.7 |
| Bottlebrush Squirreltail | Elymus elymoides | 3.6 |
| Arizona Fescue | Festuca arizonica | 1.2 |
| 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



**After recording, return to:**
**City Clerk**
**City of Flagstaff**
**211 W. Aspen Avenue**
**Flagstaff, AZ 86001**

# FIRST AMENDMENT TO INGRESS AND EGRESS EASEMENT

The Ingress and Egress Easement granted by the City of Flagstaff, an Arizona municipal corporation ("Grantor"), to US West Wireless LLC, an Arizona limited liability company ("Grantee") and recorded in the official records of Coconino County, Arizona on August 9, 2000 at Document No. 3059722, is hereby amended as follows.

1. The easement area shall consist of that area legally described and depicted in the attached "Exhibit A". For reference purposes, the easement area is located in Coconino County Assessor Parcel Number 109-02-001S.

All other terms and conditions of the easement remain unchanged.

IN WITNESS WHEREOF, Grantor has caused this First Amendment to Ingress and Egress Agreement to be executed this ____day of _____, 2021.

GRANTOR: City of Flagstaff

_____
Paul Deasy, Mayor

STATE OF ARIZONA )
)ss
County of Coconino )

ACKNOWLEDGMENT. On this ____ day of _____ 2021, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that (s)he executed the same for the purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, City Clerk |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE**

**Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Salas to place on a future agenda a discussion about strengthening existing City programs related to business services by creating a Business One-Stop Shop (BOSS) including, but not limited to, a Business One-Stop Shop (BOSS) online portal and a Business One-Stop Shop (BOSS) service desk at the City Hall for business resources and services from start-ups to business expansions.

**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 Salas 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:**

**Attachments:**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, City Clerk |
| **Date:** | 03/29/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE**

**Future Agenda Item Request (F.A.I.R.):** A request by Councilmember Salas to place on a future agenda a discussion about bolstering economic development by creating and funding a robust Workforce Development Program to expand and strengthen current workforce development efforts by the City

**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 Salas 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:**

**Attachments:**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, City Clerk |
| **Date:** | 03/31/2021 |
| **Meeting Date:** | 04/06/2021 |

**TITLE**

**City Manager Report**

**STAFF RECOMMENDED ACTION:**

Information Only

**EXECUTIVE SUMMARY:**

These reports will be included in the City Council packet for regularly scheduled Council meetings, excluding Work Session meetings. The reports are intended to be informational, covering miscellaneous events and topics involving the City organization.

**INFORMATION:**

**Attachments:** City Manager Report
Sustainability Monthly Report

# City Manager's Report

April 2, 2021

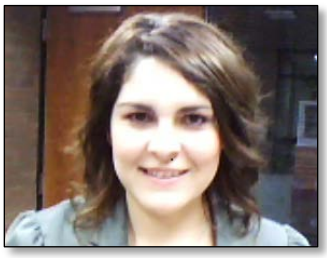
Council and Colleagues, greetings. These reports will be included in the City Council packet for regularly scheduled Council meetings, excluding Work Session meetings. The reports are intended to be informational, covering miscellaneous events and topics involving the City organization.

Council, also starting in this report, and once a month thereafter, we will be featuring our significant work anniversary achievements by our employees. We are excited to do this and will draw some focus to this each month as a call-out. Enjoy!

## Work Anniversaries!

### April 2021

- Adriana Fisher 4/25



- Christopher Magnan 4/25 (no photo available)

- Christina Rubalcava 3/28 (with twin graduates!)

- Kimberly Gifford 3/28

- Amy Starns 3/28

- Andrew Bertelsen 3/28

## 10 Years:

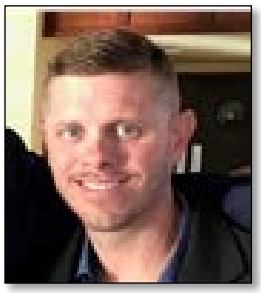
- Andrew Borg 3/20 (no photo available)

## 15 Years:

- Gerald Bills 3/26 (we call him … Jerry)

- William Condon 3/12

- Kristopher Walsh 3/12



## 20 Years:

- Tammy Bishop 3/8

- James Boyer 4/11

- Gregory McLaughlin 4/9

## 30 years:

- Adela Eschelbacher 4/16

## And … drumroll please … 33 years!

- Pat Staskey 4/3 (Woohoo!)

# Misc. Divisional Updates

Fire Department

- A structure Fire required more than 12 Firefighters over three hours to ensure proper and safe fire control of a residence (see picture). Thank you to Highlands Fire Department, Summit Fire and Medical Department, and Guardian Medical Transport, who provide back up, support, and coverage while we had units otherwise committed.

- **Congratulations!** After 24 years of great service to our community, Captain Kevin Wilson is on his way to retirement. We could not be more appreciative of his service. Check this out -- during his tenure with the FFD, Captain Wilson served in the ranks as a Firefighter, Engineer, Captain, Paramedic, Arson Investigator, and Public Information Officer. Man!

  In addition, throughout his career, he selflessly instructed several hundred students in CPR courses throughout the City of Flagstaff. It's worthy to mention that in addition to his service throughout the Greater Flagstaff Region, Captain Wilson also went out on numerous out of region wildland fire assignments with various Incident Management Teams.

  Captain Wilson, we salute you!

- Flagstaff Fire crews responded to a rollover collision on East Street. It was revealed that a vehicle struck a pedestrian and rolled over into a residential driveway. Two individuals were treated for injuries.

- Flagstaff Fire Department and Highlands Fire crews worked together on a reported house fire in the Mountain Dell neighborhood and rescuing two individuals who overturned in Kayaks on Upper Lake Mary. Things have been quite busy.

- Flagstaff Fire Department and Summit Fire District responded to a structure fire in Summit Fire District. This was a working house fire. Highlands Fire covered the city and districts for several hours.

- Finally, we cannot mention all of these emergency responses without noting the important training that that prepares our responders. A classroom shot of Greater Flagstaff Region Crews at Coconino College doing fire simulations and training on tactics and strategy.

Human Resources

- Human Resources has been meeting with divisions on pay structures for the implementation of the compensation study. It is a critical component of the compensation process and the hard work by all is appreciated.

Police Department

- The Community Relations Office put out a Public Service Announcement reminding our community to watch out for children returning to school. FPD will be working traffic safety education and enforcement in school zones this week.

- Sgt. Carlos Leyva responded to the area of 404 S San Francisco St for a report of three subjects consuming alcohol in the Rio De Flag. Upon arrival Sgt Leyva observed two males physically fighting (wrestling) and gave verbal commands to stop, as Sgt. Leyva got closer, he observed one subject stabbing the other with a knife. Verbal commands were given, and the suspect threw the knife. The suspect was detained until more units arrived on scene; the victim had a large laceration to his left hand and minor injury to his left ear. While the story is itself a bit disturbing, there is no doubt Sgt. Leyva may have prevented a loss of life here. Medics arrived on scene and transported the victim for non-life-threatening injuries. The suspect was booked for aggravated assault with a deadly weapon.

  Thank you Sgt. Carlos Leyva!

Public Works

- What's that buzz? The fan system and grow lighting system was installed inside the greenhouse project at the Thorpe Park Annex. The exterior door was also installed as staff continue to wrap up this amazing project. Staff will be germinating pollinator plants very soon inside the stone building to prepare to bring out into the greenhouse in April.

- And not as exciting as pollinator greenhouses, but important nevertheless, a Streets Signal and Lighting crew installed a replacement streetlight pole that was destroyed in a vehicle collision. Thanks to Steven Hill and his relationships with ADOT and APS to get this repair done quickly.

- Fleet service is working on a major overhaul of the transmission and track assembly continues with a Water Services 1997 John Deere crawler/dozer. Additionally, a steering gear replacement is occurring with Flagstaff Fire Engine 6. If this sounds like just small potatoes to you, check out the below pictures.

- With funding assistance from the Arizona Department of Forestry and Fire Management's Tree City USA Program, an invasive tree removal and restoration plan was developed for the McMillan Mesa Natural Area. This plan will be implemented starting on April 7th. This project will remove invasive tree species Russian Olive and Siberian Elm. This will likely generate community concern and the Open Space program is completing outreach through social media and physical signing of the location to inform the community. Over 100 trees have been identified for removal. Grant funding for canopy replacement with native trees will be sought to replace some trees with native species.

- Staff created an incredible small improvement at Ponderosa Park in conjunction with some work being done by NACOG at the adjacent Head Start location in Sunnyside. Parks staff removed a low block wall along with chain link fencing to open up the play space to the turf space and create a more inviting and accessible environment.

Before & after images …nice!

- Athletics staff hosted the annual Local User Group Field Allocation Meeting via Microsoft Teams. In attendance were local user group representatives from Continental Little League, Flagstaff Girls Softball Little League, West Flagstaff Little League, AYSO, Flagstaff Soccer Club, Prime Time Athletics, Flagstaff Eagles Youth Football & Cheer, 4 Horsemen Softball League, and Women's Soccer League.

- And now a word about cul-de-sacs. They are round, and stuff accumulates in the middle during the winter months. Cul-de-sac snow removal and clean-up is underway once again following the weekend storms. We responded to some residents who asked, "why are you doing this." In short, the snow is removed to provide adequate turn around room for emergency services, avoid daily melting and overnight ice issues and, most importantly, this removal process helps to prolong the pavement condition and surface. So there you go!

- Not to be outdone by the very impressive snow removal equipment acquired by the Airport crew recently, the Streets Section took delivery of its own new laydown asphalt paver this week. Very impressive! Enjoy these images, as you will never see asphalt equipment this new and shiny anywhere.

<u>Community Development</u>

- New Medical Campus for Northern Arizona Healthcare

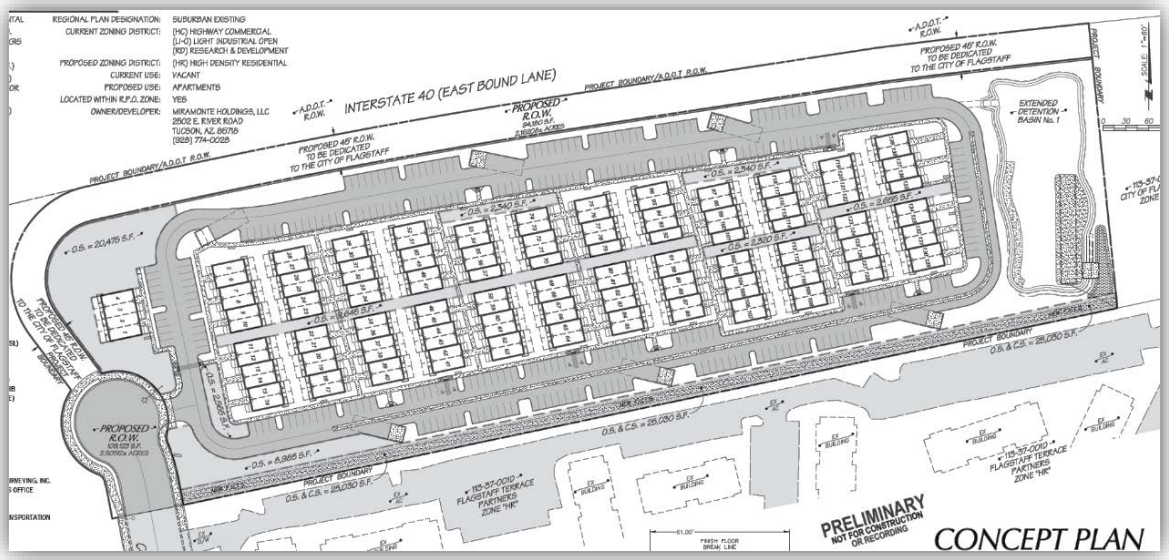
  Northern Arizona Healthcare (NAH) is intending to submit an application to Community Development by Friday, April 30, for a future hospital site located just north of Fort Tuthill. The image below comes from some preliminary information that is part of the RFP for consultants that NAH has put out. The project will require a Minor Regional Plan Amendment, a Specific Plan, and a Zoning Map Amendment. Staff has been meeting with NAH over the last several months to prepare for this application. Staff was made aware that final approval from within NAH was given at the end of March to move this project forward. The below aerial is of interest, although some of the text is hard to read.

- Graffiti Busters

  Code Compliance added two more members to our amazing Graffiti Buster Volunteers group, that will become active beginning April. Bill Sheppard and Debby Wolfe, thank you for your willingness to serve our community in this way!!

- The Lofts at Continental

  Concept Plan was found complete in the last week of March. This is the project on the vacant piece of property on the north end of E. Cortland Blvd. that requires the modification of the City's 88-foot access easement to a future regional park. This will clear the way to allow the applicant to move forward to site plan and rezoning.




Management Services

- Public Safety Pension Financing (remember that?)

  This just in. We received an interim report from the Public Safety Pension Retirement Service Actuarial (there's a mouthful). The interim report show that we reached our goal to be 100% funded. In fact, the Fire Plan is now 103.6% funded and the Police plan is 103.1% funded. There will be a brief presentation at the Budget Retreat with this information. Basically, we are ahead of the curve and this translates into additional savings potentially.

## Monthly Updates

Council, please find appended hereto the monthly updates for the Sustainability Section. You will find these to be informative reads. Please also note the very cool aerial shots of the new solar panels at NACET, now up and running!

That's all for now. Onward and upward …

# Month in Review: March, 2021.

## HOT TOPICS:

- Earth Day 2021! Due to Covid 19, Earth Day will be celebrated through virtual engagement. We will host a social media blast featuring short video clips submitted by each Council Member with their call to action! Also, look for Mayor Deasy's statewide Earth Day call to action, in collaboration with other Mayors around Arizona!
- In partnership with Water Conservation, we will be providing articles to the Daily Sun to incorporate into a weekly Earth Day Section in the Sunday paper throughout April.
- The City of Flagstaff has partnered with APS to install a solar carport at the Northern Arizona Center for Entrepreneurship and Technology (NACET). The solar carport installed at NACET will have a generation capacity of 125 kilowatts of AC power (kWac). In addition, APS will provide the City with monthly bill credits for the next 20 years for participating in the program. The project is part of APS's Solar Communities program, an initiative designed to expand access to solar for residential customers and organizations serving the limited-income population, including Title I schools, nonprofits, rural governments and municipalities. Participation in the program is free and qualified non-residential customers receive a solar-covered parking structure and a monthly bill credit on their energy bill. While the program is now closed to new non-residential applicants, APS is on track to install nearly 40 solar parking structures as part of the program.

## CLIMATE ACTION:

- Staff will be continuing our Climate Emergency Open House, focused on the draft Carbon Neutrality Plan that will go before Council on May 18th. The Open House website is available here: https://flgsustain.learnworlds.com/course/open-house. We will also be hosting 4 live events via Zoom to answer questions about the Carbon Neutrality Plan:
    - Wednesday, April 7th, 6:00-7:00 pm
    - Friday, April 9th, 12:00-1:00 pm
    - Thursday, April 15th, 6:00-7:00 pm
    - Saturday, April 17th, 10:00-11:00 am
- The Take Charge AZ program with APS to install Electric Vehicle Charging Stations (EVCS) has continued to develop for all three sites. Recent developments offered for each site:
    - Airport: Preliminary design has been expanded from 4 stalls to 6 stalls. Airport staff and project managers have been working with Peak Engineering, a civil firm, to develop plans for the new parking area. Staff met with Peak Engineering, APS and C2 representatives to coordinate parallel efforts. C2 is currently updating the design sketch for the EVCS to align with the Peak Engineering files.
    - Library: Staff continues to work with WLB, the engineering firm responsible for designing the library entrance update, and APS/C2. WLB has incorporated the EVCS design into their preliminary design, which will be going to council on May 11th. Staff has provided this design to C2 so that they can update the design sketch for the EVCS to align with the WLB files.

- Aquaplex: The preliminary design for the EVCS at the Aquaplex has been approved by staff. As such the Customer Acceptance Package has been signed by the City Manager, and APS/C2 is currently working on the detailed engineering.

## COMMUNITY STEWARDS/LITTER PREVENTION:

- We will be hosting an Earth Day neighborhood clean-up event. We will meet at several parks around the community and head out into the surrounding neighborhoods to clean up litter. Each park will have a volunteer clean up leader. Pre-Registration and masks are required, and we will be limiting the number of people at each location, per Covid.
- March Litter Cleanup Data:

| Date | # of Volunteers | Total Hours | Bags of Trash | Bags of Recycling |
|---|---|---|---|---|
| 3/6/2021 | 15 | 15 | 1 | 0 |
| 3/6/2021 | 10 | 20 | 5 | 0 |
| 3/8/2021 | 1 | 1 | 1 | 0 |
| 3/9/2021 | 1 | 1 | 1 | 1 |
| 3/20/2021 | 7 | 25 | 5 | 0 |
| 3/20/2021 | 3 | 9 | 6 | 3 |
| 3/22/2021 | 4 | 4 | 2 | 0 |
| 3/22/2021 | 5 | 10 | 2 | 1 |
| 3/27/2021 | 3 | 6 | 1 | 1 |

## ENERGY:

- The final live (virtual) HEE Workshop was run on March 11th. In total we ran 6 live (virtual) workshops this winter season and had 30 resident attendees. In addition, we have had 6 residents complete the HEE online course.
- The Solar United Neighbors Northern Arizona Co-Op continues to grow beyond expectations! As of 3/29, there are 208 members of the co-op. The original goal was for 75 members. The NAZ co-op is now the largest co-op SUN has facilitated in Arizona, eclipsing the 168 members that signed up for the Tucson co-op. The Co-op closes to new members after 3/31. In addition to attending (and presenting at) the informational webinars, staff have also:
  - Developed and posted dozens of social media posts across multiple platforms
  - Given interviews to traditional media outlets
  - Joined Council Members for live social media discussions
- Staff was also excited to learn that the co-op selection committee chose a local Flagstaff solar company, Rooftop Solar, to be the chosen co-op installer. Rooftop Solar will also be working with Prometheus to deliver all installations in a timely fashion.

## FOOD SYSTEMS:

- Sustainability and Beautification staff finalized a process for the O'Leary St Garden Placemaking Project. Staff will release a call to artists. The Southside Community Association will act as the selection committee. Targeting July to select the artist and implement as part of a community work day in the fall.
- Community Garden sign-ups have begun.

- In partnership with the Cooperative Extension, staff has developed a Garden Mentor program to help inexperienced community gardeners grow food in Flagstaff's challenging climate.

## MATERIALS MANAGEMENT:

- In partnership with the Cooperative Extension, staff has developed a Garden Mentor program to help inexperienced community gardeners grow food in Flagstaff's challenging climate. After discussions with potential participants and NAU (where food scraps would be composted), NAU's composting operation is not ready to accept compostable food scrap bin liners, which would be necessary to aggregate food scraps and dispose of in outdoor dumpsters. Staff will be working with NAU to pilot compostable bin liners with their own food scraps diversion efforts on-campus before revisiting a City collection service.
- Staff presented a Zero Waste Event Guide to the monthly Event Partner Meeting. Staff will be working with Recreation staff to update the event permit application to gather more detailed information on event producers' waste prevention and diversion plans. Sustainability Staff will also now be included in the event permit routing system for large events, providing us an opportunity to help event producers achieve waste prevention and diversion goals.

## SUSTAINABILITY COMMISSION:

- In the meeting on March 25th, the Commissioners discussed the future of the Neighborhood Sustainability Grant, worked on a Mission and Vision exercise, and heard presentations from Sustainability Staff and Beautification and Public Art Staff.
- Next meeting: Thursday April 29th, 2021, 4:30pm-6:30pm

## SOCIAL MEDIA

- Our top post was on the greenhouse being built outside our office to support the Mayor's Monarch Pledge, with 101 reactions and 19 shares on Facebook, and 145 likes on Instagram.