

REGULAR COUNCIL MEETING
TUESDAY
OCTOBER 5, 2021

COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
3:00 P.M.

ATTENTION

IN-PERSON AUDIENCES AT CITY COUNCIL MEETINGS HAVE RESUMED WITH LIMITED CAPACITY

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

WE ARE NO LONGER USING TELEPHONE COMMENTS

All verbal public comments will be given through a virtual public comment platform

If you want to provide a verbal comment during the Council Meeting, use the link below to join the virtual public comment room.

[VIRTUAL PUBLIC COMMENT WAITING ROOM](#)

Written comments may be submitted to publiccomment@flagstaffaz.gov. All comments submitted via email will be considered written comments and will be documented into the record as such.

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 ASLAN
COUNCILMEMBER MCCARTHY

COUNCILMEMBER SALAS
COUNCILMEMBER SHIMONI
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. **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.

5. **PROCLAMATIONS AND RECOGNITIONS**

- A. **Proclamation:** Manufacturers Month
- B. **Proclamation:** Indigenous Peoples' Day
- C. **Proclamation:** World Mental Health Month

6. **CITY MANAGER REPORT**

- A. **City Manager Report**
Information Only
 - i. **Independent Redistricting Grid Maps Comment**

7. **COUNCIL LIAISON REPORTS**

8. **COVID-19 UPDATE**

- A. **COVID-19 Update**
This presentation is for informational purposes only.

9. **APPOINTMENTS**

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

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

STAFF RECOMMENDED ACTION:

Make one PROFESSIONAL appointment to a term expiring December 2023.
Make two AT-LARGE appointments to terms expiring December 2022.

10. **LIQUOR LICENSE PUBLIC HEARINGS**

- A. **Consideration and Action on Liquor License Application:** Craig Garland Spivey, "Bowski's" 4650 N. Hwy 89, Series 12, New Application.

STAFF RECOMMENDED ACTION:

Hold 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 a recommendation for denial based on the testimony received at the public hearing and/or other factors.

11. **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:** Flaglights LLC, dba Holiday Cheer for the City's Holiday Lights and Decoration Program in the amount of \$59,440.00.

STAFF RECOMMENDED ACTION:

1. Approve the annual service agreement with Flaglights LLC, dba Holiday Cheer and execute a \$59,440.00 contract.
2. Authorize the City Manager to execute the necessary documents.

- B. **Consideration and Approval of Contract:** Approve the Construction Contract with Scholz Contracting, LLC for the East Route 66 and El Paso Waterline Extension Project in the amount of \$1,392,689.55 (which is the sum of the Contractor's bid amount of \$1,326,371.00 and a Contract Allowance of \$66,318.55).

STAFF RECOMMENDED ACTION:

1. Approve the Construction Contract with Scholz Contracting, LLC in the amount of \$1,392,689.55 (which is the sum of the Contractor's bid amount of \$1,326,371.00 and a Contract Allowance of \$66,318.55), and a contract time of 126-calendar days;
2. Approve a contract allowance of \$66,318.55 which is 5% of the lowest responsive and responsible bid;
3. Approve Change Order Authority to the City Manager in the amount of \$132,637.10 (10% of the contract amount, less allowances); and
4. Authorize the City Manager to execute the necessary documents.

- C. **Authorization for Partial Settlement of Tax Litigation:** *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234 (2019).

STAFF RECOMMENDED ACTION:

Authorize City Manager to approve partial settlement of the tax lawsuit, *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234 (2019).

- D. **Consideration and Approval of Grant Agreement:** Approve the Grant Agreement between the City of Flagstaff and the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) for six (6) new Firefighters.

STAFF RECOMMENDED ACTION:

Approve the Grant Agreement with the Department of Homeland Security for the FY 2020 Staffing for Adequate Fire and Emergency Response (SAFER) Grant in the amount of \$1,436,864.10 for the staffing of six (6) new Firefighters over the next three (3) years.

- E. **Consideration and Approval of Contract:** Annual Master Agreement for Software Maintenance with Hexagon for software utilized by the City Police Department in the amount of \$234,359.85 (plus any applicable sales tax).

STAFF RECOMMENDED ACTION:

1. Approve the Annual Master Agreement for Software Maintenance with Hexagon in the amount of \$234,359.85 (plus any applicable sale tax); and
2. Authorize the City Manager to execute all necessary documents.

12. **ROUTINE ITEMS**

- A. **Consideration and Approval of Contract:** Change Order Number 4 with Peak Engineering, Inc., in the amount of \$115,353.34 and add 540 calendar days for the design work associated with the potential alternative alignment of the new JW Powell Boulevard extension to Fourth Street.

STAFF RECOMMENDED ACTION:

1. Approve Change Order Number 4 with Peak Engineering, Inc.; in the amount of \$115,353.34;
2. Add 540 calendar days to the design services contract; and
3. Authorize the City Manager to execute the necessary documents.

- B. **Consideration and Adoption of Ordinance No. 2021-22:** An ordinance of the City Council of the City of Flagstaff clarifying the duties of the Beautification and Public Art Commission, and clarifying that the Procurement Code Manual procedures apply to expenditures for Arts and Sciences and Beautification funds; providing for repeal of conflicting ordinances, severability, and establishing an effective date.

STAFF RECOMMENDED ACTION:

- 1) Read Ordinance No. 2021-22 by title only for the final time
- 2) City Clerk reads Ordinance No. 2021-22 by title only (if approved above)
- 3) Adopt Ordinance No. 2021-22

13. **REGULAR AGENDA**

- A. **Consideration and Adoption of Resolution No. 2021-46:** A resolution to approve an Intergovernmental Agreement (IGA) between City of Flagstaff and Lockett Ranches Fire District to provide fire and emergency medical services.

STAFF RECOMMENDED ACTION:

- 1) Read Resolution No. 2021-46 by title only
- 2) City Clerk reads Resolution No. 2021-46 by title only (if approved above)
- 3) Adopt Resolution No. 2021-46

- B. **Consideration and Adoption of Resolution No. 2021-45:** A resolution of the City Council of the City of Flagstaff, authorizing determination and offers of relocation benefits to persons displaced to make way for the Lone Tree Overpass project; providing for delegation of authority, subsequent Council ratification, and establishing an effective date.

STAFF RECOMMENDED ACTION:

- 1) Read Resolution No. 2021-45 by title only
- 2) City Clerk reads Resolution No. 2021-45 by title only (if approved above)
- 3) Adopt Resolution No. 2021-45

- C. **Consideration and Approval of Contract:** Approve the Professional Services Contract with Terros, Inc. dba Terros Health for the Alternate Response Mobile Unit in the amount of \$2,583,300.

STAFF RECOMMENDED ACTION:

1. Approve the Professional Services Contract with Terros, Inc. dba Terros Health (Terros Health) for Mobile Alternative Response Team Services for three years with the ability to renew up to two successive one year terms in the amount of \$2,583,300. The table below outlines the cost per year.

Expense Line Item	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Personnel:	\$274,100	\$289,800	\$298,500	\$307,500	\$316,700	\$1,486,600
Fringe Benefits:	\$67,200	\$69,200	\$71,200	\$73,400	\$75,600	\$356,600
Travel:	\$7,300	\$7,500	\$7,700	\$8,000	\$8,300	\$38,700
Equipment:	\$0	\$0	\$0	\$0	\$0	\$0
Supplies:	\$7,000	\$6,600	\$6,700	\$6,600	\$6,700	\$33,600
Contracts:	\$0	\$0	\$0	\$0	\$0	\$0
Construction:	\$0	\$0	\$0	\$0	\$0	\$0
Other:	\$144,800	\$145,300	\$149,900	\$155,300	\$158,000	\$753,300
Year #1 - Program Startup - Billing Credit (Months 1-5)	\$(85,500)	\$0	\$0	\$0	\$0	\$(85,500)
Total:	\$414,900	\$518,400	\$534,000	\$550,800	\$565,200	\$2,583,300

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

14. **DISCUSSION ITEMS**

A. **Beulah/University Roadway Project - Bike and Pedestrian Design Discussion**

Presentation to share the current roadway design work by Shephard-Wesnitzer Inc. (SWI) and Mark Lenters (Kimley-Horn and Associates, Inc.) which incorporates the Council feedback from the June 29, 2021, Council Meeting concerning bike and pedestrian design. Staff recommendation is to proceed to final design and conclude the design phase of this project.

B. **Discussion on the Alternate Response Model and Care Center**

City Council discussion on the Alternate Response Model and Care Center.

15. **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 Citizens' Petition requesting "a meeting with City and County representatives to obtain a comprehensive report of what mitigation has been done on the Museum Fire burn scar and watershed and what the outcomes have been, and what the short, mid, and long term plans for funding are."

Council direction.

16. **INFORMATIONAL ITEMS TO/FROM MAYOR, COUNCIL, AND STAFF, AND 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

6. A.

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, City Clerk
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE

City Manager Report

STAFF RECOMMENDED ACTION:

Information Only

EXECUTIVE SUMMARY:

Report will be sent to Council over the weekend and posted to the agenda on Monday

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](#)
[Letter to Independent Redistricting Commission](#)

City Manager's Report

October 5, 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. This report was not prepared with sufficient timing to be included in your packet, and I apologize for the late submittal. We are calling out one item for discussion, which is the re-districting letter as discussed herein. In no specific order:

Fire Department

The new Fire Academy begins on October 25th with twelve new Firefighters. The Fire Academy is where new fire fighters receive the necessary training to perform their job duties. It is approximately 12 weeks in duration.

Police Department

- The Police Department currently has 13 Police Officer position vacancies and there are 11 employees currently at the Police Academy (similar program to the Fire Academy referenced above) or in Field Training. There are seven candidates who are currently going through background checks. Stay tuned.
- In our ongoing recruitment efforts, Officer Kevin Rueb performed an interview on KAFF Country Radio for recruitment.
- The Tyler Stewart Memorial Golf Tournament was held to fundraise for the charities that have been formed in his honor.
- Sgt. Turley and members of the recruitment team travelled to Phoenix to participate in a job fair.
- Sometimes you just want to scream. At least that was the case involving a motorhome parked in the Walmart parking lot, upon which an unknown man climbed on top and began screaming. The owners of the motorhome, when contacted, indicated that they did not know the screaming individual. The Flagstaff Fire Department, Guardian Medical Transport, and Terros responded, but were unable to garner the vocal gentleman's attention. Officer Rueb and Holberg took off their duty belt and were tethered to the Flagstaff Fire Department ladder truck bucket. They were able to secure the individual and lower him safely to the ground where he was transported to FMC for additional assistance. Great work Officer Rueb (pictured on left) and Officer Holberg (pictured on right)! Peace and quiet restored.



PROSE

The following are updates from our recently formed Parks, Rec, Open Space, and Events Division:

- The Thorpe Annex public participation team had a kick-off meeting with Southwest Decision Resources to start identifying key stakeholders and review pre-assessment questions. Weekly meetings will continue with pre-assessment meetings likely to begin in October with stakeholders. Pre-assessment outcomes will help shape the community-wide public participation meetings.
- The contractor is wrapping up the final items on the Suns Rebound Project which remodeled two basketball courts and created two pickleball courts at Ponderosa Park in the Sunnyside neighborhood! Please look for notification of a soft opening soon and come on out to shoot some hoops! Stay tuned.
- And this just in: staff and our partners in Animal Control have witnessed a dramatic uptick in usage of the City's athletic fields by ... pets. Yes, pets. And they are not obeying the regulations currently in place.

A leashing campaign as well as new signage for the City's baseball and softball fields will be implemented while Animal Control begins enforcing the current City Code 8-11-001-0007: no pets off leash or permissible when signed in parks, i.e., playing fields.

Here is a preview of the new signage, depicting both dogs and cats, although we all know that cats are the real culprits here.



- In celebration of Hispanic Heritage Month, a Coordinator at Hal Jensen Community Center participated in the County's "My Life in Peru" Show and Tell webinar.
- NAU nursing students started their internship program at Joe C. Montoya Community and Senior Center which includes interacting with the patrons and assisting staff as needed.
- Construction and restoration work surrounding the APS Elden Substation, within the McMillan Mesa Natural Area, is scheduled to start on Monday, September 27. Construction work will consist of a curb cut on N. Gemini Road, moving a streetlight, and realigning the access road to the substation to allow large work trucks better access. APS is committed to working with Open Space to conduct additional restoration surrounding the substation. Restoration work will include removing gravel, tilling compacted soil, and reseeding with native grasses. Open Space has provided information via social media to help inform the community regarding the activities.

- PROSE contributed to the Festival of Science activities this year. Thanks to Sylvia Struss, Open Space VISTA, and partners, community activities at Buffalo Park and Science in the Park were very successful! Community art was displayed at the October 1 First Friday Art Walk at the Webb Law Group building (224 E. Birch Ave). (See pictures below)



Public Works

- Streetlight maintenance is ongoing with a handful of areas being addressed by the City’s Signal Technician. The repairs on Soliere and Sparrow have commenced. The Traffic Signal Technician has also been assisting with the voice activated PED crossing.
- The DOC crew is continuing work on alleyway maintenance this week; pavement preservation inspection work continued throughout September, and the Streets Signs and Markings crew has been out doing sign maintenance this week as well.
- Pulliam Airport’s new Long-Term Parking Lot continues with new concrete curb installation with an anticipated completion of October 1st. The installation of the aggregate base course continues throughout the project area. The contractor is anticipated to pave the area on October 13th and 14th. We will plan a ribbon cutting prior to opening. There will be plenty of parking available for the attendees.
- Preparations continue at Fleet for winter. The photo to the right shows Juston Watson, sporting the welding torch, in the process of beefing up this plow frame for action.
- Fleet Services coordinated the City’s crane and ariel bucket truck inventory’s certification for safety and operational parameters this week. Thank you, Airport, Parks, Streets, Water Production, Wastewater and Lake Mary Water Treatment Plant for working with us to complete this annual task.



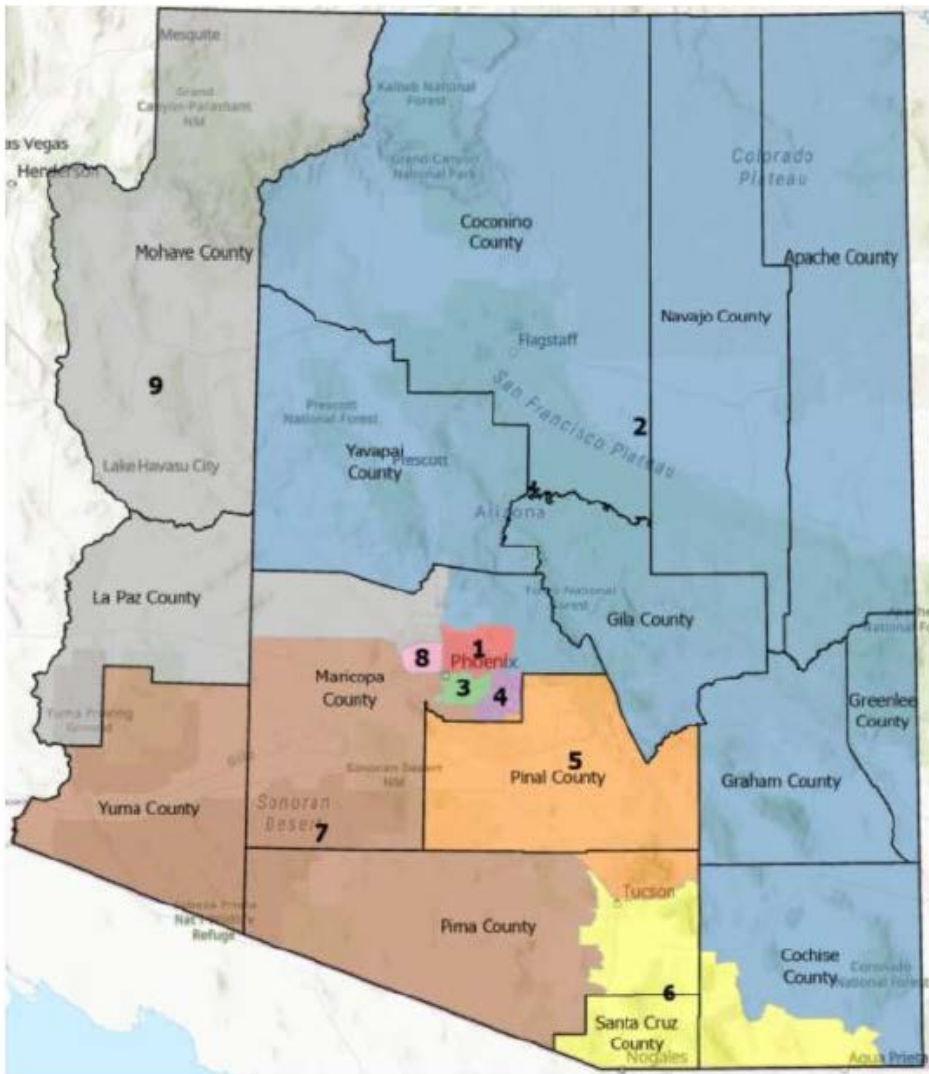
- Winterization of City Facilities has provided good results indicating all boiler systems are in good condition going into the winter months for hot water heating. Even the oldest systems are in good condition including the Library and City Hall. This is a good thing.
- Noteworthy: with the recent flooding events, the Landfill has received approximately 10,386 tons of debris to date. Bulky crews continue to collect debris from the previously flooded areas of the Sunnyside neighborhood by special request and Supervisor observation to clear debris from the flood path and damaged property.
- Also involving our Landfill, the final touches of the Cell D Excavation are being installed. The 300,000 gallon water tank is being filled with reclaimed water. Headwalls are being constructed at the drainage crossing.



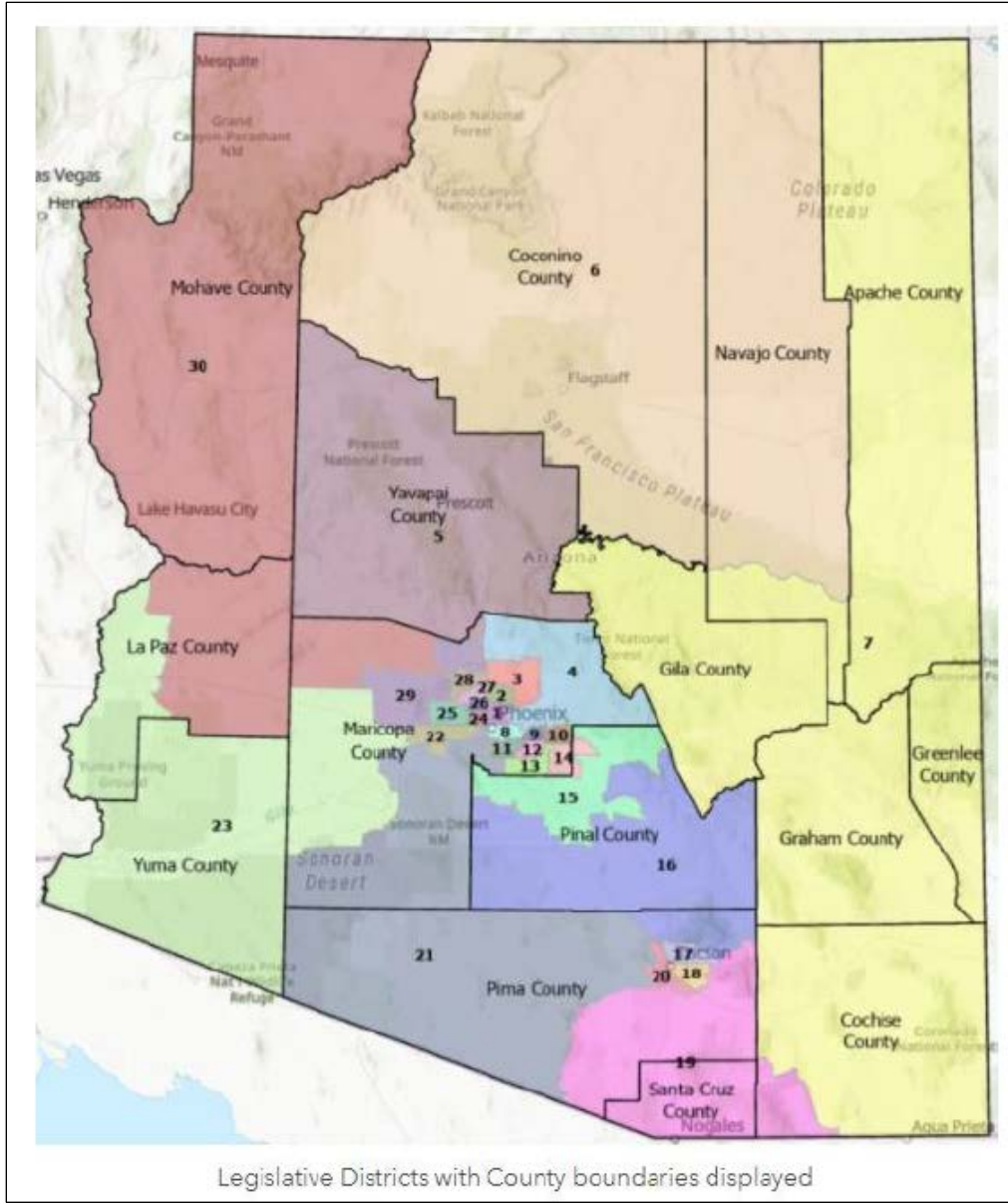
Redistricting

This topic starts with our extended appreciation to Sarah Langley, Public Affairs Director, and Todd Madeksza, our State Lobbyist. The below maps are for reference during the topic, and both Sarah and Todd will be guiding the discussion.

The work of the Independent Redistricting Commission continues as the Commission recently adopted congressional and legislative grid maps on September 14th. The grid maps use the most recent Census data to create nine balanced Congressional Districts and thirty balanced Legislative Districts across the state within +/- 1 person down to the Census Block level. This grid is simply meant to serve as a starting point and the Commission is now taking public comment on the grid maps. A draft letter from the Flagstaff City Council, providing comment on the grid maps, has been attached to this City Manager's Report, in addition to images of the congressional and legislative grid maps shown below for the Council's reference. Once adopted, this letter will be sent to the Commission prior to the 2nd public hearing scheduled for October 7th. Staff will continue to monitor the Commission's progress and advise the Council of opportunities for public comment on future versions of the maps.



Congressional Districts with County boundaries displayed



That is all for now, Council. Thank you. Onward and upward ...



CITY OF FLAGSTAFF

FLAGSTAFF CITY COUNCIL

211 West Aspen Avenue, Flagstaff, Arizona 86001

Main Line: 928-213-2000

Website: <https://www.flagstaff.az.gov>

October 5, 2021

Independent Redistricting Commission
1110 W Washington St., Ste 127
Phoenix, AZ 85007

Dear Commissioners,

The Flagstaff City Council supports the critical work of the Independent Redistricting Commission and thanks the Commission for the inclusive and thorough public engagement process that has been implemented thus far. We welcome and appreciate the opportunity to communicate our comments on the adopted grid maps and for residents of Flagstaff and the northern Arizona region to voice their values and concerns.

As was stated in our previous letter, the city of Flagstaff values a legislative and congressional redistricting result that, above all, keeps the city of Flagstaff intact and does not split the city among multiple districts. Such an outcome supports the Commission's guiding criterion of the incorporation of visible geographic features, including city and town boundaries. We are encouraged that Flagstaff is intact in both the congressional and legislative grid maps.

We also communicated in our previous letter that the city of Flagstaff would welcome an outcome that recognizes the greater Flagstaff area as a community of interest. We continue to ask that the greater Flagstaff area be kept whole in any legislative and congressional district and that the current Legislative District 6 be expanded to include rural areas that are part of our Flagstaff community but which are currently part of Legislative District 7. Specifically, the neighborhoods to be added to LD6 include Precinct 55 (Fort Valley East), Precinct 51 (Schultz), Precinct 86 (Mountain View) and Precinct 92 (Winona). All of these areas are within Coconino County and are home to residents who use Flagstaff's commercial, cultural, and healthcare resources. We are pleased that Legislative District 6 has been expanded to include the greater Flagstaff area in the approved grid map and urge the Commission to retain this expansion in future maps moving forward.

We would also like to re-emphasize that indigenous communities represent clear communities of interest that have both shared and unique priorities and concerns with other communities of interest. The values and needs of indigenous communities, as articulated by indigenous peoples and leaders, should be strongly considered by the IRC during the redistricting process.



CITY OF FLAGSTAFF

FLAGSTAFF CITY COUNCIL

211 West Aspen Avenue, Flagstaff, Arizona 86001

Main Line: 928-213-2000

Website: <https://www.flagstaff.az.gov>

Lastly, the city of Flagstaff would again like to request a legislative and congressional district outcome that values unified communities of interest. Specifically, the city of Flagstaff would welcome placement within a district among communities that:

- Value and invest in forest health and watershed protection, as well as recognize the positive impact of ecosystems on our communities.
- Share healthcare resources.
- Host Grand Canyon tourists.
- Have a strong interest in improving interconnected economies with investment in infrastructure, shared transportation corridors and shared workforce development.
- Value the protection and recovery of state shared revenues.

Thank you for your service to Arizona,

8. A.

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Shannon Anderson, Deputy City Manager
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE

COVID-19 Update

STAFF RECOMMENDED ACTION:

This presentation is for informational purposes only.

EXECUTIVE SUMMARY:

City staff will present the updated COVID-19 dashboard data and an update on Navajo and Hopi Tribal Nations situation with COVID-19.

INFORMATION:

The COVID-19 dashboard includes information on new cases, hospitalization, COVID-related deaths, community transmission level, vaccination status and variants.

The Navajo and Hopi Tribal Nations update will include information about the number of cases, any emergency orders, and related press releases.

Attachments: [Presentation](#)

COVID-19 Update





Agenda



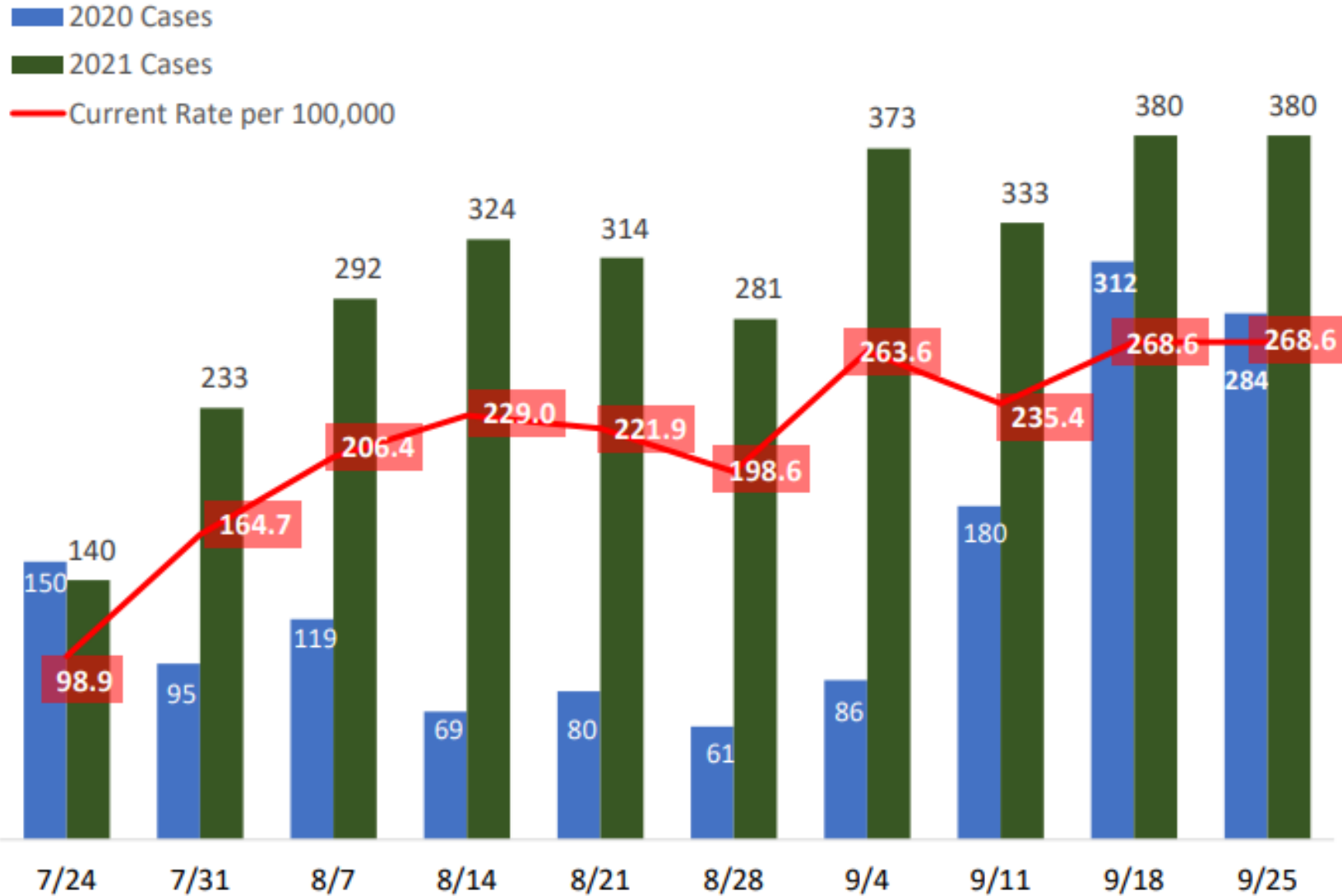
- The Data

- Coconino County Health and Human Services (CCHHS) dashboard
- Northern Arizona Healthcare (NAH) hospital census
- Navajo Nation
- Hopi Tribe

- Indigenous Nations Update



CCHHS: COVID-19 Weekly Cases

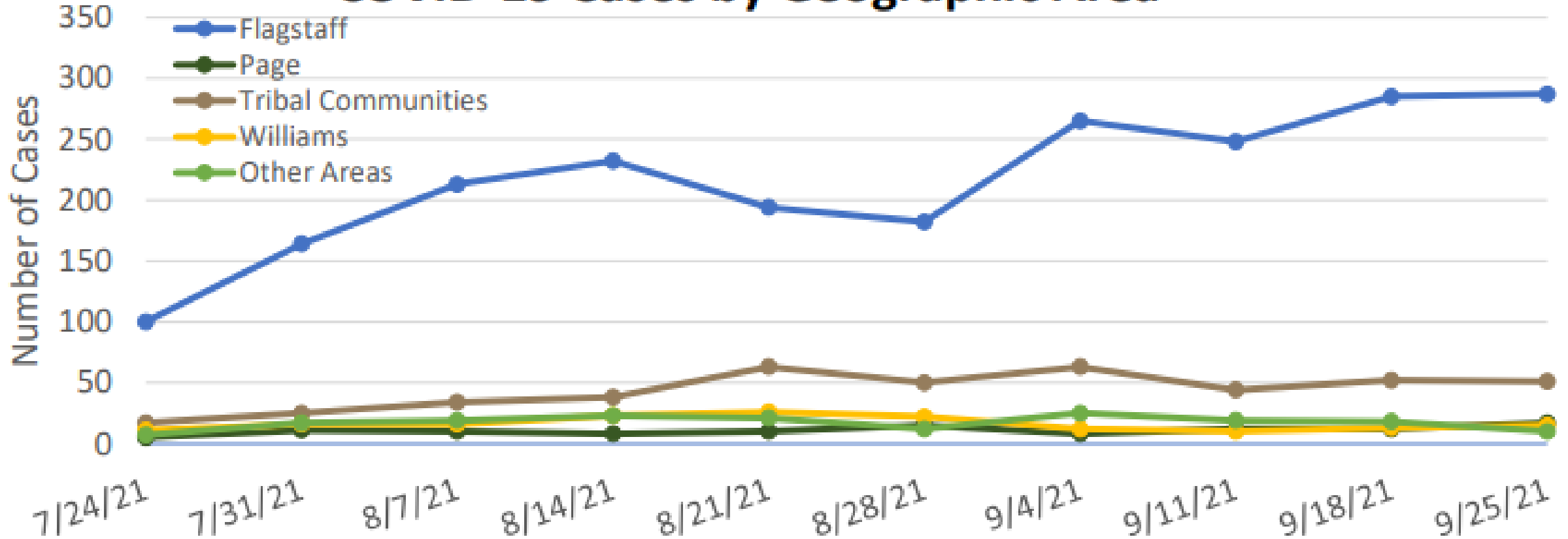




CCHHS: COVID-19 Weekly Cases



COVID-19 Cases by Geographic Area



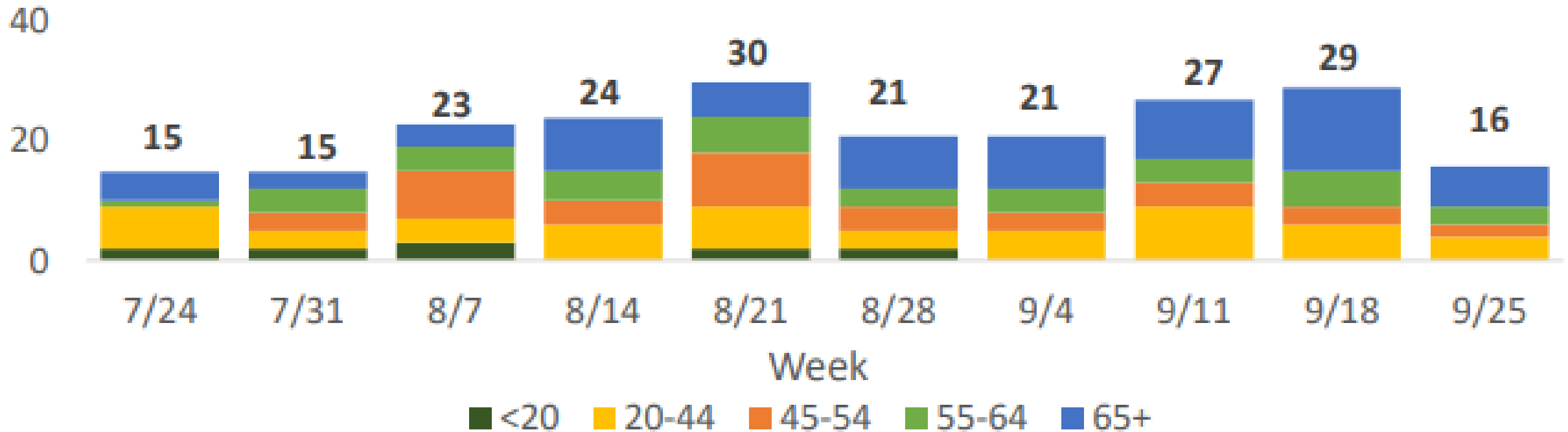


CCHHS: Hospital Admissions



Weekly Case Counts Among Coconino County Residents:

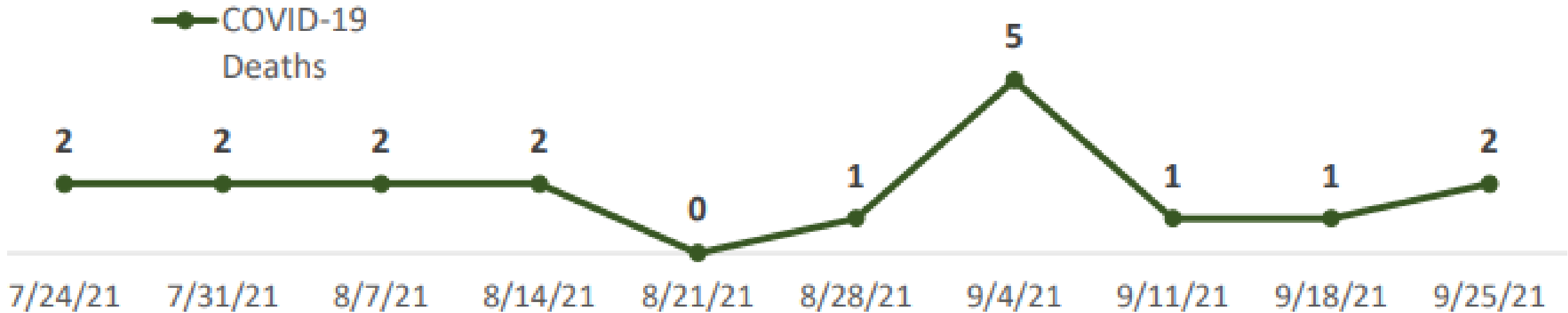
Hospitalized Coconino COVID-19 Patients by Age





CCHHS: COVID-19 Related Deaths

Weekly COVID-19 Deaths Among Coconino County Residents:





CCHHS: Community Transmission



Community Transmission

- Coconino County has a current **incidence rate of 268.6 per 100,000**, **percent positivity of 6.6%**, and **COVID-19-Like-Illness incidence (CLI) of 7%***.
- Coconino County is currently at a **High**** level of community transmission.

Indicator	Low Transmission	Moderate Transmission	Substantial Transmission	High Transmission
Total new cases per 100,000 persons in the last 7 days	0-9	10-49	50-99	≥100
Percentage of PCR tests that are positive during the past 7 days	<5.0%	5.0% - 7.9%	8.0% - 9.9%	≥10.0%



CCHHS: Community Vaccination

Doses in Coconino

Total number of COVID-19 vaccine doses administered:	158,949
Total number of COVID-19 vaccine doses ordered:	110,439
Percent of COVID-19 vaccine doses utilized:	143.9%

People in Coconino

Total number of people who have received at least one dose of COVID-19	87,046
Percent of people vaccinated:	59.1%
Number of people who are fully vaccinated against COVID-19:	74,336

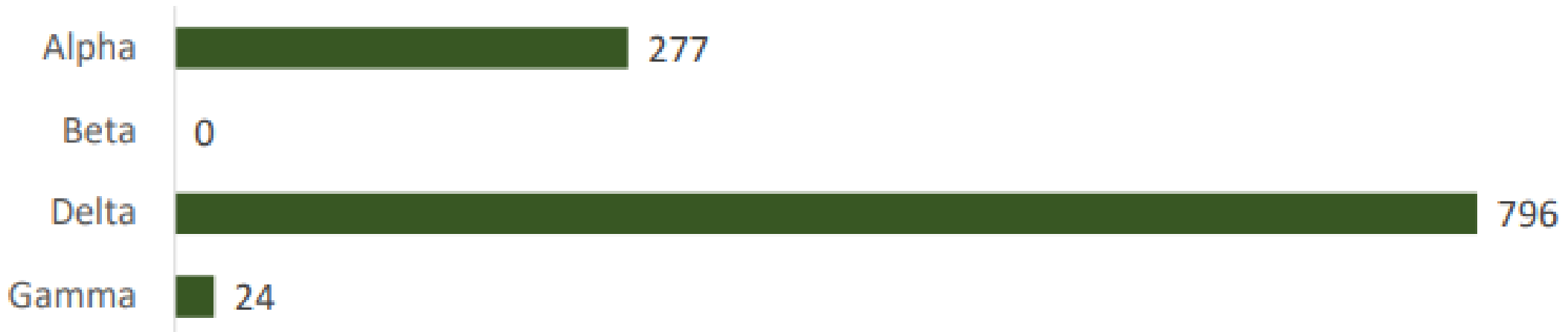


CCHHS: Variants



COVID-19 Variants:

Coconino County Total Variants of Concern**



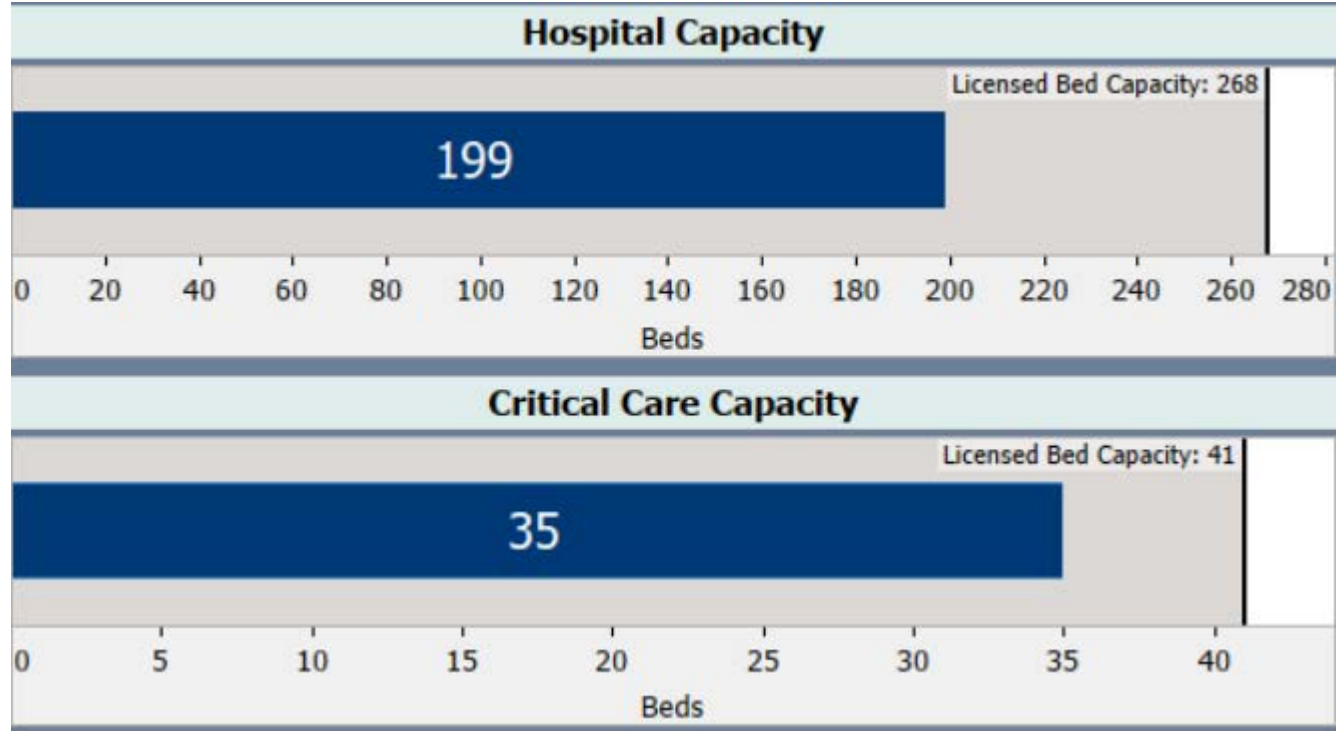
****A variant for which there is evidence of an increase in transmissibility, more severe disease (e.g., increased hospitalizations or deaths), reduced effectiveness of treatments or vaccines, or diagnostic detection failures as defined by the CDC. Current data suggest that COVID-19 vaccines authorized for use in the United States offer protection against variants currently spreading in Coconino County.**



NAH: Hospital Census



Flagstaff Medical Center Hospital Census	
199	
In House COVID-19 Patients	
Positive	Pending
37	



Data as of October 3, 2021



Indigenous Nations Data

Navajo Nation

NN Health Facilities Data	Difference in 14 days	Current Week 9/30/21	Previous Date 9/16/21
Total Tested	+ 9,187	338,739	329,552
Negative Cases	+ 7,619	278,510	270,891
Confirmed Positive Cases	+ 601	33,995	33,394
Recoveries	+ 533	32,155	31,622
Deaths	+ 19	1,447	1,428



Indigenous Nations Data

Hopi Tribe

Hopi Health Care Center Data	Difference in 6 days	9/21/21 KUYI Radio FB	9/15/21 KUYI Radio FB
Total Tested	+ 167	11,025	10,858
Negative Cases	+ 163	9,435	9,272
Positive Cases	+ 17	1,496	1,479
Hopi Tribal members (includes #s from Tuba Hospital)	+ 14	1,385	1,371



Indigenous Nations Update

- Navajo Nation
 - Public Health Emergency Orders remain the same
 - Indian Health Services distributing all three vaccines
 - All Navajo Nation government employees are required to be vaccinated
 - Health Advisory for 40 communities



Indigenous Nations Update

- Hopi Tribe

- HHCC taking appointments or walk-ins for COVID vaccine
- Continuing to encourage vaccines for everyone ages 12 or older

Council Questions



**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Fobar, Deputy City Clerk
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE:

Consideration of Appointments: Heritage Preservation Commission.

STAFF RECOMMENDED ACTION:

Make one PROFESSIONAL appointment to a term expiring December 2023.
Make two AT-LARGE appointments to terms expiring December 2022.

Executive Summary:

The Heritage Preservation Commission consists of seven citizens serving three-year terms. Two positions represent historic owners, two positions represent the professional industry, and three positions are at-large seats. The Heritage Preservation Commission locates sites of historic interest in the City, advises the City Council on all matters relating to historic preservation, and reviews development projects in the downtown design review district.

There is one professional seat and two at-large appointments available for appointment. It is important to fill vacancies on Boards and Commissions quickly so as to allow the Commission to continue meeting on a regular basis. Please note that professionals and historic property owners can be appointed to at-large seats.

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

- Emily Dale – Professional (current commissioner)
- Shelli Dea - Historic Property Owner - (new applicant)
- Amy Horn – Professional - (new applicant)
- Duffie Westheimer – At-large - (new applicant)

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

COUNCIL APPOINTMENT ASSIGNMENT: Councilmember Salas, Mayor Deasy, and Councilmember McCarthy

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:

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

Has There Been Previous Council Decision on This:

None

Background/History:

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

Community Benefits and Considerations:

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

Community Involvement:

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

Attachments: [HPC Authority](#)

CHAPTER 2-19
HERITAGE PRESERVATION COMMISSION

SECTIONS:

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

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

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

2-19-001-0002 MEMBERSHIP:

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

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

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

2-19-001-0003 TERMS AND OFFICERS:

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

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

2-19-001-0004 MEETINGS:

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

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

2-19-001-0005 POWERS AND DUTIES:

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

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

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

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

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

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

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

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

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

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

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

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Fobar, Deputy City Clerk
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE:

Consideration and Action on Liquor License Application: Craig Garland Spivey, "Bowlski's" 4650 N. Hwy 89, Series 12, New Application.

STAFF RECOMMENDED ACTION:

Hold 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 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 at the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. A Series 12 license allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Bowlski's is a new business in Flagstaff. If approved it will be the 90th active series 12 license in Flagstaff. Series 12 licenses are non-quota licenses. To view surrounding liquor licenses, please refer to the online interactive [Liquor License Map](#).

The property has been posted as required, and the Police and Community Development divisions have reviewed the application and provided their respective reports.

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 license, consideration may be given to both the location and the applicant's personal qualifications.

The deadline for issuing a recommendation on this application is October 8, 2021.

Community Benefits and Considerations:

This business will contribute to the tax base of the community.

Community Involvement:

The application was properly posted on September 14, 2021. No written protests have been received to date.

Attachments: [Letter to Applicant](#)
 [Hearing Procedures](#)
 [Series 12 Description](#)
 [PD Memo](#)
 [Zoning Memo](#)
 [Map](#)



City of Flagstaff

OFFICE OF THE CITY CLERK

9/20/2021

Craig Spivey
522 Largent Avenue
Dallas, TZ 75214

Dear Mr. Spivey:

Your application for a new Series 12 Liquor License for Bowlski's located at 4650 N. Hwy 89, Flagstaff, AZ was posted on September 14, 2021. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, October 5, 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) or in person 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 October 4, 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 (office) or 928-220-5995 (cell).

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 12 Restaurant License

Non-transferable

On-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

PURPOSE:

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:

An applicant for a restaurant license must file a copy of its restaurant menu and Restaurant Operation Plan with the application. The Plan must include listings of all restaurant equipment and service items, the restaurant seating capacity, and other information requested by the department to substantiate that the restaurant will operate in compliance with Title 4.

The licensee must notify the Department, in advance, of any proposed changes in the seating capacity of the restaurant or dimensions of a restaurant facility.

A restaurant licensee must maintain complete restaurant services continually during the hours of selling and serving of spirituous liquor, until at least 10:00 p.m. daily, if any spirituous liquor is to be sold and served up to 2:00 a.m.

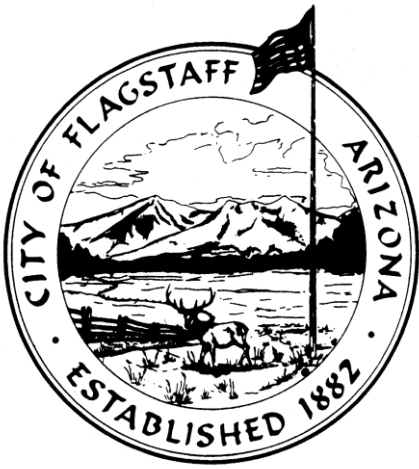
On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

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.

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 #21-071

TO: Chief Dan Musselman

FROM: Sgt. Ryan Turley

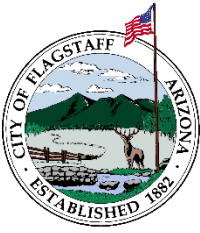
DATE: September 1^{3th}, 2021

RE: LIQUOR LICENSE APPLICATION – SERIES 12- FOR “Bowlski’s”

On September 13th, 2021, I initiated an investigation into an application for a series 12 (Restaurant) liquor license filed by Jennifer Spivey (controlling Person and Agent) and Craig Spivey (Controlling Person and Agent). This is a new application, and the application number is 159706. It is for Bowlski’s and is located at 4650 N. Hwy 89.

I conducted a query through local systems and public access on all of the applicants and discovered no derogatory records for the applicants. I conducted a search for any current or previous liquor licenses held by the applicants and found none in Arizona. I did not find any current or historical liquor violations for the applicant or the business. This business is not located within 300 feet of a school or church.

The businesses hours will generally be open the hours of the mall. I spoke Craig who advised that he would be present for the Council Meeting on October 5th.



Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk
From: Reggie Eccleston, Code Compliance Manager
CC: Alexandra Pucciarelli, Interim Planning Director
Date: Sept. 16, 2021
Re: Application for Liquor License #159706
4650 N. Highway 89, Flagstaff, Arizona 86004
Assessor's Parcel Number 113-27-016M
Craig Garland Spivey on behalf of Bowlski's

This application is a request for a new Series 12 Restaurant liquor license by Craig Garland Spivey on behalf of Bowlski's. 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.



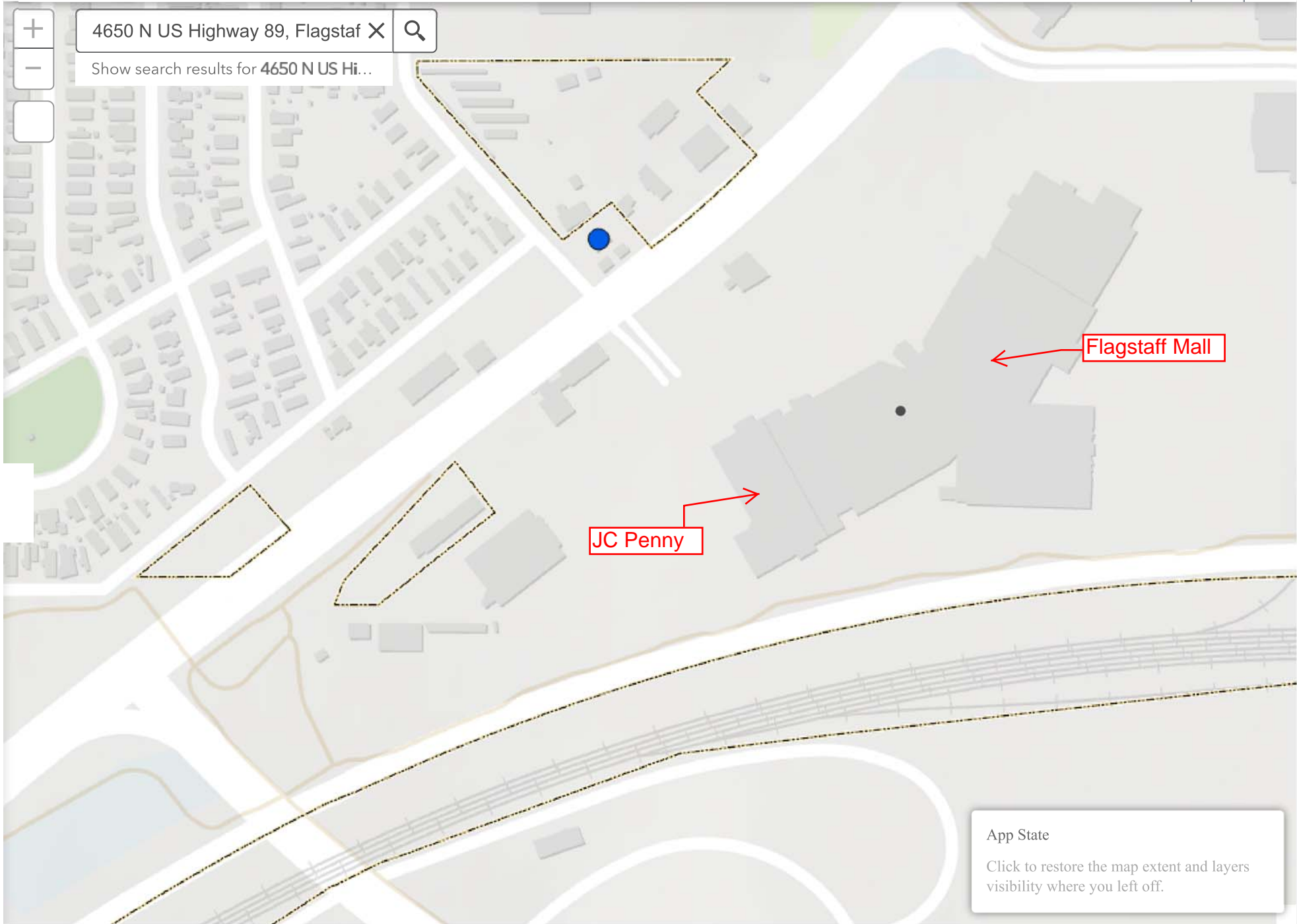
Active Liquor Licenses

City of Flagstaff GIS



4650 N US Highway 89, Flagstaf X

Show search results for 4650 N US Hi...



App State
Click to restore the map extent and layers visibility where you left off.

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council

:

Co-Submitter: Heidi Hansen

Co-Submitter: Heidi Hansen

Date: 09/30/2021

Meeting Date: 10/05/2021



TITLE:

Consideration and Approval of Contract: Flaglights LLC, dba Holiday Cheer for the City's Holiday Lights and Decoration Program in the amount of \$59,440.00.

STAFF RECOMMENDED ACTION:

1. Approve the annual service agreement with Flaglights LLC, dba Holiday Cheer and execute a \$59,440.00 contract.
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

Holiday lights and decor have been a reoccurring program with popular demand by City Council and community members. In tandem, the City of Flagstaff has been distinguished and designated by Arizona's governor as Arizona's Winter Wonderland. This coveted designation, supported with holiday lights and decor, does provide inspiration for locals and visitors alike to engage with the community, attractions and businesses. Lights and decorations are generally installed on or around November 15th and are removed on or around January 11th. As an ongoing measure, the Dark Skies Coalition has provided special considerations for the holiday lights and have approved dates.

The lighting and decor program provides:

- Wheeler Park, 212 W. Aspen Ave – at least six (6) trees
- Perimeters of structures are lighted:
 - City Hall, 211 W. Aspen Ave.
 - Library, 300 W. Aspen Ave
 - Two Spot train, corner of Route 66 and San Francisco
 - Visitor Center, 1 E. Route 66
- Downtown street trees, north side of Route 66 on both sides of the streets on: Aspen Avenue, San Francisco Street, Leroux Street and Birch Avenue - 68 trees
- 36 60" wreaths are installed on decorative green lampposts in downtown Flagstaff

Financial Impact:

Previous years, the holiday lighting and decor program was budgeted and managed by three sections: Discover Flagstaff, Beautification and Parks and Recreation. Procurement posted a formal Invitation for Bids (IFB) on August 25, 2021. The IFB closed on September 16, 2021 receiving two bid submissions. The lowest cost responsible and responsive bidder was chosen for this project. The bidder selected has years of experience with the Holiday Light and Decor install at the City of Flagstaff locations.

Effective FY2021-2022, funds are budgeted in two sections, and the two sections have collaborated for one bidding process:

Discover Flagstaff:		
ONG:	\$35,000	
One time:	\$30,000	
Beautification:		
ONG:	<u>\$15,000</u>	
TOTAL:	\$80,000	
	- <u>\$10,000</u>	(applied to marketing programming) \$70,000 for holiday lighting and decor

Policy Impact:

Connection to PBB Key Community Priorities/Objectives & Regional Plan: LIVABLE COMMUNITY and ROBUST RESILIENT ECONOMY

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

Priority Based Budget Key Community Priorities and Objectives

Livable Community - Providing holiday decor creates a sense of pride within our residents and businesses as well as creates a refreshing environment during the holiday season.

Robust Resilient Economy - Flagstaff must continue to share our designation as Arizona's Winter Wonderland. The seasonal lighting and decor program helps to invite people out and about and in return, gets them dining and spending which helps to enhance our overall quality of life with increased economic return.

Has There Been Previous Council Decision on This:

Has There Been Previous Council Decision on This: No. Previously, the holiday light program was managed by three different sections, individually managed and individually procured by each section since the total dollar amount was under the formal threshold needed for Council approval. In FY2021-2022, there are only two sections involved, both under the Economic Vitality Division. With this formal solicitation efforts were combined to accomplish a more centralized and economical procurement together. Therefore, we are seeking Council approval to continue to offer this program for our community and businesses.

Options and Alternatives:

1. Approve the agreement with Holiday Cheer; or
2. Not approve the agreement with Holiday Cheer and direct Staff how to proceed.

Background/History:

On August 25, 2021 the Purchasing Section posted a formal IFB solicitation for Holiday Lights and Decor on the PlanetBids website, and advertised the IFB in the Arizona Daily Sun on August 29, 2021 and September 5, 2021 . There were two (2) bids received by the IFB closing date of September 16, 2021. Based on the bids received in response to the project criteria laid out in the bid documents, it was determined Holiday Cheer was the lowest cost responsible and responsive bidder.

The selected vendor has been instrumental in past City of Flagstaff holiday lighting programs and has an established working relationship with the Downtown Business Alliance. The vendor has demonstrated an understanding of the holiday light and decoration program's needs in past years which has included timeliness, execution, ability to coordinate with businesses, beautifully aligned lights and timely repair of lights, etc. These details outlined are important in order to have a successful holiday season.

The summary of the two bids received are listed below:

Flaglights LLC, dba Holiday Cheer	\$59,440.00
Holiday Lighting Company	\$67,930.00

Key Considerations:

The selection of Holiday Cheer as the lowest cost responsive and responsible bidder in response to this formal solicitation process (IFB) allows the City to implement this year's Holiday Light and Decor program as well as giving the City the option to potentially continue this contract in the future for up to another four additional years

Community Benefits and Considerations:

The City's winter months can generally be defined as a shoulder or slower economic season. Holidays are generally a time when businesses need extra help and when locals need a place to fondly call home and celebrate with friends and family. The Holiday Light and Decor program creates a "sense of place." A place where people want to visit, discover and grow. Consideration should be given to the idea that other nearby cities such as Prescott (Arizona's Christmas City) and Payson market their city as a place for winter visitors – Flagstaff has to continue planting the flag as "Arizona's Winter Wonderland" so that we remain competitive in the market, continue to drive economic impact for our businesses, and offer a visibly appealing landscape to our residents, visitors, and partners.

Community Involvement:

This is a collaboration with local businesses and the Downtown Business Alliance, in addition to a collaboration with Parks and Recreation.

Expanded Options and Alternatives:

1. Approve the award as recommended. This would allow the Holiday Light and Decor program to continue;
2. Deny the requested action and provide Staff direction on how to proceed; or
3. Discontinue the Holiday Light and Decor program

Attachments: [Contract](#)

**HOLIDAY LIGHT AND DÉCOR INSTALLATION SERVICES
FOR THE CITY OF FLAGSTAFF**
Contract No. 2022-29

This Contract is entered into this _____ day of _____, 2021 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Flaglights, LLC dba Holiday Cheer, an Arizona Limited Liability Company. ("Contractor").

WHEREAS, the City desires to receive, and Contractor is able to provide materials and/or services;

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

1. Scope of Work: Contractor shall provide **HOLIDAY LIGHT AND DECOR INSTALLATION and REMOVAL**, subject to all terms, conditions, and specifications provided in the response to this Solicitation and in the Scope of Work attached hereto as Exhibit A.
2. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor an amount not to exceed Fifty-Nine Thousand Four Hundred Forty Dollars and Zero Cents **\$(59,440.00)** as defined by Exhibit A. Any price adjustments 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.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated in this Contract 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 as set forth in Exhibit C.
5. Contract Term: Initial term is for one (1) year, with annual renewal options not to exceed four (4) additional one (1) year terms.
6. Contract Renewal: The City reserves the right to unilaterally extend the period of the contract for ninety (90) days beyond the stated expiration date.
7. Notice: Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:
Brian Eilerts
Senior Procurement Specialist
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
Brian.Eilerts@flagstaffaz.gov

To Contractor:
Bradley Tremper
Flaglights, LLC
Dbas Holiday Cheer
3303 N Dyer Road
Flagstaff, AZ, 86004
Holidaycheerlighting@gmail.com

With a copy to:

Lori Pappas
Marketing and Media Relations MGR
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
LPappas@flagstaffaz.gov

With a copy to:

Amy Hagin
Parks Manager
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
AHagin@flagstaffaz.gov

8. 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

EXHIBIT A

SCOPE OF WORK

-Install lights on Wheeler Park Trees

\$19,960.00

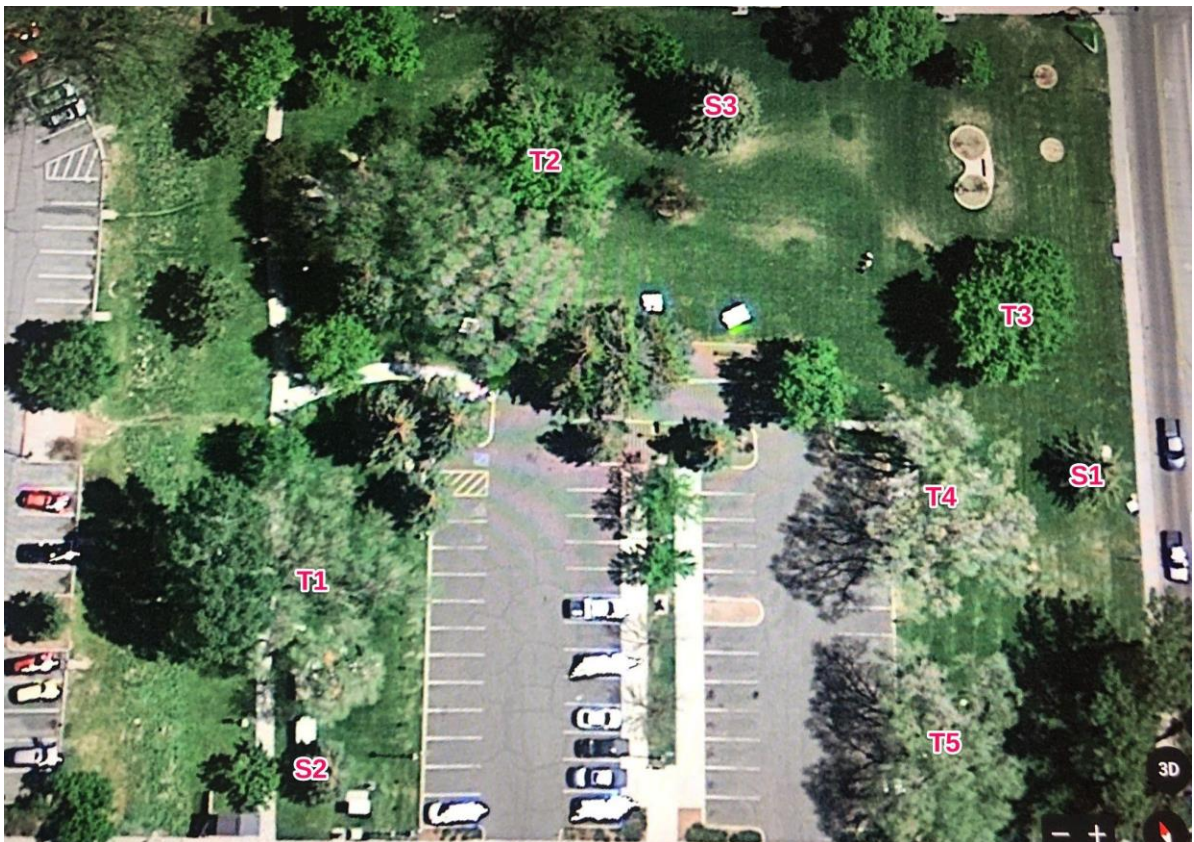
- 6 trees to be lit include 5 deciduous trees and 1 spruce (S1). Specific trees are indicated on the aerial photo. Line item cost is the sum of T1, T2, T3, T4, T5 and S1. **S2 and S3 are add-on options and were not included in the cost of the line item.**

T1.....	\$3,425.00
T2.....	\$3,735.00
T3.....	\$3,115.00
T4.....	\$3,240.00
T5.....	\$3,115.00
S1.....	\$3,000.00
S2.....	\$2,500.00
S3.....	\$10,100.00

- Trunks and main branches of deciduous trees (T1-T5) will be wrapped with warm white mini LEDs spaced 4" on the wire. Each wrap will be about 4" apart on the tree. Generally, trees will be lit as high as lift access will allow (about 65').
- Trees T1-T5 will have 1,850 linear feet of lights per tree on average.
- S1 to be lit in C7 lights, spaced 18" on the wire and about 18" between wraps. About 1200' of lights.
- S2 to be lit in C7 lights, spaced 18" on the wire and about 18" between wraps. About 1000' of lights.
- S3 to be lit with C9 lights (larger Bulbs) spaced on the wire at 24" and about 24" between wraps. About 3000' of lights. Will require the rental of an 85' telescopic boom in addition to the 65' boom used for the rest of the installation around downtown.
- T1-T5 will be lit using strands with coaxial connections. These connections are screw-together, watertight and are necessary to prevent the display from malfunctioning

during rainy or snowy weather. Coaxial lights also have the benefit of deterring vandalism and eliminate the ability for people to use the lighting display for power.

- Spacing on all trees will be even in order to prevent “black holes”.
- The main source of tampering of lights in public displays is from people trying to use the display for power to charge devices. Measures will be taken to prevent this tampering. Coaxial lights plug together via a unique 2 prong adaptor and it is impossible to take power from them anywhere other than the adaptor. The power adaptors for the coaxial lights will be enclosed in the power boxes below the outlets at the base of trees to be lit, thus preventing any access. The power to trees without outlets at the base will be run overhead and will be plugged in at least 15’ high, preventing access to the bladed plug connections.
- Images are of an install by Holiday Cheer in a previous season







Examples of “Black Holes” from the 2017 Wheeler Installation (installed by a different company)



-Install lights on City Hall

\$4,965.00

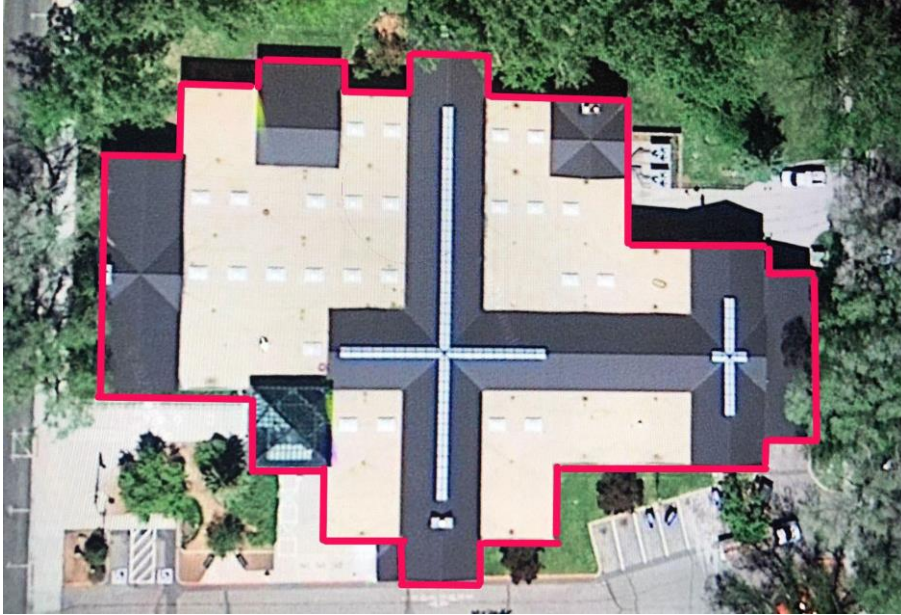
- C9 LED bulbs with 15" spacing in warm white color
- Rooflines to be lit are traced in red in the included aerial photo
- Lights will be zip tied to eyebolts (already permanently installed) and will "droop" slightly between the eyebolts. The roof material is non-magnetic and neither magnetic sockets nor clips will work. All efforts will be made to tighten the wire as much as possible to minimize drooping.
- Same installation as 2020



-Install lights on perimeter of the downtown library

\$4,363.00

- All perimeter rooflines will be lit with C9 LED bulbs with 15" spacing in warm white color
- Rooflines to be lit are traced in red in the included aerial photo
- Lights to be installed with magnetic sockets and will be perfectly straight and symmetrical around the gable ends.
- Same installation as 2020



-Install lights on 2 Spot

\$1,345.00

- C7 lights with magnetic sockets spaced 12" on the wire. Mini lights on the logs.
- Same installation as the 2020 season.
- Image is of an install by Holiday Cheer in a previous season



-Install lights on Visitor's Center

\$1,837.00

- C9 Led bulbs with 15" spacing in warm white color
- Magnetic sockets used on gable ends and clips used on gutters. Lights will be perfectly straight and symmetrical on the gable ends.
- Rooflines to be lit are outlined in red.
- Same installation as 2020



-Wrap street trees and hang wreaths

\$26,970.00

- Lights on trees will be warm white in color, 4" spacing on the wire and maximum of 4" spacing between wraps. An average of 375 linear feet of mini lights are used per tree. Main branches will be wrapped to the tips or about 10' (sometimes 15'+) out from the trunk, much farther than the basic industry standard, resulting in a dramatic sprawling appearance. Individual trees will vary depending on tree size and maximum reach of ladders.
- All extension cords are custom cut to length, ensuring a clean appearance.
- 68 street trees. 57 will be the same trees lit in the 2020 season. The additional 11 will be chosen by the Downtown Business Association. The DBA works with business and property owners to incentivise the lighting of their buildings by lighting a tree in front of their property, thus increasing the overall impact of the street tree lighting project.
- Trees are wrapped during the least busy times for downtown businesses and street traffic. Installers often work during the early hours of the morning to minimize the impact of the work on citizens and businesses. Installing during low traffic times also increases safety for pedestrians, motorists and installers. Due to the limited window of low traffic time, the Install will occur over several weeks.
- Trees will be lit in the same manner as the 2020 season installation.
- Wreaths will be "fluffed" prior to installation to provide a fuller appearance.

Terms

- Customer is responsible for providing sufficient access to electricity.
- Above prices reflect cost only if all installations are performed by Holiday Cheer. If less than all are performed prices will increase to compensate for lift cost being distributed among less installations.
- All materials provided by Holiday Cheer remain the property of Holiday Cheer during and after the lighting season.
- All bulbs are guaranteed to be working at time of installation. If a bulb goes out that requires lift access to repair during the lighting season and the city wishes to have it repaired, the city is responsible for the cost of lift rental.

Prices include install, maintenance and removal.

EXHIBIT B

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 shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract at the Contractor's own expense, and shall 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 Contractor 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 Manufacturers' 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 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 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 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.

INSPECTION, RECORDS, ADMINISTRATION

31. **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.

32. **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.
33. **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.
34. **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

35. **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.
36. **INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker’s compensation.
37. **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, attorney’s fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

38. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
39. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
40. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.

41. **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.
42. **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.
43. **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.
44. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

45. **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.
46. **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, Contractor shall comply with the City Code, Chapter 14-02 Civil Rights which prohibits discrimination based on sexual orientation, or gender identity or expression.
47. **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.
48. **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 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 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

- 49. 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 this Contract by written notice, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law, in addition to the remedies provided in this Contract.
- 50. 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.
- 51. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 52. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 53. 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.
- 54. 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.
- 55. 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, 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.

56. **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.
57. **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 in connection with award or performance of the Contract.
58. **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

59. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City without the prior written consent of the City.
60. **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. A Notice may be sent by email as a secondary form of notice.
61. **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.
62. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
63. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
64. **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.
65. **FORCE MAJEURE:** 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.

66. **NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, the parties certify that they are not currently engaged in and agree, for the duration of the Contract, not to engage in a boycott of Israel.

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: Brian Eilerts, Senior Procurement Specialist
Contract No. 2022-29
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
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council

:

Date: 09/30/2021

Meeting Date: 10/05/2021



TITLE:

Consideration and Approval of Contract: Approve the Construction Contract with Scholz Contracting, LLC for the East Route 66 and El Paso Waterline Extension Project in the amount of \$1,392,689.55 (which is the sum of the Contractor's bid amount of \$1,326,371.00 and a Contract Allowance of \$66,318.55).

STAFF RECOMMENDED ACTION:

1. Approve the Construction Contract with Scholz Contracting, LLC in the amount of \$1,392,689.55 (which is the sum of the Contractor's bid amount of \$1,326,371.00 and a Contract Allowance of \$66,318.55), and a contract time of 126-calendar days;
2. Approve a contract allowance of \$66,318.55 which is 5% of the lowest responsive and responsible bid;
3. Approve Change Order Authority to the City Manager in the amount of \$132,637.10 (10% of the contract amount, less allowances); and
4. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The contract award of \$1,392,689.55 (which is the sum of the Contractor's bid amount of \$1,326,371.00 and a Contract Allowance of \$66,318.55) to Scholz Contracting, LLC is proposed to complete the East Route 66 and El Paso Waterline Extension Project (the Project) in accordance with the approved public improvement plans prepared by Shephard Wesnitzer, Inc. The Project consists of installing 2,450 LF of new 12" ductile iron waterline and 1,600 LF of new 8" ductile iron waterline. Included will be the reconstruction and repaving of 5,400 square yards of North El Paso Road. This Project is part of the City's ongoing aging water infrastructure replacement program. Pending Council's approval, construction is anticipated to begin in October 2021 and is anticipated to be complete by the end of 2021.

Engineering consulted with IT and determined that the East Route 66 and El Paso Waterline Extension Project is included in IT's Broadband Master Plan. Staff is committed in promoting the Broadband Master Plan and has added to the Project 3,850 LF of conduits and five pull boxes within the Project limits.

Financial Impact:

The Project will be funded by the total budget appropriations, \$1,720,000, remaining in FY 22 account number 202-08-370-3338-0-4463, 202-08-370-3497-0-4464 and 203-08-375-3473-0-4466.

Policy Impact:

An award of this Construction Contract supports Water Services Strategic Plan Objective 5: Accelerate Infrastructure Maintenance and Replacement.

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

Priority Based Budget Key Community Priorities and Objectives

Safe & Healthy Community

Ensure the built environment is safe through the use of consistent standards, rules and regulations, and land use practices.

Sustainable, Innovative Infrastructure

Deliver outstanding services to residents through a healthy, well maintained infrastructure

Regional Plan

Goal WR.2.

Manage a coordinated system of water, wastewater, and reclaimed water utility service facilities and resources at the City level and identify funding to pay for new resources.

Policy WR.2.2.

Maintain and develop facilities to provide reliable, safe, and cost-effective water, wastewater, and reclaimed water services.

Goal T.8.

Establish a functional, safe, and aesthetic hierarchy of roads and streets.

Policy T.8.6.

Maintain the City's street infrastructure in a cost-effective manner to ensure the safety and convenience of all users.

Has There Been Previous Council Decision on This:

The Project's FY-22 proposed funding is being requested in the upcoming FY-22 Capital Improvement 5-Year Plan which will be presented to Council.

Options and Alternatives:

1. Approve the contract award as recommended. Approval will allow work to move forward in calendar year 2021; or,
2. Reject approval of the contract award. This action would delay the Project.
 - a. If rejection occurs, possible options include:
 - i. Direct Staff to re-advertise the Project; or
 - ii. Consider another delivery method (CMAR or Design/Build); or
 - iii. Suspend or cancel the Project completely.

Background/History:

On July 19, 2021, the Purchasing Section posted a formal Invitation for Bids (IFB) solicitation for construction on the PlanetBids website and advertised the IFB in the Arizona Daily Sun on July 25, 2021, and August 1, 2021. There were five (5) bids received which were opened electronically on August 13, 2021. A summary of the bids received are identified in the Key Considerations section below. Scholz Contracting, LLC was determined to be the lowest responsive and responsible bidder.

Key Considerations:

The completion of this Project will provide a new looped system for water distribution customers in this area of the City. The new water main will be an improvement and will meet the City Water Services Division overall distribution system needs and Capital Improvement Program.

Expanded Financial Considerations:

On August 13, 2021, bids to construct the East Route 66 and El Paso Waterline Extension Project were opened by the City. The summary results are listed below.

Engineer's Estimate	\$1,396,028.00
Scholz Contracting, LLC	\$1,326,371.00
HDS, LLC	\$1,355,043.68
KCS, LLC	\$1,496,000.00
MHE, LLC	\$1,584,132.00
SCC, Inc	\$1,690,773.00
<i>Allowance at 5% of lowest bid</i>	<i>\$ 66,318.55</i>

After the bidding process, the Contract Allowance is established to address certain unforeseen items of work where details cannot be determined at the time of contracting and may be included in the Contract Amount per the City of Flagstaff's Procurement Code Manual. The \$66,318.55 Contract Allowance is 5% of the low bid amount, which does not include a Contract Allowance. The Contract Allowance is used only at the City's discretion. See attached allowance justification form.

Administrative Change Order Authority is established to address inevitable differing field conditions usually becoming time-sensitive major construction issues resulting in unforeseen costs that are more than the Contract Amount. Change Order Authority provides the City Manager, on behalf of the Council, the administrative authority to amend the Contract Amount up to an established dollar amount (10% of the Contract Amount, less the Contract Allowance) and is only utilized if the Contract Allowance is or would become exhausted.

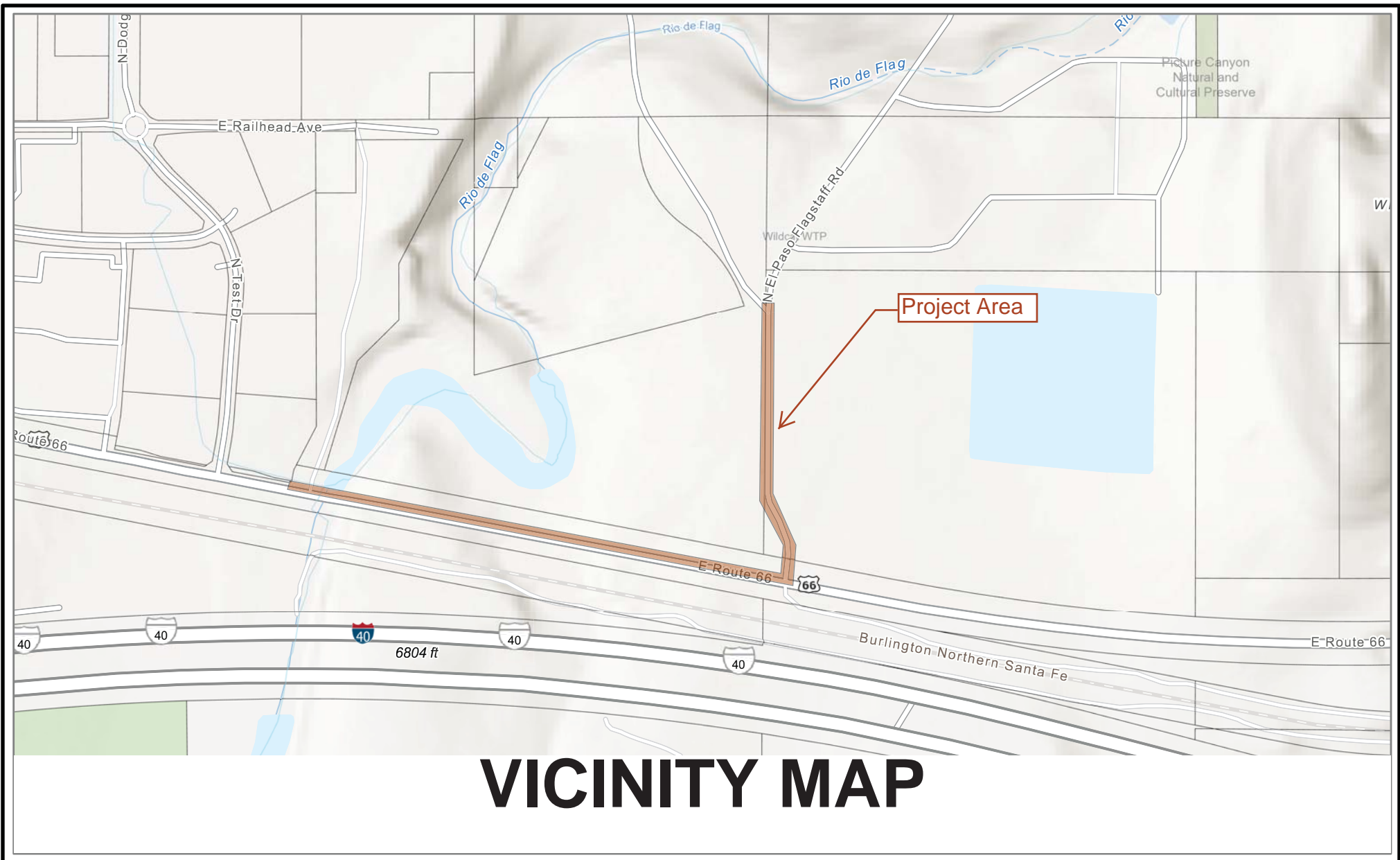
Community Involvement:

The Community benefits of this Project, include better service from the water distribution infrastructure. Additional Project information and traffic restriction advisories will be provided during construction via local media and through the City Manager's office as needed. The Project will replace old waterlines which will reduce failures and maintenance costs over time and provide the area with safe, consistent water delivery.

Expanded Options and Alternatives:

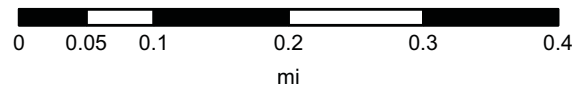
1. Approve the contract award as recommended. This would allow the project to be constructed in 2021.
2. Reject all bids. This option would delay the construction start and possibly cause the work to be deferred until 2022.

Attachments: [Vicinity Map](#)
 [Context Map](#)
 [Justification form for CA and ACO](#)
 [Contract](#)
 [Contract - Exhibit A](#)
 [Contract - Exhibit B](#)



VICINITY MAP

East Route 66 and El Paso Waterline Extension Project

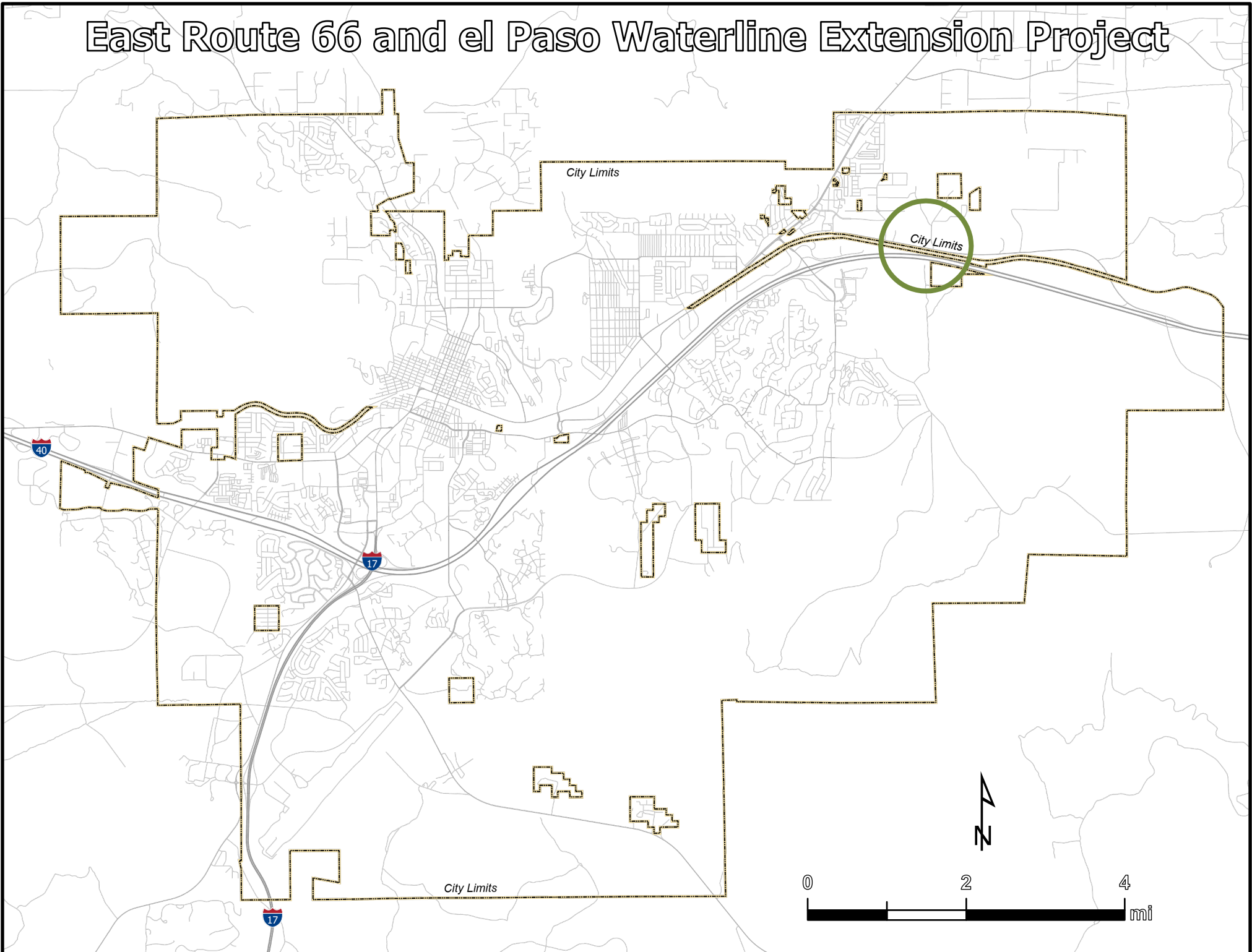


City of Flagstaff maps and data are updated on a regular basis from data obtained from various sources. The City of Flagstaff endeavors to provide accurate information, but accuracy is not guaranteed. You are strongly encouraged to obtain any information you need for a business or legal transaction from a surveyor, engineer, title company, or other licensed professional as appropriate. Information is provided subject to the express condition that you knowingly waive any and all claims for damages against the City of Flagstaff relating to use of this information.



7/30/2021 1:49 PM

East Route 66 and el Paso Waterline Extension Project





CITY OF FLAGSTAFF CONTRACT SUPPLEMENTARY JUSTIFICATION

CONTRACT ALLOWANCE
 ADMINISTRATIVE CHANGE ORDER

PROJECT NO. WA 3338 PROJECT NAME: East Route 66 and El Paso Waterline Extension

FILE NO. 03-20002 Project Manager: Mac McNamara

CONTRACTOR/CONSULTANT: Scholz Contracting, LLC

PROJECT DESCRIPTION: The Project consists of 2,450 LF of new 12" ductile iron waterline and 1,600 LF of new 8" ductile iron waterline. Included will be the reconstruction and repaving of 5,400 square yards of North El Paso Road. Included will be a new fire hydrant, air release valves, and a minimal amount of storm drain improvements within El Paso Road. Included will be 3,838 LF of new conduit and pull boxes to support the IT Broadband Master Plan.

**JUSTIFICATION FOR USE AND AMOUNT:
Contract Allowance (CA) Justification and Amount:**

A \$66,318.55 CA is recommended to compensate Scholz Contracting, LLC for costs associated with potential unforeseen items of work where details could not be determined at the time of contracting such as:

- Owner directed increases to Project scope for items not identified to need repair at the time of design or contracting.
- Non-compliant water service locations starting outside the Project limits and ending within the Project limits.

The low bid amount is \$1,326,371.00 plus a CA of \$66,318.55 or 5% of the low bid amount of \$1326,371.00 (excluding a CA), equals the total Contract Amount of \$1,392,689.55.

Administrative Change Order (ACO) Justification and Amount:

A \$132,637.10 ACO is recommended to compensate Scholz Contracting, LLC for the associated costs on items such as:

- Unforeseen trench rock excavation, unsuitable soil, subgrade stabilization, and utility conflicts.
- Increase in the Project scope due to additional funding becoming available or oversight during Project scoping.

The \$132,637.10 ACO is 10% of the low bid amount of \$1,326,371.00, which is the Contract Price of \$1,326,371.00 excluding the \$66,318.55 CA. This ACO amount is per the April 16, 2019 Procurement Code revisions.

The Procurement Code Manual for Design/Bid/Build contracts allows for up to a 5% Contract Allowance for contracts of this value. Staff recommends and is comfortable with a 5% Contract Allowance.

COST/BUDGET/FUNDING SOURCE ANALYSIS:

Contract Allowance Justification and Amount:

The CA is recommended to be included in the Contract Amount and will be funded by the total budget appropriations, \$1,720,000, remaining in FY 22 account number 202-08-370-3338-0-4463, 202-08-370-3497-0-4464 and 203-08-375-3473-0-4466.

Administrative Change Order Justification and Amount:

The ACO is recommended to be included in the Contract Amount and will be funded by the total budget appropriations, \$1,720,000, remaining in FY 22 account number 202-08-370-3338-0-4463, 202-08-370-3497-0-4464 and 203-08-375-3473-0-4466.

APPROVAL:	Signature	Date:
Project Manager	<u><i>Mac McNamara</i></u>	<u>9/13/21</u>
Program Manager	_____	Approval Recommended _____
Section Head	<u><i>[Signature]</i></u>	Approval Recommended <u>9/13/21</u>
Division Head	<u><i>[Signature]</i></u>	Approval Recommended <u>9/14/2021</u>

Definitions

Contract Allowance

Contract allowances of up to 5%, 7.5% or 10% may be added to all design/bid/build design and construction contracts. The allowance is based on the engineer's estimate OR the lowest responsible bid (whichever is lowest) and will be included in the recommendation of award by City Council.

Contract Amount

Over \$1,000,000 in value
\$250,000 - \$1,000,000
Below \$250,000

Contract Allowance

allowance of up to 5%
allowance of up to 7.5%
allowance of up to 10%

Administrative Change Order

Up to ten percent (10%) Administrative Change Order (ACO) amount may be included in all design/bid/build design and construction contracts only to be considered by the City Council.

CONSTRUCTION CONTRACT #2022-11

**City of Flagstaff, Arizona
and
Scholz Contracting, LLC**

This Construction Contract (“Contract”) is made and entered into this _____ day of _____ 2021, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and Scholz Contracting, LLC an Arizona Limited Liability Company ("Contractor") with offices at 5135 East Ingram, Suite. 105, Mesa, Arizona. Contractor and the Owner may be referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. Owner desires to obtain construction 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 any and all labor, materials, equipment, transportation, utilities, services and facilities for the **East Route 66 Waterline Extension & El Paso Flagstaff Road Improvements Project** (the “Project”). The Project scope is specific to the attached Special Provisions (Exhibit A). 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 date and time of the Conference will be agreed upon between the Contractor and the Engineer at a location identified by the City. The meeting will be held at a location identified by the City. The purpose of the meeting is to outline specific construction items and procedures that 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 pavement replacement, 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 B); 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 Special Provisions Exhibit A
- 2.1.2 Revisions of MAG Standard Specifications for Public Works Construction Exhibit B
 (“Flagstaff Addendum to MAG”)

3. Payments. In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed Total Contract Amount of **one million three hundred ninety-two thousand six hundred eighty-nine dollars and fifty-five cents (\$1,392,689.55)**, which is the sum of the Contractor’s bid amount of \$1,326,371.00 and a Contract Allowance of \$66,318.55, to the Contractor for work and materials provided in accordance with the bid schedule, which amount includes all 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;
- 3.2 Progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Contract prices of labor and material, and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the Owner, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the Owner, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the Owner determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Contract;
- 3.3 The City Engineer shall have the right to finally determine the amount due to Contractor;
- 3.4 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;
- 3.5 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;

3.6 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 **one hundred twenty-six (126) 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 4 above, or such additional time as may be allowed, the proceeds of Contractor's performance 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 the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to perform this Contract as required. If Contractor has submitted a certified check or cashier's check as a performance guaranty, the check shall be returned after the completion 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 B, 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 Owner reserves the right to initiate and terminate a Winter Shutdown at the Owner's sole discretion in the event of adverse weather conditions. A Winter Shutdown may be declared by the Owner despite delays, *for any reason*, on the Project. Owner 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 Owner. If the needed repairs and/or maintenance are not addressed within the timeframe, the Owner will accomplish the work and deduct the cost from monies due or become due to the Contractor.

The Owner 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 Owner and no delegation of any duty of Contractor shall be made without prior written permission of the Owner. The Owner 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 Contract and that Contractor shall also remain liable under all obligations, terms and conditions of this Contract.

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
mluhman@flagstaffaz.gov
928.213.2278

If to Contractor:

Jared Scholz, Vice President
Scholz Contracting, LLC
5135 East Ingram, Suite. 105
Mesa, AZ 85207
jared@scholzaz.com
602.320.1357

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, 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 (Exhibit B, Section 103.6) 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 Contract 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 Owner 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 Contract 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. Attorneys' Fees. 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 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. No Boycott of Israel. Pursuant to A.R.S. §§ 35-393 and 35-393.01, the parties certify that they are not currently engaged in and agree, for the duration of the agreement, not to engage in a boycott of Israel.

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 Owner 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 – Special Provisions. 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 Owner 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, Scholz Contracting, LLC

Greg Clifton, City Manager

Signature

Attest:

Printed Name

City Clerk

Title

Approved as to form:

City Attorney

**CITY OF FLAGSTAFF, ARIZONA
PAYMENT BOND**

PROJECT NAME: East Route 66 Waterline Extension & El Paso Flagstaff Road Improvements
PROJECT NUMBER: 03-20002/WA 3338 **BID NUMBER:** 2022-11

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 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 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: East Route 66 Waterline Extension & El Paso Flagstaff Road Improvements
PROJECT NUMBER: 03-20002/WA 3338 **BID NUMBER:** 2022-11

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

SPECIAL PROVISIONS FOR THE
EAST ROUTE 66 WATERLINE EXTENSION & EL PASO
FLAGSTAFF ROAD IMPROVEMENTS

PREPARED BY SHEPHARD - WESNITZER, INC.
SWI PROJECT NUMBER 20036
DECEMBER 11, 2020

INDEX TO SECTIONS OF THE SPECIAL PROVISIONS:

PART 000 – INTRODUCTION..... 2
PART 100 – GENERAL CONDITIONS 3
PART 200 – EARTHWORK 10
PART 300 – STREETS AND RELATED WORK 11
PART 400 – RIGHT OF WAY TRAFFIC CONTROL 15
PART 600 – WATER, SEWER, STORM DRAIN AND IRRIGATION 16

PART 000 – INTRODUCTION

The contractor is responsible for obtaining, at his/her own expense, a copy of each of the most recent specifications and details listed below:

City of Flagstaff Revisions to MAG Uniform Standard Specifications and Standard Details

City of Flagstaff General Provisions

City of Flagstaff Engineering Design Standards and Specifications

MAG Specifications and General Provisions

MAG UNIFORM STANDARD SPECIFICATIONS FOR PUBLIC WORKS AND CONSTRUCTION (WITH REVISIONS THROUGH JANUARY 2017) AND C.O.F. GENERAL PROVISIONS ARE HEREBY AMENDED TO INCLUDE THE FOLLOWING:

PART 100 – GENERAL CONDITIONS

SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS

102.6 SUCONTRACTORS’ LIST

(Revise to include the following)

The Contractor shall submit a subcontractor list to the City with the proposal pamphlet. It shall include the list of anticipated subcontractors and the dollar amount and percentage of contract work that each subcontractor will perform.

102.4 EXAMINATION OF PLANS, SPECIAL PROVISIONS AND SITE WORK:

(Revise the second paragraph to read)

The bidder shall examine the site of the proposed work and all documents pertaining to the work. It is mutually agreed that the submission of a proposal shall be considered prima facie evidence that the bidder has made such examination and is familiar with the character, quality and quantity of the work to be performed and material to be furnished.

102.6 SUBCONTRACTORS LIST:

(Revise to include the following)

The Contractor shall submit a subcontractor list to the City with the proposal pamphlet. It shall include the list of anticipated subcontractors and the dollar amount and percentage of contract work that each subcontractor will perform.

SECTION 104 – SCOPE OF WORK

104.1.1 GENERAL:

(Revise MAG to include the following)

The East Route 66 Waterline Extension & El Paso Flagstaff Road Improvements project is a City of Flagstaff project intended to extend an existing waterline along East Route 66 and El Paso Flagstaff Road and paving North El Paso Flagstaff Road between East Route 66 and the entrance to the Wildcat Hill Wastewater Treatment Plant. The project is on East Route 66 near Test Drive in the City of Flagstaff. The improvements will include of (1) the extension of an existing 12” waterline for approximately 2,450 linear feet, (2) the construction of approximately 1,600 linear feet of 8” waterline in North El Paso Flagstaff Road, and (3) the reconstruction and repaving of approximately 1,600 linear feet of North El Paso Flagstaff Road.

Pre-Construction Video

The Contractor shall record and provide the City with a pre-construction video (in readable format) of the full construction area prior to mobilization, paying special attention to the private property boundaries, private improvements, and adequately documenting the existing conditions within the project corridor. This video will serve as a record of pre-existing conditions and it is in the best interest of the Contractor to record a thorough document for the record.

104.1.2 MAINTENANCE OF TRAFFIC: (Revise MAG to include the following)

Prior to the Notice to Proceed, the Contractor is responsible for preparing, submitting and obtaining approval of a detailed traffic control plan, including all traffic control for street/lane closures, work phasing, detours, etc., by the City of Flagstaff Traffic Department. A Right of Way Permit will not be issued until the Traffic Control Plan is approved By the City of Flagstaff.

Detailed traffic control plans shall include provisions for access to all adjacent private properties within the project area. Access to all residential driveways shall be provided during non-working hours. Where property has more than one driveway, no more than one access will be restricted or closed at on time. The Contractor may temporarily limit access to properties through advance written notice and coordination with the City's Project Representative and the property owners. Should it be necessary to close access to a private property, driveway, or alley entrance the closure must be for as short a time as possible and be restored at the end of the work shift. If primary access cannot be restored, the Contractor shall provide an alternative, which will be coordinated with the resident(s) and preapproved by the City's Project Manager prior to any restrictions being implemented.

Any full street closures will require the approval of the City, re-routing through the Neighborhood with adequate temporary signage/signals, notification to emergency responders, notification to the Flagstaff Unified School District, notification to residents in the project area, and notification to the residents along the proposed route. All street restrictions or closures must be coordinated with emergency responders.

The Contractor shall be required to provide at least one (1) week advance written notice of all street closures and traffic restrictions to all affected residents, property owners, business owners, including those properties on a detour route and to the City. The notice shall be submitted to the City for review and shall include the projected date, and duration of the closure and alternate detour routes. Each notice shall include the Contractor's name, contact person and local 24-hour telephone number as well as the City Project Manager's name and telephone number.

Existing pedestrian and bicycle facilities shall be continued through or around the construction zone. The Contractor is responsible for securing the construction site and maintaining safe passage for pedestrian and bicycle traffic.

Transit stops and pedestrian access thereto shall be maintained. Should construction occur during the school year, any existing school bus stops will need to be temporarily relocated to another location acceptable to the Flagstaff Unified School District Transportation Director. The

Contractor shall coordinate any school bus stop relocations through the Flagstaff Unified School District Transportation Director, Joe Martin at 928-527-2300.

Special Access Requirements:

Sanitation Pickup:

Trash and recycle pickup in the project area is scheduled every Monday and Thursday, respectively. When construction activity interferes with pickup, the Contractor shall provide for sanitation vehicle access to the affected properties or relocate the trash containers where access is acceptable. The Solid Waste Division of the Public Works Department contact is 213-2110. The contact number for Waste Management is (928) 779-6050. If trash or recycle pick up is obstructed by the construction activity, the Contractor will be responsible for proper disposal.

Traffic Control and Safety:

At the time of the Pre-construction Conference, the Contractor shall designate an employee who is well qualified and experienced in construction traffic control and safety, to be available on the project site during all periods of construction to coordinate and maintain safe barricading whenever construction restricts traffic. The Contractor shall designate and provide the contact information of one person who shall be available during non-construction hours in case any traffic control and/or safety items that need to be handled in an urgent manner. This representative must be within 20 minutes response time from the project area and must be able to operate equipment.

Emergency Access:

Street closure information shall be coordinated by the Contractor and submitted to the Traffic Engineering Group, the City's Project Manager, and upon approval will forward the information to all First Responders. All notices shall be submitted at least one (1) week in advance of the closures. First Responders contact is Lisa Bartlett Lisa.Bartlett@nahealth.com.

U.S. Postal Service Access:

The Contractor shall be responsible for maintaining access for Postal Service within the project area at all times. The Contractor shall coordinate this work with Jessica Moore, 928-714-0524 jessica.h.moore@usps.gov, at the U.S. Postal Service to avoid interruption of mail service. Mailboxes shall be protected in place. Should an existing mailbox be damaged by construction activity, the Contractor shall promptly remove and replace the damaged mailbox with like kind; including post and foundation, at no cost to the resident or the City. Placement of any mailbox shall be in accordance with USPS requirements. The Contractor shall maintain mailboxes so that no disruption of mail service shall occur. If mail disruption is anticipated, the Contractor shall notify the City's Project Manager, Inspector, affected property owner and/or resident(s) at least 48 hours in advance.

104.2 ALTERATION OF THE WORK:

104.2.3 Due to Extra Work

(Revise to include the following)

At the pre-construction meeting, the Contractor will submit for review and approval of equipment and personnel rates that will be used to determine compensation for all extra work performed. These rates will be used when determining the cost of extra work if bid unit line item prices are not practical. Profit, taxes and markup for all extra work will be in accordance with the appropriate MAG sections if bid unit line item prices are not used.

SECTION 105 – CONTROL OF WORK

105.2.1 RECORD DRAWING (As-Built Plans)

(Revise to include new subsection as follows)

The CONTRACTOR shall maintain a set of redlined copy of the project plans including changes made in construction of the project. The redline copy shall be updated on a weekly basis in preparation for the weekly construction meeting. The CONTRACTOR shall provide the ENGINEER with a copy of the redline plans upon completion of the project to be submitted with the final as-built plans.

No separate measurement and payment shall be made for the redlined copy of the project plans. This work shall be considered incidental and included in the unit price bid for construction or installation of the appropriate contract pay items.

105.5 COOPERATION OF CONTRACTOR

(Revise to include the following)

The Contractor's Project Manager and Project Superintendent shall attend weekly construction progress meetings. The Contractor shall be prepared to discuss construction schedule, construction activities planned for the upcoming three (3) weeks (submit proposed three (3) week schedule), problems, issues, any information required by the City's Project Representative, construction staking, business/residence/citizen complaints, safety, traffic control and pedestrian access requirements, weather delays experienced during the previous week, disposal of materials, access/construction coordination with businesses/residences, inspection/testing, overtime worked during the previous week, payments, water/sewer service disruption, submittals, field orders/field changes and any other business as necessary. The Contractor may need to prepare meeting agendas and meeting minutes if required by the City's Project Representative. If required, minutes shall be distributed within four (4) working days after the meeting.

Public Involvement: At the time of the Pre-construction Conference, the Contractor shall designate an employee that is fully responsible for coordination with the public, including but not limited to; the property owners, renters, leasers, Public media, the City of Flagstaff Public Information Officer and Mayor/Council. This person shall be qualified and experienced in public coordination and shall be available during all periods of construction to coordinate any issues.

105.6 COOPERATION WITH UTILITIES
(Revise MAG to include the following)

Existing utilities have been shown on the plans to the greatest extent possible, but there is no guarantee that all utility conflicts have been identified. The Contractor shall notify all Franchise Utility Companies of the Contractor's intent to begin work. In particular, the Contractor shall make use of the Blue Stake service by calling 1-800-STAKE-IT at least 2 working days before beginning work. The Contractor shall exercise all care to avoid damaging utilities whether shown on the plans, staked in the field, or not.

105.8 CONSTRUCTION STAKES, LINES AND GRADES
(Revise MAG to include the following)

Unless noted otherwise in the contract documents, the Contractor shall layout the work from the lines, grades and dimensions shown on the drawings. The Contractor shall be responsible for all such work for the duration of the project. The Contractor shall provide all construction staking necessary for the project based upon control points shown on the plans or provided by the Engineer. The Contractor shall provide appropriate identification and verification of furnished control points prior to commencing survey. The Contractor shall immediately notify the City in writing of any dimension or grade errors, before proceeding with the work.

105.12 MAINTENANCE DURING CONSTRUCTION
(Revise City of Flagstaff General Provisions to include the following)

The Contractor is required to protect work during inclement weather. Construction drains shall be provided as needed to enable water to drain from the construction area rapidly and without damaging work in progress or adjacent properties. To further promote good drainage of the site, drainage channels, culverts, and structures, shall be constructed from downstream to upstream in such a way that, during construction, they do not impede the flow of water from the construction area. The Contractor shall utilize pumps to remove ponding water immediately during all stages of construction during both working and non-working hours.

Damage to any portion of the work caused by the contractor's failure to provide adequate drainage of the construction area, or to order the work so as to minimize the possible extent of such damage, shall be repaired at the Contractor's expense. No extension of time shall be granted on account of the time required to make such repairs.

SECTION 107 – LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

107.2 PERMITS
(Revise MAG to include the following)

The City of Flagstaff Capital Improvements Program will prepare Temporary Entry Permits for the work to be done on private property as needed. A copy of these permits will be provided to the Contractor and shall be kept on site during construction.

The Contractor shall be required to obtain City, ADEQ, and other required permits.

Erosion Protection and Site Restoration

The size of the project is greater than one (1) acre. The Contractors is required to submit a Notice of Intent and Notice of Termination to the Arizona Department of Environmental Quality. The Contractor shall use best management practices (BMP) in controlling stormwater runoff. An erosion control plan has been included in the construction documents for the Contractor's use. The Contractor shall develop a Stormwater Pollution Prevention Plan (SWPPP) and maintain a SWPPP inspection and maintenance binder that is to be kept on site during construction.

A revegetation plan shall be implemented and proved successful prior to the project closeout. Per ADEQ permanent stabilization requirements, 70% regrowth shall be documented. Per City of Flagstaff Engineering Standards Section 13-17-002-0004 and 13-17-002-0005.6, soil conditioners and watering shall be required to promote the permanent stabilization and revegetation of the disturbed area.

Measurement and Payment

Measurement shall include all items required to comply with the requirements of the AZPDES permit program and City of Flagstaff requirements. The cost for obtaining and complying with the AZPDES permit, inspection documentation, erosion control devices and all work associated with stormwater protection shall be included in the pay item for SWPPP.

107.6 PUBLIC CONVENIENCE AND SAFETY REMOVAL OF PARKED VEHICLES

(Revise to include the following)

The Contractor shall give written notice, describing the proposed work and parking restrictions, to each adjacent business or residence. Written notice (with specific dates of anticipated construction work) shall be provided at least one (1) week in advance of the work. In the event that the work requires removal of parked vehicles, they will be removed to the nearest convenient side street at the Contractor's expense. No separate payment will be made for this work.

107.9 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE (Revise MAG to include the following)

Prior to construction commencing, the Contractor shall prepare a video recording of the project area that adequately shows each private property within the project corridor to document existing conditions. A copy of this video shall be provided to the City in a viewable format.

The Contractor shall take special care to control construction-related dust and noise and to keep the project site cleaned up to the greatest extent possible. The Contractor is responsible to coordinate alternate measures for any impacted operations as mentioned which are acceptable to the parties involved.

Survey monuments and property corners shall be protected and not disturbed unless specifically called out on the plans for replacement. All costs associated with protecting or re-establishing disturbed survey monuments and property corners shall be borne solely by the Contractor.

The Contractor is responsible for replacing and/or restoring landscaping (including but not limited to fences, retaining walls, landscape walls, pavers, aggregate rock ground cover, plantings, sod) and owner improvements associated with the project to a pre-construction condition. Due to the diverse nature of landscaping improvements within the corridor, each specific type of landscaping has not been separately quantified, but shall be included in the bid as incidental to the work, unless specified in the bid schedule or plans.

The Contractor is responsible for removing existing improvements and salvaging items for relocation after the public improvements are finished. This may necessitate close coordination with property owners. The contractor is responsible for replacing materials in like kind. All cost shall be included in the bid as incidental to the work.

107.11 CONTRACTOR’S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

(Revise MAG to include the following)

The Contractor is responsible for providing written notification to each affected resident at least 48 hours prior to any disruption to water or sewer service in the construction area. The notice must include the exact time of the disruption of service and the expected duration of the loss of service. The Contractor shall schedule shut offs as to minimize disruption to the public.

The Contractor shall protect existing water, sewer, and gas service lines where the proposed work crosses individual service lines.

Not all service lines are shown on the plans and it is the Contractor’s responsibility to determine their location in the field at the beginning of the project. The Contractor shall coordinate all necessary utility relocations directly with the appropriate utility franchise and provide sufficient time for response prior to construction of the improvements.

Protection or repair of existing service lines not in conflict with the work is also considered incidental. In the event that there is a physical conflict between an existing service line and the proposed work, the Contractor shall immediately notify the Engineer of the Conflict. The Owner will make a determination as to how the conflict will be resolved. Any extra work required as a result of an unforeseen service conflict will be ordered and paid for in accordance with General Provision Section 104.2.3.

Locations of underground utilities shown on the plans are to be regarded as approximate only. Cable, telephone, and power utilities are generally overhead in the alley ways.

If determined necessary, the Contractor shall coordinate utility relocations with the appropriate utility franchise and provide sufficient time for response prior to construction of proposed improvements (6 weeks minimum).

Utility company contacts are listed below:

Arizona Public Service	Ryan Weisner	(928) 773-6414
CenturyLink	Manuel Hernandez	(928) 779-4935

SuddenLink	Sanford Yazzie	(928) 266-0672
Unisource	Martin Conboy	(928) 525-8143
City of Flagstaff Sewer	Joe Almanderz	(928) 853-4876
City of Flagstaff Water	Jim Davis	(928) 213-2411

The Contractor is responsible for locating and coordinating all utility conflicts/relocations in a timely manner as to not delay construction work. Coordination shall include, but not be limited to, direct contact and coordination with all public and private utilities, potholing, survey staking of new improvements, coordination between separate utilities, coordination between sub-contractors and utilities.

107.12 FURNISHING RIGHT OF WAY
(Revise MAG to include the following)

The Contractor shall insure that all employees of the Contractor, subcontractors, agents, or invitees are clearly informed regarding the proximity of private property boundaries that UNDER NO CIRCUMSTANCES shall any worker cross that boundary into private property, exceptions described below.

Temporary Entry Permits will be obtained from the property owners adjacent to E. Route 66 and El Paso Flagstaff Road in order to allow for grading, utility connections, and fence relocations.

PART 200 – EARTHWORK

SECTION 205 – ROADWAY EXCAVATION

205.5 SLOPES
(Revise to include the following)

Grading limits and slope construction need to be smooth transitions without rocks, drop offs, or other obstructions. Tolerance on slope matchup is 0.1 FT.

205.7 MEASUREMENT
(Revise to include the following)

Earthwork is incidental to the roadway construction. No additional payment will be made for roadway excavation.

The Contractor is responsible for estimating and accounting for earthwork, import/haul off. It is recommended that the Contractor review the report on geotechnical investigation and sampling results.

SECTION 211 – FILL CONSTRUCTION

211.3 COMPACTING
(Revise the last sentence of the fifth paragraph to read)

Each layer shall be compacted to a uniform density of not less than 95 percent, or as directed by the Engineer.

PART 300 – STREETS AND RELATED WORK

SECTION 301 – SUBGRADE PREPARATION

301.2 PREPARATION OF SUBGRADE (Revise to include the following)

The subgrade shall be scarified and loosened to a depth of 9 inches, moisture conditioned to optimum (± 2 percent) and compacted to at least 95 percent of the maximum dry density as determined by ASTM D-698. The subgrade should be proof rolled with a heavy rubber tired vehicle such as a loaded water truck to locate unstable areas per MAG 301.

301.4 SUBGRADE TOLERANCES: (Revise to read)

Subgrade upon which pavement, sidewalk, curb and gutter, driveways, or other structures are to be directly placed shall not vary more than $\frac{1}{4}$ inch from the specified grade and cross-section. Subgrade upon which sub-base or base material is to be placed shall not vary more than $\frac{1}{4}$ inch from the specified grade and cross-section. Variations within the above specified tolerances shall be compensating so that the average grade and cross-section specified are met.

301.8 PAYMENT (Revise to read)

No separate payment shall be made for base material or subgrade preparation. All costs associated with this work are to be included in the amount bid for the items of work to which it is incidental or appurtenant.

SECTION 310 – PLACEMENT AND CONSTRUCTION OF AGGREGATE BASE COURSE

310.1 DESCRIPTION (Add to the end of this section)

Cinders are not suitable base material and shall be removed from the roadway base. Removal of cinders is incidental to construction.

The Contractor may use crushed/milled asphalt concrete for roadway base course material if it complies with City of Flagstaff and MAG 702 specifications. The Contractor is required to provide testing data to the City on each batch of processed material and as requested by the City to assure consistent quality.

310.2 PLACING (Revise the fourth paragraph to read)

All curb and gutter, sidewalk, driveways and sidewalk ramps shall be constructed on a minimum

3 inches of aggregate base course (ABC).

310.5 PAYMENT
(Revise to include the following)

No separate payment will be made for base material. The cost thereof shall be included in the appropriate bid item for which aggregate base is required.

SECTION 321 – PLACEMENT AND CONSTRUCTION OF ASPHALT CONCRETE PAVEMENT

321.2 MATERIALS AND MANUFACTURE:

For patching and remove and replacement areas asphalt concrete shall be a 3/4” dense surface course PG 58-28 mix, and per MAG Section 710 unless modified by the Engineer.

321.3 WEATHER AND MOISTURE CONDITIONS:
(Revised to read)

Asphalt concrete shall be placed only when the surface is dry, and when the ambient temperature in the shade is 40 degrees F or above and rising, or above 50 degrees F if falling. No asphalt concrete shall be placed when the weather is foggy, or rainy, or when the base on which the material is placed is unstable, is in a wet condition (in excess of optimum), or in a frozen condition. Asphalt concrete shall be placed only when the Engineer determines that weather conditions are suitable.

The determination by the Engineer of unsuitable weather conditions for paving operations shall not be the cause for extension of the Contract Time. The Contractor must show that such weather conditions were not reasonably anticipated. Any request for an extension of the Contract Time shall be in accordance with Section 108.7 of the MAG Standard Specifications and Section 108.7 of the City’s General Provisions.

321.7 TRANSPORTATION
(Revise MAG to include the following)

Sufficient trucks shall be available to enable paving to proceed continuously. Failure to provide a sufficient number of trucks may be considered a failure of the Contractor’s responsibilities under Section 108.6 of the MAG Standards Specifications.

321.8.2 JOINTS
(Revised the third sentence of the first paragraph to read)

The surface in the area of the joint shall not deviate more than ¼ inch from a 12-foot straightedge, when tested with the straightedge placed across the joint, parallel to the centerline.

321.8.4 COMPACTION; ASPHALT BASE COURSE AND SURFACE COURSE
(Revise the fourth paragraph to read)

Achieving the required compaction is the responsibility of the Contractor. The Contractor shall determine the equipment pattern of rolling that will provide the proper compaction, at his expense. The Engineer will determine the acceptability of the pavement compaction in accordance with Section 321.10 of the MAG Standard Specifications.

321.8.5 SMOOTHNESS
(Revise MAG to read)

The completed surfacing shall be thoroughly compacted, smooth, true to grade and cross-section, of uniform texture and appearance, and free of ruts, humps, roller marks, depressions or irregularities. An acceptable surface shall not vary more than one-fourth (1/4) inch from the lower edge of a 12-foot straightedge when the straightedge is placed parallel to the centerline of the roadway.

321.13 PAYMENT
(Revise to include the following)

Payment for asphalt construction will be paid for at the contract price per square yard for asphalt concrete pavement section.

SECTION 329 – TACK COAT

PAYMENT:
(Replace with the following)

No separate payment shall be made for Tack Coat. Payment for Tack Coat is incidental to the cost of the asphalt pavement section construction.

SECTION 340 – CONCRETE CURB AND GUTTER

340.1 DESCRIPTION
(Revise MAG to read)

The various types of concrete curb and gutter shall be constructed to the dimensions indicated on the plans and MAG Standard Details with all applicable modifications as per the City of Flagstaff Standard Details as referenced on the plans.

All curb and gutter shall be constructed on a minimum three (3) inches of aggregate base course (ABC). The ABC shall be compacted to 95% relative density.

Unless otherwise noted for removal and replacement, the Contractor shall protect all curb and gutter that is to remain in place. Removals outside the plan limits not approved by the Owner shall be replaced at the Contractor's expense.

340.5 MEASUREMENT:
(Revise to include the following)

Measurement for work under this Section shall be in accordance with Section 340 of the MAG Standard Specifications. Measurement for all Curb & Gutter types, sidewalks, driveways and driveway match-ups includes all work necessary for a complete installation, including ABC material.

340.6 PAYMENT:
(Revise to include the following)

No direct payment will be made for aggregate base course. All costs associated with this work are to be included in the amount bid for the items of work to which it is incidental or appurtenant.

The cost of detectable warnings is included in the cost of the construction of the new sidewalk ramp.

SECTION 345 – ADJUSTING FRAMES, COVERS, VALVE BOXES, AND WATER METER BOXES

345.1 DESCRIPTION
(Modify to add)

The Contractor is cautioned that only straight, centered (relative to adjustment pavement or concrete) valve boxes that conform to City Detail 9-03-060 will be acceptable. The Engineer will provide the Contractor necessary direction for the appropriate adjustment or replacement of each valve box and cover.

At all water valve locations where existing valves are to remain in service, the entire valve box and cover shall be excavated, removed and replaced with a new complete valve box and cover as well as the adjustment to grade. The water valve box and covers that require removal and replacement shall be excavated and installed prior to paving or overlay. Final adjustments shall be made after completion of final surfacing.

SECTION 350 – REMOVAL OF EXISTING IMPROVEMENTS

350.4 PAYMENT
(Revise to include the following)

The cost of saw cutting the necessary items for removal is to be included in the related work items shown on the Bid Schedule.

PART 400 – RIGHT OF WAY TRAFFIC CONTROL

SECTION 401 – TRAFFIC CONTROL

401.1 DESCRIPTION:

(Revise City of Flagstaff General Provisions to include the following)

At all times, the Contractor shall conduct the construction activities to safeguard pedestrians and vehicular access in the vicinity of the project. All holes or trenches left open overnight shall be surrounded by Type II barricades and Type A flashing warning lights, connected by warning tape or rope, as directed by the Engineer. The Contractor shall provide plywood coverings, traffic panels, or some other protection over holes to satisfy the Engineer. There will be no direct measurement or additional payment for providing coverings or the warning tape, Type II barricades or rope, the costs being considered as included in the original cost of the contract.

For all streets, Contractor shall at a minimum allow for local traffic into and through the project site when practical. Flagmen shall be placed at either end of the project as necessary.

SECTION 405 – SURVEY MONUMENTS

405.3 CONSTRUCTION

(Revise to read)

Existing survey monuments shall be referenced, and if necessary reestablished by a surveyor registered in the State of Arizona.

The surveyor shall provide reference marks and dimensions to the survey monuments. A minimum of two “permanent” reference marks shall be established for each right-of-way control monument. The angle formed by the control point and the two reference points shall be approximately 90 degrees. Examples of permanent reference marks include an “x” chiseled into curb, PK nail in concrete and a nail in a power pole. Any existing suitable reference marks may be used.

Alternatively, the surveyor may determine and record the location of existing survey monuments using global positioning satellite (GPS) equipment and procedures of appropriate survey-grade accuracy.

No new survey monument locations shall be incorporated into this project without prior approval from the City Engineer or representative.

New survey monuments shall be reinstalled 1/4" minimum below new pavement grade at the accurate location. An elevation shall be established on survey monuments that replace survey monuments with a City established elevation. This work shall be done in accordance with good surveying practices and shall be in accordance with City Detail 11-01-010. The surveyor shall prepare and record a Results of Survey map showing the monuments found and set. This map shall include the City's unique identifying number for each point. The Result of Survey shall be reviewed and accepted by the City prior to recordation.

Any survey monuments with boxes and covers shall be adjusted to grade by the Contractor without disturbing the survey monument.

PART 600 – WATER, SEWER, STORM DRAIN AND IRRIGATION

SECTION 601 – TRENCH EXCAVATION, BACKFILLING AND COMPACTION

601.2 EXCAVATION

601.2.1 GENERAL

(Revise MAG to include the following)

All excavation, including trench excavation, shall be performed in any substance and material encountered. Excavation shall be as shown on the plans and in the specifications. The cost is considered incidental to and is to be included in the price for the bid item to be constructed or installed. No special payment shall be made for trench excavation other than rock excavation as specified under Trench Rock Excavation.

Trench rock is defined as consolidated igneous, metamorphic and/or sedimentary material in the original bed and/or in well-defined ledges that cannot be removed by a mechanical method and therefore requires pneumatic hammering, drilling or blasting for removal. Example of mechanical methods include hand tools, trenching machine, backhoe, >195 horsepower hydraulic excavator with ripping teeth or equivalent.

Boulders and pieces of rock having a volume of more than 27 cubic feet (1 cubic yard) shall be considered rock.

For projects where trench rock excavation is anticipated, the estimated contingent quantity is shown in the proposal under the applicable bid item. The contingency quantity is an estimate only and no guaranty is given that any portion will be utilized. Trench rock excavation will be paid for separately at the unit price bid per cubic yard for Trench Rock Excavation.

Measurement of Trench Rock Excavation shall be per cubic yard in place. This volume of rock will be measured by the County representative, using the maximum trench width allowed in accordance with MAG Table 601-1, the lineal footage of actual rock excavation required and the actual depth of rock as determined by inspection of the trench after rock excavation and before backfilling.

601.2.3 TRENCH GRADE

(Revise the first paragraph to read)

Alignment and elevation stakes shall be furnished by the Contractor at set intervals and agreed-upon offsets including grade breaks, valve locations, and service locations. On water mains, cut stakes will be furnished only when deemed necessary by the Engineer. In all cases where elevation stakes are furnished, the Contractor shall also furnish the Engineer with cut sheets.

(Revise first sentence of second paragraph to read)

For all pipe or conduit, the contractor shall excavate for and provide an initial granular bedding of at least 6 inches thick; per the applicable details (9-01-030 through 9-01-033) shown on the plans.

SECTION 610 – WATER LINE CONSTRUCTION

610.4.3 BLOCKING AND RESTRAINTS

(Revise the fifth paragraph to read)

Unless noted otherwise on the plans, all thrust restraint shall be accomplished through the use of a joint restraint system approved by the City of Flagstaff.

610.11 CONNECTIONS TO EXISTING MAINS

(Revise MAG to include the following)

Contractor shall verify location and depth of existing waterlines and notify the City's representative of any conflict with any proposed improvements.

610.1 MEASUREMENT AND PAYMENT

(Revise final sentence of paragraph G)

The cost of the fire hydrant shall be the cost per complete assembly, and shall include full payment of the isolation valve, hydrant run-out, as well as any required fittings, thrust blocking or restraint.



**CITY OF FLAGSTAFF
AMENDMENTS
to
MAG STANDARD SPECIFICATIONS
FOR PUBLIC WORKS CONSTRUCTION
(General Provisions)**

The
MAG UNIFORM STANDARD SPECIFICATIONS
for
PUBLIC WORKS CONSTRUCTION
is hereby amended to include the following:

PART 100 - GENERAL CONDITIONS

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

102.1 ELIGIBILITY AND PREFERENCE:
(revise to include the following)

If requested by the City, a Bidder shall furnish satisfactory evidence of the Bidder's competency to perform the proposed work. Such evidence of competency, unless otherwise specified, shall consist of statements covering the Bidder's experience on similar work, a list of equipment that would be available for the work and a list of key personnel that would be available.

In addition, if requested, a Bidder shall furnish the City of Flagstaff with satisfactory evidence of the Bidder's financial responsibility. Such evidence of financial responsibility, unless otherwise specified, shall consist of a confidential statement or report of the Bidder's financial resources and liabilities as of the last calendar year or the contractor's last fiscal year. Such statements or reports shall be certified by a public accountant. At the time of submitting such financial statements or reports, the Bidder shall further certify whether the Bidder's financial responsibility is approximately the same as stated or reported by the public accountant. If the Bidder's financial responsibility has changed, the Bidder shall qualify the public accountant's statement or report to reflect the Bidder's true financial condition at the time such qualified statement or report is submitted to the City of Flagstaff.

The Bidder shall submit such "evidence of competency" and "evidence of financial responsibility" to the City of Flagstaff no later than five (5) working days after receipt of a written request by the City of Flagstaff.

Each bidder, contractor and subcontractor shall possess and maintain the appropriate contractor's license for the work included in this contract. The appropriate license shall be as required by the Arizona State Registrar of Contractors and as required by Arizona Revised Statutes Chapter 10, Title 32.

102.2 CONTENTS OF PROPOSAL PAMPHLET:

(revise to include the following)

The Plans, Specifications and other Documents designated in the Contract Documents shall be considered a part of the Contract whether attached or not.

The City of Flagstaff reserves the right to refuse to issue a proposal form or accept a proposal form from a prospective Bidder if they are in default for any of the following reasons:

- (A) Failure to comply with any prequalification regulations of the City of Flagstaff, if such regulations are cited or otherwise included in the Proposal as a requirement for bidding;
- (B) Failure to pay or satisfactorily settle all bills due for labor and materials on former contracts in force (with the City of Flagstaff) at the time the City of Flagstaff issues the Proposal to a prospective Bidder;
- (C) Contractor, as a company owner, has defaulted under previous contract(s) with the City of Flagstaff in the prior five calendar years;
- (D) Record of unsatisfactory work on previous contract(s) with the City of Flagstaff in the prior five calendar years.

102.2 CONTENTS OF PROPOSAL PAMPHLET:

(third paragraph, revise last sentence to read as follows)

The work embraced herein shall be done in accordance with the requirements of:

City of Flagstaff Amendments to MAG Standard Specifications for Public Works Construction (General Provisions).

City of Flagstaff (City) Engineering Standards (Current Version and adopted revisions).

Maricopa Association of Governments (MAG), *Uniform Standard Specifications for Public Works Construction*, Current Version (MAG Specifications).

MAG Standard Details for Public Works Construction, Current Version and adopted revisions (MAG Details).

Arizona Department of Transportation (ADOT) Standard Specifications for Road and Bridge Construction, Current Version and adopted revisions.

In the case of conflict, the following order of precedence shall govern:

1. Special Provisions
2. Construction Plans and Addenda
3. General Provisions and MAG Revisions
4. City of Flagstaff Standards and Specifications
5. MAG Standards and Specifications
6. ADOT Standards and Specifications
7. FHWA Manual of Uniform Traffic Control Devices

102.4 EXAMINATION OF PLANS, SPECIAL PROVISIONS AND SITE OF WORK:

(revise to include the following)

Before submitting a bid, each bidder shall examine the site and obtain information that pertains to the physical conditions of the site that may affect the cost, progress or performance of the work. Any restrictions or difficulties relating to the completion of the work shall be considered in accordance with the terms and conditions of the contract documents.

102.7 IRREGULAR PROPOSALS:

(revise to include the following)

The City of Flagstaff reserves the right to reject any irregular Proposal and the right to waive technicalities for acceptance of Proposals, if such waiver is in the best interest of the City of Flagstaff and conforms to local laws and ordinances pertaining to the letting of construction contracts.

Proposals shall be considered irregular for the following additional reasons:

- (A) If the Proposal contains unit prices that are obviously unbalanced.
- (B) If the Proposal is not accompanied by the proposal guaranty specified by the City.

102.12 DISQUALIFICATION OF BIDDERS:

(revise to include the following)

A Bidder shall also be considered disqualified if the Bidder is considered in default for any reason specified in Subsection 102.2 as amended by this MAG Amendment.

102.13 SUCCESSFUL BIDDERS:

(revise paragraph to read as follows)

The City of Flagstaff shall provide six (6) sets of plans and Contract Documents at no cost. A direct expense fee shall be charged for any additional copies.

SECTION 103 - AWARD AND EXECUTION OF CONTRACT

103.6 CONTRACTOR'S INSURANCE:

103.6.1 GENERAL:

(revise subsection to read as follows)

The Contractor and its Subcontractors, at Contractor's and Subcontractors' own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, 7, or approved by the City. The insurance company shall be licensed in the State of Arizona. Policies and forms shall be satisfactory to the City.

All insurance required herein shall be maintained in full force and effect until all work and/or services required to be performed, under the terms of the Contract, are satisfactorily completed and formally accepted. At the sole discretion of the City, failure to do so may constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall not contribute to it.

Contractor shall not fail to comply with the claim reporting provisions of the insurance policies or cause a breach of any insurance policy warranty that would affect coverage afforded under insurance policies to protect the City.

The insurance policies (except Worker's Compensation) shall contain a waiver of transfer of rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for the deductible and/or self-insured retentions, and the City, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt 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.

Except for Worker's Compensation, the insurance policies, required by this Contract shall name the City, its agents, representatives, officers, directors, officials and employees as additional insureds.

Required Coverage

A. COMMERCIAL GENERAL LIABILITY

The Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The Policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage. Coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision and shall not contain a sunset provision or commutation clause, nor any provision, which would serve to limit third party action over claims. The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc. Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

B. OWNERS AND CONTRACTOR'S PROTECTIVE LIABILITY

The Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Work or Contractor's operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

C. AUTOMOBILE LIABILITY

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any auto, all owned autos, scheduled autos, hired autos, non-owned autos assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off-loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

D. WORKER'S COMPENSATION

The Contractor shall carry Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required of the Contractor.

E. BUILDER'S RISK (PROPERTY) INSURANCE (AS REQUIRED)

When the project includes construction of a new building, an addition to an existing building, modifications to an existing building, or as otherwise may be required by the contracting agency, the Contractor shall purchase and maintain, on a replacement cost basis, Builder's Risk insurance in the amount of the initial Contract Amount as well as subsequent modifications thereto for the entire work at the site. At a minimum, the policy limits of such insurance shall be equal in face amount to the full Contract Amount. Such Builder's Risk insurance shall be maintained until final payment has been made or until no person or entity other than the City has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of the City, the Contractor, and all Subcontractors and Sub-Subcontractors in the work during the life of the Contract and course of construction, and shall continue until the work is completed and accepted by the City. For new construction projects, the Contractor agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the Contractor agrees to assume responsibility for loss or damage to the work being performed at least up to the full Contract Amount, unless otherwise required by the Contract Documents or amendments thereto.

Builder's Risk insurance shall be on an all-risk policy form and shall cover false work and temporary buildings. Builder's Risk insurance shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements and shall cover reasonable compensation for Architect's service and expenses required as a result of such insured loss and other "soft costs" as required by the Contract.

Builder's Risk insurance must provide coverage from the time any covered property becomes Contractor's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being

transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof is occupied. Builder's Risk insurance shall be primary and not contributory.

If the Contract requires testing of equipment or other similar operations, at the option of the City, the Contractor will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy.

Required coverage may be modified by an amendment to the Contract Documents.

CERTIFICATES OF INSURANCE

Prior to commencing work or services under this Contract, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policies required by this contract are written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance shall be identified with bid/project number and project name. A \$25.00 administrative fee will be assessed for all certificates received without the appropriate bid serial number and title.

CANCELLATION AND EXPIRATION NOTICE

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days written notice to the City.

SECTION 104 - SCOPE OF WORK

104.1.3 WATER SUPPLY: (revise to include the following)

Potable water may not be used for major construction activity, such as dust control, soil compaction, or street cleaning. Reclaimed water is available at the Wildcat Hill Wastewater Treatment plant on East Highway 66 and at the south end of Babbitt Drive at the Rio De Flag Water Reclamation Plant. Additional reclaimed water bulk loading sites are located in other areas of the city. The contractor should obtain current locations from the Water Services Department. **Current rates for the**

reclaimed water shall apply. The Contractor is responsible for the cost of construction water and it is considered incidental to the cost of the contract.

Prior to loading, hauling and applying reclaimed water, the Contractor shall be required to obtain the necessary no fee permit at the Wildcat Hill Wastewater Treatment Plant or from the Rio De Flag plant and shall be responsible for complying with all permit and ADEQ requirements regarding the use of reclaimed water.

104.1.4 SPECIAL ACCESS REQUIREMENTS:
(revise to include the following)

The Contractor shall maintain access to all side streets, access roads, driveways, alleys, parking lots and to adjacent properties during their hours of operation. The Contractor shall coordinate with residents and ensure access to all driveways be provided during all non-working hours. Where a property has more than one driveway, no more than one access will be restricted or closed at one time. Should it be necessary to close access to private property, driveways or alley entrances, the closure must be for as short a time as possible and be restored at the end of the work shift. If primary business access cannot be restored, the Contractor shall provide an alternate access, which will be coordinated with the business and pre-approved by the Owner prior to any restrictions being implemented.

104.1.5 SANITATION PICKUP:

When construction activity interferes with pickup, the contractor shall provide for sanitation and recycling vehicle access to the affected properties or relocate the containers where access is acceptable.

104.1.6 EMERGENCY ACCESS:

Street closure information shall be submitted to the City's Project Representative who will forward the information to the Fire Department and Police Department. All notices shall be submitted at least 72 hours in advance of the closures.

104.1.7 POSTAL SERVICE ACCESS:

The contractor shall be responsible for maintaining access for Postal Service within the project area at all times.

104.1.8 SCHOOL BUS ACCESS:

The contractor shall be responsible for maintaining access for bus access within the project area.

104.2 ALTERATION OF THE WORK:

104.2.3 DUE TO EXTRA WORK:
(revise to include the following)

When Allowance and/or Contingency items are provided for in the contract, the funds are encumbered for use at the discretion of the Project Manager. The funds are to cover unanticipated costs to complete items of work not included in the Contract Documents or may be applied to any work deemed necessary by the Owner. Work would include, but not limited to, unanticipated conditions, scope changes, addressing errors or omissions, and/or construction changes that are warranted for project completion consistent with the purpose of the work.

The amount of the allowance item is determined by the City and is not subject to individual bid pricing. The allowance is not part of the bidding process and per the City of Flagstaff Procurement Manual, will be added to the contract amount, if approved by the City Council.

The allowance item provides an estimated funding to cover unforeseen changes that may be encountered and corresponding extra work needed to complete the contract. Any work which is to be paid out of this allowance shall be authorized in writing and approved by Field Order prior to proceeding with the work. Extra work shall be paid for in the following order of precedence: 1.) by extension of unit bid prices, 2.) by negotiated price or 3.) by a time and materials basis in accordance with MAG Section 109.5.

It shall be understood that the amount for this item in the proposal is an estimate only and no guarantee is given that the full amount or any portion thereof will be utilized. It shall not be utilized without first obtaining an approved Field Order signed by the Contractor and the Project Manager.

105.2.1 RECORD DRAWING PREPARATION AND COORDINATION
(revise to include new subsection as follows)

Record drawing preparation shall be the obligation of the Contractor whose purpose is to accurately record and depict the as-built conditions. During the construction phase and prior to backfilling or covering of improvements, the Contractor shall have the work surveyed and recorded for record drawing preparation.

The Contractor shall maintain a redline working copy of the project plans which shall include changes made in construction of the project. The redline copy of the plans shall be updated weekly.

105.2.2 RECORD DRAWING (As-Built Plans)

(revise to include new subsection as follows)

The Contractor shall retain an Arizona licensed civil engineer to record as-built information per Arizona Revised Statute § 32-152. Water and sewer record drawing certification shall comply with ADEQ R18-5-508 (drinking water) and ADEQ R18-9-E301 (sewage collection) requirements for as-built drawings. Unless otherwise noted, the City will complete and submit the Engineer's Certificate of Completion to ADEQ.

Prior to the City's final approval and acceptance of public improvements (sanitary sewer, water, storm sewer, streets) record drawings (as-built plans) must be submitted to the City for review and acceptance per Engineering Standard Specifications.

A redline submittal shall be a .pdf and/or two sets of blue or black line paper sets, copied from the originally approved plan set. Redline submittal will be reviewed by the City and returned with applicable comments. Comments are to be addressed and resubmitted for the City's final approval. A reference checklist is available from the Office of the City Engineer.

Upon City and ADEQ (when applicable) review and approval of the submittal, an electronic .pdf of the plans shall be submitted to the City as a permanent record. All record drawing plan sets shall contain a statement by a licensed professional engineer, currently registered to practice in Arizona, certifying that the drawings are per the as-built condition. The record set requires the seal and signature of the registrant per Arizona Revised Statutes § 32-152. All survey data given by the record drawings shall be performed by a land surveyor who is currently registered in the State of Arizona. Plans must show seal and signature of registrant.

Payment shall be lump sum for all work required to develop the necessary documents, including but not limited to coordination, field inspection, survey, drafting, printing and engineer's seal. The fee shall include as-built information for all record changes within the project area.

SECTION 105 - CONTROL OF WORK

105.8 CONSTRUCTION STAKES, LINES AND GRADES:

(revise entire subsection to read as follows)

The Contractor shall be responsible for all required construction staking, including preconstruction staking for relocation of existing utilities. All construction staking is to be done under the direct supervision of a Registered Land Surveyor or Civil Engineer. All costs associated with this work are to be included in the amount bid for the items of work to which it is incidental or appurtenant. No separate payment will be made for construction staking.

105.10 INSPECTION OF THE WORK

(revise to include the following)

The Contractor is responsible for Quality Control of the work. The City will perform Quality Assurance; frequency of testing will be determined by the City. The Contractor shall be responsible for coordinating and scheduling all inspections of the work and shall confirm that the required inspections and material testing are completed and accepted prior to proceeding with additional work. The Contractor is required to perform the work to a confidence level that the City's Quality Assurance will validate that the work meets specification(s).

105.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK:

(revise to include the following)

Any work and/or materials condemned by the Project Manager as inferior or not in compliance with the Contract, Specifications and Plans shall be immediately removed by the Contractor. Materials and/or work so condemned shall be removed and promptly replaced and executed in accordance with the Contract, Specifications and Plans without any expense to the Owner. The Contractor shall bear the expense of making good on all work of other contractors destroyed or damaged by such removal and replacement.

105.12 MAINTENANCE DURING CONSTRUCTION:

(revise to include the following)

The Contractor is responsible to provide adequate drainage for the construction area at all times. Damage to any portion of the work caused by the Contractor's failure to provide adequate drainage of the construction area shall be repaired at the Contractor's expense. A contract time extension will not be granted for any additional time required to make such repairs.

The Contractor shall control open excavations and stockpiling in a manner to prevent water from running into excavations. Obstructions of surface drainage shall be avoided and means shall be provided whereby storm water and wastewater can flow uninterrupted in existing or established pipes, flow courses, other surface drains, temporary drains or channels.

Material for backfill or for protection of excavations within public roads or easements shall be placed and shaped to cause the least possible interference to public travel. In no event shall any flows be allowed to enter private property.

105.16 MAINTENANCE DURING WINTER SUSPENSION OF WORK

(revise to include new subsection as follows)

The City retains the right to declare a winter shutdown, *for any reason*, on the Project including but not limited to adverse weather conditions. A winter shutdown period is typically December through March during which no work will be performed on the Project.

The Contractor shall shutdown, properly insulate and shelter the Project in a safe and workmanlike manner pursuant to local, state and federal laws.

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 suspension shall be by field order, change order or original contract. If repairs and/or maintenance are needed during the suspension, 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. All other snow removal and maintenance operations shall be the responsibility of the Contractor. All cost associated with snow removal and proper disposal shall be considered incidental to the work including the repair of temporary surface improvements due to normal wear and snow removal operations during the Winter Shutdown.

SECTION 107 - LEGAL REGULATIONS AND RESPONSIBILITY TO THE PUBLIC

107.1 LAWS TO BE OBSERVED: (revise to include the following)

(G) TAX EXEMPTION: Certain material, machinery and equipment to be installed in this project is exempt from sales tax or use tax as allowed in Arizona Revised Statutes Section 42-5061, 42-5009 and Section 42-5159 and by the Administrative Rules and Regulations of the Arizona Department of Revenue; ACC R15-5-608, R15-5-120 and R15-5-2314.

The City wishes to rely upon the expertise of the contractor in the purchase of items that qualify for the tax exemption. With respect to purchase of the qualifying items, the Contractor is authorized to act as an agent for the City. This agency agreement is strictly limited to the purchase of the qualifying items to be used in the construction of the project and will not otherwise affect or alter the respective rights, responsibilities and remedies of the parties as specified under this contract. The contractor shall furnish the City a list of suppliers and the material, machinery and equipment

to be furnished by each. The City will then issue the materials and equipment exemption certificate to each supplier pursuant to A.R.S. §42-5009 (A) (2). The contractor's applicable unit bid prices for items qualifying for this tax exemption should not include sales or use tax. The materials, machinery and equipment that are a part of this project and to which the exemption applies are listed below:

1. Pipes, valves and appurtenances four (4) inches in diameter or larger used to transport potable water,
2. Any additional material, machinery or equipment identified in the Special Provisions.

107.2.1 TEMPORARY USE PERMITS:
(revise to include new subsection as follows)

A Temporary Use Permit (and Above Ground Fuel Storage Permit if applicable) is required prior to the establishment of any temporary construction yard, material storage area or staging area located within City limits and outside the public right-of-way or project limits. The Contractor is responsible for obtaining the necessary Temporary Use Permit from the agency with jurisdictional authority.

The time required to process the Temporary Use Permit is approximately twelve (12) calendar days. The Contractor shall submit the necessary permit application no later than ten (10) calendar days following the Notice of Award. Any delays experienced by the Contractor in acquiring the Temporary Use Permit shall not necessarily be grounds for delaying the project Notice to Proceed.

107.2.2 DISPOSAL OF WASTE AND SURPLUS MATERIAL:
(revise to include the following)

All disposal costs, regardless of disposal site, shall be included in the bid unit price for the related item of work and no direct payment will be made for disposal of waste or surplus materials. This right of disposal does not apply to any substance or items that are regarded as toxic and/or hazardous by the City, the State of Arizona or the United States Government.

Alternate disposal sites may be proposed by the Contractor but are subject to all applicable local ordinances and codes. In addition to the property owner's written authorization, all disposal sites within the city limits are subject to review and approval by the Temporary Use Permit process. The disposal of material at alternate disposal sites will not be allowed without written authorization of the owner, approval of the appropriate jurisdictional authority, and the issuance of all necessary permits.

107.2.3 ABOVE GROUND FUEL STORAGE PERMIT:

(revise to include new subsection as follows)

If required, Above Ground Fuel Storage Permits may be obtained from the City of Flagstaff Fire Department, located at 211 West Aspen Avenue, Flagstaff, AZ. The Contractor is responsible for obtaining the permit.

107.5 SAFETY, HEALTH, AND SANITATION PROVISIONS:

107.5.4 HANDLING, REMOVAL AND DISPOSAL OF SURPLUS MATERIAL AND ASBESTOS CONTAINING MATERIALS (ACM)

(revise to include new subsection as follows)

The Contractor is responsible for handling, removal and disposal of all soil material generated by the project as described in the General Provisions.

The City requires compliance with Environmental Protection Agency (EPA), Arizona Department of Environmental Quality (ADEQ) and Occupational Safety and Health Administration (OSHA) asbestos regulations for all City projects.

Utility pipes constructed of materials other than metal or polyvinyl chloride (PVC) require testing prior to any disturbance of the pipes to determine if regulated levels of asbestos are present in the pipe material. Suspect pipe materials requiring testing typically include vitrified clay and cement pipe (transite). Asbestos testing is not required for metal pipes.

City Public Works/Sustainability & Environmental Management staff are available to collect samples and submit the samples for analyses. The City of Flagstaff will provide testing free of charge. If the pipe does not contain regulated levels of asbestos, the contractor may disturb and remove the piping. If utility piping contains regulated levels of asbestos, an asbestos abatement contractor must perform any disturbance/removal of the pipe materials. This is required to ensure workers are not exposed to any asbestos fibers.

Work may require the proper handling, removal and disposal of regulated asbestos piping and materials generated by cutting or breaking the pipe to remove it from the ground. If asbestos containing materials (ACM) removal is necessary on the project, the City of Flagstaff requirements for handling, removal and disposal are as follows:

- If an infrastructure or building material that is not either wood, glass or metal is encountered during the project and has not yet been either assumed or positively identified to be ACM then the material(s) must be sampled in accordance with regulations generated by the EPA Asbestos Hazard and Emergency Response Act (AHERA) 40 CFR 763 as well as OSHA 29 CFR 1910.1101, by a certified AHERA Building Inspector and sent to a National Voluntary Laboratory Accreditation Program (NVLAP) certified laboratory for analysis.

- Once materials of concern are assumed or properly identified to be ACM then material removal is required according to OSHA 29 CFR 1910-1926.1101 by a certified asbestos abatement worker, and NOT a general contractor (GC). However, if the GC holds the appropriate asbestos certifications (AHERA Asbestos Operations and Maintenance), which the City would need to verify is current, then the GC could perform the asbestos abatement.

The City requires the General Contractor arrange for abatement of assumed and/or identified ACM by a certified asbestos abatement contractor and to arrange area and/or clearance air monitoring by a third party certified asbestos consultant. If applicable to the project, copies of abatement activities and air monitoring shall be provided to City of Flagstaff Environmental Management staff.

In the event of large disturbances to ACM, compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR 61, Subpart M shall be followed. Notification would be required the Arizona Department of Environmental Quality 10 working days in advance of the start of a large project. This notification is not typically required for utility pipe work, but could be required for a very large project involving numerous saw cuts of utility pipes. <http://www.azdeq.gov/enviro/air/asbestos/>

If ACM removal is necessary on the project, the City of Flagstaff requirements for ACM disposal at the City's Cinder Lake Landfill are as follows:

Only non-friable asbestos waste is accepted for disposal at Cinder Lake Landfill. PRIOR to disposal of non-friable ACM, obtain the necessary forms, which are:

- Non-Friable Asbestos Waste Acceptance Application and accompanying instructions
- Non-Friable Asbestos Waste Shipment Record (WSR)

The Asbestos Waste Acceptance Application is available at the City of Flagstaff's website or by contacting the City of Flagstaff Environmental Management staff. A Waste Shipment Record is required to accompany each load of non-friable asbestos waste taken to the Cinder Lake Landfill.

Assure the non-friable ACM is properly handled and wrapped. Non-friable ACM must be thoroughly wetted using amended water PRIOR to being wrapped in 6-millimeter poly and be tightly sealed with duct tape. If the material is heavy (such as transite pipe), has sharp edges, or may easily puncture the poly wrap, a double layer of poly will be necessary. The Cinder Lake Landfill scale house attendant will inspect the load to ensure it is properly wrapped. Containers holding non-friable ACM shall be carefully unloaded and placed in a designated location. Dumping using a hydraulically lifted bed of a truck is not permitted (dump truck), as the poly wrap may be torn open.

If using a large bin for disposal, attach a copy of the Waste Shipment Record to the disposal bin. If not using a City of Flagstaff disposal bin, make sure the delivery driver takes a copy of the SIGNED Non-Friable Asbestos Waste Acceptance Application and the Waste Shipment Record to the Cinder Lakes Landfill with the waste delivery.

If using a City of Flagstaff disposal bin call City Environmental Services at (928) 774-0668 to schedule a pick-up for the disposal bin. Please be sure to provide the driver with the SIGNED Non-Friable Asbestos Waste Acceptance Application and the Waste Shipment Record and be sure to clarify if you would like the disposal bin emptied and removed, or emptied and returned to the work site. When disposal is completed, the Landfill Manager will sign the Waste Shipment Record and landfill staff will provide or mail a copy of the Waste Shipment Record.

Cutting of utility pipes generates Regulated Asbestos Containing Material (RACM). RACM requires disposal at the Joseph City Landfill or at other landfills located in southern Arizona.

All work relating to the removal and disposal of unknown and unanticipated hazardous materials as described above shall be paid per MAG 109.4.3.

107.8 107 USE OF EXPLOSIVES:

(first paragraph, revise second sentence to read as follows)

The Contractor shall submit a blasting plan for approval and obtain a Blasting Permit from the City of Flagstaff Fire Department, located at 211 W. Aspen Avenue, Flagstaff, Arizona.

(revise to include the following)

The Contractor shall submit a copy of the approved blasting plan to the Project Manager. The plan shall include as a minimum; safety layout, drilling pattern, size and depth of bore, weight and type of charge, delay sequence, contractor's anticipated peak particle velocity at the right-of-way line or nearest structure, and the proposed seismograph locations.

A record of each blast shall be kept and all records including seismograph reports shall be available for inspection. Each record shall provide as a minimum; location, date and time of blast, name of person in charge, number of holes burdened, spacing, diameter and depth of holes, boring logs to determine top of rock, type and total amount of explosives used, direction and distance to nearest building, type of detonators and delay periods used, and exact locations of seismographs.

When blasting operations are to be conducted within 200 feet of a water line, sewer line or other underground utility, the Contractor shall take additional precautionary measures. The Contractor shall also coordinate with Franchise Utilities prior to blasting operations. The Contractor shall notify the owner of the facility a minimum of two weeks in advance that such blasting operations are

intended. At their discretion, the Owner may perform pre-blast, post-blast pressure tests or other inspection of the facility. If any damage occurs because of blasting operations, the Contractor shall be responsible for the restoration of the facility to pre-blast conditions.

107.9 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE:
(revise to include the following)

The Contractor is responsible for replacing and/or restoring the site, landscaping and owner's improvements associated with the project to the pre-existing condition using in-kind materials. All cost shall be included in the bid as incidental to the work, unless otherwise specified in the bid schedule or plans.

Within easements, the Contractor is responsible for removing existing improvements and salvaging items (not identified for removal) for relocation after the public improvements are completed. Close coordination between the Contractor and property owners and/or residents is required.

107.11 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES:
(revise to include the following)

All power poles, pedestals, guy wires and underground facilities shall be removed and/or relocated by the respective owners of the facilities. The contractor is responsible for the notification and coordination with the utility companies to ensure that this work is accomplished in a manner consistent with the construction schedule. Payment for Franchise Utility coordination and location is incidental to the cost of the work.

The Contractor shall perform utility potholes and identify potential conflicts prior to trenching. The utility pothole information and identification of potential conflicts shall be provided to the Project Manager at least two weeks prior to performing trenching or pipeline construction.

SECTION 108 - COMMENCEMENT, PROSECUTION AND PROGRESS

108.1 NOTICE TO PROCEED:
(revise to include the following)

Time is of the essence in submitting the initial and revised construction schedule and traffic control plan. Each is a requirement that precedes the Contractor's right and the City's obligation to proceed with the agreement.

The Notice to Proceed shall be issued for a start date no later than twenty-seven (27) calendar days following receipt of the Notice of Award. The Contractor shall be required to submit a construction schedule and traffic control plan in accordance with the Contract Documents and the following:

The Contractor shall within seven (7) calendar days of receiving the Notice of Award, submit a construction schedule and traffic control plan to the Project Manager. The Project Manager shall promptly review the construction schedule and traffic control plan and either approve them, or provide a written list of the items that will require revision. The Contractor shall submit the revised construction schedule and traffic control plan within five (5) calendar days of receiving the Project Manager's list of required revisions. The corrected construction schedule and traffic control plan submittal shall address all comments from the Project Manager's list of required revisions.

108.3 CORRESPONDENCE TO THE CONTRACTOR:
(revise to include the following)

In addition to written communication to the Project Manager, the Contractor shall provide and maintain a contact located within ten miles of the job site at all times throughout the duration of the Contract. The designated contact shall be accessible by telephone at all times to respond to agency requirements and emergencies. The local location and phone number(s) shall be provided to the Project Manager prior to issuance of the Notice to Proceed. Any changes of the location or phone number(s) shall be reported immediately to the Project Manager.

If a response is needed, the Contractor is required to respond and perform the repairs and/or maintenance within two (2) 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.

108.4 CONTRACTOR'S CONSTRUCTION SCHEDULE:
(revise to include the following)

The Contractor's schedule shall include, as a minimum, the following:

- Identification of project tasks with assigned dates and durations, which reflect anticipated sequencing of construction activities on scheduled working days;
- All anticipated subcontractors that will be used during the course of the work;
- The anticipated number of crews to expedite the progress and ensure prompt completion of the work;

Definition of a crew;

- personnel (*e.g. operator, laborer*)
- equipment (*e.g. Cat 325 Excavator, 950 Loader*)
- workdays anticipated or scheduled per week (*e.g. Monday through Friday*)
- work hours anticipated or scheduled per day (*e.g. 7:00 am to 3:30 pm*)

- Anticipated adverse weather days for weather dependent activities, weekends and holidays.
- Specific long lead times for delivery of equipment and materials;
- Critical path project schedules may be required as provided for by the Special Provisions or Project Addenda.

108.5 LIMITATION OF OPERATIONS:
 (third paragraph, revise to read as follows)

Except in emergencies endangering life or property, written permission shall be obtained from the City prior to performing any work on weekends, legal holidays or after regular work hours (hereinafter defined as 7:00 a.m. to 5:00 p.m. - Monday through Friday). Work on Saturdays will be permitted with prior approval by the City’s Engineering Inspection Supervisor. 72 hours advance notice will be required. Work on Sundays and legal City Holidays will not be permitted except in emergencies or as approved by the owner. Inspection and testing will not be provided on Sundays or City legal holidays without prior approval from the Project Manager (72-hour advance notice) and full compensation by the Contractor for any necessary personnel, equipment and services.

Overtime compensation for City personnel shall be as follows:

- Construction Supervisor @ \$ 43.00/hour
- Inspector II @ \$ 35.00/hour
- Inspector I @ \$30.00/hour
- Lab Tech I @ \$ 25.00/hour
- Vehicle @ \$1.80/hour

108.7 DETERMINATION AND EXTENSION OF CONTRACT TIME:
 (revise to include the following)

The contract time, including final clean-up of the project site and storage areas, may be extended because of weather conditions that cannot be reasonably anticipated. The number of actual days that the scheduled work is impacted by adverse weather shall be recorded weekly during the construction period.

The Contractor will be entitled to a contract time extension if the actual adverse weather days experienced during the work exceed the anticipated adverse weather days shown. The following is the monthly schedule of adverse weather days that shall be anticipated by the Contractor in scheduling the work:

TABLE 108.7 MONTHLY CALENDAR DAYS for ANTICIPATED ADVERSE WEATHER

<i>MONTH</i>	<i>JANUARY</i>	<i>FEBRUARY</i>	<i>MARCH</i>	<i>APRIL</i>	<i>MAY</i>	<i>JUNE</i>
Monthly Calendar Days for Anticipated Adverse Weather	7 Days	7 Days	8 Days	6 Days	4 Days	3 Days
Average Monthly Precipitation	1.98"	1.96"	2.05"	1.34"	0.68"	0.51"
<i>MONTH</i>	<i>JULY</i>	<i>AUGUST</i>	<i>SEPTEMBER</i>	<i>OCTOBER</i>	<i>NOVEMBER</i>	<i>DECEMBER</i>
Monthly Calendar Days for Anticipated Adverse Weather	12 Days	11 Days	7 Days	5 Days	5 Days	6 Days
Average Monthly Precipitation	2.78"	2.68"	1.82"	1.52"	1.49"	1.90"

The above schedule of anticipated adverse weather days establishes the base line for the project's monthly weather impacts based on historical records, as recorded by the National Weather Service at Pulliam Airport, for precipitation in excess of 0.01 of an inch per calendar day.

The number of actual days that scheduled work is impacted by adverse weather as defined above shall be recorded weekly during the contract period. It is the Contractor's responsibility to request in writing any adverse weather delays experienced during the prior week no later than the normally scheduled weekly project meeting. Any adverse weather day requests that are not received, as stated above, shall neither be considered nor approved. Once the number of approved actual adverse weather days exceeds the number of anticipated adverse weather days in the schedule above, the Contractor is entitled to a contract time extension.

Actual adverse weather days must also prevent work for fifty (50) percent or more of the Contractor's work day and delay scheduled work critical to the timely completion of the project. The City will convert any delays meeting the above requirements to calendar days and extend the contract period as necessary. No additional compensation will be allowed for direct and indirect overhead expenses associated with any such contract time extensions. The Contractor's schedule must include the above anticipated adverse weather delays for all weather dependent activities and shall show all weekends and holidays.

108.8 GUARANTEE AND WARRANTY PROVISIONS:
(revise to include the following)

If requested by the City, the Contractor shall return to the project site eleven months after acceptance of the project and visually inspect, in the presence of the Owner's Representative, all accessible construction items and appurtenances. All defective materials and/or workmanship shall be satisfactorily repaired or replaced at the sole expense of the Contractor.

All costs for the 11-month inspection and repair shall be borne by the Contractor and in figuring his or her bid, the Contractor shall include an appropriate amount for such inspection and possible required repair, and no additional payment will be allowed.

108.10 FORFEITURE AND DEFAULT OF CONTRACT:
(revise to include new section)

Due to Failure to Prosecute the Work

If the Contractor fails to prosecute the work in accordance with the contract, including requirements of the progress schedule, the City may correct these deficiencies after three days after providing written notice to the Contractor. The cost of these remedies shall be charged against the Contractor. A change order may be issued to make the necessary changes in the contract and to make an appropriate reduction in the contract price. Such a change order shall not require the signature or approval of the Contractor. The remedy shall not prejudice the City's use of any other remedy, which the City may be entitled to use.

108.12 AUTHORIZED SIGNATURES:
(revise to include new section)

The Contractor shall provide a notarized list of all authorized signatures for project related documents. Only those individuals listed by the Contractor on the project Authorized Signature form shall be authorized to sign the contract, contract change orders, time extensions, bonds, securities, pay requests, certifications or other documents that affect the execution of the Contract.

108.13 SUBSTANTIAL COMPLETION:
(revise to include new section)

The project is substantially complete within the contract time and liquidated damages will no longer be assessed when the following have occurred:

(A) All contract items of work have been substantially completed and pedestrian and vehicular traffic can move unimpeded through the project;

(B) The only work left for completion is incidental, causes no disruption to pedestrian and vehicular traffic, and does not affect the safety and convenience of the public;

The decision whether the project is substantially complete is within the sole discretion of the Project Manager. At that time, a *Substantial Completion* letter will be issued by the City to the Contractor.

The remaining incidental work shall be completed within 15 calendar days from the issuance of the *Substantial Completion* letter. Failure to prosecute the remaining work within this time-period will result in the resumption of time charges and the application of liquidated damages from the date scheduled for final acceptance and start of warranty.

The start of the project warranty period will be established in the *Notice of Final Acceptance* and does not begin with substantial completion.

The Contractor is responsible for correction and repair of any project deficiencies until the end of the warranty period established in the *Notice of Final Acceptance* at which time the City will accept the improvements for operation and maintenance.

108.14 SUSPENSION and TERMINATION:
(revise to include new section)

CITY'S RIGHT TO STOP WORK

The City may, at its discretion and without cause, order the Contractor in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.

The Contractor may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by the City.

TERMINATION FOR CONVENIENCE

Upon receipt of written notice to the Contractor, the City may, at its discretion and without cause, elect to terminate this Agreement. In such event, the City shall pay the Contractor only the direct value of its completed Work and materials supplied as of the date of termination. The Contractor shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead.

If the City suspends the Work for one hundred eighty-one (181) consecutive days or more, such suspension shall be deemed a termination for convenience.

Upon such termination, the Contractor shall proceed with the following obligations.

1. Stop Work as specified in the notice.
2. Place no further subcontracts or orders.
3. Terminate all subcontracts to the extent they relate to the work terminated. The Contractor shall ensure that all subcontracts contain this same termination for convenience provision.
4. At the City's sole discretion and if requested in writing by the City, assign to the City all right, title and interest of the Contractor under the subcontracts subject to termination.
5. Take any action that may be necessary for the protection and preservation of the property related to this Agreement that is in the possession of the Contractor and in which the City has or may acquire an interest.

6. The Contractor shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the date of the notice of termination.

The City shall pay the Contractor the following:

1. The direct value of its completed Work and materials supplied as of the date of termination.
2. The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit, anticipated overhead, or costs arising from the Contractor's failure to perform as required under this Agreement.
3. The Contractor shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead. If it is determined that the Contractor would have sustained a loss on the entire Work had they been completed, the Contractor shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

The Contractor shall maintain all records and documents for three (3) years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.7.

THE CITY'S RIGHT TO PERFORM AND TERMINATE FOR CAUSE

If the City provides the Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions and the Contractor fails to comply in a time frame specified, the City may have work accomplished by other sources at Contractor's sole expense.

If the Contractor persistently fails to

1. provide a sufficient number of skilled workers,
2. supply the materials required by the Contract Documents,
3. comply with applicable Legal Requirements,
4. timely pay, without cause, sub-consultants and/or subcontractors,
5. prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, or
6. perform material obligations under the Contract Documents, then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth below.

Upon the occurrence of an event set forth above, the City may provide written notice to the Contractor that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of the Contractor's receipt of such notice.

If the Contractor fails to cure, or reasonably commence to cure, such problem, then the City may give a second written notice to the Contractor of its intent to terminate within an additional seven (7) day period.

If the Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then the City may declare this Agreement terminated for default by providing written notice to the Contractor of such declaration.

Upon declaring this Agreement terminated and for the purpose of completing the Work, the City may enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work. The Contractor hereby transfers, assigns and conveys all items, which have been purchased or provided for the performance of the Work to the City for such purpose and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, the Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the Contractor shall be entitled to be paid only for Work performed and accepted by the City prior to its default.

If the City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then the Contractor shall be obligated to pay the difference to the City. Such costs and expenses shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the re-procurement and defense of claims arising from the Contractor's default.

If the City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of 108.14

SECTION 109 - MEASUREMENTS AND PAYMENTS

109.1 MEASUREMENT OF QUANTITIES: (revise to include the following)

It is the responsibility of the Contractor to conform to the Contract Documents, including plans, typical sections and specifications including but not be limited to dimensions, materials, application rates and densities. The Contractor shall take all actions necessary to ensure that the work conforms to the contract documents. The Contractor shall cooperate fully with the Project Manager or Project Manager's representative to correct any known nonconformity to the contract documents.

109.1 MEASUREMENT OF QUANTITIES:
(delete the second paragraph)

Unless otherwise specified, longitudinal and surface (plane) measurements will be made in a horizontal plane.

PART 200 - EARTHWORK

SECTION 201 - CLEARING AND GRUBBING

201.3 CONSTRUCTION METHODS:
(revise to include the following)

The Contractor shall make every effort possible to avoid damaging existing trees. In the event that any trees suffer limb damage, the Contractor shall cut branches to the nearest branch crotch or to the branch collar at the trunk.

No separate payment will be made for trimming trees. The cost shall be considered incidental to the work.

SECTION 205 – ROADWAY EXCAVATION

205.1 DESCRIPTION
(revise to include the following)

The bid schedule unit cost for excavation, backfill and embankment work shall include the cost of rock excavation, handling rock or disposing of rock and no separate measurement or payment shall be made. Rock shall be defined as any highly cemented or hard material that may require additional efforts for removal, handling or disposal.

205.2 UNSUITABLE MATERIAL:
(third paragraph, revise to read as follows)

Should unsuitable material be encountered at subgrade elevation in cut areas or at existing grade in fill areas, the unsuitable material shall be removed and replaced with suitable fill material in accordance with MAG Section 210 and MAG Section 211.

Determination of unsuitable material and the limits and depths of required removal and replacement shall be at the sole discretion of the Project Manager. In no case shall any unsuitable material be removed without prior written consent of the Project Manager.

Measurement and payment for removal and replacement of unsuitable material will be by the cubic yard as shown in the proposal. Payment shall be compensation in full for the work complete and in-place including any borrow, permits, pit royalties, all excavation, hauling, placing, compacting, conditioning, watering and proper disposal, together with all appurtenant costs.

205.3 MEASUREMENT

(revise to include the following)

Earthwork is incidental to the roadway construction and no additional payment will be made for roadway excavation. The Contractor shall be responsible for estimating and accounting for earthwork import and haul off. It is recommended that the Contractor review the report on geotechnical investigation and sampling results.

PART 300 -- STREETS AND RELATED WORK

SECTION 301 - SUB-GRADE PREPARATION

301.1 DESCRIPTION:

(revise to include the following)

The untreated base or prepared subgrade shall be test rolled in the presence of the Project Manager prior to the placement of asphalt paving materials. The equipment used to perform the test roll shall be approved by the Project Manager. The Contractor shall be responsible for scheduling this test roll with the Inspector during regularly scheduled work. All costs associated with the test roll shall be considered incidental to and included in the cost of sub-grade preparation.

SECTION 336 - PAVEMENT MATCHING AND SURFACING REPLACEMENT

336.1 DESCRIPTION:

(first paragraph, revise to include the following)

The exact points of pavement matching shall be determined in the field by the Project Manager.

336.2 MATERIALS AND CONSTRUCTION METHODS:

336.2.1 PAVEMENT WIDENING OR EXTENSIONS:

(first paragraph, revise second sentence to read as follows)

The minimum depth of cut shall be four (4) inches or $\text{Depth}/4$, whichever is greater.

PART 400 -- RIGHT-OF-WAY AND TRAFFIC CONTROL

SECTION 401 - TRAFFIC CONTROL

401.5 GENERAL TRAFFIC REGULATIONS:

(revise to include the following)

Within seven (7) calendar days following receipt of the Notice of Award and in accordance with Section 108.1 of these General Provisions, the Contractor shall submit to the Project Manager a traffic control plan that shows the control of traffic in accordance with Part VI of the FHWA Manual on Uniform Traffic Control Devices for all phases of the work. The plan should include nights, weekends, shut down periods and an approximate schedule of street closures and detours.

The Traffic Control Plan is to detail the Contractor's proposal for routing traffic and pedestrians around the areas of construction. The Plan shall be coordinated with the proposed construction schedule and show how the locations of the various traffic and pedestrian control devices will change as construction progresses. The Plan shall allow for complete detours around the work areas.

Private and commercial driveways shall not be closed for any period exceeding eight hours during any twenty-four-hour period. The affected resident and the City shall be notified 48 hours in advance of any closure. Convenient access to driveways, houses and buildings along the line of work shall be maintained and temporary crossings or alternate access shall be provided and maintained in good condition, except during that period mentioned above. **Business access shall be maintained at all times by at least one driveway.**

(eleventh paragraph, revise to read as follows)

The Contractor will reinstall all permanent traffic control devices as required by the approved construction plans and specifications.

(twelfth paragraph, delete the last sentence)

Delete - The Traffic Engineering Department will reinstall all traffic signs.

401.7 PAYMENT:

(revise paragraph to read as follows)

Payment for all work and materials required to prepare a traffic control plan and provide traffic control during construction shall be made at the lump sum price shown on the Bid Schedule. Full compensation for any required traffic control devices, flaggers, uniformed off-duty law enforcement

officers, pilot cars and drivers shall be included in the lump sum contract price and no additional payment shall be allowed. Progress payments shall be made based on the Contractor's estimate for percent complete as approved by the Owner.

SECTION 425 TOPSOIL

425.2 MATERIALS: (revise to read as follows)

Overburden topsoil shall be salvaged and reused when possible. All topsoil, whether overburden or imported, shall be free of roots, heavy clay, clods, noxious weed seeds, coarse sand, large rocks, sticks, brush, litter and other deleterious material and meet the requirements of MAG Section 795. The Project Manager's approval of the proposed topsoil shall be obtained before delivery to the project.

425.4 MEASUREMENT: (revise paragraph to read as follows)

Topsoil shall be measured lump sum, complete and in place unless indicated otherwise by the bid schedule.

425.5 PAYMENT: (revise to read as follows)

Topsoil will be paid for in accordance with the contracted price for furnishing and placing topsoil, as described and specified. Progress payment shall be made based on the Contractor's estimate for percent complete as approved by the Owner.

SECTION 430 – LANDSCAPING AND PLANTING (revise to include section as follows)

430.3 LAWN AREAS

430.3.1 Preparation of In Place Soil (delete the second paragraph and revise to read as follows)

After clearing, grubbing and initial cultivation has been completed, a slow release chemical fertilizer shall be mechanically spread over the turfgrass area at an average rate of 1 pound of actual nitrogen per 1000 square feet. After spreading, the fertilizer shall be cultivated into the top four inches of soil using suitable equipment. The resulting soil shall be in a friable condition suitable for planting. (Actual nitrogen is determined by using the nitrogen ratio number x weight of the bag/100).

430.3.2 Seeding

(delete the first and second paragraph revise to read as follows)

The rate of seeding shall be three pounds of seed per 1000 square feet using the following seed mixture;

Poa pratensis	Kentucky Bluegrass (mix of three varieties)	70%
Lolium perenne	Perennial Rye Grass	10%
Festuca rubra	Creeping Red Fescue	20%

Alternative species may be acceptable but are subject to prior approval from the City Project Manager or duly authorized representative.

SECTION 431 – EROSION CONTROL

(revise to include new section as follows)

431.1 DESCRIPTION

Erosion control applies to improvements within the city and as part of the erosion control section of a Storm Water Pollution Prevention Plan (SWPPP). Materials, means and methods for erosion control and stabilization, Best Management Practices (BMPs), Erosion Control Plans (ECPs) and SWPPPs are described in the City of Flagstaff Stormwater Design Manual.

The Contractor shall stabilize all disturbed areas within the project site and as shown on the plans. Work shall be performed according to the provisions of this Section and shall include but not be limited to the furnishing, hauling, placement and application of erosion control materials.

The Contractor is responsible for complying with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit program. This generally includes submittal of a Notice of Intent to the Arizona Department of Environmental Quality (ADEQ) and Notice of Termination to ADEQ for the project. Preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) for the site is required per ADEQ and City of Flagstaff standards.

The cost for complying with the NPDES permit and the SWPPP, including the erosion control devices, shall be included in the NPDES & SWPPP Requirements portion of the Contractor’s bid. It is recommended that contractors see the ADEQ Smart NOI (Notice of Intent) program website (<http://az.gov/webapp/noi/main.do>) for information and processes.

Progress payment shall be made based on the Contractor’s estimate for percent complete as approved by the Owner.

432.1 NATIVE SEEDING

All areas to be seeded that are accessible to machinery shall be tilled to a minimum depth of four (4) inches. Areas inaccessible to machinery shall be hand tilled and prepared to a minimum depth of two (2) inches. Cut slopes of 2:1 or steeper do not require tilling. Cultivation on sloping terrain shall run perpendicular to the direction to the slope. If weeds or herbaceous plant material interferes with proper seedbed preparation, the contractor shall remove them from the seedbed.

Contractor shall remove and dispose of all debris and other objectionable material that may interfere with seeding operations.

The area to be seeded shall be relatively smooth and all surface irregularities (e.g. rills, tire marks) shall be filled and firmed to conform to the desired cross sections. The seedbed shall be rolled both before and after the seeding operation with a minimum of one pass of a cultipacker or drag harrow.

Seed shall be sown when conditions will promote germination and growth. Normal non-irrigated permanent native seed application dates are between April 1 and June 15, between August 15 and September 20 and after the first frost (recurring overnight temperature of 28 degrees F) until snowfall. Seeding work shall be performed only after planting and other work affecting ground surface is complete.

To assist in establishment of the permanent seed mix, a nurse crop shall be used for this work. Preapproved nurse crop seed shall be one of the following, incorporated with the specified permanent seed mix;

Annual ryegrass	<i>(Lolium multiflorum)</i>	30 lbs/acre
Oats	<i>(Avena sativa)</i>	60 lbs/acre
Regreen©	<i>(Triticum aestivum x Elytrigia elongata)</i>	30 lbs/acre

Alternative species may be acceptable but are subject to prior approval from the City Project Manager or duly authorized representative.

When cut or fill slopes are greater than six (6) feet in height and steeper than 3H:1V, the seeded area shall be covered with American Excelsior Company straw/coconut blanket or an approved equal. Installation shall be per the manufacturer’s written directions.

440.10. (D) SEQUENCING
(add the following section)

The irrigation system shall be installed, inspected, approved and operable prior to the installation of plant materials, landscape fabric and ground plane treatments (*decomposed granite, landscape rock, mulch, etc.*)

PART 600 - WATER AND SEWER

SECTION 601 - TRENCH EXCAVATION, BACKFILLING AND COMPACTION

601.2 EXCAVATION:

601.2.1 GENERAL:
(revise to include the following)

All excavation, including trench excavation, shall be performed in any substance and material encountered. The cost is considered incidental to and is to be included in the price for the bid item to be constructed or installed. No special payment shall be made for trench excavation other than rock excavation as specified under Trench Rock Excavation.

Trench Rock Excavation

Trench rock is defined as consolidated igneous, metamorphic and/or sedimentary material in the original bed and/or in well-defined ledges that cannot be removed by a mechanical method and therefore requires pneumatic hammering, drilling or blasting for removal. Example of mechanical methods include hand tools, trenching machine, backhoe, ≥ 195 horsepower hydraulic excavator with ripping teeth or equivalent.

Boulders and pieces of rock having a volume of more than 27 cubic feet (1 cubic yard) shall be considered rock.

For projects where trench rock excavation is anticipated, the estimated contingent quantity is shown in the proposal under the applicable bid item. The contingency quantity is an estimate only and no guaranty is given that any portion will be utilized. Trench rock excavation will be paid for separately at the unit price bid per cubic yard for Trench Rock Excavation.

Measurement of Trench Rock Excavation shall be per cubic yard in place. This volume of rock will be measured by the City representative, using the maximum trench width allowed in accordance with MAG Table 601-1, the lineal footage of actual rock excavation required and the actual depth of rock as determined by inspection of the trench after rock excavation and before backfilling.

SECTION 611 – WATER, SEWER AND STORM DRAIN TESTING

611.2 DISINFECTING WATER MAINS:

611.2.13 Fire Flow Testing:
(revise to include the following new section)

All water lines that have new fire hydrants shall require a fire flow test per CoF Engineering Standard 13-09-006-0006.1.

Fire flow testing shall be performed by a certified tester. Results shall be sealed by an Arizona Professional Engineer.

The City Water Services Section requires a 72-hour notice via e-mail to schedule hydrant operation and testing observation. A digital copy of the test results shall be submitted to the City Project Manager.

SECTION 631 WATER TAPS AND METER SERVICE CONNECTIONS

(revise to add the following)

631.3 INSTALLATION:

New water service lines shall be installed to replace the existing water service lines. Construction includes replacement of all water services to COF Engineering Standards, including the service saddle at the main, corporation stop, pipe and curb stop to the meter and adjust the customers' service to the new outlet meter coupling elevation. The lines shall be extended to the new polymer meter box location and a new meter box shall be installed and shall connect to the existing meter. If the existing meter is not at the City's standard depth; the contractor shall adjust the elevation of the meter. In cases where the meter box moves, the contractor shall salvage the existing meter and shift it to the proposed location. At each of these locations the contractor is required to connect the existing water services on the private side of the meter. The Contractor shall coordinate with each homeowner where private construction is required to verify the water line rerouting and to restore landscaping to its original condition.

The City will provide the contractor with Temporary Rights of Entry for the water service connection, replacement/adjustment of water meter boxes and associated work. If the contractor needs to go outside the Temporary Right of Entry limits they will have to provide the City with written permission from the property owner prior to conducting the work.

A residential plumber's license will be required for all work that is done on the private service side of the meter.

City of Flagstaff utility tapping fees are the responsibility of the contractor. The contractor shall perform all work and coordinate payment directly with the City Water Services Department. All costs for utility tap work and fees shall be included in the line item for installation of the new service, including but not limited to all labor and materials for complete installation. Repair associated within any abandoned or new tap shall be included in the contract bid item.

SECTION 710 - ASPHALT CONCRETE

710.1 GENERAL:
(revise to include the following)

The asphaltic concrete designation shall be 3/4 inch, except as required by the project plans or Special Provisions.

End of Document

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
:
Co-Submitter: Rick Tadder, Management Services Director
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE:

Authorization for Partial Settlement of Tax Litigation: *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234 (2019).

STAFF RECOMMENDED ACTION:

Authorize City Manager to approve partial settlement of the tax lawsuit, *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234 (2019).

Executive Summary:

City staff is requesting that the City Manager be authorized to approve partial settlement of the lawsuit, *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234 (2019), which continues to be litigated on remand in the trial court. This tax litigation was filed in order to collect local transaction privilege taxes, penalties and interest from online travel companies ("OTCs").

Financial Impact:

Financial impact is confidential. State law prohibits disclosure of taxpayer information without consent of the taxpayer.

Policy Impact:

The City strives to ensure all taxpayers pay their fair share of taxes.

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

Priority Based Budget Key Community Priorities/Objectives

High performing governance: Enhance the organization's fiscal stability and increase efficiency and effectiveness (SP)3.1/ (RP)CD.

Has There Been Previous Council Decision on This:

In 1987, the City Council adopted the Model City Tax Code, which includes authority to pursue collection of local transaction privilege taxes.

In 2013 the City Council approved an agreement with outside legal counsel for collection of local taxes from the online travel companies. The Cities are being represented by an Arizona firm, Wright Welker & Pauole PLC, and a law firm based in Atlanta, Georgia. As consideration for legal services, outside legal

counsel is entitled to payment of a 27% contingency fee from any amount recovered plus its costs.

City Council has received legal advice and litigation updates regarding this lawsuit on several occasions.

In September 2021 the City Council received legal advice and provided direction to City staff regarding this lawsuit.

Options and Alternatives:

1. Motion to authorize City Manager to approve partial settlement of lawsuit. This will result in partial settlement of the lawsuit.

2. No action. In this case, the litigation with all parties will continue.

Background/History:

This lawsuit arose because the Cities conducted a multi-jurisdictional audit of the OTCs for the audit period of 2000-2009. As a result of the audit, in 2013 an assessment was issued against the OTCs. However, the OTCs asserted they are not legally obligated to pay taxes, and appealed through all levels of the courts.

In November 2019 the Arizona Supreme Court ruled that OTCs are liable for payment of tax on gross income under Section -444 Hotels of the Model City Tax Code, but not under Section -447 Transient Lodging. *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234 (2019) Taxes are due from and after the court's decision. However, the case was remanded to the trial court to determine whether or not the taxpayers are liable for payment of taxes prior to the court's decision. The parties have continued to litigate the case to reach such a determination.

All of the above information is a matter of public record.

Key Considerations:

The proposed partial settlement of this lawsuit is fair and appropriate, in the opinion of staff from the City of Flagstaff and other cities who have been monitoring the litigation.

Community Involvement:

The purpose of this staff report is to inform. Per state law, taxpayer information is confidential except to the extent it is a public record (such as court filings) or voluntarily released to the public.

Attachments:

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Jerry Bills, Deputy Fire Chief
Co-Submitter: Stacey Brechler-Knaggs
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE:

Consideration and Approval of Grant Agreement: Approval the Grant Agreement between the City of Flagstaff and the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) for six (6) new Firefighters.

STAFF RECOMMENDED ACTION:

Approve the Grant Agreement with the Department of Homeland Security for the FY 2020 Staffing for Adequate Fire and Emergency Response (SAFER) Grant in the amount of \$1,436,864.10 for the staffing of six (6) new Firefighters over the next three (3) years.

Executive Summary:

Currently both Fire Administration and Council have given support to increase staffing through the grant application process to help meet both the National Fire Protection Administration 1710 deployment standards and the significant increase in call volume for our community. This Grant will help the department by increasing staffing levels by two members per shift, while adding an additional two-person rescue unit. By adding six (6) new FTE's and increasing our minimum staffing, it will move us toward improving our 1710 standard response for fire scenes, increase safety to our members.

Financial Impact:

The grant application was submitted on March 11,2021, in the amount of \$1,436,864.10. This covered current personnel costs plus current benefits costs over the next three (3) years. The City's share amount is \$0 and FEMA's share amount is \$1,436,864.10.

Per the grant rules, the cost for employees and benefits had to match the current amounts being paid (as of March 2021) and could not be for expected or known increases in the new fiscal year. The Grant pays 100% for 3 years. In Year Four, the City is 100% responsible for all costs associated with the six (6) new firefighters.

This grant is budgeted in FY 2021-22 in the amount of \$483,201 in account number 001-03-052-6046-2 which will cover the first year of expenses. The General Fund 5-year plan has reserved funds for the remaining years of the grant plus the ongoing expense for year four.

In addition, the adopted budget includes the costs for adding three paramedic slots and promoting three fire captains to support the grant and expansion of services in the amount of \$86,000.

Policy Impact:

No policy impact.

Connection to PBB Key Community Priorities/Objectives & Regional Plan:**Priority Based Budget Key Community Priorities and Objectives**

Provide public safety with the resources, staff, and training to respond to community needs

Regional Plan

Goal PF.2. Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics.

Has There Been Previous Council Decision on This:

None

Options and Alternatives:

- Approval and accept the SAFER Grant Agreement which will provide funding to hire six (6) firefighters.
- Do not approve and accept the Grant Agreement and the funds will be returned and no additional firefighters will be hired.

Background/History:

The City had two separate needs assessments performed in 2003 and 2007 to determine the adequate staffing levels of the fire department for our community when the alarm load was 8200 calls a year. The recommendation of the assessments were both conclusive that we needed two additional units and 18 new members to be in the best position to meet NFPA 1710 based on call volume at that time.

In 2008 we were successfully awarded a SAFER grant for six (6) new firefighters, but due to the onset of the great recession we turned these awarded positions down. Since that time, we have lost nine (9) firefighter positions from 2008-2012 while seeing a 50% increase in call volume (15,700) during that same time. In 2015, the City entered into an IGA with Summit Fire Department to share resources and the IGA was extended in 2017. A SAFER grant in 2016 had provided 6 personnel to assist in retuning to 2008 levels. In the FY 2021-2022 budget funding is allocated for three new firefighter EMTs to support an alternate response model.

Currently both Fire Administration and Council have given support to increase staffing through grant application processes to help meet both the 1710 standards and the significant increase in call volume for our community. This grant will help the department by increasing staffing levels by two members per shift, while adding an additional two-person rescue unit.

Key Considerations:

This project will regain much needed personnel that was lost through the great recession. While we are increasing the number per shift by two (2) through the acceptance of this grant. Currently we are fully staffed at twenty-seven (27) members per shift and have a minimum staffing level of twenty-one (21). With the addition of a Rescue unit to each shift our minimum staffing will be 23, and the total number of shift personnel would be twenty-nine (29).

Expanded Financial Considerations:

This is a 100% federal grant for 3 years. The following is the breakdown of yearly cost FEMA is providing: Year 1, \$466,139.66, Year 2, \$478,826.88, Year 3, \$491,884.86 for a total of \$1,436,864.10 during the grant period. The numbers include PSPRS contributions, market pay adjustments, and ERE for each of the 6 personnel for 3 years.

In addition, the City is funding the ongoing cost for these positions beyond year three and the cost of adding 3 paramedics slots and promoting 3 fire captains to add to the success of the grant.

Community Benefits and Considerations:

The benefits are largely two-fold; We will have the ability to put up an additional Rescue unit therefore, reducing the workload on the other 6 units. Also, uses a lighter and more agile vehicle for the bulk of EMS alarm in its district.

Attachments: [SAFER Agreement](#)

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 08/31/2021

Stacey Brechler-Knaggs
CITY OF FLAGSTAFF
FLAGSTAFF CITY HALL 211 W ASPEN AVE
FLAGSTAFF, AZ 86001



EMW-2020-FF-01522

Dear Stacey Brechler-Knaggs,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2020 Staffing for Adequate Fire and Emergency Response (SAFER) Grant funding opportunity has been approved in the amount of \$1,436,861.10 in Federal funding.

FEMA has waived, in part or in full, one or more requirements for this grant award. See the Summary Award Memo for additional information about Economic Hardship Waivers.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2020 SAFER Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A handwritten signature in blue ink that reads "Robert Farmer".

Robert Farmer
Acting Deputy Assistant Administrator
Grant Programs Directorate

Summary Award Memo

Program: Fiscal Year 2020 Staffing for Adequate Fire and Emergency Response

Recipient: CITY OF FLAGSTAFF

DUNS number: 088302625

Award number: EMW-2020-FF-01522

Summary description of award

The purpose of the SAFER Grant Program is to provide funding directly to fire departments and volunteer firefighter interest organizations to assist in increasing the number of firefighters to help communities meet industry minimum standards and attain 24-hour staffing to provide adequate protection from fire and fire-related hazards, and to fulfill traditional missions of fire departments. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application — including budget information — was consistent with the SAFER Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for FY2020 Staffing for Adequate Fire and Emergency Response (SAFER) funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Approved Economic Hardship Waivers

Position cost limit waiver

FEMA has waived the position cost limit requirement for this grant award. Costs are limited to the approved budget.

Cost share waiver

FEMA has waived the cost share requirement for this grant award. You are not required to contribute non-Federal funds for this grant award. The recipient is responsible for any costs that exceed the Federal funding provided for this grant award.

Minimum budget waiver

FEMA has waived the minimum budget requirement for this award.

Non-supplanting waiver

FEMA has waived the non-supplanting requirement for this award. SAFER grant funds may be used to replace funds that would be available from State or local sources or from the Bureau of Indian Affairs.

Amount awarded table

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the total approved budgeted estimates for object classes for all funded firefighter positions for this award (including Federal share plus your cost share, if applicable, as applied to the estimated costs):

Object Class	First Year	Second Year	Third Year	Total
Personnel	\$342,435.84	\$351,592.92	\$361,024.68	\$1,055,053.44
Fringe benefits	\$123,713.52	\$127,233.96	\$130,860.18	\$381,807.66
Travel	\$0.00	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00	\$0.00
Indirect charges	\$0.00	\$0.00	\$0.00	\$0.00
Federal	\$466,149.36	\$478,826.88	\$491,884.86	\$1,436,861.10
Non-federal	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$466,149.36	\$478,826.88	\$491,884.86	\$1,436,861.10
Program Income				\$0.00

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2020 SAFER NOFO.

Approved request details:

Hiring of Firefighters

New, Additional Firefighter(s)

BENEFITS FUNDED

Retirement is 13%, Medicare 1.5% Health care 17% dental life, and vision insurance 1.3%, worker Comp insurance 2.7% Total ERE 35.5%

NUMBER OF FIREFIGHTERS

6

	ANNUAL SALARY PRICE	ANNUAL BENEFITS	TOTAL PER FIREFIGHTER
Year 1	\$57,072.64	\$20,618.92	\$77,691.56
Year 2	\$58,598.82	\$21,205.66	\$79,804.48
Year 3	\$60,170.78	\$21,810.03	\$81,980.81
3 Year Total	\$1,436,861.10		

Agreement Articles

Program: Fiscal Year 2020 Staffing for Adequate Fire and Emergency Response

Recipient: CITY OF FLAGSTAFF

DUNS number: 088302625

Award number: EMW-2020-FF-01522

Table of contents

Article 1 Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

Article 2 DHS Specific Acknowledgements and Assurances

Article 3 Acknowledgement of Federal Funding from DHS

Article 4 Activities Conducted Abroad

Article 5 Age Discrimination Act of 1975

Article 6 Americans with Disabilities Act of 1990

Article 7 Best Practices for Collection and Use of Personally Identifiable Information

Article 8 Civil Rights Act of 1964 – Title VI

Article 9 Civil Rights Act of 1968

Article 10 Copyright

Article 11 Debarment and Suspension

Article 12 Drug-Free Workplace Regulations

Article 13 Duplication of Benefits

Article 14 Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Article 15 Energy Policy and Conservation Act

Article 16 False Claims Act and Program Fraud Civil Remedies

Article 17 Federal Debt Status

Article 18 Federal Leadership on Reducing Text Messaging while Driving

Article 19 Fly America Act of 1974

Article 20 Hotel and Motel Fire Safety Act of 1990

Article 21 Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Article 22 Lobbying Prohibitions

Article 23 National Environmental Policy Act

Article 24 Nondiscrimination in Matters Pertaining to Faith-Based Organizations

Article 25 Non-Supplanting Requirement

Article 26 Notice of Funding Opportunity Requirements

Article 27 Patents and Intellectual Property Rights

Article 28 Procurement of Recovered Materials

Article 29 Rehabilitation Act of 1973

Article 30 Reporting of Matters Related to Recipient Integrity and Performance

Article 31 Reporting Subawards and Executive Compensation

Article	SAFECOM
32	
Article	Terrorist Financing
33	
Article	Trafficking Victims Protection Act of 2000 (TVPA)
34	
Article	Universal Identifier and System of Award Management
35	
Article	USA PATRIOT Act of 2001
36	
Article	Use of DHS Seal, Logo and Flags
37	
Article	Whistleblower Protection Act
38	
Article	Acceptance of Post Award Changes
39	
Article	Prior Approval for Modification of Approved Budget
40	
Article	Disposition of Equipment Acquired Under the Federal Award
41	
Article	Environmental Planning and Historic Preservation (EHP) Review
42	
Article	Award Performance Goals
43	

Article 1**Assurances, Administrative Requirements, Cost Principles, Representations and Certifications**

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002. By accepting this agreement, the recipient and its executives, as defined in 2 C.F.R. § 170.315, certify that the recipient policies are in accordance with OMB guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

Article 2**DHS Specific Acknowledgements and Assurances**

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. 1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS. 2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance. 3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. 4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance. 5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administrative Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

<p>Article 3</p>	<p>Acknowledgement of Federal Funding from DHS Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.</p>
<p>Article 4</p>	<p>Activities Conducted Abroad Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.</p>
<p>Article 5</p>	<p>Age Discrimination Act of 1975 Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.</p>
<p>Article 6</p>	<p>Americans with Disabilities Act of 1990 Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.</p>
<p>Article 7</p>	<p>Best Practices for Collection and Use of Personally Identifiable Information Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf and Privacy Template at https://www.dhs.gov/sites/default/files/publications/privacy_pia_template_2017.pdf as useful resources respectively.</p>
<p>Article 8</p>	<p>Civil Rights Act of 1964 – Title VI Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.</p>

Article 9	Civil Rights Act of 1968 Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)
Article 10	Copyright Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.
Article 11	Debarment and Suspension Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
Article 12	Drug-Free Workplace Regulations Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).
Article 13	Duplication of Benefits Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

<p>Article 14</p>	<p>Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.</p>
<p>Article 15</p>	<p>Energy Policy and Conservation Act Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.</p>
<p>Article 16</p>	<p>False Claims Act and Program Fraud Civil Remedies Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)</p>
<p>Article 17</p>	<p>Federal Debt Status All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)</p>
<p>Article 18</p>	<p>Federal Leadership on Reducing Text Messaging while Driving Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.</p>
<p>Article 19</p>	<p>Fly America Act of 1974 Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.</p>
<p>Article 20</p>	<p>Hotel and Motel Fire Safety Act of 1990 In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, (codified as amended at 15 U.S.C. § 2225.)</p>

Article 21 **Limited English Proficiency (Civil Rights Act of 1964, Title VI)**
Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article 22 **Lobbying Prohibitions**
Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article 23 **National Environmental Policy Act**
Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article 24 **Nondiscrimination in Matters Pertaining to Faith-Based Organizations**
It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article 25 **Non-Supplanting Requirement**
Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article 26	Notice of Funding Opportunity Requirements All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.
Article 27	Patents and Intellectual Property Rights Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
Article 28	Procurement of Recovered Materials States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
Article 29	Rehabilitation Act of 1973 Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 U.S.C. § 794) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
Article 30	Reporting of Matters Related to Recipient Integrity and Performance If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.
Article 31	Reporting Subawards and Executive Compensation Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

<p>Article 32</p>	<p>SAFECOM Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.</p>
<p>Article 33</p>	<p>Terrorist Financing Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.</p>
<p>Article 34</p>	<p>Trafficking Victims Protection Act of 2000 (TVPA) Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.</p>
<p>Article 35</p>	<p>Universal Identifier and System of Award Management Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.</p>
<p>Article 36</p>	<p>USA PATRIOT Act of 2001 Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, which amends 18 U.S.C. §§ 175-175c.</p>
<p>Article 37</p>	<p>Use of DHS Seal, Logo and Flags Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.</p>
<p>Article 38</p>	<p>Whistleblower Protection Act Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.</p>

Article 39 Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@fema.dhs.gov if you have any questions.

Article 40 Prior Approval for Modification of Approved Budget

Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. § 200.308. FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. § 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article 41 Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its subrecipients is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. § 200.313.

Article 42**Environmental Planning and Historic Preservation (EHP) Review**

DHS/FEMA funded activities that may require an EHP review are subject to the FEMA Environmental Planning and Historic Preservation (EHP) review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state, and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP Review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws and Executive Orders. To access the FEMA EHP screening form and instructions, go to the DHS/FEMA website at: <https://www.fema.gov/media-library/assets/documents/90195>. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive order, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article 43**Award Performance Goals**

FEMA will measure the recipient's performance of the grant by comparing the firefighter hiring activities of new, additional firefighters, rehire laid off firefighters, or retain firefighters facing layoff OR recruitment and retention activities of volunteer firefighters who are involved with or trained in the operations of firefighting and emergency response as requested in its application. In order to measure performance, FEMA may request information throughout the period of performance. In its final performance report submitted at closeout, the recipient is required to report on the recipients increased compliance with the National standards described in the NOFO.

Obligating document

1. Agreement No. EMW-2020-FF-01522	2. Amendment No. N/A	3. Recipient No. 866000244	4. Type of Action AWARD	5. Control No. WX00586N2021T		
6. Recipient Name and Address CITY OF FLAGSTAFF 211 W ASPEN AVE FLAGSTAFF, AZ 86001		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Stacey Brechler-Knaggs	9a. Phone No. 9286995585	10. Name of FEMA Project Coordinator Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program		10a. Phone No. 1-866-274-0960		
11. Effective Date of This Action 08/31/2021	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING	14. Performance Period 02/27/2022 to 02/26/2025 Budget Period 02/27/2022 to 02/26/2025			
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
SAFER	97.083	2021-F0-GF01 - P410-xxxx-4101-D	\$0.00	\$1,436,861.10	\$1,436,861.10	\$0.00
Totals			\$0.00	\$1,436,861.10	\$1,436,861.10	\$0.00
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)	DATE
18. FEMA SIGNATORY OFFICIAL (Name and Title) Robert Farmer, Acting Deputy Assistant Administrator Grant Programs Directorate	DATE 08/31/2021

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

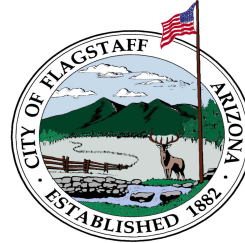
To: The Honorable Mayor and Council

:

Co-Submitter: Allison Hughes

Date: 09/30/2021

Meeting Date: 10/05/2021



TITLE:

Consideration and Approval of Contract: Annual Master Agreement for Software Maintenance with Hexagon for software utilized by the City Police Department in the amount of \$234,359.85 (plus any applicable sales tax).

STAFF RECOMMENDED ACTION:

1. Approve the Annual Master Agreement for Software Maintenance with Hexagon in the amount of \$234,359.85 (plus any applicable sale tax); and
2. Authorize the City Manager to execute all necessary documents.

Executive Summary:

Staff is requesting approval of the Annual Master Agreement for Software Maintenance ("Software Agreement") with Hexagon. The Software Agreement is for the Flagstaff Police Department Records Management Software company to provide ongoing software licensing support and maintenance as necessary. The attached quote outlines the anticipated expenditures for the fiscal year 2021-2022. The purchase of this annual software maintenance provides the means to continue to conduct day-to-day activities of the Police Department without delay. The Software Agreement may be subject to any applicable sales tax(es) to be added at a later time.

Financial Impact:

Software maintenance is budgeted in the Police Department for FY2021-2022, account numbers 001-04-061-0221-2-4231, 001-04-061-0223-2-4231, and 001-04-061-0224-2-4231. Costs for the software are shared with Coconino County Sheriff and Northern Arizona University per Intergovernmental Agreement #A2005.

Policy Impact:

None.

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



MASTER TERMS AND CONDITIONS

These Master Terms and Conditions (the “Master Terms”) govern transactions and relations between Customer and Hexagon (each a “Party” and collectively the “Parties”).

Hexagon will make available to Customer certain proprietary software, including related proprietary Documentation; software maintenance services; Equipment/Content; DevTools; Cloud Programs; and professional services; and other items, which will be provided to Customer pursuant to these Master Terms and an Order. Before Hexagon will provide any items or services (including the Services), Customer must agree to these Master Terms and to the terms of a corresponding Order. The Parties agree these Master Terms will govern each Order. To the extent the Master Agreement purports to impose obligations, restrictions, or limitations upon Customer’s Affiliates or Users, Customer shall be responsible to Hexagon for Customer’s Affiliates’ and Users’ compliance with such terms and shall procure Customer’s Affiliates and Users compliance.

These Master Terms consist of the following:

- The General Terms and Conditions set forth below;
- Exhibit A – End User License Agreement;
- Exhibit B – Maintenance Terms and Conditions for Software;
- Exhibit C – Sample Project Deliverable Sign-Off Form;
- Exhibit D – Cloud Program Conditions;
- Exhibit E – Subscription License Terms;
- Exhibit F – COTS Training Program Terms; and
- Exhibit G – Common Terms Glossary.

GENERAL TERMS AND CONDITIONS

1 Definitions. All capitalized terms not otherwise defined herein shall have the meaning set forth in Exhibit G (Common Terms Glossary). Words used herein in the singular, where the context so permits, shall be deemed to include the plural, and vice versa.

2 Elements of an Order.

2.1 Order Composition. Each Order will be comprised of Order Documents, including any applicable Schedule(s). An Order is formed only once both Parties accept the Order Documents, which the Customer shall do by executing the Order Documents and/or issuing a PO in connection with the Order Documents. Orders shall be effective as of the date both Parties accept the Order Documents except where the Order is for a term-based offering (e.g., Subscription License), in which case the Order shall commence as of the date specified in the Order Documents, if provided.

2.2 Schedules. Any Schedules applicable to Products or items purchased in an Order are incorporated and are either included in the Order Documents or, in the absence thereof, accessible via hyperlinks contained within Exhibit G. If a Product or item is not listed in the document(s) accessed via hyperlinks provided in Exhibit G, and related Schedule(s) are not otherwise included in the Order Documents, then that Product or item does not have a corresponding Schedule.

2.3 Pricing. Order Documents shall describe basic pricing and include other details relevant to the offerings included in the Order.

2.4 Change Control. During the course of Hexagon’s performance under an Order, either Party may request a change in the scope of the Order in writing, delivered to the other Party. Any changes in price, schedule, or other terms must be documented either by an amendment or Change Order. No change, as contemplated in this paragraph, shall become effective until set forth in a mutually executed writing.

2.5 Acceptance. Acceptance will occur based upon the following:

2.5.1 For Fixed Price Project Assignments, not governed by Exhibit F, acceptance shall occur when the applicable Task Acceptance Criteria has been satisfied in accordance with the Task Acceptance Process.

2.5.2 For Time and Materials Project Assignments and Maintenance Services, the Services are accepted as performed.

2.5.3 For a Cloud Program, acceptance occurs when the License Keys are provided to Customer.

2.5.4 For all Orders not described more specifically above, acceptance occurs once the ordered item has been delivered or access to the ordered item has been provided.

3 Composition of the Master Agreement.

3.1 Components. The agreement between the Parties (herein referred to as the "Master Agreement") consists of: (1) the Primary Contracting Document, (2) these Master Terms (including the General Terms and Conditions and all Exhibits), (3) any amendments to the Master Agreement, (4) Orders, together with any Change Orders, that may be delivered, prepared, or issued after the Effective Date, and (5) all documents, including applicable Schedules and documents referenced via hyperlink, incorporated by reference in the documents identified in this Section. For certain Third Party Software, Third Party Terms will also be applicable and be considered as part of the Master Agreement.

3.2 Order of Precedence. In the event of any conflict or inconsistency among documents forming the Master Agreement, the following order of precedence shall be used to determine the resolution of the discrepancy, unless the Parties mutually agree in writing to an alternative decision:

- (1) Any amendments to the Master Agreement;
- (2) The Primary Contracting Document;
- (3) Applicable Schedules;
- (4) These Master Terms (excluding Exhibits);
- (5) Exhibits to these Master Terms; and
- (6) Order Documents, if any, in addition to items specifically identified in this Section 3.2 above.

For only Third Party Software subject to Third Party Terms, the Third Party Terms shall have precedence in the event of a conflict between the Third Party Terms and any other terms of the Master Agreement.

4 Invoicing and Payment.

4.1 Invoices. Invoices shall be issued based upon the contents of the Order.

4.1.1 For Fixed Price Project Assignments Hexagon may invoice Customer upon completion of a payment milestone identified in the Order Documents, or when applicable, in accordance with Exhibit F; provided however, if this type of Order also includes Subscription Licenses or Cloud Program(s), the fees for such shall be due in accordance with Exhibits E and D, respectively.

4.1.2 For Product(s) or items not included within an Order for a Fixed Price Project Assignment or otherwise more specifically addressed in this Section 4, Hexagon may invoice Customer for the full amount set forth in the Quote in addition to any applicable freight/shipping charges upon delivery of or access having been provided to any of the Product(s) or items identified in the Order Documents.

4.1.3 Time and Materials Project Assignments shall be billed and invoiced monthly as the hours are expended and Onsite Fees are incurred, or after all hours set forth in the Order Documents have been expended, whichever occurs first.

4.1.4 Maintenance Services not included within an Order for a Fixed Price Project Assignment or Product Order shall be billed and invoiced in accordance with Exhibit B.

4.1.5 Cloud Program(s) (even if included within a Fixed Price Project Assignment) shall be billed and invoiced in accordance with Exhibit D.

4.2 Payment. Customer shall make payment for any invoices issued by Hexagon within thirty (30) calendar days of the date the invoice was issued.

4.3 Late Payment. If Customer does not make timely payment, an interest charge of two percent (2%) per Month (or the maximum allowed by law, whichever is less), compounded monthly, will be due on any unpaid and overdue amounts. To the extent the Customer is the subject of an applicable prompt pay act statute or ordinance, the Customer shall be subject to the terms set forth in that statute(s) and/or ordinance(s) in lieu of the prior sentence. As it pertains to Equipment, Hexagon shall retain a security interest in the Equipment. If Customer is late or otherwise in default of its payment obligations for Equipment, then Hexagon may, in addition to any other remedies available, exercise remedies of a secured party regarding the Equipment.

4.4 Taxes. The purchase price is exclusive of all federal, state, and/or local taxes. Any taxes applied to this sale by a federal, state, and/or local taxing authority will be the responsibility of Customer. Such taxes do not include franchise taxes or taxes based on net income. If Customer is claiming tax-exempt status, it must submit the proper documentation satisfactory to Hexagon evidencing its tax-exempt status. Applicable taxes may be invoiced at any time such taxes become fixed and certain.

5 Term and Termination.

5.1 Term. The Term of the Master Agreement shall begin on the Effective Date and remain in effect for a period of sixty (60) consecutive Months or until the Master Agreement is earlier terminated pursuant to the terms set forth herein or by mutual agreement of the Parties. An Order that is executed prior to the expiration of the term of the Master Agreement shall be governed by the Master Agreement even if the Master Agreement Term expires during the performance of the Order. To the extent Customer executes an Order pursuant to later issued master terms, then this Master Agreement shall terminate upon completion of all Orders executed hereunder regardless of the amount of time remaining in the Term.

5.2 Termination for Convenience. Either Party may terminate the Master Agreement or an Order in its sole discretion at any time upon providing the other Party with thirty (30) days written notice. In the event of a termination pursuant to this paragraph, Customer agrees to pay Hexagon for the Work performed and Product(s) or items delivered and provided, plus the cost of any labor and/or Product(s) or items ordered in good faith prior to notice of termination that could not be canceled, less amounts previously paid by Customer for such Work and/or Product(s) or items. Hexagon is entitled to retain all amounts paid under any Order prior to termination. To the extent a Party exercises its right to terminate a specific Order, that termination shall have no effect upon the remaining Master Agreement, which, along with any other active Orders, shall remain in full force and effect. If a Party desires to terminate the Master Agreement, then the Parties shall proceed to wind down all ongoing work under the respective Orders in effect under the Master Agreement by the termination date. Each Party shall take commercially reasonable steps to bring the work to a close and to reduce its costs and expenditures.

5.3 Termination for Cause. Either Party may terminate the Master Agreement or a specific Order, as the case may be, in the event the other Party materially breaches a material term of the Master Agreement or any Order.

5.3.1 In the event a Party materially breaches an Order, the non-breaching Party may terminate the Order only after providing a sixty (60) calendar day cure period to cure such breach and the breach has not been cured, except for material breaches arising from non-payment. During the sixty (60) day cure period, the Parties shall try to determine a mutually agreeable plan to cure such breach. If such breach cannot be cured or an acceptable plan is not provided within the sixty (60) day cure period, the non-breaching Party may, but does not have the obligation to, terminate the Order.

5.3.2 In the event a Party materially breaches the Master Agreement or multiple Orders, the non-breaching Party may terminate the Master Agreement only after providing a sixty (60) calendar day cure period to cure such breach and the breach has not been cured except for material breaches arising from non-payment. During the sixty (60) day cure period, the Parties shall try to determine a mutually agreeable plan to cure such breach. If such breach cannot be cured or an acceptable plan is not provided within the sixty (60) day cure period, the non-breaching Party may, but does not have the obligation to, terminate the Master Agreement. If the Master Agreement is terminated pursuant to this paragraph, by the termination date, Hexagon will stop all Work pursuant to any Orders arising under the Master Agreement.

5.3.3 If the Master Agreement or any one or more Orders is terminated pursuant to paragraphs 5.3.1 or 5.3.2, Hexagon will stop all Work with respect to impacted Orders as soon as practicable and shall be entitled to payment for all Work performed as well as Product(s) provided on all impacted Orders up to the termination date, less amounts previously paid by Customer under the affected Orders.

5.3.4 Notwithstanding the foregoing, Hexagon may suspend its performance of or terminate any Order or the Master Agreement for cause if payment is not received within thirty (30) days following the date when payment was due. In the event an Order is suspended or terminated for cause, Hexagon shall be entitled to, and Customer agrees to pay Hexagon, payment for Work performed and/or Product(s) delivered on said Order up to the suspension or termination date, less amounts previously paid by Customer under the affected Orders. Hexagon is entitled to retain all amounts paid under any Order prior to its termination. If Hexagon suspends an Order under this paragraph, then it may thereafter terminate the Order upon giving written notice to Customer.

5.3.5 Notwithstanding the foregoing, Customer may not exercise a termination pursuant to the terms of Section 5.3 if Hexagon's material breach of the terms and conditions of the Master Agreement or any Order thereunder is caused or partially caused by Customer's negligence or failure to perform its obligations.

6 Ownership.

6.1 Customer acknowledges Hexagon will retain ownership and title of Hexagon IP made or provided pursuant to any Order. All Software (including Software embedded within Equipment) provided under the Master Agreement is licensed to Customer in accordance with Exhibit A (End User License Agreement), except as it is inconsistent with the terms set forth herein. Third Party Software, including any Software developed by a third party embedded within Equipment, is licensed to Customer pursuant to Third Party Terms or as otherwise specified in the applicable E/C Schedule.

6.2 As it pertains to any Equipment, and only Equipment, provided to Customer under an Order, the Customer shall receive title to and ownership of the Equipment identified in the Order Documents, excluding any IPR pertaining to the Equipment and Software provided with the Equipment, FOB place of origin and subject to Customer's payment of all amounts owed for the Equipment.

6.3 Customer shall own Customer Data. Customer grants Customer Data Rights to Hexagon, to, among other things, facilitate Hexagon's performance of its obligations.

7 Warranties.

7.1 Software. The Software Products licensed under Exhibit A are warranted to meet Minimal Operations Levels for a period of thirty (30) days from the initial installation; provided that Software Products covered by a Maintenance Contract between Customer and Hexagon shall instead be warranted and supported as stated in the Maintenance Contract.

7.2 Subsystem Warranty Coverage. For, and only for, new Subsystems procured/implemented pursuant to an Order under these Master Terms, the warranty coverage shall be set forth in the applicable Order Documents, which shall be in lieu of the warranty coverage set forth in Section 7.1.

7.3 Equipment Warranty Coverage. If Equipment supplied by Hexagon is provided with a warranty or other Equipment support, then the extent of the Equipment support is provided within the corresponding E/C Schedule or other Order Documents.

7.4 Third-party Warranty Coverage. To the extent no warranty or Equipment support is described in the applicable E/C Schedule or other Order Documents, third-party products supplied by Hexagon, are provided with a pass-through-warranty from the original manufacturer, if any.

7.5 Disclaimer. Any product information Hexagon has shared with Customer during the proposal and/or contract activities to date was to provide an understanding of Hexagon's current expected direction, roadmap, or vision and is subject to change at any time at Hexagon's sole discretion. Hexagon specifically disclaims all representations and warranties regarding future features or functionality to be provided in any Software or Deliverable(s). Hexagon does not commit to developing the future features, functions, and/or products discussed in this material beyond that which is specifically committed to being provided by Hexagon pursuant to a valid Order. Customer should not factor any future features, functions, or products into its current decisions since there is no assurance that such future features, functions, or products will

be developed. When and if future features, functions, or products are developed, they may be made generally available for licensing by Hexagon.

7.6 Warranty Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE, HEXAGON DISCLAIMS (TO THE FULLEST EXTENT PERMITTED BY LAW) ALL WARRANTIES ON PRODUCTS FURNISHED PURSUANT TO THE MASTER AGREEMENT, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, HIGH RISK USE, AND NON-INFRINGEMENT. ALL WARRANTIES PROVIDED PURSUANT TO THIS MASTER AGREEMENT ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY OR INDIRECTLY FROM AN UNAUTHORIZED USE OR MISUSE OF A WARRANTED ITEM, INCLUDING, WITHOUT LIMITATION, USE OF A WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR UNAUTHORIZED MODIFICATION OR REPAIR OF A WARRANTED ITEM OR FAILURE TO ROUTINELY MAINTAIN A WARRANTED ITEM. THE WARRANTIES SET FORTH IN THIS ARTICLE 7 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND, EXCEPT AS SET FORTH IN ARTICLE TITLED "INDEMNIFICATION PROVISIONS" BELOW, REPRESENT THE FULL AND TOTAL WARRANTY OBLIGATION AND/OR LIABILITY OF HEXAGON.

8 LIMITATION OF LIABILITY

IN NO EVENT WILL HEXAGON BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE OR PRODUCTION, LOSS OF REVENUE, LOSS OF DATA, OR CLAIMS OF THIRD PARTIES, EVEN IF HEXAGON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCE WILL HEXAGON'S LIABILITY UNDER THIS MASTER AGREEMENT EXCEED THE AMOUNT THAT HEXAGON HAS BEEN PAID BY CUSTOMER UNDER THE INDIVIDUAL ORDER UNDER WHICH THE EVENT GIVING RISE TO THE CAUSE OF ACTION HAS OCCURRED.

9 Indemnification Provisions.

9.1 Subject to the limitation of liability provisions in the Master Agreement, Hexagon will defend, at its expense, a third party action, suit, or proceeding against Customer ("Claim"), and indemnify Customer from any judgments, settlements, and reasonable attorney's fees resulting therefrom, to the extent such Claim is (i) attributable to bodily injury, death, or physical damage to tangible property caused by Hexagon's negligent acts or omissions arising under the Master Agreement; or (ii) based upon an allegation that a Software Product, Customized Software, Cloud Application, or Services Deliverable as of its delivery date under the Master Agreement, infringes a valid United States: patent, copyright, or trademark, or misappropriates a third party's trade secret ("Infringement Claim").

9.2 Hexagon's defense and indemnification obligations are conditioned upon:

9.2.1 Customer providing prompt written notice to Hexagon of any Claim;

9.2.2 Hexagon having primary control of the defense of any actions and negotiations related to the defense or settlement of any Claim, understanding Hexagon may not settle a claim without Customer's consent if such settlement assigns fault or culpability to Customer; and

9.2.3 Customer cooperating fully in the defense or settlement of any Claim.

9.3 Hexagon will have no obligation to defend Customer or to pay any resulting costs, damages, or attorneys' fees for any Infringement Claims alleging direct or contributory infringement of the Software Product, Cloud Program, or Service Deliverable (i) by the combination of or integration with a product, process, or system not supplied by Hexagon; (ii) by material alteration by anyone other than Hexagon or its subcontractors; (iii) by use after Customer has been notified of possible infringement; (iv) by use after modifications are provided to Customer; (v) by use after a return for refund as described below is ordered by Hexagon; (vi) if the creation of which was pursuant to specifications provided by Customer; or (vii) by use other than as specified in the Documentation associated with the Software Product.

9.4 In connection with any Infringement Claims, Hexagon, at its own expense and option, may either (i) obtain rights for Customer to continue using the allegedly infringing Hexagon supplied item; (ii) replace the item with a non-infringing alternative, or modify the allegedly infringing elements of the item, while maintaining substantially similar software functionality or data/informational content; or (iii) refund to Customer a prorated portion of the license fees paid by Customer for the infringing item(s); provided that proration for perpetually licensed software shall be based on a five (5)-year, straight-line depreciation basis

beginning from the initial date of delivery. In the event of a prorated return, Customer will uninstall, cease all use of and return to Hexagon the infringing item(s).

9.5 In no event will the indemnification for Infringement Claims apply to any Beta Software, or sample, hot fix, royalty free, or evaluation software delivered pursuant to the Master Agreement.

9.6 This section provides the sole and exclusive remedies of Customer and Hexagon's entire liability in the event of a Claim. Customer has no right to recover, and Hexagon has no obligation to provide any other or further remedies, whether under another provision of the Master Agreement or any other legal theory or principle in connection with a Claim.

10 Insurance.

10.1 Policies and Coverage Amounts. Hexagon agrees to procure and maintain in force during the term of the Master Agreement, at its own cost, the following policies and amounts of coverage:

10.1.1 Workers' Compensation Insurance as required state statute or regulation.

10.1.2 Commercial General Liability Insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, and personal injury.

10.1.3 Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of Hexagon's owned, hired or non-owned vehicles assigned to or used in performance of the services or work under the Master Agreement.

10.1.4 Umbrella/Excess Coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) per occurrence.

10.2 Certificate of Insurance. If required or requested: a Certificate of Insurance shall be completed by Hexagon's insurance agent(s) as evidence that policies providing the required coverage amounts, conditions, and minimum limits are in full force; and, the completed Certificate of Insurance shall be sent to the contact person identified in the Primary Contracting Document.

10.3 Insurance Deductible. Hexagon shall be solely responsible for any deductible losses under the policies required above.

11 Security and Breach Notification.

11.1 Hexagon shall take reasonable industry action to prevent, detect, identify, report, track and respond to Security Incidents. In the event of a Security Incident, Hexagon will provide a Security Incident report to the Customer or its Affiliates via the Designated Portal. The report shall be provided within twenty-four (24) Business Hours following Hexagon's discovery, confirmation, and investigation of a Security Incident.

12 Dispute Resolution.

12.1 Resolution Protocol. The Parties shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to the Master Agreement or Order made pursuant to the Master Agreement ("Dispute") in accordance with the provisions set forth herein. If either Party disputes any provision of the Master Agreement (the "Disputing Party"), or the interpretation thereof, or any conduct by the other Party under the Master Agreement, the Disputing Party shall bring the matter to the attention of the other Party at the earliest possible time in order to resolve the Dispute, except for Disputes for non-payment. If such Dispute is not promptly resolved by the employees responsible for the subject matter of the Dispute, the Disputing Party shall be permitted to deliver to the non-disputing Party's contact person identified in the Primary Contracting Document a written notice of the Dispute, whereupon the Parties shall endeavor in good faith to escalate the Dispute to appropriate executives for each Party for resolution within fifteen (15) Business Days, or such longer period as to which the Parties may mutually agree.

12.2 Mediation. To the extent a Dispute is not resolved through the process outlined in the previous section and remains unresolved, the Parties agree to enter into non-binding mediation to resolve the Dispute. Within sixty (60) calendar days, of the issuance of the Dispute notice, or such longer period that is mutually agreeable to the Parties, the Parties agree to identify a mutually acceptable mediator who shall mediate the Dispute. If, after making reasonable efforts to identify a mutually acceptable mediator and no later than fifty (50) calendar days after the issuance of the Dispute Notice, the Parties are unable to identify

such a mediator, the Disputing Party shall provide the non-disputing Party with a list of five (5) proposed mediators. The non-disputing Party shall have five (5) Business Days from receipt of such list from the Disputing Party to identify one proposed mediator on the list to use as a mediator. If the non-disputing Party fails to identify and communicate its choice to the Disputing Party in the time allotted, then the Disputing Party shall be permitted to unilaterally identify the mediator from the list of five (5) mediators previously given who shall mediate the Dispute. The mediator shall be an attorney licensed to practice law in the state courts identified in section below titled "Governing Law." Subject to the mediator's availability, the Parties agree to mediate the Dispute within thirty (30) days after the Parties have identified a mediator who has agreed to mediate the Dispute. To the extent the mutually identified mediator is unavailable, unwilling, or unable to mediate the Dispute, the Parties shall utilize the same steps listed above to identify a new mutually agreeable mediator. To the extent the Disputing Party had to prepare a list of proposed mediators previously, it shall prepare and transmit a revised list within five (5) Business Days of receiving notice of the proposed mediator's unavailability. Subject to the mediator's requirements, the Parties agree they shall be permitted to attend the mediation via telephone or video conferencing. The Parties agree to pay in equal shares the mediator's fee and expenses unless otherwise agreed to pursuant to a settlement agreement.

12.3 Prerequisites to Litigation. Except for Disputes for non-payment, only after the Parties have endeavored to resolve the Dispute through the processes outlined in the immediately preceding two sections may a Party commence litigation to resolve the dispute.

12.4 Injunctive Relief. Notwithstanding the foregoing, either Party may, before or during the exercise of the informal dispute resolution procedures set forth above, apply to a court identified in the section titled "Governing Law" for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of such informal dispute resolution procedures.

13 Notices.

All notices given between the Parties shall be in writing and shall be considered properly sent by postage prepaid United States Mail or overnight carrier to the Customer and/or Hexagon representative, as applicable and identified in the Primary Contracting Document, or such substitutes as may hereafter be disclosed by proper notification.

14 Force Majeure.

Neither Party shall be deemed to be in default of any provision of the Master Agreement or an Order or be liable for any delay, failure in performance, or interruption of service resulting from acts of war, acts of terrorism, criminal acts, acts of God, natural disaster, fire, lightning, acts of or restriction imposed by civil or military authority, pandemics, epidemics, cyber-attack, labor disruption, civil disturbance, expropriation, embargo, lawful export restriction, or any other cause beyond its reasonable control. This section does not relieve or suspend a Party's obligation to pay money to the other Party under the terms of the Master Agreement.

15 Place of Performance.

To the extent necessary, Customer agrees to provide appropriate workspace and workplace accommodations; computer equipment; software; access to relevant data, documents, plans, reports, and analyses; and necessary access for Hexagon personnel to perform work on an Order. To the extent work is performed remotely, Customer must provide VPN or secured remote connectivity (including a login and password) to all servers and workstations requiring installation/configuration by Hexagon.

16 Amendments.

Any and all amendments to the Master Agreement shall be in writing specifically reference the fact the amendment is intended to alter these Master Terms and executed by authorized representatives of both Parties. No Order or Change Order shall affect these Master Terms, unless expressly stated in such document.

17 Confidential Information.

The Parties agree not to disclose Confidential Information provided to it by the Disclosing Party to the maximum extent allowable under applicable law unless it first obtains the Disclosing Party's written consent to such disclosure. It is further understood and agreed that money damages may not be a sufficient remedy for any breach of this provision of the Master Agreement by the Receiving Party and the Disclosing Party may seek equitable relief, including injunction and specific performance, as a remedy for any such breach.

Such remedies shall not be deemed to be the exclusive remedies for a breach of this provision of the Master Agreement but will be in addition to all other remedies available at law or equity. The covenants set forth herein and the rights and obligations related thereto shall continue for a period of five (5) years from the date of disclosure.

18 Personal Data.

18.1 Where Personal Data is provided by the Customer to Hexagon, the Customer shall act as the data controller and shall be responsible for complying with all applicable data protection laws. Hexagon shall act as the data processor in respect of such Personal Data and shall process the Personal Data in accordance with applicable data protection laws. The Customer acknowledges and agrees that Hexagon is not capable of being a data controller due to Hexagon's inability to determine the purpose and means of the processing of Personal Data provided by Customer to Hexagon. To the extent that: (a) Personal Data of Users or Authorized Cloud Users provided by the Customer to Hexagon pursuant to the Master Agreement is subject to the European Union General Data Protection Regulation 2016/679, as may be amended from time to time ("GDPR"); and (b) the Customer and Hexagon do not have a separate, written data processing agreement, then the Customer and Hexagon agree that the terms of Hexagon's Data Processing Addendum, as updated from time to time, found at: https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/Policies/DPA/DPALP/DPA_LP_08-2019.pdf, shall apply.

18.2 Where Customer is responsible for providing Personal Data on behalf of Users or Authorized Cloud Users directly to Hexagon, Customer will secure and maintain all necessary consents and make all necessary disclosures before including Personal Data in Customer Data input to, or otherwise supplied to Hexagon. In the event Customer, including all its Users, does not consent to Personal Data being processed as a result of the Master Agreement, Customer acknowledges Hexagon may be unable to provide Services, Product(s), Maintenance Services, and/or Cloud Program (or part thereof).

18.3 Hexagon will only process Customer supplied Personal Data in accordance with the Customer's lawful instructions and to the extent and as necessarily required to provide the applicable goods and services under the Master Agreement and for no other purpose. Except as may be otherwise required by law, contract, or judicial order, after expiration or earlier termination of the Master Agreement, Hexagon will destroy all Customer-supplied Personal Data in accordance with applicable data protection laws.

18.4 If Hexagon supplies maintenance, support, or subscription services to Customer with respect to third-party products, and if the third-party supplier or proprietor of such requires Customer be party to any data processing agreement in connection therewith, and if Customer has not separately executed an instrument to satisfy such requirement, then Customer and Hexagon agree that the terms of the applicable third-party data processing agreement, as updated from time to time, found at https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/Policies/DPA/DPALP/DPA_LP_08-2019.pdf, shall apply.

19 Assignment.

Neither Party shall assign, sublet, or transfer all or any portion of the Master Agreement, nor any interest in the Master Agreement, without the express written consent of the non-assigning Party, which consent may be granted or withheld in the sole discretion of the non-assigning Party. Notwithstanding the foregoing, Hexagon may assign its rights and obligations under the Master Agreement, without the approval of Customer to: (1) an Affiliate or (2) another business entity in connection with a merger, consolidation, or reorganization of Hexagon or any of its subsidiaries.

20 Cooperative Purchasing.

If Customer is a government entity, another government entity (referred to in this paragraph as a cooperative purchaser) may, with prior written consent of Hexagon, use the Master Agreement, excluding Orders to which it is not a party, as a contract vehicle for its purchases from Hexagon; provided that in such event the term "Customer" shall refer solely to the relevant cooperative purchaser with respect to its transaction and shall not refer to the cooperative purchaser with respect to transactions not for its direct benefit. Product(s) and services will be priced and scoped upon request of the cooperative purchaser and dependent upon the scope of the intended project. To the extent this clause is exercised by any cooperative purchaser with Hexagon's consent, Hexagon shall deal directly with the cooperative purchaser regarding the scope and pricing of the project. Cooperative purchasers shall make their own legal determination as to whether the collective purchasing permitted by this clause is consistent with laws, regulations, and other policies applicable to the cooperative purchaser; and, Customer shall have no liability with respect to

obligations of any cooperative purchaser utilizing the terms of this section 20 to place Orders under the Master Agreement.

21 Export.

Equipment/Content, and Hexagon IP, including any technical data related to Software, Services, Maintenance Services, or Cloud Programs, are subject to the export control laws and regulations of the United States. Diversion contrary to United States law is prohibited. Equipment/Content and/or Hexagon IP, including any technical data related to Software, Services, Maintenance Services, or Cloud Programs, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

- To Cuba, Iran, North Korea, Syria, the Crimean region of Ukraine or any national of these countries or territories;
- To any person or entity listed on any United States government denial list, including, but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists, the United States Department of Treasury Specially Designated Nationals List, and the United States Department of State Debarred List (http://export.gov/ecr/eg_main_023148.asp);
- To any entity if Customer knows, or has reason to know, the end use is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses; and/or
- To any entity if Customer knows, or has reason to know, that a reshipment contrary to United States law or regulation will take place.

Customer agrees to comply with all applicable export control laws and regulations. User shall not request information or documentation where the purpose of such request is to support, give effect to or comply with a boycott of any country that is not sanctioned by the United States, including but not limited to the Arab League boycott of Israel. Any questions regarding export or re-export of the Software should be addressed to Hexagon's Export Compliance Department at 305 Intergraph Way, Madison, Alabama, 35758, USA or at exportcompliance@intergraph.com. If the Software Customer received is identified on the media as being ITAR-controlled, the Software has been determined to be a defense article subject to the U.S. International Traffic in Arms Regulations ("ITAR"). Export of the Software from the United States must be covered by a license issued by the Directorate of Defense Trade Controls ("DDTC") of the U.S. Department of State or by an ITAR license exemption. The Software may not be resold, diverted, or transferred to any country or any end user, or used in any country or by any end user other than as authorized by the existing license or ITAR exemption. Subject to the terms of the EULA included herein, such Software may be used in other countries or by other end users if prior written approval of DDTC is obtained.

If Customer is located outside the United States, Customer is responsible for complying with any local laws in Customer's jurisdiction which might impact Customer's right to import, export or use the Software, and Customer represents that Customer has complied with any and all regulations or registration procedures required by applicable law related to the use and importation of the Software.

22 Non-Solicitation of Employees.

Customer agrees it will not, without the prior written consent of Hexagon, solicit any Hexagon employee, or induce such employee to leave Hexagon's employment, directly or indirectly, during the Term and for a period of twelve (12) Months after the Master Agreement expires or is terminated.

23 Miscellaneous.

23.1 Authority. Each Party represents and certifies to the other Party it has the requisite legal authority to enter into and be bound by the Master Agreement and all Orders arising from the Master Agreement. Any individual purporting to execute or accept a Quote, Primary Contracting Document, or any Order Documents governed by the Master Terms on behalf of a Party represents and warrants to the other Party that such individual has the authority to bind, and does bind, the Party on whose behalf such individual purports to execute or accept such instrument(s). By issuance of a Quote to Customer without the word "DRAFT" or similar markings thereon, Hexagon represents it has the requisite legal authority to enter into and be bound by the Master Agreement and the Order intended to result from the Quote. By executing the Quote and returning it to Hexagon or otherwise entering into an Order, Customer represents and certifies to Hexagon it has the requisite legal authority to enter into and be bound by the Master Agreement and the Order associated therewith.

23.2 Survival. In addition to other provisions that are specifically identified as surviving termination of this Master Agreement, the rights and obligations in sections titled "IP Ownership," "Limitation of Liability," "Dispute Resolution," "Confidential Information," "Export," and the terms of any license or access granted pursuant to the Master Agreement (including, but not limited to, Exhibit A, Exhibit D, Exhibit E, and/or Exhibit F), shall survive and continue after expiration or termination of the Master Agreement, shall remain in effect until fulfilled, and shall apply to any permitted successors and assigns. Upon termination of the Master Agreement, the provisions of the Master Agreement, including those in the preceding sentence, which by their express terms survive termination, shall remain in full force and effect.

23.3 Waiver. The waiver by either Party of any of its rights or remedies in enforcing any action or breach under the Master Agreement in a particular instance shall not be considered as a waiver of the same or different rights, remedies, or actions for breach in subsequent instances.

23.4 Severability. If any provision of the Master Agreement or an Order is void, voidable, unenforceable, or illegal in its terms, but would not be so if it were rewritten to eliminate such terms that were found to be voidable, unenforceable, or illegal and such rewrite would not affect the intent of the provision, then the provision must be rewritten to be enforceable and legal.

23.5 Headings. Numbered topical headings, articles, paragraphs, subparagraphs or titles in the Master Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

23.6 Governing Law. The Master Agreement shall for all purposes be construed and enforced under and in accordance with the laws applicable to and governing the Customer's location as identified in applicable Order Documents. The Parties agree any legal action or proceeding relating to the Master Agreement shall be instituted in an appropriate court having personal jurisdiction over Customer. The Parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceeding. The Parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of the Master Agreement.

23.7 Governing Language. The controlling language of the Master Agreement is English. If Customer received a translation of the Master Agreement into another language, it has been provided for convenience only.

Les parties confirment que l'accord-cadre et toute la documentation connexe sont et seront en anglais. (Translation: "The Parties confirm that the Master Agreement and all related documentation is and will be in the English language.")

23.8 Independent Contractor. The Parties agree that Hexagon is an independent contractor, that nothing in the Master Agreement shall be construed as establishing or implying a relationship of master and servant between the Parties, or any joint venture or partnership between the Parties, and that nothing in the Master Agreement shall be deemed to constitute either of the Parties as the agent of the other Party or authorize either Party to incur any expenses on behalf of the other Party or to commit the other Party in any way whatsoever. Hexagon and its agents, employees, or subcontractors shall at no time be deemed to be agents, employees, or subcontractors of Customer, or be deemed to be under the control or supervision of Customer when carrying out the performance of its obligations in the Master Agreement. Without the prior written consent of Customer, Hexagon shall not carry on any activity that could be construed as being on behalf of Customer.

23.9 Limitation on Claims. Except as otherwise prohibited from applicable law, no claim, regardless of form, arising out of or in connection with the Master Agreement may be brought by Customer more than two (2) years after the event giving rise to the cause of action has occurred.

23.10 Anti-Bribery. Each Party hereby certifies it shall comply with all applicable laws in carrying out its duties under the Master Agreement, including, but not limited to, the United States Foreign Corrupt Practices Act ("FCPA"). In particular, Customer, on behalf of itself and its Affiliates, and Hexagon, each severally represent and agree that: such party is familiar with the FCPA and its purposes and agrees to comply with the acts; specifically, such party is aware of and will comply with the FCPA's prohibition of the payment or the gift of any item of value, either directly or indirectly, to an official of a government, political party or party official, candidate for political office, or official of a public international organization, for the purpose of influencing an act or decision in his/her official capacity, or inducing him/her to use his/her influence with the government to assist a company in obtaining or retaining business for, with, or in that

country or directing business to any person; such party has not made, and will not make, payments to third parties which such party knows or has reason to know are illegal under the FCPA, or the laws of any applicable jurisdiction; and the method of making payment to Hexagon as provided hereunder is not in violation of the law of any applicable jurisdiction. Either Party has the right to terminate the Master Agreement upon any violation of the FCPA or similar laws by the other Party.

24 Entire Agreement.

The Master Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof. Except as otherwise provided in the Primary Contracting Document, the Master Agreement supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of the Master Agreement. The Master Agreement may not be amended or modified unless so done in a writing signed by authorized representatives of both Parties. The pre-printed terms and conditions of Customer's PO or any other terms and conditions of a Customer PO shall be void, even if issued subsequent to the effective date of the Master Agreement, and shall not be deemed to constitute a change to the Master Agreement.

EXHIBIT A

END-USER LICENSE AGREEMENT

IMPORTANT—READ CAREFULLY: This EULA is a legal agreement by and between User and Hexagon. Software is also subject to Use Terms. Any software, including, without limitation, any third party components and/or Updates, associated with a separate end-user license agreement is licensed to User under the terms of that license agreement. Use Terms applicable to an Update shall apply to the Update. All use of the Software is subject to applicable Order Documents.

- 1 LICENSE GRANT.** Provided User is not in breach of any term or condition of this EULA, Hexagon hereby grants User a limited, non-exclusive license up to the quantity of Software licenses purchased by User to: (i) install and use the Software, in object code form only; (ii) use, read, and modify Documentation prepared by Hexagon and delivered to User pursuant to the Order Documents; and/or (iii) view and/or use Hexagon audio-visual training materials provided to User pursuant to the Order Documents; provided all of the foregoing shall be strictly for User's internal use and strictly in accordance with this EULA and the applicable Order Documents. The license is non-transferable, except as specifically set forth in this EULA. User assumes full responsibility for the selection of the Software to achieve User's intended results, and for the installation, use and results obtained from the Software.
- 2 UPDATES.** If the Software is an Update to a previous version of the Software, User must possess a valid license to such previous version to use the Update. Neither the Software nor any previous version may be used by or transferred to a third party. All Updates are provided to User on a license exchange basis and are subject to all of the terms and conditions of the EULA provided with the Update. By using an Update, User (i) agrees to voluntarily terminate User's right to use any previous version of the Software, except to the extent that the previous version is required to transition to the Update; and (ii) acknowledges and agrees that any obligation that Hexagon may have to support the previous version(s) of the Software will end upon availability of the Update. If an Update is provided, User will take prompt action to install such Update as directed by Hexagon. If User fails to do so, User acknowledges that the Software may not work correctly or that User will not be able to take advantage of all the Software's available features. In such event, Hexagon will not be liable for additional costs User incurs because of User's failure to install such Update. For Third Party Software, please read carefully the applicable Third Party Terms regarding concurrent use of an Update and the prior version of Software during transition to the Update as the Third Party Terms may differ from terms applicable to Hexagon Software Products.
- 3 RIGHTS AND LIMITATIONS.**

 - 3.1 The Following are Permitted for User's License:**

User may make one copy of Software media in machine readable or printed form and solely for backup purposes. Hexagon retains ownership of all User created copies. User may not transfer the rights to a backup copy unless User transfers all rights in the Software and license as provided for in Section 3.2.1 below. Any other copying of the Software, any use of copies exceeding the number of copies User has been authorized to use and has paid for, and any distribution of the Software not expressly permitted by this EULA, is a violation of this EULA and of federal and/or applicable governing law.
 - 3.2 The Following are Prohibited for User's License:**

 - 3.2.1** User shall not sell, rent, license, lease, lend or otherwise transfer the Software, or any copy, modification, or merged portion thereof without Hexagon's express written consent for such transfer, which consent may not be unreasonably withheld. Any such unauthorized transfer will result in automatic and immediate termination of the license.
 - 3.2.2** The Software is licensed as a single product. User shall not, and User shall not authorize anyone else to: (i) decompile, disassemble, or otherwise reverse engineer the Software; (ii) work around any technical limitations in the Software;

(iii) publish the Software for others to copy or use; (iv) use, copy, modify, distribute, disclose, license or transfer the Software, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this EULA; (v) re-use the component parts of the Software with a different software product from the one User is licensed to use or on different computers; (vi) circumvent any license mechanism in the Software or the licensing policy; (vii) publish to a third party any results of benchmark tests run on the Software; (viii) use or view the Software for any purposes competitive with those of Hexagon; (ix) use the Software except as expressly set forth in this EULA; and (x) unless otherwise specifically permitted in writing by Hexagon, use the Software outside the country in which it is licensed.

3.3 Fault Tolerance.

The Software is not one hundred percent (100%) fault tolerant. Unless the Software's Documentation expressly provides the contrary, the Software is not designed or intended for use in any situation where failure or fault of any kind of the Software could lead to death or serious bodily injury of any person, or to severe physical, property or environmental damage ("High-Risk Use"); and, User is not licensed to use the Software in, or in conjunction with, any High-Risk Use. High-Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: operation of aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices. User hereby agrees not to use the Software in, or in connection with, any High-Risk Use. High Risk Use shall not mean use of the Software for purposes for which it is regularly marketed and sold (e.g., public safety and utility dispatch software may be used to dispatch police, fire, emergency medical services, and emergency utility services).

3.4 Licensing Mechanism Disclaimer.

Without waiver of any of its rights herein, Hexagon may at its sole discretion provide User who is operating public safety Software a licensing mechanism to allow such Software to be available for use even when User has accessed all of its purchased licenses. Regardless of whether it receives the licensing mechanism, User acknowledges it is permitted to use the Software only up to the number of licenses it has purchased. Any usage of Software beyond the amount purchased by User will be subject to the payment of additional fees by User to Hexagon at then current prices for the Software in like manner as provided in Section 6.2 below (Audit).

4 USER OBLIGATIONS.

- 4.1 The Software may require User's System to comply with specific minimum software, hardware, and/or Internet connection requirements. The specific minimum software, hardware, and/or Internet connection requirements vary by Software and type of license and are available from Hexagon upon request.
- 4.2 User is responsible, and bears the sole risk, for backing up all systems, software, applications, and data, as well as properly using the Software.
- 4.3 At all times, User must keep, reproduce and include all copyright, patent, trademark and attribution notices on any copy, modification or portion of the Software, including, without limitation, when installed, used, checked out, checked in, and/or merged into another program.
- 4.4 User shall comply with the Use Terms, including limitations that apply to specific types of licenses identified therein.

5 TERM.

- 5.1 For a Perpetual License, this EULA is effective until terminated (i) by User, by returning to Hexagon the original Software or by permanently destroying the Software, together with all copies, modifications, and merged portions in any form; (ii) by Hexagon, upon User's breach of any of the terms hereof or User's failure to pay the appropriate license fee(s); or (iii) upon User's installation of an Update that is accompanied by a new license agreement covering the Software Update. User agrees upon the termination of this EULA to cease using and to permanently destroy the Software (and any copies, modifications and merged portions of the Software in any form, and all of the component parts of the Software), and to certify such destruction in writing to Hexagon.

For a Subscription License, this EULA is effective until the User's Subscription Term expires without being renewed; by Hexagon upon User's breach of any of the terms hereof; User's failure to pay the appropriate Subscription License fee(s); or, the Subscription is otherwise terminated. User agrees upon the termination of this EULA or expiration of User's Subscription to cease using and to permanently destroy the Software (and any copies, modifications, and merged portions of the Software in any form, and all of the component parts of the Software), and to certify such destruction in writing to Hexagon.

6 AUDIT.

6.1 Hexagon shall have the right to:

6.1.1 Audit User's use of the Software and User's compliance with the provisions of this EULA during User's normal Business Hours. Hexagon will provide User with thirty (30) days prior written notice of an audit under this Section. Hexagon's right to conduct this type audit shall be limited to twice per calendar year. Prior to the start of an audit, Hexagon's personnel will sign a reasonable non-disclosure agreement provided by User. During the audit, User shall allow Hexagon's personnel to be provided reasonable access to both User's records and personnel.

6.1.2 Obtain certain documentation from User, as follows. If the Software includes logging mechanisms intended to track usage volume or quantity, User shall transmit log files associated therewith to Hexagon upon Hexagon's demand and in accordance with Hexagon's reasonable transmission instructions. Hexagon will not demand the transmission of usage tracking log files more frequently than four (4) times in any calendar year.

6.2 In the event the results of the audit in Section 6.1.1 or the documentation provided by User in Section 6.1.2 indicate User has used unlicensed Software or quantities thereof, User agrees to promptly pay Hexagon: (i) the current list price for each unlicensed Software used by User; (ii) interest of two percent (2%) per month or the highest rate allowed by applicable law for each month, commencing with the initial month of unlicensed usage of the Software); and (iii) the costs for the audit in Section 6.1.1.

END OF EXHIBIT A

EXHIBIT B

MAINTENANCE TERMS AND CONDITIONS FOR SOFTWARE

These terms and conditions (“Maintenance Terms”) govern the provision of maintenance and support services by Hexagon with respect to Covered Products.

1. DEFINITIONS.

All capitalized terms not otherwise defined herein shall have the meaning set forth in the associated Exhibit titled “Common Terms Glossary.”

2. TERM.

- 2.1. Term. The Maintenance Contract shall begin, retroactively (if applicable), on the first calendar day of the first Month of the Coverage Period and shall expire on the last calendar day of the last Month of the Coverage Period. The Coverage Period shall be for whole Months only.
- 2.2. Renewal. Prior to expiration of the Coverage Period, Hexagon may submit to Customer a renewal quote with pricing for extension of the Coverage Period. The Parties may extend the Coverage Period pursuant to Order Documents.
- 2.3. Lapse. In the event of a Lapse: (i) Hexagon shall, at any time, be entitled to discontinue Maintenance Services, in whole or in part, for the affected Covered Products; (ii) Hexagon shall be relieved of any previously provided pricing commitments or options for Maintenance Services, if any, related to time periods following the Lapse; and, (iii) Hexagon may permit Customer to reinstate support for Covered Products pursuant to Hexagon’s then current policies and practices, including any policies or practices related to payment of reinstatement fees.

3. SCOPE OF COVERAGE FOR COVERED SOFTWARE PRODUCTS.

Maintenance Services described in this Section apply to Covered Software Products only. Maintenance Services for Covered Third Party Products are separately stated.

Hexagon offers three levels of Maintenance Services for Covered Software Products, dependent upon the Software Product and other factors. Under all levels of Maintenance Service, Hexagon shall provide reasonable commercial efforts to aid in the diagnosis of Defects. Under all levels of Maintenance Services, but only until the subject Software Product version reaches Version Limitation I or Version Limitation II, Hexagon shall provide reasonable commercial efforts to aid in correction of Defects. After a Software Product version reaches Version Limitation I, but only until the subject Software Product reaches Version Limitation II, Hexagon shall provide reasonable commercial efforts to aid in correction of Level One Defects only. The level of Maintenance Services for each Software Product is identified in the Order Documents, subject however to Version Limitations. Defect corrections provided by Hexagon shall, unless otherwise agreed by Hexagon, be delivered within Hexagon’s product releases, and in accordance with Hexagon’s standardized release cycles. Levels of Maintenance Services are as follows:

- 3.1. Advantage Support. Advantage Support will include and be limited to the diagnostic and Defect correction support as described above, and the following: Out-of-the-box functionality support via the support help desk (telephone or eService via the Designated Portal; and, access to any available Hexagon problem knowledge base online self-help tool. Phone support is available Monday through Friday from 8AM – 5PM at Customer’s local time, excluding Hexagon-observed holidays. Local variances in support hours will be posted online or can be determined by contacting Customer’s local Hexagon office.
- 3.2. Standard Support. Standard Support will include and be limited to the following:
 - 3.2.1. All features of Advantage Support.
 - 3.2.2. Access to available Updates of Covered Software Products. Hexagon will notify Customer when Updates are made available for any Covered Software Products for

which Maintenance Services have been purchased, by way of posting notices of such to the "Support Notices and Announcements" section on the Designated Portal site, where available, or via direct notification by Hexagon. Updates are shipped to Customer upon Customer's request logged in the Designated Portal site. Hexagon is not obligated to produce any Updates. For avoidance of doubt, a Customer's entitlement to Updates shall not include entitlement to any therein embedded or otherwise related module or function which is licensed and priced separately from Covered Products for which Customer has purchased an entitlement to Updates.

- 3.3. Premium Support. Premium Support will include all features available under Standard Support (subject to Version Limitations). Additionally, for a Level One Defect, phone support is also available after-hours and on Hexagon-observed holidays.
- 3.4. Product Change Requests will be reported in like manner as set forth in Section 3.1. Hexagon will review Product Change Requests and at its sole discretion decide whether to make the requested change to the Covered Product(s) through an Update. Product Change Requests not accepted may be the subject of a separate Order between the Parties. For the avoidance of doubt, to the extent Hexagon agrees to make a requested change to a Covered Product pursuant to a Product Change Request, any and all IPR resulting from the Update, including the change or modification is and shall remain the property of Hexagon.

4. MINIMUM SYSTEM REQUIREMENTS; CUSTOMER'S OBLIGATIONS.

Performance of Maintenance Services by Hexagon is specifically conditioned upon the following minimum system requirements and fulfillment by Customer of the following obligations (collectively, minimum system requirements and customer obligations hereinafter referred to as "Customer Obligations"):

- 4.1. System Requirements. Customer is responsible for ensuring: the System Equipment and network infrastructure meet minimum system requirements specified by Hexagon and made available to Customer upon request; its System Equipment and network infrastructure are adjusted as required to accommodate Updates of Covered Products; compatibility of non-Hexagon provided products with products provided by Hexagon; and, its systems, software, and data are adequately backed up. Hexagon is not liable for lost data.
- 4.2. Hexagon Access and Customer Cooperation. Customer's system and/or System Equipment must have input and output devices that enable the use of Hexagon's diagnostic programs and supplemental tests. Customer will permit Hexagon to electronically access Customer's system via Secure Access Tool. Customer will ensure availability of its own system technical support personnel so that Hexagon can fulfill its Maintenance Services obligations. When reporting problems to Hexagon's support help desk, Customer will provide a complete problem description, along with all necessary documents and information that is available to Customer and required by Hexagon to diagnose and resolve the problem. Customer will grant all necessary access to all required systems as well as to the Covered Products, and any other reasonable assistance needed. Customer will carry out any reasonable instructions and will install any necessary patches, Defect corrections, or Updates. Customer will appoint a minimum of two and a maximum of five contact people who are each authorized to make use of the Maintenance Services ("Authorized Contacts"). Customer is obligated to select only those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's operating system, network, and hardware and software. Customer agrees to promptly notify Hexagon of any replacement of an Authorized Contact. Customer must ensure Authorized Contacts have adequate expertise, training, and experience to provide professionally accurate descriptions of malfunctions and facilitate Hexagon's efficient response. Authorized Contacts must have successfully completed Hexagon product training, or complete it at the next available scheduled opportunity, for those products for which formal training is available. Customer will bear the cost of this training. Customer will enter and/or log requests for assistance in such systems, and utilizing such forms, as Hexagon may designate from time to time.

5. EXCLUDED SOFTWARE SERVICES.

Services for the following are outside the scope of the Maintenance Contract and may be available under separate Order at an additional charge (collectively "Excluded Services"):

- 5.1. Installation of any Covered Product, Update, or interface software;
- 5.2. Network configuration;
- 5.3. Configuration or customization of Covered Products to Customer or other third party requirements (except as necessary to remedy a Defect);
- 5.4. System-level tuning and optimization and system administration support;
- 5.5. Training;
- 5.6. Services required because the Authorized Contact is not available or is not trained;
- 5.7. On-site services (unless waived by Hexagon, in its sole discretion);
- 5.8. Services required due to modifications of Covered Products by Customer;
- 5.9. Services required due to use other than in the ordinary manner intended for the Covered Products, or use in a manner that contravenes terms hereunder, or Customer's disregard of the installation and operating instructions according to the Documentation provided with the Covered Products;
- 5.10. Services required due to failure of software or hardware that is not a Covered Product;
- 5.11. Services required due to Customer's use of hardware or software that does not meet Hexagon specifications or failure of Customer to maintain or perform industry standard maintenance on Customer's hardware or software;
- 5.12. Services required due to software or portions thereof that were (i) incorrectly installed or configured (other than by Hexagon), (ii) used in an environment inconsistent with the support environment specified by Hexagon, and/or (iii) used with peripherals, operational equipment or accessories not conforming to Hexagon's specifications;
- 5.13. Services required due to cases of force majeure, especially lightning strikes, fire or flood, third-party criminal acts, or other events not caused through Hexagon's fault;
- 5.14. Services required due to Customer's failure to fulfill the Customer Obligations; and/or
- 5.15. Services required due to faulty or incomplete Customer data.

6. COVERED THIRD PARTY PRODUCTS.

Support and Updates of Covered Third Party Products shall be provided in the fashion and to the extent or duration that Hexagon is authorized to provide such by the third party manufacturer of the Covered Third Party Products, and such Covered Third Party Products and related services may be subject to additional terms and conditions of the third party manufacturer of the Third Party Software.

Services and updates for any Third Party Software not listed in the Order Documents as Covered Products must be obtained from the third party owner of the products or their designated representative.

7. REQUIRED COVERAGE.

- 7.1. Multiple or Interdependent Licenses. If Customer holds multiple licenses for any Covered Product, all held licenses must be included as Covered Products in the Maintenance Contract.
- 7.2. Prerequisite Licenses. All prerequisite licenses for Software Products necessary to operate the Covered Products, together with all licenses of Software Products interoperating with Covered Products in a single solution, must be included as Covered Products in the Maintenance Contract.

8. ADDITIONS AND REMOVALS OF COVERED PRODUCTS.

- 8.1. Additions of Covered Products. Software Products licensed from Hexagon during the term of the Maintenance Contract may be added as Covered Products, if such addition is addressed through additional related Order Documents. If Software Products are not added as Covered Products by commencement of Production use thereof, Hexagon may permit Customer to add them as

Covered Products, but subject to additional fees payable pursuant to Hexagon's then current policies or practices.

- 8.2. Removal of Covered Products from Maintenance. Either Party may provide written notice to the other Party at least sixty (60) calendar days prior to the end of any Coverage Period Anniversary of its intent to remove any individual Covered Products from the Maintenance Contract at the end of the then current and contracted Coverage Period or any Coverage Period Anniversary. Neither Party may remove Covered Products except upon Coverage Period renewal or extension or Coverage Period Anniversary; provided that Hexagon may additionally remove Covered Products as part of a general discontinuance program at any time upon one hundred eighty (180) days' written notice. Customer may not remove from the Maintenance Contract individual software licenses of a Covered Product for which Customer has multiple copies under Maintenance Services or for Covered Products that are being used interdependently, unless Customer has first certified to Hexagon on a "Software Relinquishment Agreement" that it surrenders and relinquishes all rights in and to the applicable Software licenses and the copies of the Covered Product for which Customer desires to cease Maintenance Services (the "Relinquished Licenses") for the renewal Coverage Period have been uninstalled and removed from its System(s). Should Customer desire to resume usage of the Relinquished Licenses at a later date, Customer must re-purchase the licenses at the then current list price.

9. PAYMENT.

- 9.1. Terms of Payment. Charges for Maintenance Services are due and payable annually and in advance. All charges are due net thirty (30) calendar days from the date of invoice or prior to the beginning of the applicable Coverage Period, whichever is earlier. Charges for Covered Software Products added during a Coverage Period shall be prorated to the remaining Months of the Coverage Period, in whole Month increments only, and such charges shall be due and payable in full upon receipt of invoice. Covered Third Party Products added during a Coverage Period are subject to Section 6 of these Maintenance Terms.
- 9.2. Past Due Accounts. HEXAGON RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE. At the discretion of Hexagon, Customers who have not paid any charges when due (i) under the Maintenance Contract, (ii) under any other agreement between the Parties, or (iii) under any agreement between Hexagon and Customer's parent and/or subsidiary, may not be rendered Maintenance Services until all past due charges are paid in full. The start of the Coverage Period shall not be postponed due to delayed payment of any charges.
- 9.3. Customer's Responsibilities Concerning Invoice Questions. Subject to applicable law, if Customer intends to dispute a charge or request a credit, Customer must contact Hexagon within ten (10) calendar days of the date on the invoice. Customer waives any right to dispute a charge or receive a credit for a charge for Maintenance Services that Customer does not report within such period.

10. CUSTOMER ACKNOWLEDGEMENTS.

During the Coverage Period, Customer commits to the following:

- 10.1. Customer shall have reviewed the Order Documents and by executing the Order Documents confirms the Order Documents accurately reflects all Hexagon software in its possession or control.
- 10.2. Customer acknowledges and confirms that for all Covered Products supported under the Maintenance Contract, all licenses of a Covered Product for which Customer has multiple copies in its possession and all prerequisite licenses necessary to operate Covered Products, are accounted for in the Order Documents. If all like Covered Products or prerequisite software licenses are not accounted for in the Order Documents, Customer agrees to notify Hexagon so that Hexagon may issue a revised Quote to Customer.
- 10.3. Customer acknowledges and confirms Maintenance Services provided herein shall be utilized only for the quantity of Covered Products licenses listed in the Order Documents.

11. ADDITIONAL TERMS.

- 11.1. Pass-Through Third Party Warranties. Covered Third Party Products are only warranted pursuant to a pass-through warranty to Customer from the applicable Third Party Software manufacturer and only to the extent warranted by the applicable Third Party Software manufacturer.
- 11.2. Remedies. In the event a warranted Maintenance Service, Covered Product, or Update provided pursuant to the Maintenance Contract does not substantially comply with the limited warranties set forth in the Maintenance Contract, Hexagon's entire liability and Customer's exclusive remedy shall be, in Hexagon's sole and absolute discretion, either (i) providing of a Service, Covered Product, or Update which conforms substantially with the warranty; or (ii) a refund of the purchase price of the particular warranted Service, Covered Product, or Update for the period of time that the warranted Service, Covered Product, or Update did not substantially conform to the limited warranties set forth in the Maintenance Contract.
Hexagon is acting on behalf of its suppliers for the sole purpose of disclaiming, excluding and/or limiting obligations and liability as provided in the Maintenance Contract, but in no other respects and for no other purpose.
- 11.3. WARRANTY DISCLAIMERS. In addition to the Warranty Disclaimer provided in the Master Terms, Hexagon does not warrant that any Services, Covered Products, and Updates provided pursuant to the Maintenance Contract will meet Customer's requirements, and under no circumstances does Hexagon warrant that any Services, Covered Products, and Updates will operate uninterrupted or error or Defect free.
- 11.4. Third Party Providers. Hexagon reserves the right to provide Maintenance Services through a third party provider.

END OF EXHIBIT B

EXHIBIT C

PROJECT DELIVERABLE SIGN-OFF FORM

CUSTOMER NAME, CUSTOMER CITY – PROJECT NAME

Submission Date:	Month/Day/Year	Sign-Off Target Date:	Month/Day/year
Submitted By:	Hexagon Contact Name	Submitted To:	Customer Contact Name
Customer Contract #:	Customer Contract Number	Customer/Project #:	Hexagon Project Number

TYPE OF DELIVERABLE

SOW Tasks Payments Plans/Designs Training Other

DELIVERABLE INFORMATION

DELIVERABLE DESCRIPTION
THIS SECTION DESCRIBES THE DELIVERABLE

\$AMOUNT OF PYMT
(If applicable)

With the deliverable described above complete, the Customer shall have ten (10) Business Days after receipt of a written request from Hexagon, to either sign-off that the Task Acceptance Criteria has been satisfied or state in writing to Hexagon the reason the Task Acceptance Criteria has not been satisfied.

Sign-off of the Task shall be based solely upon satisfaction of the Task Acceptance Criteria stated in the Contract between Hexagon and CUSTOMER NAME dated Month/Day/Year and shall be indicated by the Customer signing the Project Deliverable Sign-off Form. If the Customer does not provide such sign-off or rejection within the ten (10) Business Days after delivery then the Task will be deemed to have been accepted.

The signature below acknowledges that Task Acceptance Criteria described in the Statement of Work and listed above has been satisfied and the Task is accepted.

Authorized Customer Representative
Customer Contact Name

SIGNATURE

DATE

END OF EXHIBIT C

EXHIBIT D

CLOUD PROGRAM CONDITIONS

These terms and conditions (“Cloud Conditions”) govern the provision of the Cloud Program by Hexagon to Customer under a Cloud Program Order. Any additional terms in any Cloud Services Schedule(s) also apply.

1. DEFINITIONS.

Capitalized terms used and not otherwise defined herein have the meanings assigned in the Common Terms Glossary.

2. SCOPE OF CLOUD PROGRAM.

- 2.1 From the Cloud Program Start Date and for the duration of the Cloud Term, Hexagon will provide the License Key(s) to Customer in the amount specified in the Quote with respect to the Cloud Program purchased by Customer to use the Cloud Program subject to the provisions of these Cloud Conditions. Except for the Cloud Services, no other service, including Cloud Consulting Services, are provided by Hexagon pursuant to a Cloud Program Sales Order.
- 2.2 Hexagon may from time to time provide or otherwise make available Local Software. Local Software may include mobile applications obtainable from an online applications store, applications owned by a third-party, or other facilitating applications. In the event Hexagon provides or makes available such applications, the same shall be made available to Customer and owned by Hexagon (or the relevant third party) and used subject to these Cloud Conditions. If not sooner terminated, the license to use such Local Software shall terminate upon expiration of the Cloud Term.

3. CLOUD SERVICES AUTHORIZATION.

During the Cloud Term, Hexagon grants Customer and its Affiliates the right to access and use components of the Cloud Program listed in the quantities reflected on the Quote solely for Customer’s and Affiliates’ own internal business purposes and subject to these Cloud Conditions.

4. TERM, TERMINATION AND SUSPENSION.

- 4.1 The Cloud Program Order commences on the Effective Date of the Order and shall continue for the Cloud Term, unless earlier terminated in accordance with the Master Terms and these Cloud Conditions. To the extent any optional renewals are identified in the Quote, the Customer must issue a PO or a notice to proceed to extend the Cloud Term and at the prices set forth in the Quote not less than sixty (60) days prior to the end of the Cloud Term. Prior to the end of the Cloud Term, the Customer may renew the Cloud Program Order and/or have Customer Data Offboarded.
- 4.2 In addition to the rights and remedies set forth in the Master Terms, once notified in writing of an overdue payment, Customer acknowledges Hexagon may, without further notice, reduce the Cloud Services to the lowest tier of Cloud Services offered by Hexagon. During such time, Hexagon or the Third Party Service Provider is not obligated to facilitate or provide any services related to Onboarding or Offboarding. Without waiver of its right to terminate the Master Agreement and/or Cloud Program Order or seek additional remedies, if full payment has not been received by Hexagon within thirty (30) days following written notice, Hexagon may suspend providing the Cloud Program to Customer until all outstanding Cloud Program Fees together with any applicable interest has been paid to and received by Hexagon. Suspension of the Cloud Program for non-payment shall not prejudice Hexagon’s rights hereunder or relieve Customer from the obligation to pay Cloud Program Fees associated with the period of suspension.
- 4.3 Termination shall not relieve the Customer of the obligation to pay any Cloud Program Fees accrued or payable to Hexagon prior to the date of termination. Unless otherwise agreed to in

writing by Hexagon, in the event Hexagon terminates a Cloud Program Order due to any of the conditions set forth in Section 4.2 above, then under no circumstances whatsoever shall Customer be entitled to any refund of Cloud Program Fees paid in advance to Hexagon pursuant to the terms of the Master Agreement.

5. **AVAILABILITY.** Hexagon shall reasonably endeavor to deliver Availability in accordance with the Service Level specified in the applicable Cloud Services Schedule. “**Availability**” or “**Available**” means the ability to connect to the Cloud Portal, connect to the Customer Cloud Environment for Production, launch Cloud Application(s), and access Customer Data contained in the Customer Cloud Environment for Production. Availability does not include the availability of third-party portals or Cloud Optional Services. Availability of Cloud Application(s) shall be determined by launching the main application for the applicable Cloud Application. For purposes of calculating Availability time, the following is excluded: time expended for Planned Maintenance; downtime required to perform Cloud Consulting Services; time expended due to the inability for Customer to connect to the Cloud Portal due to problems with the Customer’s infrastructure or the internet; unavailability arising from Customer exceeding Customer purchased Cloud Application capacity; and, time expended due to any other circumstances beyond Hexagon’s reasonable control, including Customer’s or any User’s use of third-party materials or use of the Cloud Program other than in compliance with the express terms of the Master Agreement and Hexagon’s reasonable instructions (collectively “**Exception(s)**”).
6. **CRITICAL SERVICE LEVELS.** The purchased Service Level classifications are set forth in the Cloud Service Schedule. “**Service Operational Time**” means the time, expressed in a percentage as set forth below, that the Cloud Application is Available for a given Month during the service. The method of calculating the Service Operational Time is:

$$\frac{\text{Hours of Cloud Program Availability for a given Month}}{\text{Hours of Cloud Program Availability + downtime hours for such Month which are not related to an Exception}} \times 100$$

7. **SERVICE CREDITS.**

- 7.1 If in any Month the Service Operational Time in a Cloud Environment for Production falls below the purchased Service Level (a “**Service Incident**”), a “Return to Green Plan” shall be initiated for the Customer’s Production Environment. Hexagon shall have: (i) the remainder of the Month in which the Customer notified Hexagon of the Service Incident by way of a Cloud Service Request, which notified Hexagon of the problem which resulted in the Service Operational Time falling below the applicable Service Level, *plus* (ii) one (1) additional Month (collectively, the “**Go Green Period**”), to return the Service Operational Time to such Service Level.
- 7.2 Subject to Section 7.3 below, if the Service Operational Time does not rise to the applicable Service Level within the Go Green Period, then the Service Credit provided in the Cloud Service Schedule will be applied against each Month in which the Service Operational Time remains below such Service Level.
- 7.3 Service Credits apply:
- 7.3.1 Only as specified within the applicable Cloud Services Schedule;
 - 7.3.2 Only to the extent that the affected Customer Environment is used in Production;
 - 7.3.3 In strict accordance with Section 5;
 - 7.3.4 Only if a Customer has logged a Cloud Service Request which notified Hexagon of the problem that causes the Critical Service Level to fall below the identified Availability percentage in the applicable Cloud Services Schedule (“Green”); and
 - 7.3.5 Only where Customer is compliant with the AUP.
- 7.4 To the extent applicable and properly noticed by Customer in accordance with Section 7.1 above, Service Credits shall be credited against the next invoice until such applicable Service Credits have been used. If the Master Agreement is terminated or Customer elects not to renew the Master Agreement before an ensuing invoice is issued, then such Service Credits are forfeited.

Customer shall have no right to receive any monetary remuneration in exchange for unused Service Credits. Notwithstanding anything herein to the contrary, in no event shall Service Credits for any given year during the Cloud Term exceed twenty percent (20%) of the amount of Cloud Program Fees payable by Customer to Hexagon pursuant to the Quote for the annual period in which the Service Credit accrued.

- 7.5 The Customer's exclusive remedy for not meeting the Critical Service Level specified in the applicable Cloud Services Schedule shall be the Service Credits as set forth in this Section.

8. CLOUD SERVICES SUPPORT.

- 8.1 As part of Cloud Services, Hexagon will provide the Cloud Services Support described within this Section 8.
- 8.2 Cloud Services Support is available at the times specified in the applicable Cloud Services Schedule. Cloud Service Requests and Product Change Requests can be directed by an Authorized Cloud User to Hexagon by: (i) the Designated PortalWe, or (ii) telephoning Hexagon support at the times permitted within the Cloud Services Schedule.
- 8.3 When reporting a Cloud Service Request, if an Error, an Authorized Cloud User shall assign the Cloud Service Request a priority level based upon the criteria set forth in the Designated Portal . The Authorized Cloud User shall provide a brief justification as to the criticality of the Cloud Service Request and a description of the Error giving rise to the Cloud Service Request, to include a statement of steps necessary to produce the Error. Hexagon shall respond to the Cloud Service Request and provide commercially reasonable efforts to aid and address the Cloud Service Request. If Hexagon disagrees with the priority of the Cloud Service Request, it shall discuss the matter with Customer, but Hexagon, in its sole discretion, reserves the right to revise the initially reported priority level of the Cloud Service Request.
- 8.4 Product Change Requests will be reported in like manner as set forth in Section 8.3. Hexagon will review Product Change Requests and at its sole discretion decide whether to make the requested change to the Cloud Program. Product Change Requests not accepted may be the subject of a separate contract between the Parties. For the avoidance of doubt, to the extent Hexagon agrees to make a requested change to the Cloud Program pursuant to a Product Change Request, any and all IPR resulting from such change or modification is and shall remain the property of Hexagon.
- 8.5 Customer acknowledges and agrees that, as part of providing Cloud Services Support, Hexagon is permitted to make necessary changes to the Cloud Program, without notice if necessary, to perform Emergency Maintenance. Hexagon shall be permitted to access the Customer Cloud Environment in the event Hexagon deems Emergency Maintenance is necessary.
- 8.6 As it relates to, and only to, Local Software which is listed on the Quote, Hexagon shall provide support in like manner as is provided for Cloud Applications except Customer will permit Hexagon to electronically access the Local Software in the Local Environment via Secure Access Tool. Support for Local Software listed on the Quote is included within Cloud Services Support except as is otherwise rendered commercially unreasonable due to the Local Software being hosted by Customer.
- 8.7 Except as otherwise necessary, as determined by Hexagon in its sole discretion, to satisfy the requirements of Sections 8.3 and 8.4, Cloud Services Support does not include: (i) training; (ii) configuration of Cloud Application(s), Cloud Optional Services, Cloud Portal, Third Party Software Products, Software Products, or other components of the Cloud Program; (iii) Customer Cloud Administration; (iv) programming or software development; (v) modifications to the Cloud Applications or Cloud Optional Services not accepted as a Product Change Request; (vi) onsite services; or (vii) services required because Customer has not performed its obligations under the Master Agreement.

8.8 Updates.

8.8.1 As part of Cloud Services Support, Customer is entitled to receive all Updates to the purchased Cloud Application(s) and Local Software that Hexagon makes available. Cloud Consulting Services may be necessary to Update Cloud Optional Services, which is not part of Cloud Services Support.

8.8.2 From time to time, Hexagon may notify Customer through the Designated Portal that Hexagon has developed an Update for the purchased Cloud Application(s) and intends to deploy said update, including any applicable Third Party Software Products. On the date specified in the notification, Hexagon will deploy the Update to the Cloud Development Environment for Customer testing and review, which Customer shall complete within the time prescribed in the notification of the availability of the Update, but not less than thirty (30) days thereafter (the "Testing Period"). In the event no Material Adverse Effect is reported by Customer within the Testing Period, then on a subsequently specified date by Hexagon, Hexagon will, at its discretion, deploy the update to Customer Cloud Environment for Production.

8.8.3 In the event Customer provides written notice to Hexagon, within the Testing Period, of a Material Adverse Effect as a result of Customer's testing of the Update in accordance with Section 8.8.2 above, Hexagon shall discuss the matter with Customer and use commercially reasonable efforts to address any reasonable workarounds to such Material Adverse Effect, such agreed upon workaround to be subject to the same protocols set forth in Section 8.8.2 and this Section 8.8.3; provided, however, if Hexagon reasonably finds that no Material Adverse Effect exists, Hexagon may deploy the Update to the Customer Cloud Environment for Production.

8.8.4 As it relates to implementing Updates for Local Software that is included within the Cloud Program, Customer shall permit Hexagon to electronically access the Local Software on Customer's System Equipment via Secure Access Tool to implement the Update in conjunction with the updating of the Cloud Applications and provide any other reasonable support and cooperation required by Hexagon to update the Cloud Program.

9. CUSTOMER RESPONSIBILITIES.

9.1 Customer shall be responsible for all activities that occur in Authorized Cloud Users' and Users' accounts, including, but not limited to, its Affiliates' accounts, and for Authorized Cloud Users' and Users' compliance with the Master Agreement. Customer shall:

9.1.1 Have sole responsibility for the accuracy, quality, integrity, reliability and appropriateness of all Customer Data that is placed into the Customer Cloud Environment;

9.1.2 Use commercially reasonable efforts to prevent unauthorized access to or use of Cloud Program, including preventing utilization of more Credentials than otherwise reflected by the License Key(s) set forth in the Quote, and notify Hexagon of any such unauthorized access or use;

9.1.3 Provide and maintain its own System Equipment, third party software, networks, internet access, and communication lines, including any public lines required to properly access the Cloud Portal and use the Local Software, including content or data and ensure such meet the minimum standards required to interoperate with the Cloud Program as communicated by Hexagon to Customer via the Cloud Portal or as otherwise determined by Hexagon; and

9.1.4 Abide by and comply with the Acceptable Use Policy, Documentation, and other requirements of these Cloud Conditions.

9.2 Customer shall reasonably cooperate with Hexagon as it pertains to Planned Maintenance.

10. CLOUD SERVICE PROGRAM FEES.

10.1 Generally. Subject to Section 10.2 below, in consideration of the Cloud Program provided by Hexagon, Customer shall pay to Hexagon the Cloud Program Fees.

10.2 Adjustment. It is the Customer's responsibility to monitor its usage of License Key(s) and/or Cloud Application capacity it has purchased. Hexagon may periodically review the Customer's usage of the Cloud Program to determine whether Customer's usage is consistent with the

quantity of License Key(s) and/or Cloud Application capacity purchased. If the usage shows the Customer has used more License Key(s) than are specified in the Quote, then Customer shall pay Cloud Program Fees corresponding to the number of License Key(s) used in excess of the purchased quantity. If a Cloud Application is subject to capacity limitations (e.g. a limited number of transactions in a period), as expressly set forth in the applicable Cloud Services Schedule, the Cloud Application may be configured to cease or degrade some or all functions upon Customer reaching those capacity limitations and/or may be configured to permit additional usage for additional fees, all as and if described in the applicable Cloud Services Schedule(s).

11. TERMS OF PAYMENT.

The invoice corresponding to the first year of Cloud Program Fees shall be provided to Customer upon Hexagon's issuance of License Key(s) to Customer. For purposes of clarity, once the first License Key(s) is issued for any Cloud Environment, the annual Cloud Program Fee will be due and payable in full. Invoices for subsequent years included within the Cloud Term as specified in the Quote (as may be adjusted pursuant to Section 10.2 above) will be issued prior to the Cloud Anniversary.

12. ACCEPTABLE USE POLICY (AUP).

- 12.1 The AUP forms part of these Cloud Conditions and is incorporated by reference. It may be found at the following site: https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/Policies/AUP/Cloud_AUP-L.pdf. The Customer and any Authorized Cloud User or User shall comply with the AUP. A User or Authorized Cloud User will be prompted with review and acceptance of the AUP to gain access to the Cloud Application(s). Any update to the AUP will require each User or Authorized Cloud User to re-accept the modified AUP. Failure to comply with the AUP may result in the suspension of the Cloud Program or termination of the Cloud Program Order as provided in Section 5 of the Master Terms. During any period of suspension, the Customer will still be liable for payment of the applicable Cloud Program Fees.
- 12.2 Hexagon reserves the right to change the AUP at any time, but to the extent within the control of Hexagon, it will give Customer thirty (30) days' notice in accordance with the Master Terms and the Primary Contracting Document of any such changes by posting notice of the upcoming change in the AUP on the Cloud Portal or as otherwise determined by Hexagon, unless otherwise required by law or where a Third Party Service Provider requires a change to be made to the AUP and is unable to provide such period of notice. If a Third Party Service Provider requires a change to be made to the AUP, Hexagon shall provide the equivalent period of notice as is provided by the Third Party Service Provider to Hexagon.
- 12.3 Without waiver of any other requirement or limitation set forth herein, Customer's use of any third party software in conjunction with the Cloud Application, Cloud Optional Services, and Hexagon Software Products that is not certified by Hexagon to operate in conjunction with the same is solely at Customer's risk. Addressing service requests arising from the use of uncertified third party software is not included within Cloud Services Support or the Cloud Program.

13. OWNERSHIP AND INTELLECTUAL PROPERTY.

- 13.1 In accordance with Section 6 of the Master Terms, Hexagon owns all right, title and interest in and to Cloud Application(s), Cloud Optional Services, the Software Products, Local Software, Documentation written by Hexagon, and any other data and information provided as part of the Cloud Program (except for data and information being owned by a third party), and all copies of all or any part thereof, are and shall remain vested in Hexagon. Third parties shall retain any and all IPR in and to their intellectual property that may be provided as part of the Cloud Program. Customer and its Affiliates do not have, and shall not attempt to decompile, disassemble, or otherwise attempt to gain access to any source code for the Cloud Application, Cloud Optional Services, any other Hexagon Software Product, or Third Party Software. Customer, for itself and its Affiliates acknowledges and agrees the Cloud Program is comprised of trade secrets, proprietary information, and Confidential Information, and that Customer, and its Affiliates shall not use, distribute, copy, perform, amend, alter, modify, create derivative works, reverse engineer, exploit, sublicense, or assign the Cloud Program or any component thereof except as

expressly permitted by Hexagon (which permission may in some instances, subject to stated limitations, be contained in a Cloud Services Schedule with respect to a particular Cloud Application). Without Hexagon's express, written permission, Customer shall ensure that no User transfers or assigns any Credentials to any other person or entity that is not an employee of Customer.

- 13.2 Customer and its Affiliates, respectively, shall retain their respective full ownership and all rights associated therewith solely to Customer Data to the extent they own IPR to said information, as well as work product input or output generated by the Cloud Program. This ownership shall not extend to any formats or other Intellectual Property provided by Hexagon under the Master Agreement that makes a particular data file intelligent or that structures output, said formats and Intellectual Property which shall remain the property of Hexagon or the respective third party that owns said format or Intellectual Property.

14 PERSONAL DATA.

- 14.1 Hexagon reserves the right, but does not assume the obligation, to investigate any violation of this Exhibit D (Cloud Program Conditions) and/or AUP or misuse of the Cloud Services or Cloud Program. Hexagon may: (a) investigate violations of this Exhibit D (Cloud Program Conditions) and/or AUP or misuse of the Cloud Services or Cloud Program; and (b) remove, disable access to, or modify any content or resource that violates this Exhibit D (Cloud Program Conditions) and/or AUP. Hexagon may report any activity that Hexagon suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Hexagon's reporting may include disclosing appropriate information related to Customer or any User. Hexagon also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Exhibit D (Cloud Program Conditions) and/or AUP.
- 14.2 Unless Customer Specified Data Center(s) are included in the Cloud Services as identified in the Quote, Hexagon and its Third Party Service Provider shall have sole discretion of the location of the Data Center(s).

15 SECURITY & BREACH NOTIFICATION.

- 15.1 Hexagon shall take reasonable industry action to prevent, detect, identify, report, track and respond to Security Incidents.
- 15.2 Hexagon Response to Security Incident. In the event of a Security Incident, Hexagon will provide a Security Incident report to the Customer or its Affiliates (as applicable) via the Designated Portal, or otherwise. The report shall be provided within twenty-four (24) Business Hours following Hexagon's discovery, confirmation, and investigation of a Security Incident.
- 15.3 Additional Requirements for Personal Data. With respect to any Personal Data in the possession or under the control of Hexagon, which does not include Customer Data within the Customer Cloud Environment, and in order to protect Personal Data from unauthorized access, destruction, use, modification or disclosure, Hexagon shall:
 - 15.3.1 Develop, implement, and maintain reasonable security procedures and practices appropriate to the nature of the information to protect Personal Data from unauthorized access, destruction, use, modification, or disclosure; and
 - 15.3.2 Develop, implement, and maintain data privacy and security programs with administrative, technical, and physical safeguards appropriate to the size and complexity of Hexagon's business and the nature and scope of Hexagon's activities to protect Personal Data from unauthorized access, destruction, use, modification, or disclosure.

16 WARRANTIES, DISCLAIMER AND INDEMNITIES.

- 16.1 During the Cloud Term, Hexagon does not warrant the Cloud Application(s) purchased by Customer will meet the Service Level specified in the applicable Cloud Services Schedule. The Cloud Program may be subject to limitations, delays and other problems inherent in the use of the internet, electronic communications, and Customers' IT infrastructures. Hexagon will not be responsible for any delays, delivery failures, or other damage.
- 16.2 Hexagon does not warrant the Cloud Application(s) and Third Party Software accessed via Cloud Services will perform substantially in accordance with the Documentation provided. To the extent an Error should be discovered, Customer shall report such Error to Hexagon as provided in Section 8 of the Cloud Program Conditions and Hexagon will respond as provided therein.
- 16.3 Cloud Services will use industry standard Virus detection software to avoid transmission to the Customer and its Affiliates any Viruses (except for any Viruses contained in Customer Data uploaded or Onboarded by Customer).
- 16.4 Hexagon does not warrant the Cloud Program (to the extent accessed by Customer under the Master Agreement) will meet the Customer's or any of its Affiliates' requirements or that it will run uninterrupted or be Error free. Customer and its Affiliates are responsible for the results obtained from the use of the Cloud Program.
- 16.5 The warranties set forth herein are in lieu of all other warranties, expressed or implied, and represents the full and total warranty obligation and/or liability of Hexagon

17 ACCESS TO THE MASTER AGREEMENT BY CUSTOMER'S AFFILIATES.

If Customer's Affiliate accesses or utilizes any or all components of the Cloud Program, the Affiliate shall be deemed to have agreed to be bound by the terms and conditions of these Cloud Program Conditions. The Affiliate, in accessing the Cloud Program (or any part thereof), and Customer, in permitting the Affiliate's access, each represent to Hexagon they have entered into an agreement by which Affiliate is permitted to use the Cloud Program and is bound to the terms herein. Except for Affiliates and employees of Affiliates, no other person, including any third parties not authorized by Hexagon, may access the Cloud Program or be provided with Credentials.

END OF EXHIBIT D

EXHIBIT E
SUBSCRIPTION TERMS AND CONDITIONS

These Subscription Terms and Conditions (“Subscription Terms”) govern the licensing and support for the Subscription.

1. **DEFINITIONS.** All capitalized terms not otherwise defined herein shall have the meaning set forth in Exhibit G (Common Terms Glossary).

2. **SERVICES PROVIDED.**

2.1 **Access.** Subject to an Order and these Master Terms, including Exhibit A (End User License Agreement), Hexagon will make the Subscription Licenses available to Customer for Customer’s use during the Subscription Term. Any renewal or extension of the Subscription Term shall be subject to such terms and product components as reflected in the applicable renewal or extension Quote issued by Hexagon (the “***Renewal Quote***”). Customer acknowledges and agrees that Customer shall compensate Hexagon for Customer’s continued use of a Subscription after expiration or termination of a Subscription Term, at a rate equitably and proportionately calculated based upon the Renewal Quote and based upon the period of such extended use; *provided that* if no Renewal Quote is issued prior to expiration or termination of the Subscription Term, the initial Quote shall be substituted in the calculations set forth in this Section 2.1.

2.1.1 As it pertains to Metered Licenses, the Customer’s right to use the Metered Licenses shall end upon the earlier of: (i) expiration of the Subscription Term, or (ii) Customer’s use of its allotment of units of service as set forth in the Quote.

2.2 **Maintenance and Support.** During the applicable Subscription Term, Hexagon will provide maintenance services and support to the Customer for the Subscription Licenses in accordance with Exhibit B (Maintenance Terms and Conditions) of these Master Terms.

2.3 **Services.** These Subscription Terms only provide for the licensing and support of the Subscription. If the Customer desires for Hexagon to provide Services for implementation, configuration, training, or other work in relation to the Subscription, then Customer may contract with Hexagon pursuant to these Master Terms for Services.

3. **INVOICES.** Hexagon shall invoice Customer for the full amount set forth in the Quote upon delivery of or access having been provided for any of the Subscription Licenses identified in the Quote. To the extent the Quote includes multiple types of Subscription Licenses, Hexagon shall invoice the Customer when the first type of Subscription License is allowed to be invoiced as provided in this section.

4. **CUSTOMER OBLIGATIONS.**

4.1 **Customer Control.** Customer and its authorized Users of the Subscription shall at all times comply with Exhibit A (End User License Agreement). Customer will be solely responsible for administering and monitoring the use of login IDs and passwords provided by Customer to authorized Users pursuant to the Subscription, or by Hexagon on behalf of Customer. Upon the termination of employment of any authorized User, Customer will terminate that individual’s login ID and password. Hexagon is not responsible for any damages resulting from Customer’s failure to manage the confidentiality of its login ID and passwords and Customer is responsible for any actions arising out of use or misuse of Customer’s login IDs.

4.2 **Security.** Customer shall take commercially reasonable security precautions to prevent unauthorized or fraudulent use of Hexagon IP by Customer, Customer’s employees, consultants, agents, or any other third parties authorized by Customer to access the Subscription on Customer’s behalf.

END OF EXHIBIT E

EXHIBIT F

COTS Training Program Terms

These terms and conditions (“COTS Training Program Terms”) govern the provision of the Training Curricula by Hexagon to Customer under a Fixed Price Project Assignment. Any additional terms in a Training Program Statement also apply; and, notwithstanding the order of precedence stated in the Master Terms, but without otherwise modifying such order of precedence, any conflict between these COTS Training Program Terms and any applicable Training Program Statement shall be resolved in favor of the Training Program Statement.

1. DEFINITIONS.

Capitalized terms used and not otherwise defined herein have the meanings assigned in the Common Terms Glossary.

2. SCOPE OF TRAINING PROGRAM.

Hexagon will provide the Training Curricula specified in the Quote and purchased by Customer, in accordance with and subject to the provisions of these COTS Training Program Terms and the applicable Training Program Statement(s). The Training Program Statement(s) and Quote shall describe the duration and delivery method for the Training Curricula; provided that if no duration is otherwise stated for a Training Curricula delivered by online means, Customer shall cease use thereof twelve (12) months following the date the Order was placed for the Training Curricula.

3. FEES AND PAYMENT.

Unless otherwise expressly provided in applicable Training Program Statement(s) corresponding to the Order, fees for Training Curricula delivered by a live instruction method shall be invoiced as and when the Training Curricula is delivered; and fees for Training Curricula delivered by an online on-demand method shall be invoiced upon first delivery to Customer of the initial ability to access any portion of the Training Curricula.

4. SPECIFIC ONLINE TERMS.

- 4.1 Assignment of Credentials. For Training Curricula delivered by an online on-demand method, Customer acknowledges and agrees that: each specific student/user must be assigned individual credentials, thereby consuming one of the overall quantity of credentials available to Customer under the terms of the Order, and student/user credentials may not be shared or used by more than one student/user. Upon request, and subject to processing and any requirements of the Third Party Service Provider, credentials may be subject to reassignment to a new student/user and from a student/user no longer requiring access to the Training Curricula. The period of availability of an online on-demand Training Curricula shall not be extended due to delays in Customer's assignment of available credentials or in any reassignment of credentials.
- 4.2 Use Restrictions. Customer shall comply, and assure all students/users comply, with terms of use of the Training Curricula and the platform through which it is provided, including without limitation, each of the following: the platform and assets associated therewith shall never be used to perform unlawful activity or activity which interferes with networks, systems, or facilities associated with operation of the platform; the platform shall not be used to store, process, or publish threatening, disparaging, or offensive material, or material that constitutes Spam/E-Mail/Usenet abuse or to create a security risk or an infringement of privacy or IPR; the platform shall not be used for any activity intended to directly or indirectly circumvent security measures of the Third Party Service Provider or Hexagon; and, the platform shall be used solely within the use requirements of the Third Party Service Provider and solely for the purpose of consuming the Training Curricula.

5. OWNERSHIP AND INTELLECTUAL PROPERTY.

In accordance with Section 6 of the Master Terms, Hexagon owns all right, title and interest in and to Training Curricula, and any other data and information provided as part of Training Curricula (except for data and information being owned by a third party), and all copies of all or any part thereof, are and shall remain vested in Hexagon. Third parties shall retain any and all IPR in and to their intellectual property that may be provided as part of the Training Curricula, to include without limitation the Third Party Service Provider's retention of intellectual property associated with the platform through which any online on-demand Training Curricula is provided. Customer and its Affiliates shall not attempt to decompile, disassemble, obtain any source code for, or record Training Curricula, in whole or in part. Customer, for itself and its Affiliates and their respective personnel accessing the Training Curricula, acknowledges and agrees the Training Curricula is comprised of trade secrets, proprietary information, and Confidential Information, and that Customer, and its Affiliates shall not use, distribute, copy, record, perform, amend, alter, modify, create derivative works, reverse engineer, exploit, sublicense, or assign the Training Curricula or any component thereof except as expressly permitted by Hexagon. The Customer acknowledges Hexagon shall retain sole custody and control of the underlying online Training Curricula and any documents and information displayed therein. Unless otherwise set forth in the Training Program Statement, Hexagon shall only provide electronic copies of any specified Documentation. Without Hexagon's express, written permission, Customer shall ensure student/user credentials issued to Customer are only assigned and/or used only by Customer's employees.

6. CUSTOMER OBLIGATIONS.

Customer shall at all times be responsible for administering and monitoring the use of Training Curricula by its students/users. Training Curricula shall be used solely for Customer's internal training purposes. Upon the termination of employment of any student/user, Customer will terminate that individual's access to Training Curricula. Customer shall be responsible for supplying all components necessary to supply of the Training Curricula not expressly specified in the Training Program Statement as a deliverable by Hexagon. Depending upon the nature and delivery method of the particular Training Curricula, components to be supplied by Customer may include, by way of example only, computers or software for use by students/users, internet connectivity, or training space at the Customer's site.

END OF EXHIBIT F

EXHIBIT G

COMMON TERMS GLOSSARY

“Acceptable Use Policy (AUP)” means the Acceptable Use Policy identified as such within Exhibit D (Cloud Program Conditions).

“Activity” or **“Activities”** means a single work activity/event or collection of work activities/events by a Party or by both Parties under a specified Task.

“Affiliate” means, for business entities, the parent business entity of a Party and any business entities in which a Party or its parent company directly or indirectly hold a controlling ownership interest. “Affiliates” means, for government entities which are Customers, an entity which has entered into an intergovernmental agreement with Customer which: (i) relates to or addresses the subject matter of the Primary Contracting Document; and (ii) was disclosed to, and acknowledged by, Hexagon (A) prior to the Effective Date for any existing intergovernmental agreements, and (B) prior to any renewal date of such Primary Contracting Document for any intergovernmental agreements entered into after the Effective Date. “Control” for the purposes of this definition means that Customer owns in excess of fifty percent (50%) of the ownership interest of the Affiliate or owns a majority of the voting shares of the Affiliate. For purposes of Section 9 in the General Terms and Conditions, an Affiliate is not a third party.

“Authorized Cloud User” means an individual user authorized by the Customer to use an entire Cloud Program on behalf of the Customer and for whom an account is set up by which the Authorized Cloud User can utilize Cloud Services Support and log Cloud Service Requests and Product Change Requests.

“Auxiliary System License” means the license(s) of Software Product made available by Hexagon for select Software Products to augment Production System Licenses. Each Auxiliary System License requires a corresponding Production System License and the term of the Auxiliary System License shall not exceed the term of the applicable Production System License.

“Beta Software” means any version of Software Product prior to a generally available commercial release of such Software Product.

“Business Day” means any day other than a weekend or public holiday in the country listed on the Quote.

“Business Hour” means an hour occurring during a Business Day and during the generally recognized eight (8) working hours comprising the Business Day at the Customer’s location.

“Catastrophic Event” means a rare circumstance in which mass casualties and/or significant property damage has occurred or is imminent (e.g., September 11th, hurricanes greater than Category 2 on the Saffir-Simpson scale, earthquakes greater than 6.1 on the Richter scale).

“Change Order” means a document executed or accepted in writing by both Parties that modifies the scope, price, milestones, and/or project schedule of an Order.

“Client” means a computing device connected to a Server.

“Cloud Anniversary” means the anniversary of the date on which Hexagon provided the License Key(s) to Customer.

“Cloud Application(s)” means the Hexagon software applications, including without limitation application programming interfaces made available by Hexagon through the Cloud Portal as part of the Cloud Program. Cloud Application(s) are subject to Cloud Services Schedules.

“Cloud Consulting Services” means Services that relate to the Cloud Program including, but not limited to, implementation, configuration, customization, data conversion, Onboarding, design, training, and or enhancement of the Cloud Program.

“Cloud Cutover” means the point in time when Customer first uses the Cloud Program for its generally marketed purpose.

“Cloud Development Environment” means a logical group of virtual or physical computers comprised within the Cloud Environment to which the Customer will be provided with access and use for the limited purpose of making modifications, as specifically permitted herein, to the Cloud Application. For purposes of clarity, the Cloud Development Environment cannot be used in Production or for training purposes.

“Cloud Environment” means the collection of remote environments provided to Customer on which the Cloud Application(s) operates and that is supported by Hexagon.

“Cloud Optional Services” means those certain Hexagon Software Products that provide ancillary functionality or capability to the Cloud Applications, including, but not limited to, interfaces and custom forms and functionality. Unless specific Cloud Optional Services are identified in the Quote with a corresponding purchase commitment from Customer, Cloud Program does not include Cloud Optional Services.

“Cloud Portal” means the website through which Customer accesses and uses the Cloud Program. The Cloud Portal provides access to the Cloud Program according to Customer’s rights, and further provides access to additional Cloud Services, as made available by Hexagon.

“Cloud Program” means the combination of Cloud Services, Cloud Application(s), Local Software, Third Party Software, and Cloud Optional Services provided pursuant to the Order Documents. The components of the Cloud Program are specifically identified in the Quote and for purposes of this definition shall mean only those components and not any other components not specifically listed in the Quote.

“Cloud Program Fees” means, collectively, any of the fees payable by Customer to Hexagon for the Cloud Program (or any part thereof). Cloud Program Fees shall be in the amount described in the Quote and/or Cloud Services Schedule, and shall be invoiced on an annual basis, except to the extent otherwise expressly provided in the Primary Contracting Document or the Cloud Services Schedule.

“Cloud Program Start Date” means the date on which the first License Key(s) are provided to the Customer. For Cloud Program Fees purposes, Cloud Program use by Customer will be assumed to be for the entire Month in which the Cloud Program Start Date falls regardless of the actual date in such Month that access to the applicable Cloud Application began.

“Cloud Service Request” means a request made to the first level support service to diagnose and address an Error in a Cloud Application or to report the purchased Cloud Application(s) is not Available.

“Cloud Services” means the services, service levels, Cloud Services Support, Customer Cloud Environment, and Third Party Service Provider’s hosting services (which are more particularly described in the Cloud Services Schedule(s)), for Cloud Application(s), Cloud Optional Services, and Third Party Software and ordered by the Customer.

“Cloud Services Schedule” means a document(s) titled “Cloud Services Schedule” related to one or more Cloud Application(s) that contains additional details regarding the Cloud Services being provided to Customer with respect to the applicable Cloud Program components purchased by Customer. In the absence of Cloud Service Schedule(s) being included within the Order Documents, Cloud Services Schedules may be found at <https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/TPS/CSS-LLP.pdf>, which Schedules are incorporated into the Order as if fully set forth therein.

“Cloud Services Support” means the service specified as such in the Cloud Conditions through which Customer can report Cloud Service Requests and Product Change Requests.

“Cloud Staging Environment” or **“Cloud Testing Environment”** means a logical group of virtual or physical computers comprised within the Cloud Environment to which the Customer will be provided with access and use for the limited purposes of testing modifications and training, as specifically permitted herein, to the purchased Cloud Application(s). For purposes of clarity, the Cloud Staging Environment cannot be used in Production.

“Cloud Term” means the duration of a Cloud Program Order.

“Confidential Information” means any data or information, tangible or intangible, disclosed or made available by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") that the Disclosing Party considers confidential or proprietary and is not generally known in the industry or to competitors of the Disclosing Party and which shall include: (i) tangible information marked by the Disclosing Party with

the word "Confidential" or otherwise identified by an appropriate stamp or legend indicating its confidential nature; (ii) information disclosed orally or visually and identified by the Disclosing Party as confidential when disclosed, and confirmed by the Disclosing Party in a written notice within thirty (30) days following disclosure, which notice shall include markings similar to those outlined above; and (iii) all other information that, notwithstanding the absence of markings or designations, would be understood by the Parties, exercising reasonable business judgment, to be confidential. The term Confidential Information does not include information that: (i) is or becomes available in the public domain through no act of the Receiving Party; (ii) has been received on a non-confidential basis from a third party without breach of the Primary Contracting Document, where the Receiving Party has no reason to believe that such third party is bound by any confidentiality obligation to the Disclosing Party; (iii) was developed independently by the Receiving Party without reliance on the disclosed Confidential Information, provided that such independent development can be substantiated; (iv) was within the Receiving Party's possession prior to its being furnished by the Disclosing Party, where the Receiving Party has no reason to believe that such third party was bound by any confidentiality obligation to the Disclosing Party, or (v) is confirmed in writing by the Disclosing Party as not being confidential.

"Core" means a physical processor on a computer Server that can respond to and execute the basic instructions that drive the computer. A Central Processing Unit ("CPU") may have one or more Cores, and a given Server may have multiple CPU sockets that may each contain multiple Cores.

"COTS" means commercial off the shelf Intellectual Property in the form generally released and distributed to Hexagon's customers and not including any functionality or features requiring source code changes.

"COTS Documentation" means commercial off the shelf Documentation in the form generally released and distributed to Hexagon's customers and not including or requiring changes thereto.

"Coverage Period" means the period of performance of Maintenance Services with respect to a Covered Product, as stated in the Order Documents. Coverage Periods may differ for discrete Covered Products.

"Coverage Period Anniversary" means the anniversary of the date on which the Coverage Period commenced.

"Covered Products" means collectively, Covered Software Product(s) and Covered Third Party Products.

"Covered Software Product(s)" means Software Product(s) and Developer Tools identified in the Order Documents as software for which Maintenance Services are to be provided by Hexagon. Covered Software Products shall not include Third Party Software or any Cloud Program.

"Covered Third Party Products" means Software Product(s) identified in the Order Documents as Third Party Software for which Maintenance Services are to be provided by Hexagon. Covered Third Party Products shall not include Software Products or any Cloud Program.

"Credentials" means the unique log-in identifier by which a person could access a service or benefit, such as, without limitation, a Cloud Program or Training Curricula.

"Customer" means the non-Hexagon party to the Primary Contracting Document.

"Customer Cloud Administration" means providing User's access to the Cloud Application(s) purchased by Customer, managing User accounts, providing Credentials to Users, and any system administration beyond User interface.

"Customer Cloud Environment" means a logical group of virtual or physical computers comprised within the Cloud Environment and Local Environment to which the Customer will be provided with access and use of as part of the Cloud Program. A Customer Cloud Environment consists of a Cloud Development Environment and Production Environment.

"Customer Data" means all electronic data or information: (i) provided by Customer to Hexagon in connection with the Deliverables provided pursuant to an Order; and/or (ii) created by Customer and/or submitted to the Cloud Environment by Customers, Users, and/or Authorized Cloud Users. "Customer Data" shall not mean data which (i) is not particular to Customer, and/or (ii) is of value to the general implementation, development, operation, or use of Hexagon products or services for the benefit of other customers. For the avoidance of doubt, Customer Data shall not include the Cloud Application(s), Software Products, Cloud Optional Services, Documentation written by Hexagon, DevTools, Content, Equipment and

Software intentionally designed and embedded with Equipment or Special Purpose Items, and any other data and information provided as part of the Cloud Program or constituting a Hexagon Deliverable.

“Customer Data Rights” means: (i) the right to use Customer Data that contains Customer’s Confidential Information to perform Hexagon’s obligations within the Order; (ii) the right to use, alter, modify, and disclose Customer Data that does not include Customer’s Confidential Information to perform Hexagon’s obligations and other business purposes for which the information may be disclosed to third parties; and (iii) except as otherwise provided in the EULA or Developer Tools Schedule, a worldwide, royalty-free, irrevocable license to use, replicate, sell, modify, enhance, and distribute any works created by the Customer through its use of Developer Tools.

“Customer Specified Data Center” means a data center used in the provision of a Cloud Environment, whose location has been specified by the Customer and agreed to by Hexagon and identified in the Quote. Additional Cloud Program Fees may be payable for a Customer Specified Data Center.

“Customized Software” means those Services Deliverables that are software or computer code, whether in source code or object code.

“Cutover” means the point in time in which a Software Product(s) is first used by User for its generally marketed purpose.

“Data Center(s)” means the data center(s) from which the Cloud Program (or part thereof) will be stored as determined by Hexagon or its Third Party Service Provider.

“Defect” means a reproducible instance of an adverse and incorrect functioning of a Software Product or Cloud Application that impacts the ability to use functionality intentionally integrated in the design of the Software Product OR Cloud Application, assuming proper usage of the Software Product or Cloud Application in its required operating environment. Defects are further classified into four levels as follows:

Level	Impact of Defect
▶ Level One	<i>No workaround available and either:</i> <ul style="list-style-type: none">▶ <i>Productive use prohibited, or</i>▶ <i>Aborts.</i>
▶ Level Two	<i>No workaround available and either:</i> <ul style="list-style-type: none">▶ Primary purpose compromised, or▶ Productive use significantly impacted
▶ Level Three	▶ Productive, but incomplete operation Level Three Defects generally have a workaround or do not otherwise substantially impair productive use.
▶ Level Four	▶ Defects not qualifying as Level One, Two, or Three, including defects of a cosmetic nature and defects not materially limiting complete productive use

Customer shall classify a Defect in accordance with the foregoing; provided that, Hexagon shall reclassify the Defect as appropriate following its review thereof.

“Deliverable(s)” means all Services Deliverables, software, hardware, Cloud Programs, and other items delivered or to be delivered by Hexagon to Customer and identified in the Order.

“Designated Portal” means the portal(s), website(s), platform(s), or other similar channels designated by Hexagon from time to time to be used for specific collaboration(s), information dissemination(s), or communications(s).

“Developer Tools” or “DevTools” means any software intended for use by developers to create (i) software for (a) redistribution, or (b) interfacing two or more of the following: Software, Cloud Applications, E/C; or (ii) specific customizations for which the Developer Tool is intended and designed. Developer Tools are subject to Developer Tools Schedules.

“Developer Tools Schedule” or “DevTools Schedule” means a document relating to certain DevTools provided by Hexagon listed in the Order Documents that identifies particular details, limitations, licensing, and other parameters relating to the DevTools. In the absence of DevTools Schedule(s) being included within the Order Documents, DevTools Schedules may be found at <https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/TPS/DT-LLP.pdf>, which Schedules are incorporated into the Order as if fully set forth therein.

“Documentation” means, whether in electronic or printed form, any user's guides, reference guides, administrator's guides, configuration guides, release guides, installation guides, and help guides made available through the Designated Portal. Not all of the types of Software Products or Cloud Applications are provided with Documentation or with similar Documentation.

“Effective Date” means the date and time the last Party is on notice that all Parties have accepted the Primary Contracting Document.

“Emergency Maintenance” means all maintenance performed when a Cloud Service Request demands immediate, unplanned attention, as reasonably determined by Hexagon.

“Equipment” means tangible, personal property to be provided by Hexagon identified in Order Documents, including, but not limited to computing hardware, computer-related equipment, computer devices, furniture, sensors, equipment, unmanned aerial vehicles, and instruments.

“E/C” or “Equipment/Content” means digital content identified in an E/C Schedule and/or any Equipment supplied by or through Hexagon. For purposes of clarity, the term “E/C” excludes Maintenance Services, Cloud Program, Software (except Software intentionally designed and embedded with Equipment), and Services. E/C is subject to E/C Schedules.

“E/C Schedule” means a document relating to certain E/C provided by Hexagon listed in the Order Documents that address some or all of the following depending upon the offering being addressed: licensing requirements for any embedded Software, maintenance parameters and limitations, warranty, and support provisions. In the absence of E/C Schedule(s) being included within the Order Documents, E/C Schedules may be found at <https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/TPS/EC-LLP.pdf>, which Schedules are incorporated into the Order as if fully set forth therein.

“Error” means a Defect with a purchased Cloud Application, Cloud Optional Service, or Third Party Software causing a purchased Cloud Application to fail to materially conform to its designed functionality or Documentation. Errors are further classified into the same four levels as corresponding to the definition for “Defect.”

“EULA” means the certain Hexagon End-User License Agreement set forth in these Master Terms as Exhibit A and/or that is delivered with Software and which must be accepted prior to Software installation.

“Exchanged Product” means a later released Software Product which the Customer will receive pursuant to its Maintenance Contract and supplants the Replaced Product.

“Fixed Price Project Assignment” means a type of Order where Hexagon will provide Services with or without accompanying Product(s) for a fixed price.

“Hexagon” means the entity that is a member of the Hexagon Group of companies that is identified in the Order Documents; provided however, as used in the EULA, “Hexagon” means Intergraph Corporation.

“Hexagon IP” means Hexagon or Hexagon Affiliate developed, created, or prepared Intellectual Property. Additional information regarding Hexagon patents, including a list of registered patents associated with the Software Products, is available at www.intergraph.com/patents and/or www.uspto.gov.

“Intellectual Property” or “IPR” means all forms of intellectual property including, but not limited to, patents, trademarks, copyrights, trade secrets, methodologies, logos, techniques, processes, know-how, formulae, algorithms, logic designs, screen displays, schematics, source and object code computer programs or software, declaring code, implementing code, Documentation, mask work rights, digital data content, design, ideas, product information, inventions and improvements thereto, and all works of authorship fixed in any medium of expression (including any form of online, digital, or electronic medium), whether or not copyrightable and whether registered or not.

“Lapse” means an occurrence of any period of time, regardless of duration, during which (i) a Covered Product is not the subject of an active Order for Maintenance Services or other Maintenance Contract and an active Coverage Period, and/or (ii) payment is past due to Hexagon under a Maintenance Contract. Extension of a Coverage Period and/or payment to Hexagon after the occurrence of a Lapse shall not negate a Lapse, absent Hexagon’s express written waiver.

“License Key(s)” means certain unique data string(s) verifying authorized access to the Cloud Application(s), which are purchased by the Customer and provided by Hexagon, as set forth on the Quote.

“Local Environment” means the collection of environments provided and supported by Customer (e.g. providing System Equipment, etc.) in which the Local Software operates.

“Local Software” means software applications incidental to the Cloud Program which are designed to operate natively on devices outside the Cloud Portal and in the Local Environment.

“Maintenance Contract” means a contract under which Hexagon provides Maintenance Services to Customer in relation to Covered Products and under which Customer is to compensate Hexagon therefor.

“Maintenance Services” means only those services described in the document titled “Maintenance Terms and Conditions for Software” provided by Hexagon with respect to Software and other Deliverables licensed to Customer and identified in the Order Documents as the subject of Maintenance Services.

“Material Adverse Effect” means a change that individually or collectively in aggregate with other changes has the impact of (i) negatively and materially reducing the Customer’s and/or its Affiliates and/or its/their Authorized Cloud Users’ or Users’ access and/or usage rights in respect of the Cloud Program and which render the Cloud Program unusable for its primary intended purpose; or (ii) making the Cloud Program materially less secure which results in increased risk to Customer Data or to data belonging to other Hexagon customers. For clarity, a Material Adverse Effect is a condition which would render the Cloud Program un-usable or materially less secure for intended users generally, and not merely as a result of individual characteristics associated with Customer or its specific implementation or operation.

“Metered License” means a specific type of Subscription License that allows the Customer to use the Subscription License up to the number of hours set forth in the Quote during the Subscription Term. For reference, a Subscription License that is a Metered License shall have the word “Metered” in the Software Product name and/or have the letters “MTR” at the end of the product number for the Software Product instead of the other identifiers corresponding to an unmetered Subscription License referenced in its definition.

“Minimal Operations Levels” means operation of a Software Product without a Level One Defect.

“Modern Release” means a version of a Software Product published by Hexagon no more than eighteen (18) months prior to Customer’s first use thereof in Production.

“Month” means, unless otherwise stated in the applicable provision, a calendar month.

“Network Requirements” means (i) the minimum requirements, including but not limited to software and/or hardware, internet connection, latency or other requirements, which must be met by Customer in order to access the Cloud Portal and use the Cloud Program; and (ii) network recommendations to the Customer which describe general and specific recommendations for the network connection requirements of the Cloud Program in order to enable the Cloud Program to function as designed. The Network Requirements may be updated from time to time and Customer will be notified of such update via posting in the Cloud Portal or as otherwise determined by Hexagon.

“Offboarding” or **“Offboarded”** means the process for offboarding the Customer Data (or part thereof) from the Customer Cloud Environment and relocating or facilitating relocation of Customer Data to another Customer-designated location.

“Onboarding” or **“Onboarded”** means the process of loading Customer Data into the Customer Cloud Environment.

“Onsite Fee” means a fixed fee encompassing Hexagon’s travel expenses for an individual trip (an individual trip means to travel from the Hexagon resource’s primary duty station in furtherance with an Order and lasting no more than five (5) consecutive days).

“Order” means each individual purchase transaction in which the Parties engage, as evidenced by Order Documents.

“Order Documents” shall mean written documents, the terms of which include Hexagon’s commitment to provide specific products, licenses, and/or services at a specified price, subject to the terms and conditions of the Primary Contracting Document. Order Documents may consist of a single document executed by the parties or a combination of documents that together form an Order. Any Schedule applicable to the Order is incorporated into the Order Documents as if fully set forth therein.

“Perpetual License” means a type of license for Software Product which allows the User to use the Software Product in perpetuity so long as the User does not otherwise violate the terms of the EULA. For reference, a Perpetual License on a Quote is denoted by its absence of either the terms “Subscription,” “SaaS,” or “Metered” and/or the absence of the letters “SU,” “UB,” “CLD,” or “MTR” at the end of the Software Product number or the letters “HCL” at the beginning of the Software Product number.

“Personal Data” means data, including but not limited to criminal justice information, and other information which corresponds to a living individual person defined to be Personal Data under the applicable Personal Data protection laws of the Customer’s jurisdiction.

“Planned Maintenance” means maintenance planned and communicated in advance by Hexagon to Customer for the maintenance of the Cloud Program.

“Primary Contracting Document” means the contract document accepted by the Parties which references and incorporates this Common Terms Glossary and/or references and incorporates a document to which this Common Terms Glossary is an exhibit or attachment.

“Product Change Request” means a request for additional functionality or modification to the purchased Cloud Application(s) or Covered Products.

“Product Order” means a type of an Order that involves only the sale of Products from Hexagon. A Product Order may include the sale of Maintenance Services or maintenance for Equipment so long as the subject of the services is also included in the Product Order. This type of Order does not include Services or Cloud Programs.

“Product(s)” means either or the combination of Software (including Subscription Licenses), E/C, or other goods, and excluding Services, Maintenance Services, or a Cloud Program.

“Production” means, as applicable, where a Subsystem or Cloud Program is used in production/operation with an aim to accomplish one or more of its ultimate intended purposes. Operation solely for testing or training is not Production.

“Production Environment” means a logical group of virtual or physical computers comprised within the Cloud Environment to which the Customer will be provided with access and use the purchased Cloud Application(s) in production and for its generally marketed purpose.

“Production System License” means the license(s) of Software Product provided to User for general production use.

“Product-Specific Terms” modify the EULA, and (ii) in the event of a conflict between the EULA and Product-Specific Terms, Product-Specific Terms shall govern for the applicable Software. In the event of a conflict of terms between the EULA, any prior Product-Specific Terms (including any product-specific terms delivered in the form of an addendum to the EULA), and later Product-Specific Terms, the later Product-Specific Terms shall take precedence over the EULA and any prior Product-Specific Terms regarding the subject Software.

“Purchase Order” or **“PO”** means a document issued by Customer to Hexagon to authorize the delivery of certain Product(s), Services, Deliverables, or Cloud Programs.

“Quote” means a document issued by Hexagon reflecting Product(s), Services, Maintenance Services, Deliverables, and/or Cloud Programs, which Hexagon offers to provide Customer, as well as the prices and fees therefor, the Customer’s name and location, and any applicable Schedule(s). To the extent any document or information is identified in the Quote with the intention of it being incorporated into the Quote, it will form part of the Quote.

“Replaced Product” means an earlier Software Product which will be replaced pursuant to a Maintenance Contract for an Exchanged Product.

“Schedule” means one or more of: E/C Schedule(s), Cloud Services Schedule(s), DevTools Schedule(s), Training Program Statement(s), and/or Special Purpose Schedule(s).

“Secure Access Tool” is a tool designated by Hexagon for providing secure, auditable remote access to Customer utilized environments in order for Hexagon support personnel to effectively perform services.

“Security Incident” means an event or set of circumstances resulting in a compromise of the security, confidentiality, or integrity of Customer Data under Hexagon’s control. Examples of Security Incidents include: (i) security breaches to Hexagon’s network perimeter or to internal applications resulting in compromise of Customer Data; (ii) severe degradation of, Hexagon’s security controls, methods, processes or procedures that result in compromise of the security, confidentiality or integrity of Customer Data; and (iii) the unauthorized disclosure of Customer Data.

“Server” means a computer or computer program which manages access by Clients to a centralized resource or service in a network.

“Server-based Software Product” means Server-based software that is accessed by one or more Clients.

“Services” means the work, services, projects, assignments, or tasks Hexagon shall perform pursuant to an Order. Services do not include Maintenance Services, Cloud Programs, or XaaS (anything as a service).

“Services Deliverable” means any data, document, information, Customized Software, Third Party Software, or material provided to Customer as a product of Hexagon’s performance of Services pursuant to an Order. Cloud Programs are not Services Deliverables.

“Software” means the software and DevTools owned by Hexagon or an Affiliate and Third Party Software that is licensed to Customer. For the avoidance of doubt, Cloud Programs and their contents are not “Software” as that term is used herein.

“Software Product” means the Hexagon or Hexagon Affiliate software product(s) identified in the Order Documents, which includes (i) any associated Hexagon files, sample data, demo data, or media with which the software is provided, (ii) any associated templates, data, printed materials, and “online” or electronic Documentation, and (iii) any Updates of such Software Products not made the subject of a separate license agreement. The term Software Products shall not include, and no rights of use are granted to User for, third party components, Hexagon products, or dependencies unnecessary to operate products made the subject of the Order Documents, but incidentally delivered within the same files or media. Software Product shall not mean any Third Party Software. For the avoidance of doubt, Cloud Programs and their contents are not “Software Products” as that term is used herein. For avoidance if doubt, Software Product does not include Developer Tools. Software Products are subject to all of the terms and conditions of the EULA which the Parties agree will apply to the same; and in the absence of such agreement, then the terms of the EULA provided with the Software Product.

“SOW” means a statement of work setting forth the scope of Services being provided pursuant to an Order.

“Special Purpose Item” means an item identified in Order Documents as due to be delivered by Hexagon, which item is subject to certain unique terms, conditions, restrictions, or requirements identified in a Special Purpose Schedule.

“Special Purpose Schedule” means a document identifying terms, conditions, and restrictions applicable to a Special Purpose Item. In the absence of Special Purpose Schedule(s) being included within the Order Documents, Special Purpose Schedules may be found at <https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/TPS/SPS-LLP.pdf>.

“Subscription” means the collection of Subscription License(s) identified on the Quote and or purchased by the Customer.

“Subscription License” means a particular type of license to a Software Product that allows a Customer to use the Software Product for a specified period of time identified in the Quote. For reference, a Software Product that is a Subscription License shall have the word “Subscription” in the Software Product name and/or have the letters “SU” at the end of the product number for the Software Product.

“Subscription Term” means the period of time during which Users are authorized to use the Subscription License as set forth on the applicable Quote beginning on the date the Subscription Licenses are provided to the User or the User is provided license keys or access to the Subscription License, unless otherwise noted in the Order Documents.

“Subsystem” means a Hexagon solution that is designed to provide a specific capability independent of the procurement of any other Subsystem. Hexagon’s computer aided dispatch system (“I/CAD” or “OnCall Dispatch”), records management system (“RMS” or “OnCall Records”), and G/Technology (G/Tech) are each an example of a Subsystem.

“System” means a physical or operational location where the Software resides and operates on an individual Server or where a single operational identification number (“Site ID”) has been assigned by Hexagon.

“System Equipment” means all computer-related hardware, including but not limited to, servers, workstations, cables, mice, keyboards, cameras, and SAN’s; operating system software; database software; and other third party software.

“Task” means an Activity or combination of Activities of any nature whether tangible or intangible, whether onsite or remote, or an event, as further identified in an SOW.

“Task Acceptance” means the event when the Task Acceptance Criteria has been satisfied in accordance with the Task Acceptance Process.

“Task Acceptance Criteria” means the criteria by which a Task will be evaluated for completion as described in an SOW.

“Task Acceptance Process” means the process by the Customer and Hexagon verify completion of the Task Acceptance Criteria as further described below. Once Hexagon believes the Task Acceptance Criteria has been successfully completed, Hexagon shall submit for execution by Customer’s project manager a sign-off form in substantial conformity with Exhibit C, “Project Deliverable Sign-off Form.” Within ten (10) Business Days of receipt of the applicable Project Deliverable Sign-off Form for the completed milestone or Task, Customer’s project manager will either: (i) execute the Project Deliverable Sign-off Form provided by Hexagon, or (ii) provide a written description of all deficiencies to Hexagon. If Customer fails to perform either action identified in the preceding sentence within ten (10) Business Days, or if the Deliverable, including the Software contained in the Fixed Price Project Assignment Order, is placed into Production or utilized in a live environment, then the Task or milestone shall be deemed accepted.

“Term” means the duration of performance under the contract into which this Common Terms Glossary is incorporated by reference.

“Third Party Service Provider” means the third party service provider with whom Hexagon enters into a subcontract with respect to the hosting of a cloud platform, Training Curricula, and/or other services to provide an element of the Cloud Program, Training Curricula, or other service to Customer (if applicable) on behalf of Hexagon.

“Third Party Software” means computer software or other technology in which any person or entity, other than Hexagon or Hexagon’s Affiliate, has any right, title or interest, including any restrictions or obligations (such as obligations to obtain consents or approvals and restrictions that may be eliminated only by obtaining such consents or approvals) applicable to the computer software or technology, but does not include software embedded in the Software Products by license from third parties. The use of Third Party Software is subject to all of the terms and conditions of the Third Party Terms. “Third Party Software Products” also means, where applicable, pre-requisite third party software products used by Hexagon in order for Customer to receive other components of the Cloud Program or licensed by Hexagon and used by the Customer to use Cloud Application or Cloud Optional Services.

“Third Party Terms” means for certain Third Party Software additional terms and conditions provided with the Order Documents and/or cited in the Use Terms, or otherwise made available to the Customer or any User.

“Time and Materials Project Assignment” means Hexagon will perform the Services set forth in an Order on an hourly basis until the project is either completed or the authorized hours are exhausted, whichever

comes first. Unless otherwise specified in the Order Documents, a Time and Materials Project Assignment shall end six (6) months after formation of the Order.

“Training Curricula” means one or more training classes or resources provided by Hexagon to Customer as a service over a limited time period. Training Curricula are subject to Training Program Statements.

“Training Program Statement” means document(s) titled “Training Program Statement” containing additional details regarding the Training Curricula parts being provided to Customer, including, but not limited to: whether the training is provided live on-site, live but remotely, or by way of recorded or static online content; and, certain other pertinent details; provided that “Training Program Statement” may alternatively refer to only those specific terms of an SOW containing additional details regarding Training Curricula being provided to Customer. In the absence of Training Program Statement(s) being included within the Order Documents, Training Program Statements may be found at <https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/TPS/TPS-LLP.pdf>, which Training Program Statements are incorporated into the Order as if fully set forth therein.

“Update” means any upgrade, modified version, new release, fix, patch and/or update of the Software. Updates can require full installation and a new License Key. Updates are subject to all of the terms and conditions of the EULA provided with User’s then current version of the Software; provided that if a new EULA is delivered with an Update, acceptance thereof is a requirement for its use.

“User” means Customer and/or an individual employed by Customer and authorized by Hexagon to use a particular Software, Cloud Application, Third Party Software, or Cloud Optional Services on behalf of the Customer. A User may also include Customer’s contractor who requires temporary use in order to provide services on Customer’s behalf. A person can only be authorized and a User if the person is an employee or designee of Customer and Customer has purchased the requisite number of licenses, or in the case of Cloud Programs, the requisite number of License Key(s) to provide Credentials for that User.

“Use Terms” means the Hexagon Product Usage Policy and Product Specific Terms accessible from https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/Licenses/LLP/LLP_08-2019.pdf which are incorporated herein. For purposes of clarity, the Use Terms corresponding to the date of the Order shall apply to that specific Order and the Software provided thereunder.

“Version Limitation I” is a status reached by a Software Product on the earlier of the (i) the third anniversary of the Customer’s first operation of that Software Product in a live Production environment or (ii) the fifth anniversary of Hexagon’s first actual delivery of the Software Product to the Customer for implementation; provided that each time Customer upgrades the version of the Software Product used in Production to a Modern Release, a reset shall occur, such that Version Limitation I shall thereafter be reached upon the third anniversary of the Customer’s first operation of such Modern Release in a live Production environment.

“Version Limitation II” is a status reached by a Software Product on the earlier of (i) the fourth anniversary of the Customer’s first operation of that Software Product in a live Production environment or (ii) the sixth anniversary of Hexagon’s first actual delivery of the Software Product to the Customer for implementation; provided that each time Customer upgrades the version of the Software Product used in Production to a Modern Release, a reset shall occur, such that Version Limitation II shall thereafter be reached upon the fourth anniversary of the Customer’s first operation of such Modern Release in a live Production environment.

“Version Limitations” means, separately and collectively, limitations on Services to be provided hereunder based upon a Covered Product reaching Version Limitation I and/or Version Limitation II.

“Virus” means any thing or device (including any software, code, file or program) which may: (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or (iii) adversely affect the user experience or security, including worms, Trojan horses, viruses and other similar things or devices.

“Work” means, as applicable, the performance or providing of Services, Maintenance Services, or Cloud Services.

“XML Files” means the XML (Extensible Markup Language) files generated by the Software Product, where applicable.

“XSL Stylesheets” means the XSL (Extensible Stylesheet Language) presentation of a class of XML Files which, when included with the Software Product, describe how an instance of the class is transformed into an XML (Extensible Markup Language) document that uses the formatting vocabulary.

END OF EXHIBIT G



THIS DATA PROCESSING ADDENDUM (“DPA”) supplements the Master Terms between Customer and Hexagon, or other agreement between Customer and Hexagon (the “**Agreement**”) governing Customer’s use of Hexagon Software Products, Maintenance Services, and/or the Cloud Program Hexagon’s performance of Services (collectively, “Hexagon Products”) when the GDPR applies to Customer’s use of Hexagon Products to process Customer Data. This DPA is an agreement between Customer and Hexagon. Any and all terms capitalized but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

“**EU Model Clause Agreement**” means an agreement made using the relevant EU Model Clauses as adopted by the EU Commission for the transfer of personal data to third countries.

“**EU Personal Data Legislation**” means (a) until 24 May 2018, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and any amendments made thereto, (b) until 24 May 2018, local legislations where the Directive referred to in (a) is implemented and any amendments made thereto, and (c) the GDPR.

“**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC (General Data Protection Regulation), and any amendments made thereto.

“**Hexagon Affiliates**” means a legal entity that directly or indirectly through one or more intermediaries is controlled by or under common control with Hexagon’s ultimate parent company. For the purposes of this definition, the term “control” shall be understood as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a legal entity, whether through the ownership of voting stock, by contract, or otherwise.

“**Party**” or “**Parties**” means the Customer and Hexagon separately, or jointly, as the case may be.

“**Regulatory Requirements**” means the privacy and personal data legislation applicable to the processing of personal data, including the EU Personal Data Legislation, and such legislation as may replace the aforementioned legislation from time to time (and in case of discrepancies or contradictions between different rules or regulations, the one which provides the highest degree of privacy and/or information security shall apply).

“**Supervisory Authority**” means any court, regulatory agency or authority which, according to applicable laws and/or regulations (including the Regulatory Requirements), supervises privacy issues and/or the processing of personal data.

1.2 Construction

1.2.1 Non-capitalized terms and expressions used in this Agreement, *e.g.* ‘data subject’, ‘controller’, ‘personal data’, ‘processing’, ‘processor’, ‘third country’, etc., shall have the same meaning as in EU Personal Data Legislation.

1.2.2 Unless it is otherwise stated herein, or clearly follows from the context in which it appears, the term “including” shall mean “including without limitation”.

2. SPECIAL UNDERTAKINGS OF THE PARTIES

2.1 Roles, Ownership of Personal Data, Processing and Purpose

- 2.1.1 The Customer shall be regarded as a controller of all personal data processed on behalf of the Customer and in accordance with its instructions. Hexagon shall be considered a processor of the personal data processed on behalf of the Customer.
- 2.1.2 Hexagon may only process the Customer's personal data for the purpose set forth on Schedule 1 attached hereto and to the extent it is necessary for the fulfilment of Hexagon's obligations under this DPA or the Agreement.
- 2.1.3 Hexagon acknowledges that, between the Parties, all rights, title, and interest in the personal data processed as a result of this Agreement is vested solely in the Customer, irrespective of whether Hexagon is considered to be a controller of personal data.

2.2 Special Undertakings of the Customer

The Customer undertakes to:

- (a) Ensure that there is a legal ground for processing the personal data covered by this DPA;
- (b) Ensure that the data subjects, as required by the EU Personal Data Legislation, have received sufficient information regarding the processing, including information on that Hexagon may process the personal data on behalf of the Customer;
- (c) Immediately after it is brought to the Customer's attention, inform Hexagon of any erroneous, rectified, updated or deleted personal data subject to Hexagon's processing;
- (d) In a timely manner, provide Hexagon with lawful and documented instructions regarding Hexagon's processing of personal data;
- (e) Before this DPA enters into force, provide Hexagon with the Customer's applicable policies and guidelines for processing of personal data; and
- (f) Act as the data subject's point of contact.

2.3 Special Undertakings of Hexagon

Hexagon undertakes to:

- (a) Only process the personal data in accordance with the Customer's documented instructions, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by Regulatory Requirements; in such a case, Hexagon shall inform the Customer of that legal requirement before processing the personal data, unless such information is prohibited by the Regulatory Requirements on important grounds of public interest;
- (b) Ensure that such employees (of Hexagon or its subcontractors) which process personal data on behalf of the Customer have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) Take all measures required pursuant to GDPR, Article 32;
- (d) Taking into account the nature of the processing, assist the Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights set forth in the EU Personal Data Legislation;

- (e) Except in cases of personal data breach, upon a timely request by the Customer, assist the Customer in ensuring compliance with the obligations pursuant to GDPR, Articles 32 to 36 (e.g. assist in data protection impact assessments) taking into account the nature of the processing and the information available to Hexagon; and
 - (f) Make available to the Customer the information necessary to demonstrate compliance with Hexagon's obligations set forth in this DPA and allow for and contribute to audits, including inspections, conducted by the Customer or another authorized third party, in accordance with Section 4.
- 2.3.1 Hexagon shall immediately inform the Customer if, in its opinion, a Customer instruction infringes the EU Personal Data Legislation.
- 2.3.2 The Parties agree that the security measures taken by Hexagon, listed in the Agreement, fulfils Hexagon's undertakings in Sections 2.3(c) and 2.3(e).

3. SUBCONTRACTORS

- 3.1 Hexagon shall be entitled to engage subcontractors acting as sub-processors of the personal data under the condition that such subcontractors are bound by a written contract which states that they must adhere to the same data protection, privacy and audit obligations as Hexagon under this DPA.
- 3.2 Should Hexagon wish to engage a subcontractor different from or additional to those subcontractors set forth in the Agreement or the Quote, it shall notify the Customer in advance. The Customer may, within twenty-four (24) hours from receipt of the notification, object to Hexagon appointing that specific subcontractor. Should the Customer's objection(s) result in any additional costs or expenses for Hexagon, e.g. if the engagement of another subcontractor than the one initially proposed by Hexagon would result in additional or increased costs or expenses by Hexagon, Hexagon shall be compensated for such additional and/or increased costs and expenses.
- 3.3 Hexagon shall remain the Customer's sole point of contact, unless otherwise agreed.
- 3.4 For the avoidance of doubt, the Customer fully and explicitly consents to the use of the subcontractors with whom Hexagon has agreements in place with at the time this DPA enters into force, including all Hexagon Affiliates, regardless if they have been engaged as subcontractors at the time of this DPA.

4. AUDIT RIGHTS AND LOCATIONS

- 4.1 The Customer shall have the right to perform audits of Hexagon's processing of the Customer's personal data (including such processing carried out by Hexagon's subcontractors, if any) in order to verify Hexagon's, and any subcontractor's, compliance with this DPA and the EU Personal Data Legislation.
- 4.2 Hexagon will, during normal business hours and upon reasonable notice (whereby a notice period of twenty (20) Business Days shall always be deemed reasonable), provide an independent auditor, appointed by the Customer and approved by Hexagon, reasonable access to the parts of facilities where Hexagon is carrying out processing activities on behalf of the Customer, to personnel and to all information relating to the processing of the Customer's personal data. The auditor shall comply with Hexagon's work rules, security requirements and standards when conducting site visits.
- 4.3 A Supervisory Authority shall always have direct and unrestricted access to Hexagon's premises, data processing equipment and documentation in order to investigate that Hexagon's processing of the personal data is performed in accordance with the Regulatory Requirements.
- 4.4 The Customer is responsible for all costs associated with the audit mentioned in Section 4.2, save for when the audit concludes a material breach of Hexagon's undertakings in

violation of this DPA. If so, Hexagon shall compensate the Customer for reasonable and verified costs associated with the audit.

- 4.5 The Customer's personal data may not be processed in a manner that entails a transfer to a third country or an international organisation (including inadvertently through the use of cloud-based IT solutions) unless this is in accordance with the Customer's instructions.

5. INTERNATIONAL PERSONAL DATA TRANSFERS

5.1 Hexagon Affiliates and sub-contractors outside the EU/EEA

- 5.1.1 When providing the Hexagon Products, Hexagon may need to process the Customer's personal data outside of the EU/EEA. Therefore, the EU Model Clause Agreement as set out in Schedule 2 shall apply in such instances. The Parties agree that any disputes arising under an EU Model Clause Agreement shall be treated as if they had arisen under the Agreement.
- 5.1.2 If the Customer's personal data is to be transferred to and processed by a sub-contractor located outside the EU/EEA, Hexagon is obliged to ensure that the sub-contractor accedes to the EU Model Clause Agreement as set out in Schedule 2.
- 5.1.3 The above shall not apply if the jurisdiction in which Hexagon or sub-contractor is established has been deemed by the European Union as a jurisdiction with adequate protection for personal data.

6. REMUNERATION

- 6.1 The remuneration for Hexagon's undertakings under this DPA shall, unless otherwise stated in this Section 6.1, be included in the remuneration paid by the Customer under the Agreement. Notwithstanding the aforesaid, Hexagon shall always, in case of the Customer's instructions or other requests under this DPA requires extra measures by Hexagon in addition to what is reasonably required under the Agreement, be entitled to compensation for such surplus work on a time and material basis. This includes, for example, Hexagon's assistance handling data subject requests.
- 6.2 In the event that (a) the Customer amends its written instructions mentioned in Section 2.2(d), or (b) the Customer would require the implementation of technical or organizational measures, in addition to those mentioned herein, and this would cause a cost increase to Hexagon, then Hexagon shall be entitled to request an equitable adjustment in the remuneration.
- 6.3 The payment terms for the adjusted remuneration shall be governed by the provisions regarding payment in the Agreement.

7. TERM AND TERMINATION

- 7.1 This Agreement shall enter into force on the Effective Date. Unless terminated earlier due to a material breach of the terms of this DPA, this Agreement shall remain in force until the termination or expiration of the Agreement, whereupon it shall terminate automatically without further notice.
- 7.2 On termination of this DPA for any reason, Hexagon shall cease to process the personal data processed on behalf of the Customer and shall, at the Customer's expense, provide for the return to the Customer (or its nominated third party) of all such personal data together with all copies in its possession or control unless storage of the personal data is required under the Regulatory Requirements. If the Customer does not respond to an offer from Hexagon to return the personal data processed by it under this DPA, within a period of three (3) months from when the offer was made, Hexagon will be entitled to delete any such personal data, including copies thereof, unless storage of the personal data is required under the Regulatory Requirements.

8. FORCE MAJEURE

Hexagon shall not be liable for any default or delay in the performance of its obligations under this DPA if and to the extent the default or delay is caused by Force Majeure. A failure by a subcontractor will be considered a Force Majeure event provided that the underlying reason for the subcontractor's non-performance is an event which, if it had been related directly to Hexagon, would have qualified as a Force Majeure event under this DPA.

9. MISCELLANEOUS

9.1 Neither Party may assign its rights or obligations under this DPA without the prior written consent of the other Party. Notwithstanding the foregoing, Hexagon may assign its rights and obligations under this DPA, without the approval of Customer to: (a) a Hexagon Affiliate, or (b) another business entity in connection with a merger, consolidation, or reorganization of Hexagon or any of its subsidiaries.

9.2 This DPA and the Agreement sets forth and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and all prior agreements, understandings or promises with respect thereto are hereby superseded.

9.3 No amendment, modification, release, or discharge of this DPA shall be binding upon the Parties unless in writing and duly executed by authorised representatives of both Parties.

10. GOVERNING LAW AND DISPUTES

10.1 Provisions regarding governing law and disputes are set forth in the Agreement.

[SCHEDULES ATTACHED HERETO]

SCHEDULE 1

DESCRIPTION OF THE PROCESSING OF PERSONAL DATA

1. **Subject matter**. The subject matter of the data processing under this DPA is Customer Data.
2. **Duration**. As between Hexagon and Customer, the duration of the data processing under this DPA is determined by Customer.
3. **Purpose**. The purpose of the data processing under this DPA is the provision of the Hexagon Products initiated or requested by Customer from time to time.
4. **Nature of the Processing**: Compute, storage, and such other services as described in the Agreement and documents referenced therein and initiated by Customer from time to time.
5. **Type of Customer Data**: Customer Data uploaded to or provided by Customer in its use of or receipt of Hexagon Products.
6. **Categories of Data Subjects**: The data subjects may include Customer's end-users and natural persons that are the subject of Customer's business and/or operations.

SCHEDULE 2
EU MODEL CLAUSES

Commission Decision C(2010)593
Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

For the purposes of Article 28 of the EU General Data Protection Regulation (the “**GDPR**”), the provisions in Appendix 3 shall form an integrated part of these Clauses.

Name of the data exporting organisation:

The entity identified as “Customer” in the DPA
(the data **exporter**)

And

Name of the data importing organisation:

The entity identified as “Hexagon” in the DPA
(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the Transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-Party Beneficiary Clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by

contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the Data Exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the Data Importer¹

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain

¹ Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, *inter alia*, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and Jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with Supervisory Authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the Contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or

data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation After the Termination of Personal Data Processing Services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

The data exporter is the entity identified as “Customer” in the DPA.

Data importer

The data importer is Hexagon.

Data subjects

Data subjects are defined in Schedule 1 of the DPA.

Categories of data

The personal data is defined in Schedule 1 of the DPA.

Processing operations

The processing operations are defined in Schedule 1 of the DPA.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

The technical and organizational security measures implemented by the data importer are as described in the Agreement.

APPENDIX 3 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and by signing the Clauses, the data importer undertakes to comply with the undertakings listed in this Appendix, in addition to its undertakings following the Clauses.

In the event of inconsistencies between the provisions of this Appendix and any other provisions of the Clauses, the other provisions of the Clauses shall prevail.

Processing in Accordance with Documented Instructions

The Data importer undertakes to only process personal data in accordance with applicable law and on documented instructions from the data exporters, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by applicable law; in such a case, the data importer shall inform the data exporter of that legal requirement before processing the personal data, unless such information is prohibited by the applicable law on important grounds of public interest.

Confidentiality Commitments

The data importer undertakes to ensure that such employees (of the data importer or its subcontractors) who are authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

Technical and Organisational Security Measures

The data importer undertakes to, taking into account the nature of the processing, assist the data exporter by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the data exporter's obligations to respond to requests for exercising the data subject's rights laid down in the GDPR.

Data Breach

In the case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed by the data importer on behalf of the data exporter, the data importer shall immediately inform the data exporter of such security breach and thereafter, within twenty four (24) hours at the latest, provide the data exporter with:

- (a) a description of the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) a description of the likely consequences of the personal data breach; and
- (c) a description of the measures taken or proposed to be taken by the data importer to address the personal data breach (including measures to prevent similar security breaches in the future), including, where appropriate, measures to mitigate its possible adverse effects.

Data Protection Impact Assessment and Prior Consultation

The data importer undertakes to provide reasonable assistance to the data exporter with any data protection impact assessments, and prior consultations with supervisory authorities or other competent data privacy authorities, which the data exporter reasonably considers to be required of any data exporter by Article 35 or 36 of the GDPR or equivalent provisions of any other applicable data protection law, in each case solely in relation to processing of personal data by, and taking into account the nature of the processing and information available to, the data importer.

Deletion or Return of Personal Data

The data importer undertakes to promptly of the date of cessation of any services involving the processing of personal data, delete and procure the deletion of all companies of such personal data or, if preferred by the data exporter, to return such data to the data exporter.

Audit Rights

The data importer undertakes to make available to the data exporter on request, all information necessary to demonstrate compliance with this Appendix and shall allow for and contribute to audits, including inspections, by the data exporter or an auditor mandated by the data exporter in relation to the processing of personal data by the data importer.

Instructions in infringement of the GDPR or other Applicable Law.

The data importer shall immediately inform the data exporter if, in its opinion, a data exporter's instruction infringes the GDPR or other applicable law.

End User Data Processing Agreement for SAP Support and Professional Services

This End User Data Processing Agreement ("End User DPA") applies if User has Hexagon Software Products with SAP Business Objects Software. Capitalized terms not defined herein are defined in the PERSONAL DATA PROCESSING AGREEMENT FOR SAP SUPPORT AND PROFESSIONAL SERVICES ("SAP DPA") attached hereto and made a part of this End User DPA.

Hexagon and SAP have entered into an agreement through which SAP grants Hexagon the right to provide support services to Hexagon's customers ("End Customers").

In accordance with the agreement, SAP will provide certain support services to Hexagon, and on behalf of Hexagon to End Customers, which may include the processing of, and/or access to, Personal Data controlled by End Customers.

Any such processing of Personal Data requires prior entry into a data processing agreement ("DPA") between all parties of the data processing chain: i.e. (i) a DPA between Hexagon and SAP, and (ii) this End User DPA between Hexagon and End Customer.

This End User DPA includes the general principles of data processing in connection with support services provided by SAP. Hexagon is entering into this End-User DPA for Hexagon to use SAP as a sub-processor of Personal Data as follows.

a) To the extent Personal Data controlled by End Customers, whether or not established in the European Economic Area ("EEA"), is processed by SAP and its Subprocessors within the territory of the EEA, Hexagon is entering into End User DPAs with End Customers. End Customers are hereby required Under this End User DPA to enter a DPA with the same terms with other Controllers who have been authorized by End Customer to receive Support Services under Hexagon's Order Documents with End Customer ("End User Agreement"), except for Section 7.2(b)-(c) of the SAP DPA.

b) Regarding Section 7.2 (b)-(c) of the SAP DPA, if Personal Data controlled by End Customers or Other Data Controllers established within the EEA is processed by SAP and its Subprocessors outside of the EEA, then by executing this End-User DPA, End Customers must include it in their DPAs that End Customers or Other Data Controllers accede to the Standard Contractual Clauses between SAP SE and its relevant Non-EU Subprocessors ("Accession Model"). Other Controllers who have been authorized by End Customer to receive support service under the End User Agreement may also enter into Standard Contractual Clauses with SAP and/or the relevant Subprocessors in the same manner as End Customer in accordance with this Section.

c) End Customers may request audit reports or may audit SAP as further detailed in Section 5 of the SAP DPA.

PERSONAL DATA PROCESSING AGREEMENT FOR SAP SUPPORT AND PROFESSIONAL SERVICES

1. BACKGROUND

1.1 Purpose and Application. This document (“**DPA**”) is incorporated into the Agreement and forms part of a written (including in electronic form) contract between SAP and Customer. This DPA applies to Personal Data provided by Customer and each Data Controller in connection with the performance of the SAP services as set out in the relevant Agreement (“**SAP Service(s)**”) to which is attached the present DPA which may include:

- (a) SAP Support as defined in the Software License & Support Agreement; and/or
- (b) Professional Services as described in the services agreement concluded between SAP and the Customer (“**Services Agreement**”).

1.2 Structure. Appendices 1 and 2 are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, the categories of data, the data subjects and the applicable technical and organizational measures.

1.3 GDPR. SAP and Customer agree that it is each party’s responsibility to review and adopt requirements imposed on Controllers and Processors by the General Data Protection Regulation 2016/679 (“**GDPR**”), in particular with regards to Articles 28 and 32 to 36 of the GDPR, if and to the extent applicable to Personal Data of Customer/Controllers that is processed under the DPA. For illustration purposes, Appendix 3 lists the relevant GDPR requirements and the corresponding sections in this DPA.

1.4 Governance. SAP acts as a Processor and Customer and those entities that it permits to include Personal Data in systems accessible by SAP when performing the SAP Service act as Controllers under the DPA. Customer acts as a single point of contact and is solely responsible for obtaining any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use SAP as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller. Where SAP informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to include Personal Data and it is Customer’s responsibility to forward such information and notices to the relevant Controllers.

2. SECURITY OF PROCESSING

2.1 Appropriate Technical and Organizational Measures. SAP has implemented and will apply the technical and organizational measures set forth in [Appendix 2](#). Customer has reviewed such measures and agrees that the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.

Appendix 2 applies only to the extent that such SAP Services are performed on or from SAP premises. In the case where SAP is performing SAP Services on the Customer’s premises and SAP is given access to Customer’s systems and data, SAP shall comply with Customer’s reasonable administrative, technical, and physical conditions to protect such data and guard against unauthorized access. In connection with any access to Customer’s system and data, Customer shall be responsible for providing SAP personnel with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Customer deems appropriate from time to time. Customer shall not grant SAP access to Licensee systems or personal information (of Customer or any third party) unless such access is essential for the performance of SAP Services. Customer shall not store any Personal Data in non-production environments.

2.2 Changes. SAP applies the technical and organizational measures set forth in Appendix 2 to SAP’s entire customer base receiving the same SAP Service. SAP may change the measures set out in

Appendix 2 at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

3. SAP OBLIGATIONS

- 3.1 Instructions from Customer.** SAP will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and Customer may provide further instructions during the performance of the SAP Service. SAP will use reasonable efforts to follow any other Customer instructions, as long as they are required by Data Protection Law, technically feasible and do not require changes to the performance of the SAP Service. If any of the before-mentioned exceptions apply, or SAP otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, SAP will immediately notify Customer (email permitted).
- 3.2 Processing on Legal Requirement.** SAP may also process Personal Data where required to do so by applicable law. In such a case, SAP shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.
- 3.3 Personnel.** To process Personal Data, SAP and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. SAP and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.
- 3.4 Cooperation.** At Customer's request, SAP will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding SAP's processing of Personal Data or any Personal Data Breach. SAP shall notify the Customer as soon as reasonably practical about any request it has received from a Data Subject in relation to the Personal Data processing, without itself responding to such request without Customer's further instructions, if applicable. SAP will correct or remove any Personal Data in SAP's possession (if any), or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.
- 3.5 Personal Data Breach Notification.** SAP will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. SAP may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by SAP.
- 3.6 Data Protection Impact Assessment.** If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, SAP will provide such documents as are generally available for the SAP Service (for example, this DPA, the Agreement, audit reports or certifications). Any additional assistance shall be mutually agreed between the Parties.

4. DATA DELETION

Customer hereby instructs SAP to delete the Personal Data remaining with SAP (if any) within a reasonable time period in line with Data Protection Law (not to exceed six months) once Personal Data is no longer required for execution of the Agreement, unless applicable law requires retention.

5. CERTIFICATIONS AND AUDITS

- 5.1 Customer Audit.** Customer or its independent third party auditor reasonably acceptable to SAP (which shall not include any third party auditors who are either a competitor of SAP or not suitably

qualified or independent) may audit SAP's service and support delivery centers and IT security practices relevant to Personal Data processed by SAP only if:

- (a) SAP has not provided sufficient evidence of its compliance with the technical and organizational measures through providing a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate). Certifications are available under: <https://www.sap.com/corporate/en/company/quality.html#certificates> or upon request if the certification is not available online; or
- (b) A Personal Data Breach has occurred; or
- (c) An audit is formally requested by Customer's data protection authority; or
- (d) Mandatory Data Protection Law provides Customer with a direct audit right and provided that Customer shall only audit once in any twelve month period unless mandatory Data Protection Law requires more frequent audits.

5.2 Other Controller Audit. Any other Controller may audit SAP's control environment and security practices relevant to Personal Data processed by SAP in line with Section 5.1 only if any of the cases set out in Section 5.1 applies to such other Controller. Such audit must be undertaken through and by Customer as set out in Section 5.1 unless the audit must be undertaken by the other Controller itself under Data Protection Law. If several Controllers whose Personal Data is processed by SAP on the basis of the Agreement require an audit, Customer shall use all reasonable means to combine the audits and to avoid multiple audits.

5.3 Scope of Audit. Customer shall provide at least sixty days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice. The frequency, time frame and scope of any audits shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited to remote audits where possible. If an on-site audit is mandatory, it shall not exceed one business day. Beyond such restrictions, the parties will use current certifications or other audit reports to avoid or minimize repetitive audits. Customer shall provide the results of any audit to SAP.

5.4 Cost of Audits. Customer shall bear the costs of any audit unless such audit reveals a material breach by SAP of this DPA, then SAP shall bear its own expenses of an audit. If an audit determines that SAP has breached its obligations under the DPA, SAP will promptly remedy the breach at its own cost.

6. SUBPROCESSORS

6.1 Permitted Use. SAP is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- (a) SAP or SAP SE on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. SAP shall be liable for any breaches by the Subprocessor in accordance with the terms of the Agreement;
- (b) SAP will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA;
- (c) For SAP Support, SAP's list of Subprocessors in place on the effective date of the Agreement is published by SAP (under: <https://support.sap.com/en/my-support/subprocessors.html>) or SAP will make it available to Customer upon request, including the name, address and role of each Subprocessor SAP uses to provide the SAP Service; and
- (d) For Professional Services, SAP will, upon request of the Customer, make the list available at <https://support.sap.com/en/my-support/subprocessors.html> or identify such subprocessors prior to the start of the applicable SAP Services.

6.2 New Subprocessors. SAP's use of Subprocessors is at its discretion, provided that:

- (a) SAP will inform Customer in advance of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor (i) for SAP

Support - by posting on the SAP Support Portal, or by email, upon Customer's registration on the SAP Portal and (ii) for Professional Services - by similar posting on the SAP Support Portal, or by e-mail, or in other written form;

- (b) Customer may object to such changes as set out in Section 6.3.

6.3 Objections to New Subprocessors.

- (a) SAP Support: If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the SAP Support upon written notice to SAP, such notice to be provided to SAP no later than thirty days from the date SAP informs the Customer of the new Subprocessor. If Customer does not provide SAP with a notice of termination within this thirty days period, Customer is deemed to have accepted the new Subprocessor. Within the thirty days period from the date of SAP informing the Customer of the new Subprocessor, Customer may request that the parties come together in good faith to discuss a resolution to the objection. Such discussions shall not extend the period for providing SAP a notice of termination and does not affect SAP's right to use the new Subprocessor(s) after the thirty days period.
- (b) Professional Services: If Customer has a legitimate reason under Data Protection Law that relates to the Subprocessors' processing of Personal Data, Customer may object to SAP's use of a Subprocessor, by notifying SAP in writing within five business days of SAP's information as per Section 6.2. If Customer objects to the use of the Subprocessor, the parties will come together in good faith to discuss a resolution. SAP may choose to: (i) not use the Subprocessor or (ii) take the corrective steps requested by Customer in its objection and use the Subprocessor. If none of these options are reasonably possible and Customer continues to object for a legitimate reason, either party may terminate the relevant services on five days' written notice. If Customer does not object within five days of receipt of the notice, Customer is deemed to have accepted the Subprocessor. If Customer's objection remains unresolved thirty days after it was raised, and SAP has not received any notice of termination, Customer is deemed to have accepted the Subprocessor.
- (c) Any termination under this Section 6.3 shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

6.4 Emergency Replacement. SAP may replace a Subprocessor without advance notice where the reason for the change is outside of SAP's reasonable control and prompt replacement is required for security or other urgent reasons. In this case, SAP will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 6.3 applies accordingly.

7. INTERNATIONAL PROCESSING

7.1 Conditions for International Processing. SAP shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.

7.2 Standard Contractual Clauses. Where (i) Personal Data of an EEA or Swiss based Controller is processed in a country outside the EEA, Switzerland and any country, organization or territory acknowledged by the European Union as safe country with an adequate level of data protection under Art. 45 GDPR, or where (ii) Personal Data of another Controller is processed internationally and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into Standard Contractual Clauses, then:

- (a) SAP and Customer enter into the Standard Contractual Clauses;
- (b) Customer enters into the Standard Contractual Clauses with each relevant Subprocessor as follows, either (i) Customer joins the Standard Contractual Clauses entered into by SAP or SAP SE and the Subprocessor as an independent owner of rights and obligations ("Accession Model") or, (ii) the Subprocessor (represented by SAP) enters into the Standard Contractual Clauses with Customer ("Power of Attorney Model"). The Power of Attorney Model shall

- apply if and when SAP has expressly confirmed that a Subprocessor is eligible for it through the Subprocessor list provided under Section 6.1(c) or (d), or a notice to Customer; and/or
- (c) Other Controllers who have been authorized by Customer to include Personal Data under the Agreement may also enter into Standard Contractual Clauses with SAP and/or the relevant Subprocessors in the same manner as Customer in accordance with Sections 7.2 (a) and (b) above. In such case, Customer will enter into the Standard Contractual Clauses on behalf of the other Controllers.

7.3 Relation of the Standard Contractual Clauses to the Agreement. Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and subprocessor rules in sections 5 and 6, such specifications also apply in relation to the Standard Contractual Clauses.

7.4 Governing Law of the Standard Contractual Clauses. The Standard Contractual Clauses shall be governed by the law of the country in which the relevant Controller is incorporated.

8. DOCUMENTATION; RECORDS OF PROCESSING

Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations relating to maintaining records of processing.

9. DEFINITIONS

Capitalized terms not defined herein will have the meanings given to them in the Agreement.

9.1 "Authorized Users" means any individual to whom Customer grants access authorization in compliance with a SAP software license to use the SAP Service that is an employee, agent, contractor or representative of (i) the Customer, (ii) Customer's Affiliates, and/or (iii) Customer's and Customer's Affiliates' Business Partners (as defined under the Software License and Support Agreement).

9.2 "Controller" means the natural or legal person, public authority, agency or other body, which alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as Processor for another Controller, it shall in relation to SAP be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.

9.3 "Data Protection Law" means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement (and includes, as far as it concerns the relationship between the parties regarding the processing of Personal Data by SAP on behalf of Customer, the GDPR as a minimum standard, irrespective of whether the Personal Data is subject to GDPR or not).

9.4 "Data Subject" means an identified or identifiable natural person as defined by Data Protection Law.

9.5 "Personal Data" means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is supplied to or accessed by SAP or its Subprocessors in order to provide the SAP Service under the Agreement.

9.6 "Personal Data Breach" means a confirmed (1) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data or (2)

similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.

- 9.7 "Professional Services"** means implementation services, consulting services and/or services such as SAP Premium Engagement Support Services, Innovative Business Solutions Development Services, Innovative Business Solutions Development Support Services.
- 9.8 "Processor"** means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Controller, be it directly as Processor of a Controller or indirectly as Subprocessor of a Processor which processes Personal Data on behalf of the Controller.
- 9.9 "Standard Contractual Clauses"** or sometimes also referred to the "EU Model Clauses" means the (Standard Contractual Clauses (processors)) or any subsequent version thereof published by the European Commission (which will automatically apply).
- 9.10 "Subprocessor"** means SAP Affiliates, SAP SE, SAP SE Affiliates and third parties engaged by SAP , SAP SE or SAP SE's Affiliates in connection with the SAP Service and which processes Personal Data in accordance with this DPA.

Appendix 1 to the DPA and, if applicable, the Standard Contractual Clauses

Data Exporter

The Data Exporter is the Customer who concluded a Software License and Support Agreement and/or Services Agreement with SAP under which it benefits from SAP Service as described under the relevant Agreement. The Data Exporter allows other Controllers to also use the SAP Service, these other Controllers are also Data Exporters.

Data Importer

SAP and its Subprocessors provide the SAP Service as defined under the relevant Agreement concluded by the Data Exporter that includes the following SAP Service:

- Under the Software License and Support Agreement: SAP and/or its Subprocessors provide support when a Customer submits a support ticket because the Software is not available or not working as expected. They answer phone calls and perform basic troubleshooting, and handles support tickets in a tracking system
- under the applicable Services Agreement for Professional Services: SAP and/or its Subprocessors provide Services subject to the Order Form Services and the applicable Scope Document.

Data Subjects

Unless provided otherwise by the Data Exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, Business Partners or other individuals having Personal Data transmitted to, made available or accessed by the Data Importer.

Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data and/or data fields which could be transferred per SAP Service as stated in the relevant Agreement. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, time zone, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data transferred by Authorized Users and may include financial data such as bank account data, credit or debit card data.

Special Data Categories (if appropriate)

The transferred Personal Data concerns the following special categories of data: As set out in the Agreement (including the Order Form), if any.

Processing Operations / Purposes

The transferred Personal Data is subject to the basic processing activities as set out in the Agreement which may include:

- use of Personal Data to provide the SAP Service
- storage of Personal Data
- computer processing of Personal Data for data transmission
- execution of instructions of Customer in accordance with the Agreement.

Appendix 2 to the DPA and, if applicable, the Standard Contractual Clauses – Technical and Organizational Measures

1. TECHNICAL AND ORGANIZATIONAL MEASURES

The following sections define SAP's current technical and organizational measures. SAP may change these at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

1.1 Physical Access Control. Unauthorized persons are prevented from gaining physical access to premises, buildings or rooms where data processing systems that process and/or use Personal Data are located.

Measures:

- SAP protects its assets and facilities using the appropriate means based on the SAP Security Policy
- In general, buildings are secured through access control systems (e.g., smart card access system).
- As a minimum requirement, the outermost entrance points of the building must be fitted with a certified key system including modern, active key management.
- Depending on the security classification, buildings, individual areas and surrounding premises may be further protected by additional measures. These include specific access profiles, video surveillance, intruder alarm systems and biometric access control systems.
- Access rights are granted to authorized persons on an individual basis according to the System and Data Access Control measures (see Section 1.2 and 1.3 below). This also applies to visitor access. Guests and visitors to SAP buildings must register their names at reception and must be accompanied by authorized SAP personnel.
- SAP employees and external personnel must wear their ID cards at all SAP locations.

Additional measures for Data Centers:

- All Data Centers adhere to strict security procedures enforced by guards, surveillance cameras, motion detectors, access control mechanisms and other measures to prevent equipment and Data Center facilities from being compromised. Only authorized representatives have access to systems and infrastructure within the Data Center facilities. To protect proper functionality, physical security equipment (e.g., motion sensors, cameras, etc.) undergo maintenance on a regular basis.
- SAP and all third-party Data Center providers log the names and times of authorized personnel entering SAP's private areas within the Data Centers.

1.2 System Access Control. Data processing systems used to provide the SAP Service must be prevented from being used without authorization.

Measures:

- Multiple authorization levels are used when granting access to sensitive systems, including those storing and processing Personal Data. Authorizations are managed via defined processes according to the SAP Security Policy
- All personnel access SAP's systems with a unique identifier (user ID).
- SAP has procedures in place to so that requested authorization changes are implemented only in accordance with the SAP Security Policy (for example, no rights are granted without authorization). In case personnel leaves the company, their access rights are revoked.
- SAP has established a password policy that prohibits the sharing of passwords, governs responses to password disclosure, and requires passwords to be changed on a regular basis and default passwords to be altered. Personalized user IDs are assigned for authentication. All passwords must fulfill defined minimum requirements and are stored in encrypted form. In the case of domain passwords, the system forces a password change every six months in compliance with the requirements for complex passwords. Each computer has a password-protected screensaver.

- The company network is protected from the public network by firewalls.
- SAP uses up-to-date antivirus software at access points to the company network (for e-mail accounts), as well as on all file servers and all workstations.
- Security patch management is implemented to provide regular and periodic deployment of relevant security updates. Full remote access to SAP's corporate network and critical infrastructure is protected by strong authentication.

1.3 Data Access Control. Persons entitled to use data processing systems gain access only to the Personal Data that they have a right to access, and Personal Data must not be read, copied, modified or removed without authorization in the course of processing, use and storage.

Measures:

- As part of the SAP Security Policy, Personal Data requires at least the same protection level as "confidential" information according to the SAP Information Classification standard.
- Access to Personal Data is granted on a need-to-know basis. Personnel have access to the information that they require in order to fulfill their duty. SAP uses authorization concepts that document grant processes and assigned roles per account (user ID). All Customer Data is protected in accordance with the SAP Security Policy.
- All production servers are operated in the Data Centers or in secure server rooms. Security measures that protect applications processing Personal Data are regularly checked. To this end, SAP conducts internal and external security checks and penetration tests on its IT systems.
- SAP does not allow the installation of software that has not been approved by SAP.
- An SAP security standard governs how data and data carriers are deleted or destroyed once they are no longer required.

1.4 Data Transmission Control. Except as necessary for the provision of the SAP Services in accordance with the relevant Agreement, Personal Data must not be read, copied, modified or removed without authorization during transfer. Where data carriers are physically transported, adequate measures are implemented at SAP to provide the agreed-upon service levels (for example, encryption and lead-lined containers).

Measures:

- Personal Data in transfer over SAP internal networks is protected according to SAP Security Policy.
- When data is transferred between SAP and its customers, the protection measures required for data transfer are hereby mutually agreed upon between SAP and its customer and included as a part of the Agreement. This applies to both physical and network based data transfer. In any case, the Customer assumes responsibility for any data transfer once it is outside of SAP-controlled systems (e.g. data being transmitted outside the firewall of the SAP Data Center).

1.5 Data Input Control. It will be possible to retrospectively examine and establish whether and by whom Personal Data have been entered, modified or removed from SAP data processing systems.

Measures:

- SAP only allows authorized personnel to access Personal Data as required in the course of their duty.
- SAP has implemented a logging system for input, modification and deletion, or blocking of Personal Data by SAP or its subprocessors within the SAP Service to the extent technically possible.

1.6 Job Control. Job Control is required to ensure that personal data processed on behalf of others are processed strictly in compliance with the Customer's instructions

Measures:

SAP uses controls and processes to monitor compliance with contracts between SAP and its customers, subprocessors or other service providers.

As part of the SAP Security Policy, Personal Data requires at least the same protection level as "confidential" information according to the SAP Information Classification standard.

- All SAP employees and contractual subprocessors or other service providers are contractually bound to respect the confidentiality of all sensitive information including trade secrets of SAP customers and partners.

For SAP Support, SAP customers have control over their remote support connections at all times. SAP employees cannot access a customer system without the knowledge and consent of the customer. For SAP Support, SAP provides a specially designated, secure support ticket facility in which SAP provides a special access-controlled and monitored security area for transferring access data and passwords. SAP customers have control over their remote support connections at all times. SAP employees cannot access a customer on premise system without the knowledge and active participation of the customer.

1.7 Availability Control. Personal Data will be protected against accidental or unauthorized destruction or loss.

Measures:

- SAP employs regular backup processes to provide restoration of business-critical systems as and when necessary.
- SAP uses uninterrupted power supplies (for example: UPS, batteries, generators, etc.) to protect power availability to the Data Centers.
- SAP has defined business continuity plans for business-critical processes;
- Emergency processes and systems are regularly tested.

1.8 Data Separation Control. Personal Data collected for different purposes can be processed separately.

Measures:

- SAP uses appropriate technical controls to achieve Customer Data separation at all times.
- Customer (including its approved Controllers) will have access only to their own Data based on secure authentication and authorization.
- If Personal Data is required to handle a support incident from Customer, the data is assigned to that particular message and used only to process that message; it is not accessed to process any other messages. This data is stored in dedicated support systems.

1.9 Data Integrity Control. Personal Data will remain intact, complete and current during processing activities.

Measures:

SAP has implemented a multi-layered defense strategy as a protection against unauthorized modifications.

In particular, SAP uses the following to implement the control and measure sections described above.

In particular:

- Firewalls;
- Security Monitoring Center;
- Antivirus software;
- Backup and recovery;
- External and internal penetration testing;
- Regular external audits to prove security measures.

Appendix 3 to the DPA

The following table sets out the relevant Articles of GDPR and corresponding terms of the DPA for illustration purposes only.

Article of GDPR	Section of DPA	Click on link to see Section
28(1)	2 and Appendix 2	Security of Processing and Appendix 2, Technical and Organizational Measures.
28(2), 28(3) (d) and 28 (4)	6	SUBPROCESSORS
28 (3) sentence 1	1.1 and Appendix 1, 1.2	Purpose and Application. Structure.
28(3) (a) and 29	3.1 and 3.2	Instructions from Customer. Processing on Legal Requirement.
28(3) (b)	3.3	Personnel.
28(3) (c) and 32	2 and Appendix 2	Security of Processing and Appendix 2, Technical and Organizational Measures.
28(3) (e)	3.4	Cooperation.
28(3) (f) and 32-36	2 and Appendix 2, 3.5, 3.6	Security of Processing and Appendix 2, Technical and Organizational Measures.
28(3) (g)	4	Data Deletion
28(3) (h)	5	CERTIFICATIONS AND AUDITS
28 (4)	6	SUBPROCESSORS
30	8	Documentation; Records of processing
46(2) (c)	7.2	Standard Contractual Clauses.



Customer:	Flagstaff Coconino AZ
Quote Number:	2021-74736
Quote Date:	September 10 2021
Expiration Date:	October 01 2021

Ship To:

Allison Hughes
 Support Services Manager
 Flagstaff Coconino AZ
 911 E. Sawmill
 Flagstaff Arizona 86001
 United States

Bill To:

Allison Huges
 Support Services Manager
 Flagstaff Coconino AZ
 911 E. Sawmill
 Flagstaff Arizona 86001
 United States

Renewal Configuration Listing

Line	Base Part	Description	Begin	End	Service Level	Months	Qty	Monthly Price	Extended Net Price
1	GSPX5007	GeoMedia Professional CC	07/01/2021	06/30/2022	SND	12	1	\$268.62	\$3,223.44
2	IPS0038	I/Mobile CC	07/01/2021	06/30/2022	PRM	12	27	\$29.17	\$9,451.08
3	IPS0038TST	I/Mobile CC - Test License	07/01/2021	06/30/2022	PRM	12	32	\$0.00	\$0.00
4	IPS0015	I/Tracker - I/CAD NL	07/01/2021	06/30/2022	PRM	12	1	\$615.05	\$7,380.60
5	IPS0015TST	I/Tracker - I/CAD - Test License	07/01/2021	06/30/2022	PRM	12	2	\$0.00	\$0.00



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6	IPS0015BCK	I/Tracker - I/CAD - Backup License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
7	IPS0009	I/Mobile Data Terminal NL	07/01/2021	06/30/2022	PRM	12	1	\$1,087.88	\$13,054.56
8	IPS0009TST	I/Mobile Data Terminal NL - Test License	07/01/2021	06/30/2022	PRM	12	2	\$0.00	\$0.00
9	IPS0009BCK	I/Mobile Data Terminal NL - Backup License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
10	IPS1163	I/Map Editor CC	07/01/2021	06/30/2022	PRM	12	1	\$94.82	\$1,137.84
11	IPS1163TST	I/Map Editor CC - Test License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
12	IPS0082	Map Administration Utility CC	07/01/2021	06/30/2022	PRM	12	1	\$223.65	\$2,683.80
13	IPS0082TST	Map Administration Utility CC - Test License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
14	IPS0042I	I/NetViewer CC	07/01/2021	06/30/2022	PRM	12	15	\$41.00	\$7,380.00
15	IPS0042ITST	I/NetViewer - Test License	07/01/2021	06/30/2022	PRM	12	16	\$0.00	\$0.00
16	IPS0042IBCK	I/NetViewer - Backup License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00

Intergraph Corporation doing business as "a member of the Hexagon Group of Companies".
 305 Intergraph Way, Madison AL 35758
 Phone: null Fax: null



Customer:	Flagstaff Coconino AZ
Quote Number:	2021-74736
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17	IPS0007	I/Executive 2 NL	07/01/2021	06/30/2022	PRM	12	1	\$639.37	\$7,672.44
18	IPS0004	I/Informer CC	07/01/2021	06/30/2022	PRM	12	2	\$544.55	\$13,069.20
19	IPS0004TST	I/Informer - Test License	07/01/2021	06/30/2022	PRM	12	3	\$0.00	\$0.00
20	IPS0004BCK	I/Informer - Backup License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
21	IPS0002	I/Dispatcher CC	07/01/2021	06/30/2022	PRM	12	14	\$407.20	\$68,409.60
22	IPS0002TST	I/Dispatcher - Test License	07/01/2021	06/30/2022	PRM	12	15	\$0.00	\$0.00
23	IPS0002TRN	I/Dispatcher CC - Training License	07/01/2021	06/30/2022	PRM	12	1	\$407.20	\$4,886.40
24	IPS0002BCK	I/Dispatcher - Backup License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
25	IPS0001	I/Executive NL	07/01/2021	06/30/2022	PRM	12	1	\$897.05	\$10,764.60
26	IPS3042-TST	Xalt - Integration Runtime Engine NL - Test License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
27	IPS0048	I/FRMS-CADlink CC	07/01/2021	06/30/2022	PRM	12	1	\$247.97	\$2,975.64
28	IPS0048TST	I/FRMS-CADlink NL - Test License	07/01/2021	06/30/2022	PRM	12	2	\$0.00	\$0.00



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29	IPS0048BCK	I//FRMS-CADlink NL - Backup License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
30	IPS0012	I//Page NL	07/01/2021	06/30/2022	PRM	12	1	\$493.50	\$5,922.00
31	IPS0012TST	I//Page - Test License	07/01/2021	06/30/2022	PRM	12	2	\$0.00	\$0.00
32	IPS0012BCK	I//Page - Backup License	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
34	IPSCUSTOM12	E-Citation SW Interface	07/01/2021	06/30/2022	PRM	12	1	\$666.10	\$7,993.20
35	IPS2043TST	HxGN OnCall Records - Xalt Interface - TST	07/01/2021	06/30/2022	PRM	12	1	\$0.00	\$0.00
36	RMS0017TST	HxGN OnCall Records - Concurrent User License - Test License	08/01/2021	06/30/2022	PRM	11	60	\$0.00	\$0.00
37	RMS0017C	Exchange I//LEADS RMS Client for WebRMS Concurrent User	08/01/2021	06/30/2022	PRM	11	60	\$34.65	\$22,869.00
38	RMS0016TST	HxGN OnCall Records - Server CC License - Test License	08/01/2021	06/30/2022	PRM	11	1	\$0.00	\$0.00

Intergraph Corporation doing business as "a member of the Hexagon Group of Companies".
 305 Intergraph Way, Madison AL 35758
 Phone: null Fax: null



Customer:	Flagstaff Coconino AZ
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Expiration Date:	October 01 2021

39	RMS0016C	Exchange I/LEADS Server for WebRMS Server	08/01/2021	06/30/2022	PRM	11	1	\$1,876.35	\$20,639.85
40	PSA2100	HxGN OnCall Records - NIBRS - Federal	08/01/2021	06/30/2022	PRM	11	1	\$199.50	\$2,194.50
41	PSA2100TST	HxGN OnCall Records - NIBRS - Federal - Test	08/01/2021	06/30/2022	PRM	11	1	\$0.00	\$0.00
42	RMSCUSTOM15	TraCS Interface	08/01/2021	06/30/2022	PRM	11	1	\$0.00	\$0.00
43	RMS0018	Intergraph WebJMS User License	08/01/2021	06/30/2022	PRM	11	20	\$15.75	\$3,465.00
44	RMS0018TST	HxGN OnCall Records - Jail CC - Test	08/01/2021	06/30/2022	PRM	11	20	\$0.00	\$0.00
45	IPS2043	Intergraph WebRMS Connect for EdgeFrontier	08/01/2021	06/30/2022	PRM	11	1	\$731.85	\$8,050.35
46	IPS2304TSTC	HxGN OnCall Analytics - Records Essentials NL 4 CoreTSTComp	08/01/2021	06/30/2022	PRM	11	1	\$0.00	\$0.00



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47	IPS2304C	HxGN OnCall Analytics - Records Essentials NL 4 Core Comp	08/01/2021	06/30/2022	PRM	11	1	\$269.85	\$2,968.35
48	IPS3042	EdgeFrontier Runtime Engine	08/01/2021	06/30/2022	PRM	11	1	\$420.00	\$4,620.00
49	IPSCUSTOM10	Oncall Records Livescan Interface	07/01/2021	06/30/2022	PRM	12	1	\$108.18	\$1,298.16
51	IPS0038	I/Mobile CC	07/01/2021	06/30/2022	PRM	12	5	\$29.17	\$1,750.20
52	ESCROW	Annual Software Escrow Fee	07/01/2021	06/30/2022	PRM	12	1	\$41.67	\$500.04

\$234,359.85



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Intergraph Corporation has elected to do business as: "a member of the Hexagon Group of Companies" in certain public safety, utility delivery, transportation, and information technology markets; "Hexagon Geospatial," in certain geospatial markets; and, "Process, Power & Marine," in certain engineering markets. These alias and trade names do not reflect any change of legal corporate entity, applicable tax identification number, or similar formalities.

This quote is provided pursuant to separately agreed upon Terms and Conditions which are expressly identified in this Quote; but in absence of such express identification, this Quote is governed by <https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/Sales/USMT062021a.pdf>.

You will be sent a confirmation of purchased maintenance services by the Hexagon Customer Services Administration department.

If maintenance is not purchased at the same time as you purchase products listed in this quotation, you may purchase the maintenance for the products at a later date; however reinstatement or upgrade fees shall apply.

Summary

Total Renewal Year One	\$234,359.85
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Total Price*:	\$234,359.85
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*Tax included in this quotation is an estimate only. Final tax billed will reflect the applicable tax rates at time of sale as required by law.

Notes:

This Quote is an Order made pursuant to that certain Master Agreement dated November 12, 2020 by and between City of Flagstaff, AZ ("Customer") and Intergraph Corporation, doing business through its Hexagon Safety & Infrastructure division ("Hexagon"). This Quote for Maintenance Services shall only become binding and effective upon the written acceptance of both parties. This Quote for Maintenance Services expires on the first day of the Coverage Period identified herein.

Any commercial Off-the-shelf product information Hexagon has shared with its audience during the proposal / contract activities to date, were to provide an understanding of Hexagon's current expected direction, roadmap or vision and is subject to change at any time at Hexagon's sole discretion. Hexagon does not commit to develop the future features, functions and products discussed in this material beyond that which is specifically committed to be provided by Hexagon as part of the intended contract. The audience of this material should not factor any future features, functions or products into its current buying decision since there is no assurance that such future features, functions or products will be developed. When and if these future features, functions or products are developed, they will generally be available for licensing by Hexagon.

To place an order against this quotation, please either fill in the required information below and have an authorized representative of your company sign this quotation, have your company issue a purchase order with the required information below and reference this quotation number, or have your company remit payment via one of the methods described in the billing and payment instructions that follow, making sure to include a reference to this quotation number. Please submit the signed quotation, your purchase order, or payment to the Order Administration desk in accordance with the contact information provided below. This agreement shall only become binding and effective upon the written acceptance by Hexagon or the first delivery of the products/services within this quotation. The terms and conditions of this quotation cannot be superseded, altered, modified, or amended by subsequent Purchase Order or writing received from customer without the express written consent of Hexagon.

Attn: Hexagon Administration
Intergraph Corporation
P. O. Box 240000
Huntsville, AL 35813
Phone: (256) 730-2705
Fax Numbers: 800-239-2972 or 256-730-6089
Email: ordersall.si@hexagon.com



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Flagstaff Coconino AZ

Signature:

Printed Name:

Phone:

Date:

PO reference(if required for invoicing):

Please check to indicate payment and billing instructions:

My PURCHASE ORDER (PO) is attached. (Your order will be processed upon written acceptance by Hexagon. Terms and conditions printed on a customer PO shall not supersede the applicable terms and conditions attached to this quotation.)

PO Number: _____ PO Amount: _____

I wish to pay by CREDIT CARD. Hexagon will contact you to obtain the credit card number. Please provide the name and telephone number of the credit card holder below. (Your order will be processed upon written acceptance by Hexagon and upon authorization/approval of your credit card.)

Name as it appears on Credit Card: _____

Telephone number of Cardholder: _____

Signature of Cardholder: _____

INVOICE ME based on my returning this signed acceptance sheet. (Your order will be processed upon written acceptance by Hexagon and upon credit approval.)

My CHECK payable to **Intergraph Corporation** has been sent to the following address

Intergraph Corporation
7104 Solution Center
Chicago, IL 60677-7001

(Your order will be processed upon written acceptance by Hexagon and after your check clears - approximately 5 days after receipt by our lockbox.)

Check Number: _____ Check Amount _____

My DOMESTIC WIRE PAYMENT has been wired to :

ABA Number: 021000018
Bank Name: Bank of New York Mellon, New York
Favor of: Bank: SEB(Skandinaviska Enskilda Banken)
Account Number: 890 043 9688
For further credit to Beneficiary: Intergraph Corporation b/a a member of the Hexagon Group of Companies,
Account #00007583

My ACH PAYMENT has been sent to:

Account Number: 1030429611
Company Name: Intergraph Corporation SGI
Routing Number: 043000096
Beneficiary Bank Name: PNC Bank N.A.
Address: Pittsburgh, PA 15222
Phone# 1-877-824-5001, Opt 1 and Opt 3
Contact: Lockbox Group, Product Client Services

(Your order will be processed upon written acceptance by Hexagon.)

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council

:

Date: 09/30/2021

Meeting Date: 10/05/2021



TITLE:

Consideration and Approval of Contract: Change Order Number 4 with Peak Engineering, Inc., in the amount of \$115,353.34 and add 540 calendar days for the design work associated with the potential alternative alignment of the new JW Powell Boulevard extension to Fourth Street.

STAFF RECOMMENDED ACTION:

1. Approve Change Order Number 4 with Peak Engineering, Inc.; in the amount of \$115,353.34;
2. Add 540 calendar days to the design services contract; and
3. Authorize the City Manager to execute the necessary documents.

Executive Summary:

Change Order Number 4 will compensate Peak Engineering, Inc., for the expanded services, coordination, and public outreach for the development of a potential alternative alignment of JW Powell Boulevard extension to Fourth Street. This potential realignment of the roadway would relocate the regional arterial from the rural residential neighborhood along the South Fourth Street Corridor. The scope of this change order will include the conceptual roadway design, design of the public utilities, a re-evaluation and exhibit of the resource protection resources, a revision of the preliminary drainage analysis, as well as an updated construction cost comparison for the proposed alternative alignment. Moreover, the scope includes resources for up to 10 additional meetings with residents of the Fourth Street Neighborhood, large property owners, a community-wide open house, boards or commissions, or the City Council.

Financial Impact:

Funding for Change Order Number 4, \$115,353.34, will come from the Neighborhood Plans account 048-05-119-3460-6-4426 for the community partnering portion of Proposition 419 funding which was approved by voters in November 2018. Funding in this account is \$250,000.00 for FY 2021-22.

Current authorized funding for this project is \$42,145.00 for FY 2021-22, which is located in account number 001-09-402-3369-6.

Policy Impact:

There are no policy impacts.

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

Sustainable, Innovative Infrastructure

Utilize existing long-range plan(s) that identify the community's future infrastructure needs and all associated costs

Environmental Stewardship

Actively manage and protect all environmental and natural resources

Council Goal 2017 – 2019 - Transportation and Other Public Infrastructure

Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

Council Goal 2017 – 2019 - Environmental and Natural Resources

Actively manage and protect all environmental and natural resources

Region Plan Goal – Environmentally Sensitive Lands Goals and Policies

Goal E&C.7. Give special consideration to environmentally sensitive lands in the development design and review process.

Team Flagstaff Strategic Plan – Priority 3

Deliver outstanding services through a healthy environment, resources, and infrastructure.

Has There Been Previous Council Decision on This:

The JW Powell Specific Plan Study Project has been before City Council three times in the past five years. The first occurrence was a Council Work Session on 25 October 2016 with a discussion on Infrastructure and Public Facilities Planning and Engineering in the John Wesley Powell Boulevard area. The second occurrence was on 6 February 2018, for the award of contract to Peak Engineering for the JW Powell Specific Plan Study which is currently underway. Additionally, the JW Powell Specific Plan Study was discussed during the Capital Programming update on 24 April 2020. The most current City Council presentation was on 27 October 2020, when the JW Powell Design Team presented the latest design work and the land use framework for the currently designed South Fourth Street alignment.

Options and Alternatives:

1. Approve Change Order Number 4 with Peak Engineering, Inc;. in the amount of \$115,353.34 and add 540 calendar days as recommended; or
2. Reject Change Order Number 4, which will forfeit the opportunity for the City to further investigate alternative designs for the JW Powell Boulevard alignment.

Background/History:

On 20 February 2018, City Council approved the contract with Peak Engineering, Inc. for the John Wesley Powell Area Specific Plan Study to develop a Specific Plan to guide the future private development of public infrastructure, utilities and public facilities (schools, fire/police stations, libraries, parks, etc.).

In November 2018, voters approved Proposition 419 which allocated funding for roadway and bike and pedestrian improvements along the future John Wesley Powell Boulevard extension.

On 27 October 2020, City Staff and the JW Powell Design Team presented an update to City Council regarding the current design work and the Land Use Framework.

On 28 January 2021, the JW Powell Design Team conducted a corporate meeting with the small-parcel property owners and consequential one-on-one meetings with small-parcel property owners who requested to meet regarding specifics to their respective parcels. Starting in May 2021, the JW Powell



CITY OF FLAGSTAFF

<input type="checkbox"/> CONFIRMING CHANGE ORDER NO.	_____
<input checked="" type="checkbox"/> CONSULTING CONTRACT CHANGE ORDER NO.	4
<input type="checkbox"/> CONSTRUCTION CONTRACT CHANGE ORDER NO.	_____
<input type="checkbox"/> CONTRACT ALLOWANCE UPDATE NO.	_____

PROJECT NO. ST3369 **PROJECT NAME:** J.W. Powell Specific Plan Study

FILE NO. 03-16010 **PROJECT MANAGER:** David Pedersen

TO: Peak Engineering, Inc.

You are hereby directed to make the herein described changes from the plans and/or specifications or perform the following described work not included in the plans and/or specifications of this contract. Description of work to be done:

This change order request is for expanded services, coordination, and public outreach for the development of a potential alternative alignment. The scope of this change order will include the conceptual roadway design, design of the public utilities, a re-evaluation and exhibit of the resource protection resources, a revision of the preliminary drainage analysis, as well as an updated construction cost comparison for the proposed alternative alignment. Moreover, the scope includes resources for up to 10 additional meetings with residents of the Fourth Street Neighborhood, large property owners, a community-wide open house, boards or commissions, or the City Council.

Change Order originated by: CITY OF FLAGSTAFF CONTRACTOR CONSULTANT OTHER: _____

Project Manager	<u>23 September 2021</u> <small>Date</small>	Approval Recommended	
Department Head	<u>09/23/2021</u> <small>Date</small>	Approval Recommended	_____
Water Services	<u>09-23-2021</u> <small>Date</small>	Approval Recommended	<u>Water Services Absent</u>
Public Works	<u>09-24-2021</u> <small>Date</small>	Approval Recommended	_____
Eng. and Capital Improvements	<u>09/23/2021</u> <small>Date</small>	Approval Recommended	_____
City Attorney	_____ <small>Date</small>	Approval Recommended	_____
Purchasing (Chair)	_____ <small>Date</small>	Approval Recommended	_____
City Manager	_____ <small>Date</small>	Approval Recommended	_____

END DATES			
ORIGINAL CONTRACT PERIOD	<u>265</u> Days	(12/30/18)	ORIGINAL CONTRACT \$ <u>316,299.00</u>
PRIOR TIME CHANGES	<u>838</u> Days	(04/16/21)	TOTAL PRIOR VALUE CHANGES \$ <u>54,326.25</u>
THIS TIME CHANGE	<u>540</u> Days	(10/08/22)	VALUE OF THIS CHANGE \$ <u>115,353.34</u>
NEW CONTRACT PERIOD	<u>1643</u> Days	(10/0822)	NEW CONTRACT \$ <u>486,978.59</u>

We, the undersigned consultant, have given careful consideration to the change proposed and hereby agree, if this proposal is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above and perform all services necessary for the work above specified and will accept as full payment therefore the prices and time extensions shown above.

FIRM NAME: Peak Engineering, Inc.

Accepted Date: Sept. 17, 2021 **By:** Thomas E. Smith



CITY OF FLAGSTAFF

- CONFIRMING CHANGE ORDER NO. _____
- CONSULTING CONTRACT CHANGE ORDER NO. 4
- CONSTRUCTION CONTRACT CHANGE ORDER NO. _____
- CONTRACT ALLOWANCE UPDATE NO. _____

PROJECT NO. ST3369 **PROJECT NAME:** J.W. Powell Specific Plan Study

FILE NO. 03-16010 **PROJECT MANAGER:** David Pedersen

JUSTIFICATION:

Over the past several months a representative from two of the large parcel properties has shown support for a potential alternative alignment which would exclusively cross the large parcel properties and shift the original alignment from the South Fourth Street Neighborhood. This unique opportunity has led to meetings between City Staff and the other large parcel property owners to see if there is consensus and agreement on a proposed new alignment. City Staff is currently working to schedule a meeting with the final, directly impacted, large parcel property owner. Based on the support of an alternative alignment from the other large property owners, feedback from the small parcel property owners (those along the South Fourth Street Corridor), and consideration of the area’s natural resources the design work for the alternative alignment is being requested with this change order.

The scope of the work proposed in this change order is for Peak Engineering to cultivate new design work for the proposed alternative alignment including conceptual roadway design, public utilities, resource protection, preliminary drainage analysis, and construction cost comparison. Furthermore, BetaPr will work in conjunction with Peak Engineering to facilitate and create resources for the proposed meetings.

TIME ANALYSIS:

The work encompassed with this change order will require an additional 540 calendar-day contract time extension.

Change Order #01: Cost - \$12,925.00 Time – 96 days	Field Order #06: Cost - \$0 Time – 30 days	Field Order #12: Cost - \$0 Time – 30 days	Change Order #04: Cost - \$115,353.34 Time – 540 days
Field Order #01: Cost - \$0 Time – 30 days	Field Order #07: Cost - \$0 Time – 30 days	Field Order #13: Cost - \$0 Time – 30 days	
Field Order #02: Cost - \$0 Time – 30 days	Field Order #08: Cost - \$0 Time – 30 days	Field Order #14: Cost - \$0 Time – 30 days	
Field Order #03: Cost - \$0 Time – 30 days	Field Order #09: Cost - \$0 Time – 30 days	Field Order #15: Cost - \$0 Time – 30 days	
Field Order #04: Cost - \$0 Time – 30 days	Field Order #10: Cost - \$0 Time – 30 days	Change Order #02: Cost - \$0 Time – 262 days	
Field Order #05: Cost - \$0 Time – 30 days	Field Order #11: Cost - \$0 Time – 30 days	Change Order #03: Cost - \$41,401.25 Time – 30 days	

COST ANALYSIS:

The cost of this change order will be \$115,353.34.

For the efforts of this change order the breakdown of costs is:

OVERALL FEE SUMMARY

Task	Description	Current Contract Amount	CO#4	Total
1	PM & Meetings – Peak	\$40,365		\$40,365
1A	Public Involvement	\$40,995		\$40,995
1B	PROJECT MANAGEMENT & Public Involvement		\$19,460 (Peak) \$14,366 (BetaPr)	\$33,826
2	Conceptual Collector Street Network – Charlier	\$13,446.25		\$13,446.25
3 (A&B)	Public Facilities – Swaback	\$69,630		\$69,630
4 (A&B)	Conceptual Roadway Design – Peak	\$90,195		\$90,195
4C	Conceptual Roadway Design for Alternate Alignment		\$36,885	\$36,885
5	Public Utilities – Peak & Entellus	\$55,159		\$55,159
5A	Public Utilities for Alternate Alignment		\$11,550	\$11,550
6	Resource Protection - Peak	\$10,705		\$10,705
6A	Re-evaluate Resource Protection		\$7,965	\$7,965
7	Preliminary Drainage Analysis - Peak	\$35,330		\$35,330
7A	Revise Preliminary Drainage ANALYSIS		\$19,290	\$19,290
8	Engineer’s Opinion of Construction Cost – Peak & Entellus	\$10,775		\$10,775
8A	Construction Cost Comparison		\$3,420	\$3,420
	Direct Project Expenses (Allowance) – Peak, Entellus, Swaback & BetaPr	\$4,025	\$500 (Peak) \$2,917.34 (BetaPr)	\$7,442.34
	TOTAL Proposed Budget	\$370,625.25	\$115,353.34	\$486,978.59

The original contract included a \$30,000.00 change order authority. Change Order #1 used \$12,925.00 of the \$30,000.00 balance, leaving a balance of \$17,075.00. The second change order used the remaining change order authority balance of \$17,075.00 as well as an additional \$24,326.00 which was funded from the Neighborhood Plans account. The funding for this change order will also come from the Neighborhood Plans account.

Breakdown of Project Change Orders:

<u>Original Change Order Authority</u>	<u>\$30,000.00</u>
Change Order #01	\$12,925.00
Change Order #02	\$0
Change Order #03	\$41,401.25
<u>Change Order #04</u>	<u>\$115,353.34</u>
Change Order Authority Remaining	\$0
Costs Exceeding Change Order Authority	\$115,353.34

The exceeding value of \$115,353.34 will be funded from the Neighborhood Plans account 048-05-119-3460-6-4426 for the community partnering portion of Proposition 419 funding which was approved by voters in November of 2018. Funding in this account is \$250,000.00 for FY21/22.

Current authorized funding for this project is \$42,145.00 for FY21/22, which is located in account number 001-09-402-3369-6.

CITY OF FLAGSTAFF				PROJECT STATUS FORM	
PROJECT NAME: J.W. Powell Specific Plan Study			<input checked="" type="checkbox"/> Design <input type="checkbox"/> Construction <input type="checkbox"/> Other		
PROJECT NO. ST3369			FILE NO. 03-16010		
ACCT. NO. 001-09-402-3369-6-4421			0%	\$329,224.00	
048-05-119-3460-6-4426			0%	\$41,401.25	
048-05-119-3460-6-4426			100%	\$115,353.34	
PROPOSED CONTRACT TOTAL <i>(Includes Original Contract Amount & All Change Orders)</i>				\$486,978.59	
COUNCIL APPROVAL:		February 20, 2018	ORIGINAL CONTRACT AMOUNT:		\$316,299.00
PROJECT BUDGET (3369)		\$42,145.00	FY:		2021/2022
PROJECT BUDGET (3460)		\$250,000.00	FY:		2021/2022
NOTICE TO PROCEED:		April 9, 2018	ORIGINAL CONTRACT PERIOD (calendar days):		265
ORIGINAL COMPLETION DATE:		December 30, 2018	ORIGINAL CONTRACT ALLOWANCE:		\$0
CONSULTANT: Peak Engineering, Inc.			LOCATION: Flagstaff, AZ		
CITY PROJECT MANAGER: David Pedersen					
Change Orders	C.O. Amount/ Allowance Amt	C.O. Days	Council Date	REASON FOR CHANGE	
Revision Date	New Total	New Total	New Comp. Date		
Change Order #1	\$12,925.00	265	02/20/2018	Alternative alignment study for South Fourth St./JWP	
11/08/2018	\$329,224.00	361	04/05/2019		
Field Order #1	0	30	02/20/2019	Project on hold	
03/28/2019	\$329,224.00	391	05/05/2019		
Field Order #2	0	30	02/20/2018	Project on hold	
04/17/2019	\$329,224.00	421	06/04/2019		
Field Order #3	0	30	02/20/2018	Project on hold	
06/04/2019	\$329,224.00	451	07/04/2019		
Field Order #4	0	30	02/20/2019	Project on hold	
06/25/2019	\$329,224.00	481	08/03/2019		
Field Order #5	0	30	02/20/2018	Project on hold	
08/03/2019	\$329,224.00	511	09/02/2019		
Field Order #6	0	30	02/20/2018	Project on hold	
09/02/2019	\$329,224.00	541	10/02/2019		
Field Order #7	0	30	02/20/2019	Project on hold	
09/30/2019	\$329,224.00	571	11/01/2019		
Field Order #8	0	30	02/20/2018	Project on hold	
10/28/2019	\$329,224.00	601	12/01/2019		

Field Order #9	0	30	02/20/2018	Project on hold
11/27/2019	\$329,224.00	631	12/31/2019	
Field Order #10	0	30	02/20/2018	Project on hold
12/23/2019	\$329,224.00	661	01/30/2020	
Field Order #11	0	30	02/20/2018	Project on hold
01/15/2020	\$329,224.00	691	02/29/2020	
Field Order #12	0	30	02/20/2018	Project on hold
02/20/2020	\$329,224.00	721	03/30/2020	
Field Order #13	0	30	02/20/2018	Project on hold
03/25/2020	\$329,224.00	751	04/29/2020	
Field Order #14	0	30	02/20/2018	Project on hold
04/28/2020	\$329,224.00	781	05/29/2020	
Field Order #15	0	30	02/20/2018	Project on hold
05/26/2020	\$329,224.00	811	06/28/2020	
Change Order #2	0	262	02/20/2018	Time extension necessary to complete project upon new timeline and scope of work.
06/24/2020	\$329,224.00	1073	03/17/2021	
Change Order #3	\$41,401.25	30	02/20/2018	Additional public involvement during Phase 1.
09/22/2020	\$370,625.25	1103	04/16/2021	
Change Order #4	\$115,353.34	540	02/20/2018	Additional design work and analysis, public involvement and partner meetings for proposed new alignment
9/23/2021	\$486,978.59	1643	10/08/2022	
FINAL PAYMENT	\$486,978.59	1643	10/08/2022	

COMMENTS: The allocations shown above are inclusive of all Change Orders shown.

Purchase Order Number: 18-001394	Line Number: 1	Amount \$486,978.59

CHANGE ORDER #4 REQUEST SCOPE OF SERVICES

Date: September 13, 2021

Project: John Wesley Powell Specific Plan Study, Phase 1

COF Project No: 03-16010 (PO 18-001394)

Peak Project No: 17COF02

Prepared For: David Pedersen, Capital Improvements Project Manager

Prepared By: Julie Leid, P.E., Peak Project Manager

We have prepared this change order request for the proposed alignment change to JW Powell Boulevard. Peak Engineering completed the conceptual roadway and public utility design for the alignment depicted in the regional plan in December 2020. This change order request is to develop a new alignment that extends from the current termination of JW Powell Boulevard at Pine Canyon to the east boundary of Canyon del Rio. The new alignment would bypass S. 4th Street.

The scope of this change order also includes additional coordination with large property owners and the residents of the neighborhoods served off of Herold Ranch Road. The public involvement effort will be facilitated by BetaPr. BetaPr's proposal is attached.

Our detailed scope of services for this change order request is presented as an additional task to the base contract. The task numbering in this change order request follows the numbering established in the base contract and preceding change orders.

BACKGROUND

In January 2021, the City hosted a virtual public meeting for residents in the S. 4th Street and Forestdale neighborhoods. City staff then conducted one-on-one meetings with individual homeowners that would be directly impacted by the proposed alignment. South 4th Street is currently a 60' wide private ingress, egress and utility easement and the proposed JW Powell Boulevard corridor would require a minimum of a 106' wide right of way plus drainage easements extending beyond the right of way. There was much concern expressed by homeowners on S. 4th Street about the property impacts, number of travel lanes, design speed and traffic volume.

In May 2021, the City hosted a meeting with the partner developer that recently acquired the ~405 state land parcel. This developer, Capstone Homes, is also developing Canyon del Rio and Juniper Point. A new alignment was discussed at this meeting that would reduce the total roadway length, provide a more direct route through the former state land parcel, and eliminate the section of JW Powell through the S. 4th street neighborhood. The design team hosted additional coordination meetings with the developer's engineer to evaluate the viability of an alternate alignment.

In August 2021, City staff met with Little America leadership and discussed the possibility of an alternate alignment. Although there wasn't endorsement of an alternate alignment, it was not met with objection.

TASK 1B: PROJECT MANAGEMENT & PUBLIC INVOLVEMENT

This is a continuation of the task in the original scope of services and includes additional coordination and public outreach for development of the alternate alignment.

We anticipate and have budgeted for an additional 10 meetings. These meetings may include residents of the S. 4th neighborhood and Forestdale Neighborhoods, large property owners and City staff. These meetings could be one-on-one, small group, or boards/commissions at the discretion of City staff for the budgeted time. *(40 hours of PM time)*.

This phase includes preparation and participation in a community meeting for the residents of S. 4th Street and Forestdale. We have included time to support BetaPr in preparation of a mailer and notification. In addition to attending the public meeting, we anticipate providing content for the presentation and conducting a practice presentation. *(20 hours of PM time and 20 hours of PE time)* Note that BetaPr's proposal includes up to four separate mailers to residents in the S. 4th Street and Forestdale neighborhood. These mailers can be used to notify residents of the community-wide open house and Council at the discretion of City staff.

We anticipate and have budgeted for a presentation to City Council. In addition to attending the Council meeting, we anticipate providing content for the presentation, coordinating with City staff on speaking roles and conducting a practice presentation. *(12 hours of PM time)*

We anticipate and have budgeted for a community-wide open house (not limited to residents of S. 4th Street and Forestdale). *(10 hours PM time, 10 hours PE time)*. BetaPr will provide press releases and social media support to notify community members per their proposal.

We anticipate and have budgeted for regular project update meetings with City staff for the duration of the concept design. *(8 hours PM time and 8 hours PE time)*

TASK 4C: CONCEPTUAL ROADWAY DESIGN FOR ALTERNATE ALIGNMENT

Peak Engineering will prepare approximately 30% design of the alternate alignment of JW Powell Boulevard from the current terminus at Pine Canyon to the east boundary of Canyon del Rio. The alternate alignment is approximately 8,500 LF (~1.6 miles).

Scope of work for 30% design includes:

Plan and profile sheets showing preliminary horizontal and vertical geometry. We will station and label the centerline, we will show and label the centerline vertical geometry in profile view. Sheets will be 24"x36" at 1" = 40' unless otherwise directed by the City. Plan view will show key roadway features such as medians, curbs, sidewalk, ditches and match-up slopes. We will revise the typical cross sections for the new alignment at key locations. We do not intend to prepare back of curb profiles. We anticipate approximately 11 plan and profile sheets plus sheets for cover, notes & details and typical sections.

Identification of drainage crossing & size (estimate) culverts/boxes/major crossings as determined in Task 7A. We will show FEMA limits and impacts at the Rio de Flag crossing.

Based on the proposed grading limits, we will evaluate right of way and easements (TCE, slope, PUE, etc) that would be needed to show property impacts

This task does not include design of intersections for the collector network. However, we will identify possible locations for intersections and show a collector centerline at these locations.

TASK 5A: PUBLIC UTILITIES FOR ALTERNATE ALIGNMENT

Peak Engineering will evaluate alternate alignments for the water transmission and the sewer trunk line and will prepare a stand-alone water and sewer layout sheet to capture the proposed changes to the overall network. We anticipate one sheet at a scale of 1"=400' to depict the changes.

This task includes profiling the sewer in AutoCAD to ensure feasibility of gravity flow but does not include preparation of design sheets showing the profile.

Where water and sewer is aligned with the new roadway, we will show these alignments in the background of the roadway design sheets.

TASK 6A: RE-EVALUATE RESOURCE PROTECTION

Peak Engineering will prepare an exhibit of the proposed alignment corridor and its relationship with wildlife corridors, endangered species, open space and trails, drainage ways, tree resources and slopes. We will rely on the City to provide information related to endangered species such as prairie dog colonies. We will use information already provided by Arizona Game and Fish to show wildlife corridors. Open space will be shown in the areas of Hoffman tank. We anticipate two meetings with City planning staff to determine areas shown as open space.

TASK 7A: REVISE PRELIMINARY DRAINAGE ANALYSIS

The original scope of services included preliminary hydrologic calculations and watershed delineation based on existing (undeveloped) conditions. This change order includes conceptual sizing of crossing drainage structures for the alternate alignment.

The original alignment included bridge crossings spanning the channel canyon. The alternate alignment crosses the Rio de Flag in a much wider, open and flatter section of the channel which may require some channel improvements to funnel stormwater to a structure. This change order includes sizing the drainage structure crossing of the Rio de Flag for the 100-year discharge. This drainage structure could be concrete or corrugated arches, box culverts or bridge. We will rely on the City to provide a design discharge rate for the Rio de Flag for this analysis. Analysis will be based on GIS contours.

We anticipate there will need to be channel modifications where the Rio de Flag crosses the proposed alternate alignment. We will include a plan and profile sheet of the channel crossing showing conceptual level grading.

We anticipate that JW Powell will include curb and gutter and will require stormdrain. We will perform roadway capacity calculations for spacing of catch-basins and preliminary sizing for stormdrain. We will show stormdrain infrastructure in the plan view of the concept plans. We do not intend to show stormdrain profiles on the concept plans. We will evaluate possible conflicts of proposed gravity systems (sewer & stormdrain).

TASK 8A: CONSTRUCTION COST COMPARISON

Peak Engineering will revise quantities for the new alignment and will provide a quantity comparison of the original alignment to the alternate alignment. This can be used to evaluate the magnitude of the cost difference between alignments.

This task does not include preparation of a detailed opinion of probable construction cost.

EXCLUSIONS

Design of the collector network

Land use analysis (Swaback’s work on the framework & collector network)

Profiles for water and sewer extensions.

Cost-benefit analysis of bridge/structure types for the Rio de Flag crossing.

OVERALL FEE SUMMARY

Task	Description	Current Contract Amount	CO#4	Total
1	PM & Meetings – Peak	\$40,365		\$40,365
1A	Public Involvement	\$40,995		\$40,995
1B	PROJECT MANAGEMENT & Public Involvement		\$19,460 (Peak) \$14,366 (BetaPr)	\$33,826
2	Conceptual Collector Street Network – Charlier	\$13,446.25		\$13,446.25
3 (A&B)	Public Facilities – Swaback	\$69,630		\$69,630
4 (A&B)	Conceptual Roadway Design – Peak	\$90,195		\$90,195
4C	Conceptual Roadway Design for Alternate Alignment		\$36,885	\$36,885
5	Public Utilities – Peak & Entellus	\$55,159		\$55,159
5A	Public Utilities for Alternate Alignment		\$11,550	\$11,550
6	Resource Protection - Peak	\$10,705		\$10,705
6A	Re-evaluate Resource Protection		\$7,965	\$7,965
7	Preliminary Drainage Analysis - Peak	\$35,330		\$35,330
7A	Revise Preliminary Drainage ANALYSIS		\$19,290	\$19,290
8	Engineer’s Opinion of Construction Cost – Peak & Entellus	\$10,775		\$10,775
8A	Construction Cost Comparison		\$3,420	\$3,420
	Direct Project Expenses (Allowance) – Peak, Entellus, Swaback & BetaPr	\$4,025	\$500 (Peak) \$2,917.34 (BetaPr)	\$7,442.34
	TOTAL Proposed Budget	\$370,625.25	\$115,353.34	\$486,978.59

END

Client Name: City of Flagstaff	Client Information	
Project Name: JW Powell Study Phase 1 with CO#4	Name: David Pedersen	
Project Number: 17COF02	Address:	Phone:
		Email:

Project Budget Summary 2020-09-03

Task	Task Description	Principal Engineer	Project Manager	Project Engineer	Designer	Engineering Intern	Land Surveyor	Survey Team Member	Clerical	Labor Cost per Task
		\$175	\$155	\$145	\$120	\$70	\$100	\$0	\$60	
1	PM & Meetings	\$ -	\$ 27,590	\$ 11,600	\$ -	\$ -	\$ -	\$ -	\$ -	40,365.00
1A	CO#3 - Public Involvement	\$ -	\$ 8,680	\$ 10,150	\$ 5,280	\$ -	\$ -	\$ -	\$ -	24,110.00
1B	PM & PI	\$ -	\$ 13,950	\$ 5,510	\$ -	\$ -	\$ -	\$ -	\$ -	19,460.00
2	Conceptual Collector St. (Charlier)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
3	Public Facilities (Swaback)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
4	Conceptual Roadway Design	\$ -	\$ 11,625	\$ 33,930	\$ 44,640	\$ -	\$ -	\$ -	\$ -	90,195.00
4C	Conceptual Roadway Design for Alt Alignment	\$ -	\$ 6,045	\$ 10,440	\$ 20,400	\$ -	\$ -	\$ -	\$ -	36,885.00
5	Public Utilities (Peak plans)	\$ -	\$ 1,860	\$ 8,120	\$ 14,400	\$ -	\$ -	\$ -	\$ -	24,380.00
5A	Public Utilities for Alt Alignment	\$ -	\$ 2,170	\$ 2,900	\$ 6,480	\$ -	\$ -	\$ -	\$ -	11,550.00
6	Resource Protection	\$ -	\$ 1,705	\$ 3,480	\$ 5,520	\$ -	\$ -	\$ -	\$ -	10,705.00
6A	Re-evaluate Resource Protection	\$ -	\$ 2,325	\$ 3,480	\$ 2,160	\$ -	\$ -	\$ -	\$ -	7,965.00
7	Prelim. Drainage Analysis	\$ -	\$ 2,790	\$ 13,340	\$ 19,200	\$ -	\$ -	\$ -	\$ -	35,330.00
7A	Revise Preliminary Drainage Analysis	\$ -	\$ 1,550	\$ 7,540	\$ 10,200	\$ -	\$ -	\$ -	\$ -	19,290.00
8	EOPCC	\$ -	\$ 2,325	\$ 7,250	\$ 1,200	\$ -	\$ -	\$ -	\$ -	10,775.00
8A	Construction Cost Comparison	\$ -	\$ 310	\$ 2,030	\$ 1,080	\$ -	\$ -	\$ -	\$ -	3,420.00
LABOR TOTAL:		\$ -	\$ 82,615	\$ 117,740	\$ 129,480	\$ -	\$ -	\$ -	\$ -	334,430.00

Reimbursable Project Expenses		
A	Printing & Reprographics*	\$ 1,000.00
B	Swaback Expenses	\$ 1,178.75
C	Entellus Expenses	\$ 500.00
D	Entellus-Peak Sewer CAD Allowance	\$ 1,440.00
E	BetaPr Mailings	\$ 406.25
F	BetPr Mailings (CO4)	\$ 2,917.34
RPE TOTAL:		\$ 7,442.34

*added \$500 for CO4

Sub-Consultants		Markup
Charlier		10% \$ 13,446.25
Swaback		10% \$ 69,630.00
Entellus (Sewer Only)		10% \$ 30,779.00
BetaPr	\$ 3,350	10% \$ 3,685.00
Swaback CO#3	\$ 12,000	10% \$ 13,200.00
BetaPr CO#4	\$ 13,060	10% \$ 14,366.00
SUB-CONSULTANT TOTAL:		\$ 145,106.25

PROJECT TOTAL: \$ 486,978.59

September 10, 2021

Ms. Julie Leid
 Peak Engineering, Inc.
 201 East Birch Avenue, Suite 3
 Flagstaff, Arizona, 86001

Submitted via e-mail to julie@peakegr.com

Re: J.W. Powell Extension Project: Alternative Roadway Alignment Concept Plan - Cost Quote for Public Involvement Services

Ms. Leid

Beta Public Relations (BetaPr) respectfully submits this Public Involvement Services cost quote for the J.W. Powell Extension Project: Alternative Roadway Alignment Concept Plan. The project consists of design work to create and present an alternative alignment of the proposed J.W. Powell Extension. Due to the eventual benefits and potential impacts to area stakeholders, public involvement is important to managing perception of the project.

BetaPr has developed a comprehensive approach to public outreach and notification for the Flagstaff community. Outlined below are the tasks associated with the project and estimated cost. If necessary, we can adjust our estimate to accommodate any changes to the scope of work.

Project Task	Estimated Cost
<p>Task 1 – Project Notification Flier Design and Production BetaPr will design and produce as many as four (4) project notification fliers for distribution. Each flier will be tailored specifically for each planned meeting, and will highlight pertinent project details, important meeting information, and how to connect with the project team.</p>	<p>\$3,500.00</p>
<p>Task 2 – Project Notification Flier Mailing Each project notification flier will be mailed directly to previously identified property owners and residents along the project corridor whose addresses were generated from the Coconino County Assessor's website. In addition to this distribution, project notification fliers may be bulk mailed to fully saturate the area surrounding the project corridor ahead of the larger community meeting for the Flagstaff public.</p>	<p>\$960.00</p>

<p>Task 3 – Facilitate Meetings BetaPr will facilitate as many as four (4) meetings with area stakeholders and the community at large. BetaPr will work in conjunction with the Project Team to facilitate and host at least one (potentially three) neighborhood meeting(s) with all of the small-parcel property owners that were involved in the first neighborhood meeting. In addition to meeting with small-parcel property owners, BetaPr will promote and facilitate one (1) large community open house meeting for the Flagstaff public. Facilitation efforts include producing meeting materials and signage, assisting with presentations, and meeting set-up and take-down. Due to COVID-19, the project team may consider utilizing a virtual meeting to connect with stakeholders. Virtual meeting facilitation includes obtaining the meeting software, creating the meeting invitation, and mediating the digital comments and presentation. After each meeting is complete, a meeting summary will be provided to the team compiling all comments and input received.</p>	<p>\$7,400.00</p>
<p>Task 4 – Newspaper Advertisement Design and Publication To reach a larger audience to promote the open house meeting for the Flagstaff community, BetaPr will design a newspaper advertisement for publication in the <i>Arizona Daily Sun</i>. The advertisement will invite interested parties to attend the community meeting, highlight project details, and provide information on how to connect with the project team.</p>	<p>\$750.00</p>
<p>Task 5 – Press Releases and Social Media Support BetaPr will develop a press release and generate copy for social media updates prior to the community-wide open house meeting, with follow-up releases generated as needed. Press releases and social media updates will be provided to the City's Public Affairs Director to disseminate.</p>	<p>\$450.00</p>
<p>Total Estimated Labor Expenses</p>	<p>\$13,060.00</p>

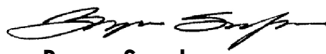
Direct Expenses	Estimated Cost
<p>Printing – 600 pieces* x \$0.50 per piece (150 per meeting) <i>* Includes mailings and supplying copies to project team.</i></p>	<p>\$300.00</p>
<p>Direct mail postage – 460 pieces* x \$0.55 per piece (115 per meeting) <i>* Includes property owner's addresses generated from the Coconino County Assessor's website.</i></p>	<p>\$253.00</p>
<p>Bulk mail postage – 3,288 pieces * x \$0.28 per piece <i>* Based on current USPS data to fully saturate the project corridor and surrounding area, totaling 3,154 residents and 134 business addresses.</i></p>	<p>\$920.64</p>

Community meeting visual aids – Printing and reproduction	\$250.00
Newspaper advertising fee – One publication run in the <i>Arizona Daily Sun</i>	\$1,193.70
Total Estimated Direct Expenses	\$2,917.34

Total Estimated Project Cost \$15,977.34

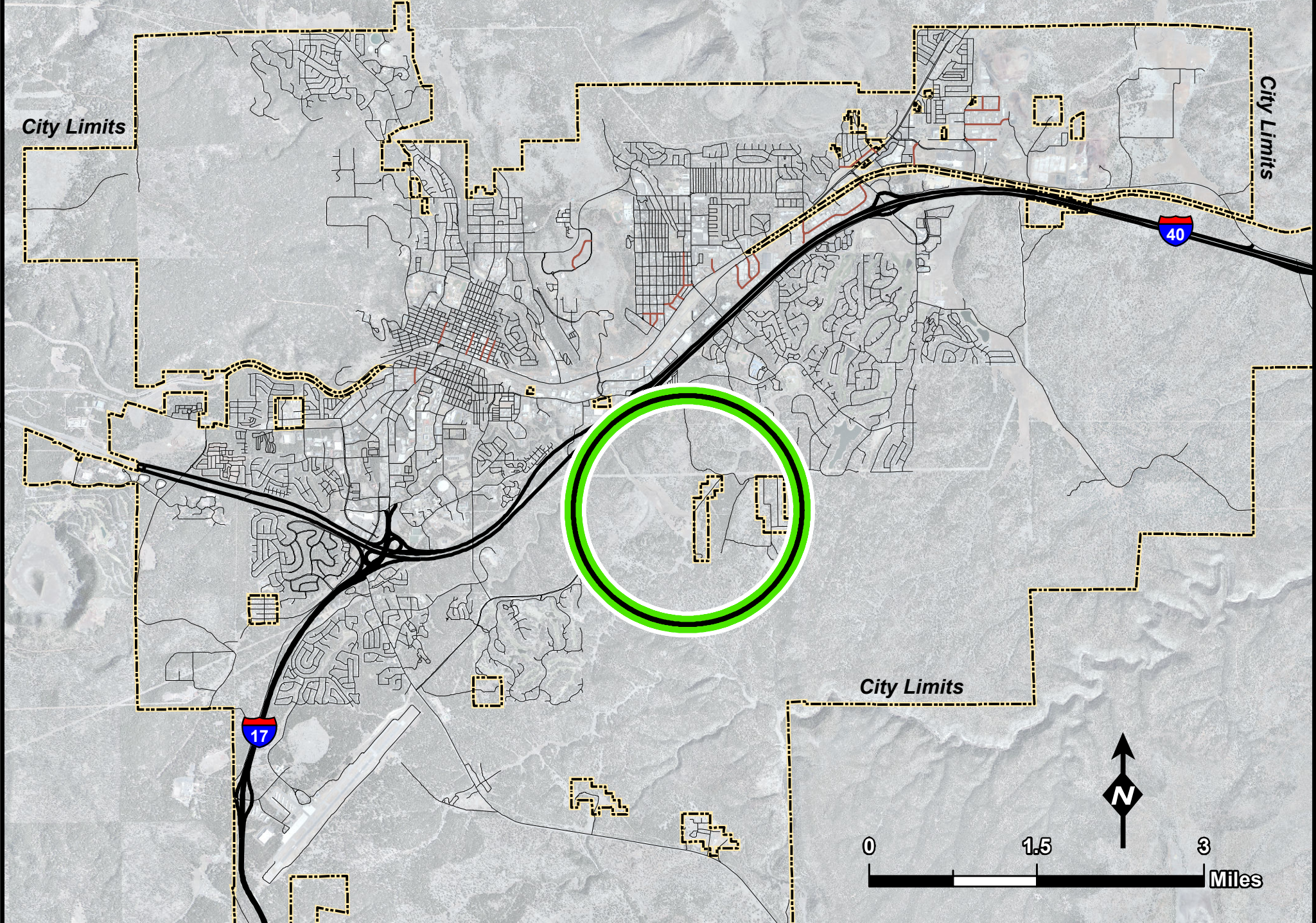
Thank you for the opportunity to work on this project. If you have any questions regarding the scope of work, feel free to contact me at (928) 440-5080. We look forward to working with Peak Engineering, Inc. to provide effective public relations support for the J.W. Powell Extension Project: Alternative Roadway Alignment Concept Plan.

Sincerely,



Bryce Snyder
Principal
BetaPr

JW Powell Specific Plan Study



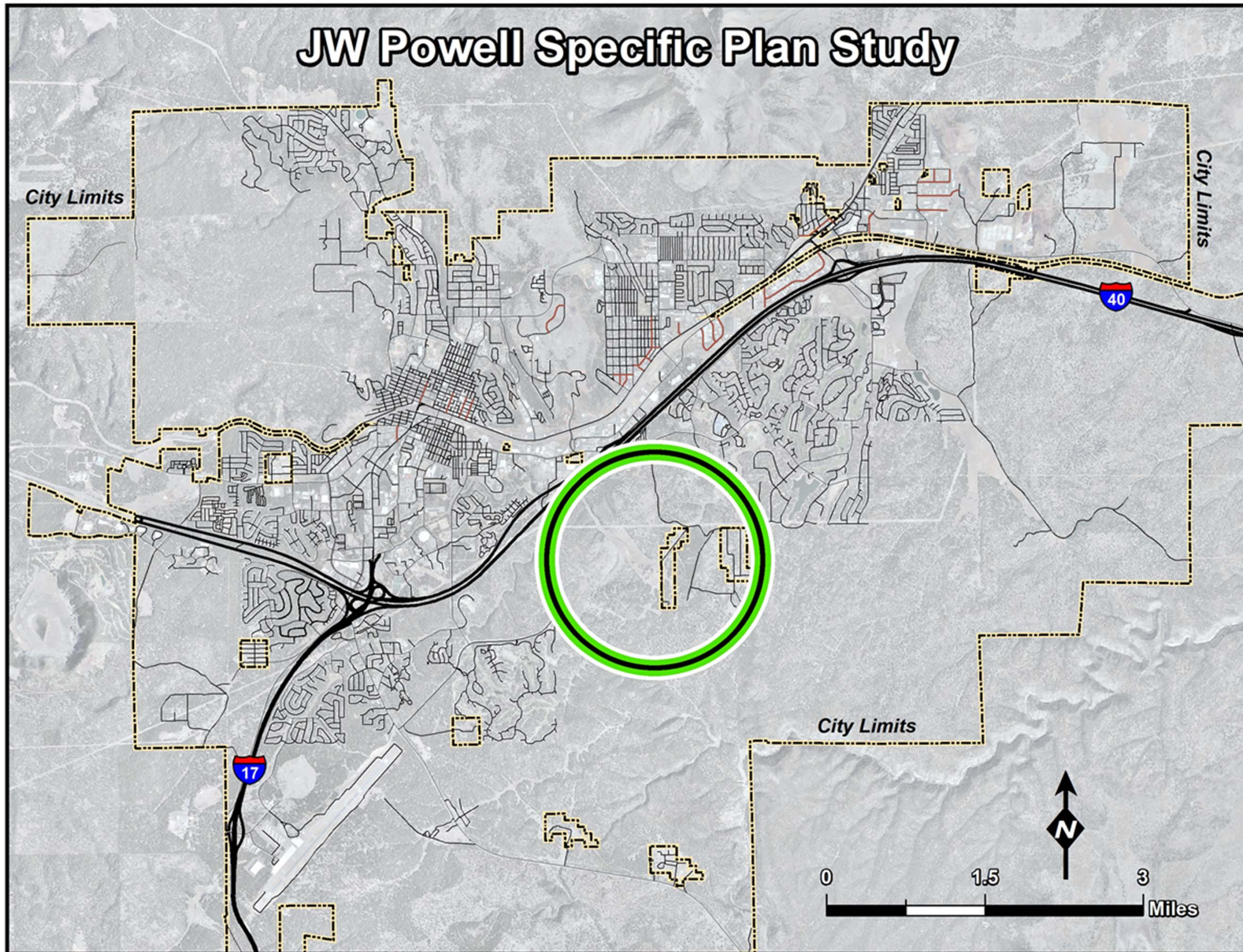
J.W. Powell Blvd Specific Plan Study

Change Order 4

5 October 2021

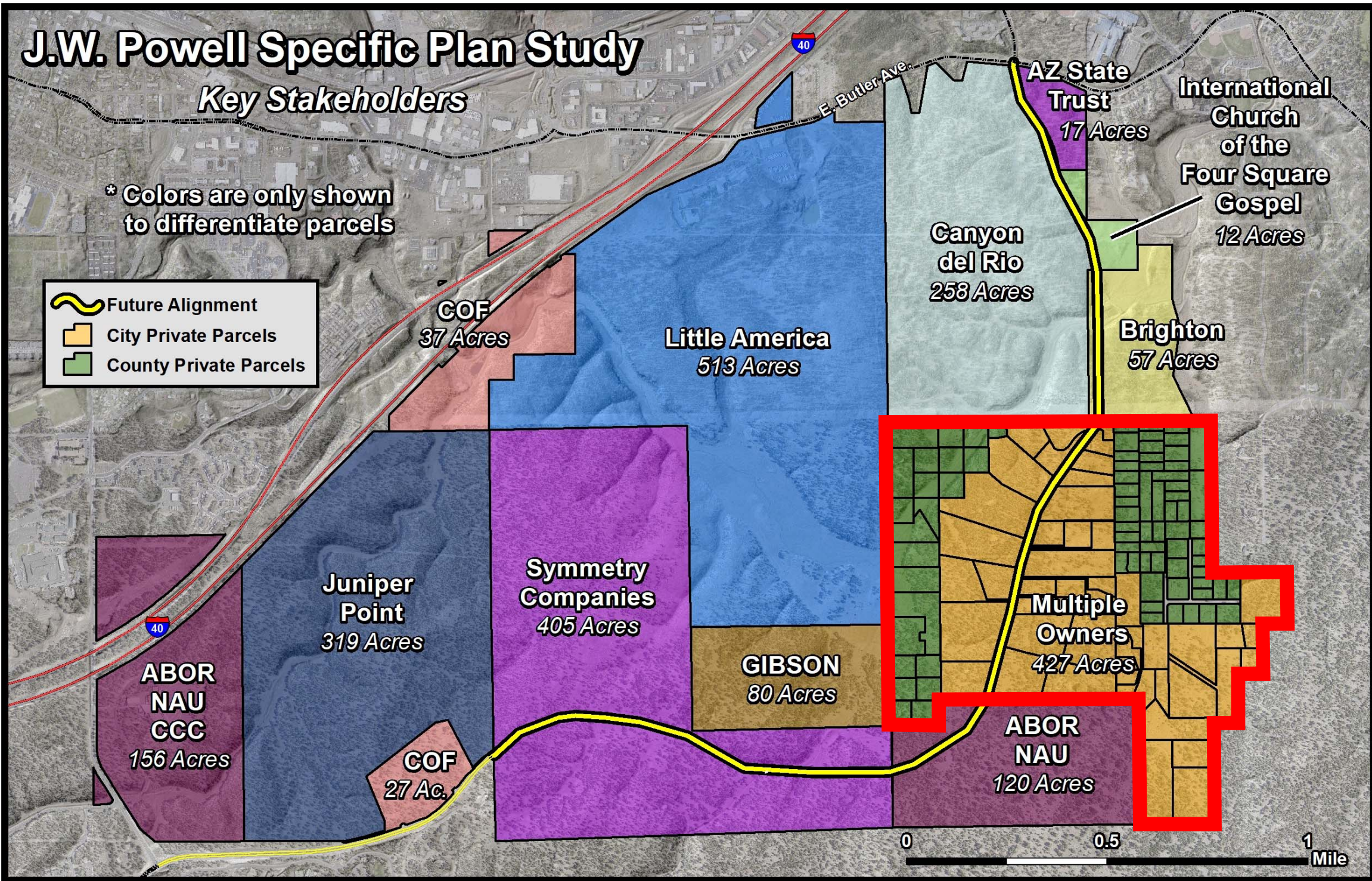


JW Powell Specific Plan Study





Key Stakeholders



- Small-Parcels
- Shown with Red Highlight
- Large-Parcels
- Outside Red Highlight



JWP Specific Plan Study



- **Project Team:**

- City Staff – Multiple Departments
- Community Service Providers – Mountain Line, MetroPlan, FUSD, ASLD, AZ Forestry & Fire Management, Northern Arizona Healthcare, Flagstaff Arts Coalition, USPS, AZ Game and Fish

- Consultant –

- Peak Engineering – *Engineering Design*

Subconsultants

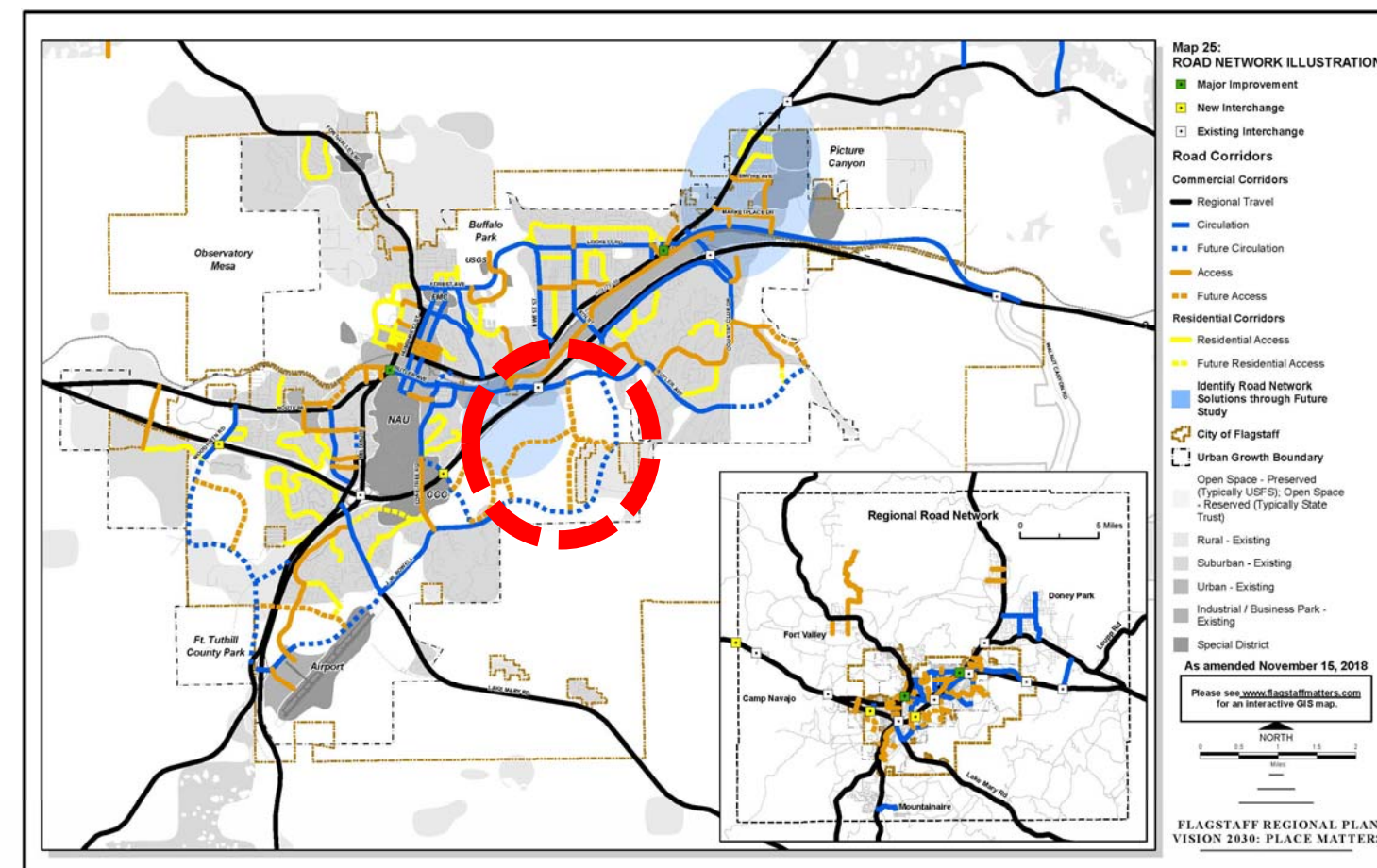
- Swaback – *Architecture & Planning*
- Charlier – *Multimodal Planning*
- Entellus – *Water and Wastewater*
- BetaPR – *Public Outreach*



Basis for JWP Roadway Extension



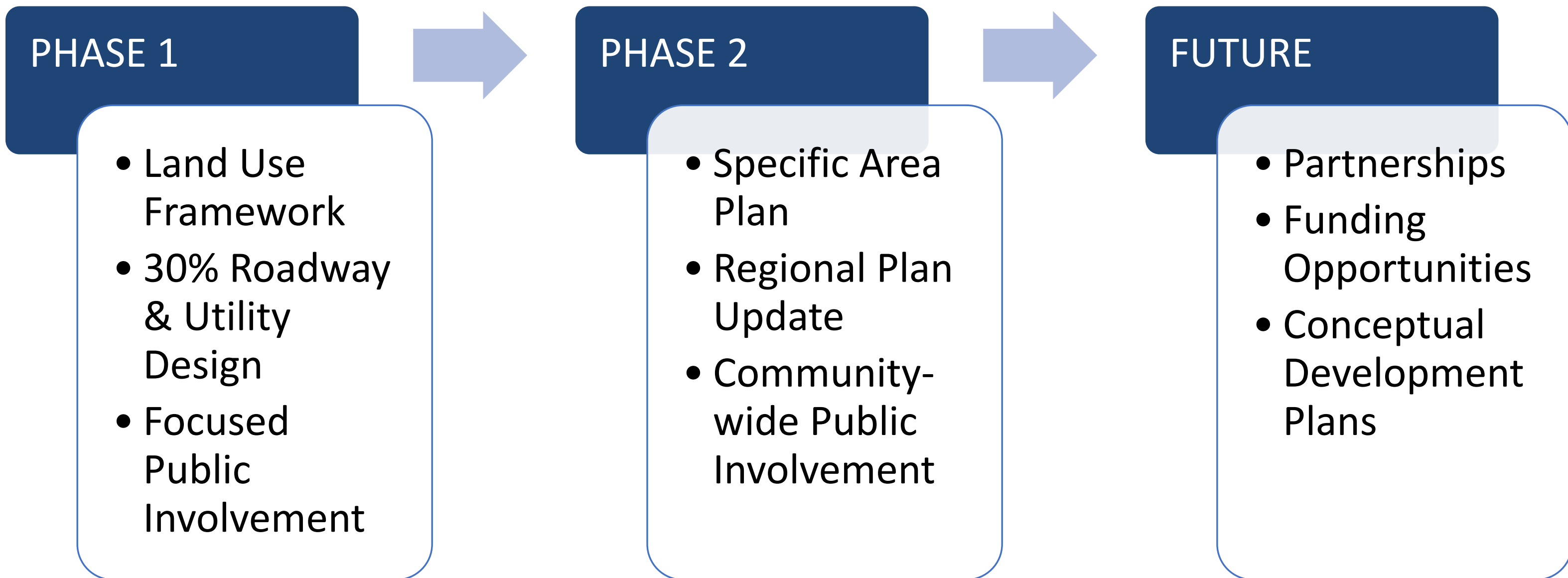
- **Flagstaff Regional Plan 2030**
 - New Roadway Shown on Map 25: *Road Network Illustration*
- **Proposition 419**
 - Voter-Approved November 2018
 - Includes JWP Roadway, Bike, and Pedestrian Improvements





Process

WE ARE CURRENTLY IN PHASE 1





Phase 1 Efforts



Focused Public Involvement

- Small-Parcel Property Owners Open House
 - 28 January 2021
 - Virtual Open House – 107 Invitations Sent; 45 Attended
- 1-on-1 Follow Up Meetings with Small-Parcel Property Owners
 - February through March 2021
- Individual Meetings with Large-Parcel Property Owners
 - Started in May and are Continuing at this Time



Phase 1 Efforts



Focused Public Involvement

- Feedback from Small-Parcel Property Owners
 - Road Width and Traffic Volume
 - Property Needed from Each Owner
 - Vehicle Access to and from Property, including Large Trailers
 - Change of Setting and Safety of Children and Animals
 - Availability of Water and Sewer Service, including Filling Station
- Opportunity from Large-Parcel Property Owners
 - Support for Potential New Alignment



Previous Change Orders

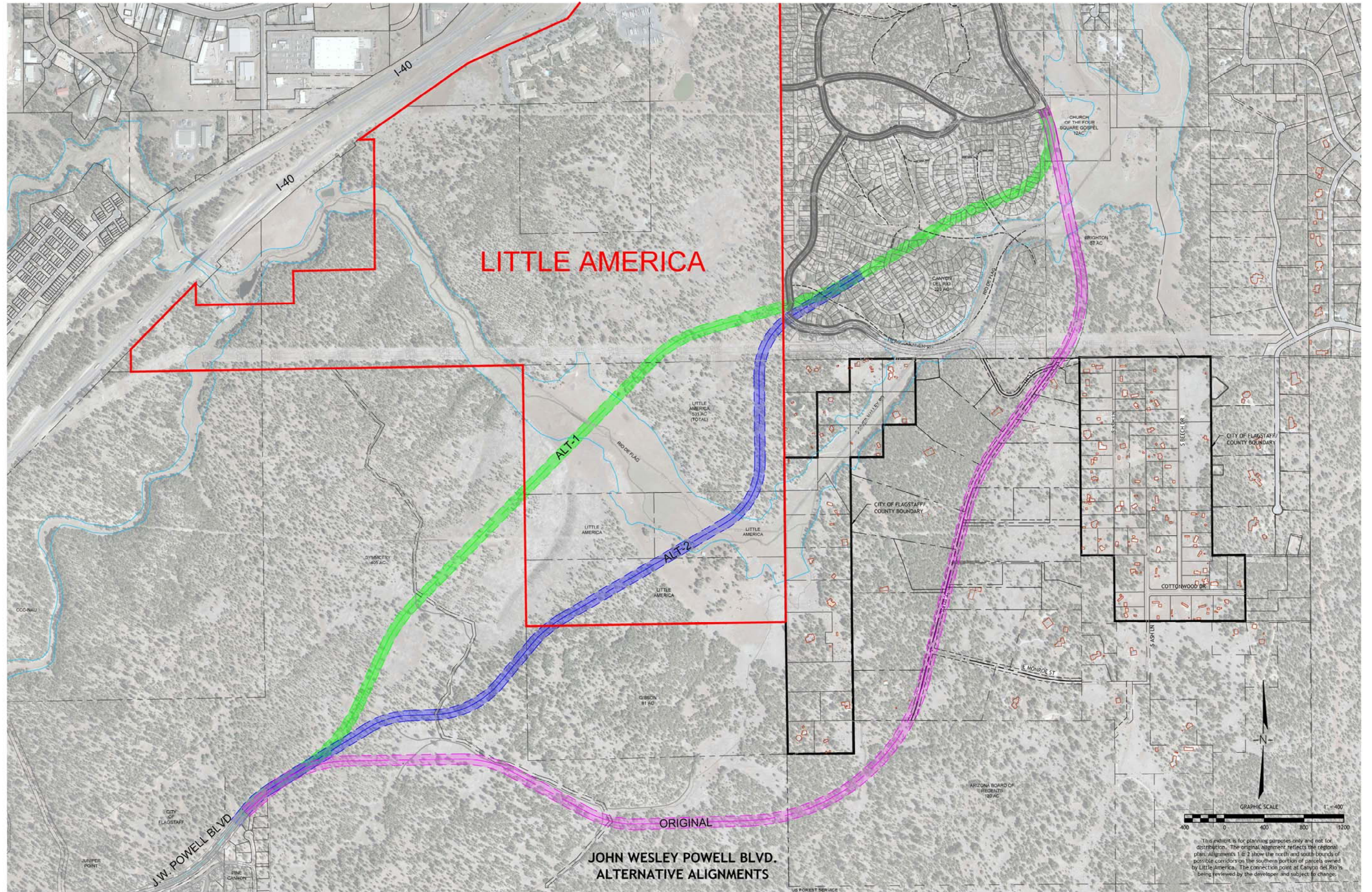
- **Change Order 1 – 20 NOVEMBER 2018**
 - *Alternative Alignment Study with Options Known at that Time*
 - *Additional 96 Calendar Days and \$12,925.00*
- **Change Order 2 – 24 JUNE 2020**
 - *Addition of 262 Calendar Days with No Cost Increases to Allow for Further Discussions and Scoping*
- **Change Order 3 – 23 OCTOBER 2020**
 - *Expanded Scope for More Extensive Public Involvement with Current Residents along the South Fourth Street Corridor*
 - *Addition of 30 Calendar Days and \$41,401.25*



Change Order 4



- Scope of Services
 - Project Management and Public Involvement
 - Conceptual Roadway Design for Alternate Alignment
 - Public Utilities for Alternative Alignment
 - Re-evaluate Resource Protection
 - Revise Preliminary Drainage Analysis
 - Construction Cost Comparison (versus current alignment)
 - Time Requested = *540 calendar days*
 - Cost = *\$115,353.34*



This exhibit is for planning purposes only and not for distribution. The original alignment reflects the regional plan. Alignments 1 & 2 show the north and south bounds of possible corridors on the southern portion of parcels owned by Little America. The connection point at Canyon del Rio is being reviewed by the developer and subject to change.



J.W. Powell Specific Plan Study



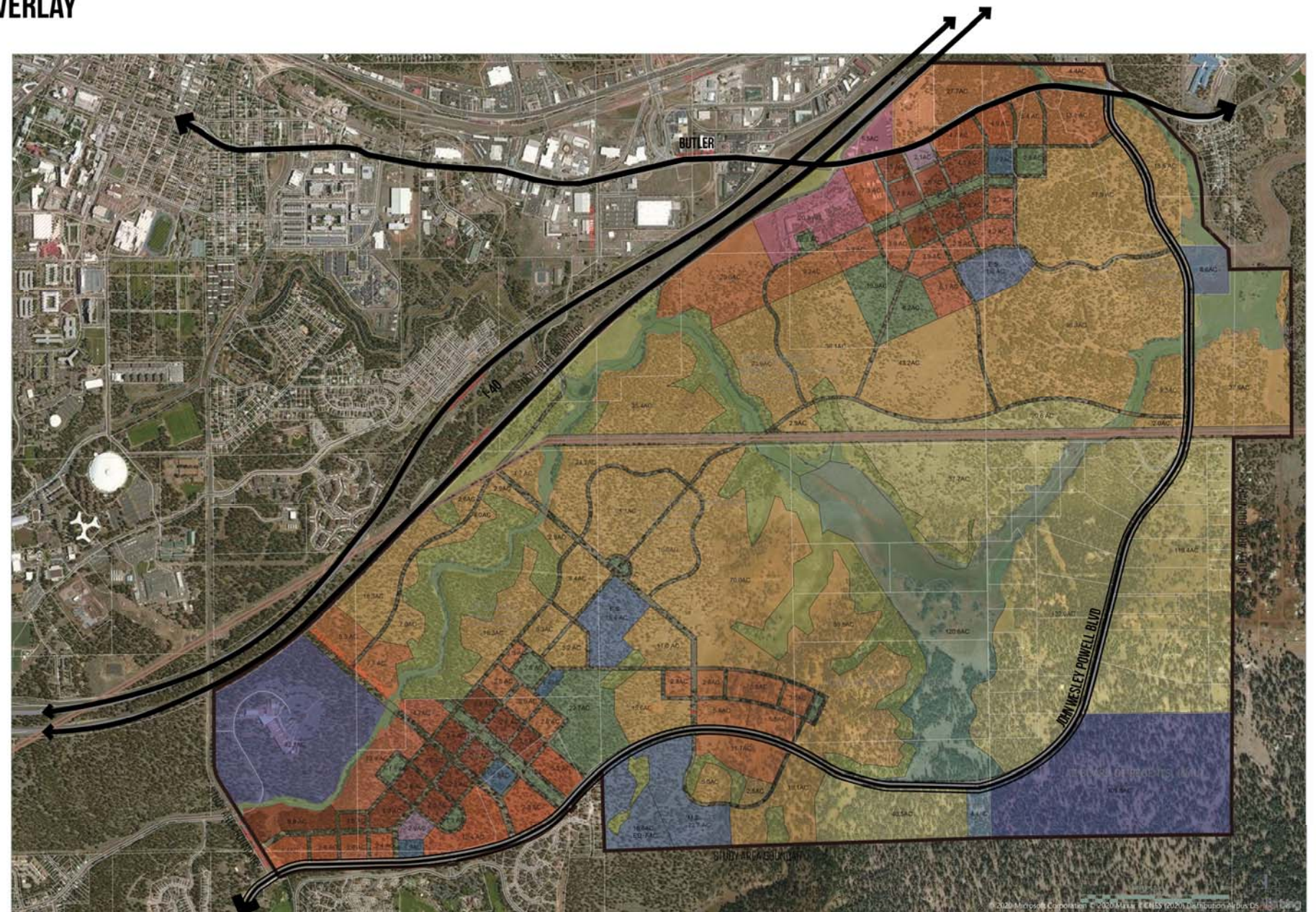
COMMENTS & QUESTIONS

David Pedersen
Project Manager
Capital Improvements
dpedersen@flagstaffaz.gov
Office :: 928.213.2677



www.flagstaff.az.gov/jwpspecificplan

AERIAL OVERLAY



**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Anja Wendel, Senior Assistant City Attorney
AW
Co-Submitter: Sterling Solomon
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE:

Consideration and Adoption of Ordinance No. 2021-22: An ordinance of the City Council of the City of Flagstaff clarifying the duties of the Beautification and Public Art Commission, and clarifying that the Procurement Code Manual procedures apply to expenditures for Arts and Sciences and Beautification funds; providing for repeal of conflicting ordinances, severability, and establishing an effective date.

STAFF RECOMMENDED ACTION:

- 1) Read Ordinance No. 2021-22 by title only for the final time
- 2) City Clerk reads Ordinance No. 2021-22 by title only (if approved above)
- 3) Adopt Ordinance No. 2021-22

Executive Summary:

The Flagstaff City Code requires the Beautification and Public Arts Commission (Commission) to make recommendations to the City Council on public art proposals. Under the Procurement Code Manual and City Code, authority is delegated to the City Manager to enter into contracts of less than \$50,000. The proposed ordinance will clarify that the Commission is not required to make recommendations regarding public art proposals that will result in contracts of less than \$50,000; however, the City Council, City Manager or his designee may request that the Commission make recommendations as to any expenditure of Arts and Sciences or Beautification Funds. The proposed ordinance will help ensure small dollar art projects can be processed efficiently, while also giving the City Council greater flexibility to ask the Commission for their recommendations, including small art projects and also beautification (such as landscaping) projects. The proposed ordinance is consistent with current practices.

Financial Impact:

None.

Policy Impact:

Clarify duties of the Commission and bring City Code into conformity with City practices.

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

Priority Based Budget Key Community Priorities and Objectives

High Performing Government:

Encourage public trust through transparency, accessibility and use of the City's public participation policy (SP)1.1/ 1.3/ 3.5/ 4.2

Enhance the organization's fiscal stability and increase efficiency and effectiveness (SP)3.1/ (RP)CD.1

Inclusive and Engaged Community:

Enhance community outreach and engagement opportunities (SP)3.5/ (RP)LU.1-2/ LU.6-7/ LU.9-12/ LU.18/ PF.1-2/ T.1-2/ T.4-7/ CD.1/ NH.1/ NH.3-5/ ED.2

Regional Plan

N/A

Has There Been Previous Council Decision on This:

The City Council has from time to time amended the responsibilities of the Commission.

Options and Alternatives:

1. Approve ordinance;
2. Do not approve ordinance.

Background/History:

The Beautification and Public Arts Commission plays an active, vital role in providing quality projects in the City. They provide recommendations regarding Public Art and this change will further clarify that process.

Key Considerations:

The purpose of this ordinance is to clarify Commission responsibilities in relation to City contracting procedures.

Community Benefits and Considerations:

The proposed ordinance clarifies that the City Council and City Manager or his designee may engage the Commission and community in making recommendations not only as to larger projects, but also smaller projects, including beautification projects, when appropriate.

Community Involvement:

Inform.

Attachments: Current City Code
 Ord. 2021-22

CHAPTER 2-14 BEAUTIFICATION AND PUBLIC ART COMMISSION

SECTIONS:

- [2-14-001-0001](#) CREATION OF COMMISSION:
- [2-14-001-0002](#) COMPOSITION AND TERM OF OFFICE:
- [2-14-001-0003](#) COMPENSATION OF COMMISSION MEMBERS:
- [2-14-001-0004](#) ORGANIZATION:
- [2-14-001-0005](#) MEETINGS:
- [2-14-001-0006](#) DUTIES:

2-14-001-0001 CREATION OF COMMISSION:

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

"Arts and sciences" means support for Flagstaff arts, scientific and cultural activities, events and organizations to provide direct and indirect citizen participation and enhancement of the overall quality of life and community image including support of public art. (Same meaning as set forth in Section 3-06-001-0001.)

"Beautification" means any modification of the urban physical environment to increase pleasure to the senses or pleurably exalt the mind or spirit or strengthen the urban design framework of the City (same meaning as set forth in Section 3-06-001-0001). (Ord. 1580, Enacted, 08/02/1988; Ord. 2006-15, Amended, 05/16/2006; Ord. 2007-07, Amended, 02/06/2007; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016)

2-14-001-0002 COMPOSITION AND TERM OF OFFICE:

The composition of the membership shall consist of seven (7) members appointed by the City Council.

Each member shall serve three (3) year terms, on a staggered basis. A member's term in office shall commence with the first regular Commission meeting following the appointment and terminate with the regular Commission meeting at which the successor takes office. No voting member of the Commission may be appointed to more than two (2) full consecutive terms. (Ord. 1580, Enacted, 08/02/1988; Ord. 1674, Amended,

09/18/1990; Ord. 2006-15, Amended, 05/16/2006; Ord. 2007-04, Amended, 02/06/2007; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016)

2-14-001-0003 COMPENSATION OF COMMISSION MEMBERS:  

Members of the Commission shall serve without compensation. (Ord. 1580, Enacted, 08/02/1988)

2-14-001-0004 ORGANIZATION:  

The Commission shall elect a Chairperson from among its members. The term of the Chairperson shall be one year with eligibility for reelection. Commission members may not serve more than two (2) consecutive terms as Chairperson. The Council representative shall not be eligible for the Chair. (Ord. No. 1580, Enacted, 08/02/1988)

2-14-001-0005 MEETINGS:  

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

B. A quorum consisting of a minimum of four (4) voting members of the Commission shall be required to conduct business. (Ord. 1580, Enacted, 08/02/88; Ord. 2006-15, Amended, 05/16/2006; Ord. 2016-30, Amended, 07/05/2016)

2-14-001-0006 DUTIES:  

The duties of the Commission shall be to:

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

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

C. Make recommendations to the City Council concerning the annual budgetary allocation of the beautification and public art portions of the Bed, Board and Booze Tax and other monies as deemed appropriate by the City Council, to include, but not be limited to:

1. Purchase, installation or modification of landscaping and irrigation systems;
2. Purchase, removal or modification of billboards and nonconforming signs;
3. Beautification of buildings and facilities, streetscapes and gateways;
4. Purchase and installation of public art projects;
5. Purchase or lease of easements or property necessary for beautification projects.

D. Make recommendations to the City Council for public art projects by:

1. Reviewing and defining potential public art projects and writing project descriptions.
2. Determining the artist selection method and writing the call to artists for public art projects.
3. Evaluating public art proposals for recommendation to the City Council.
4. Facilitating display of local art in public facilities.

E. With respect to the arts and science portion of the Bed, Board and Booze Tax allocated under Chapter 3-06, Hospitality Industry Tax Revenues, the Commission shall make recommendations to the Council concerning the annual budgetary allocation of the arts and science portion of this tax, to include but not be limited to:

1. Developing and supporting the Flagstaff arts, scientific and cultural activities, events and organizations to provide direct and indirect citizen participation, and opportunities for enhancement of the overall quality of life and community image.
2. Developing, acquiring and distributing material to promote arts and science.
3. Developing financial assistance programs to stimulate artistic and scientific activities in Flagstaff.
4. Retaining of appropriate staff to implement approved programs.

F. Perform those additional duties as determined by the City Council, related to the Beautification and Public Art Commission. (Ord. No. 1580, Enacted, 08/02/88; Ordinance No. 2006-15, Amended, 05/16/2006; Ord. 2015-22, Amended, 01/05/2016)

ORDINANCE NO. 2021-22

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA CLARIFYING THE DUTIES OF THE BEAUTIFICATION AND PUBLIC ART COMMISSION, AND CLARIFYING THAT THE PROCUREMENT CODE MANUAL PROCEDURES APPLY TO EXPENDITURES OF ARTS AND SCIENCES AND BEAUTIFICATION FUNDS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff desires to clarify the duties of the Beautification and Public Art Commission, and to clarify that the Procurement Code Manual applies to expenditures of Arts and Sciences and Beautification funds;

ENACTMENTS:

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

SECTION 1. In General.

The Flagstaff City Code, Title 2, *Boards and Commissions*, Chapter 2-14, *Beautification and Public Art Commission*, Section 2-14-001-0006 *Duties*, is hereby amended as follows (additions shown in capitalized, underlined text):

2-14-001-0006 DUTIES:

The duties of the Commission shall be to:

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

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

C. Make recommendations to the City Council concerning the annual budgetary allocation of the beautification and public art portions of the Bed, Board and Booze Tax and other monies as deemed appropriate by the City Council, to include, but not be limited to:

1. Purchase, installation or modification of landscaping and irrigation systems;
2. Purchase, removal or modification of billboards and nonconforming signs;
3. Beautification of buildings and facilities, streetscapes and gateways;

4. Purchase and installation of public art projects;
 5. Purchase or lease of easements or property necessary for beautification projects.
- D. Make recommendations to the City Council for public art projects by:
1. Reviewing and defining potential public art projects and writing project descriptions.
 2. Determining the artist selection method and writing the call to artists for public art projects.
 3. Evaluating public art proposals for recommendation to the City Council.
 4. Facilitating display of local art in public facilities.

RECOMMENDATIONS TO CITY COUNCIL ARE REQUIRED FOR A PUBLIC ART PROPOSAL WHEN THE RESULTING CONTRACT WILL BE \$50,000 OR MORE.

- E. With respect to the arts and science portion of the Bed, Board and Booze Tax allocated under Chapter 3-06, Hospitality Industry Tax Revenues, the Commission shall make recommendations to the Council concerning the annual budgetary allocation of the arts and science portion of this tax, to include but not be limited to:
1. Developing and supporting the Flagstaff arts, scientific and cultural activities, events and organizations to provide direct and indirect citizen participation, and opportunities for enhancement of the overall quality of life and community image.
 2. Developing, acquiring and distributing material to promote arts and science.
 3. Developing financial assistance programs to stimulate artistic and scientific activities in Flagstaff.
 4. Retaining of appropriate staff to implement approved programs.
- F. Perform those additional duties as determined by the City Council, related to the Beautification and Public Art Commission.

G. CONTRACTS FOR ARTS AND SCIENCES AND BEAUTIFICATION ARE SUBJECT TO PROCUREMENT UNDER THE PROCUREMENT CODE MANUAL. IN ADDITION, THE CITY COUNCIL, CITY MANAGER OR HIS OR HER DESIGNEE(S) MAY REQUEST THE COMMISSION TO MAKE RECOMMENDATIONS REGARDING ANY ARTS AND SCIENCES OR BEAUTIFICATION PROPOSAL.

SECTION 2. Repeal of Conflicting Ordinances.

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

SECTION 3. Severability.

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

SECTION 4. Effective Date.

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

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of October, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Mark Gaillard, Fire Chief
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE:

Consideration and Adoption of Resolution No. 2021-46: A resolution to approve an Intergovernmental Agreement (IGA) between City of Flagstaff and Lockett Ranches Fire District to provide fire and emergency medical services.

STAFF RECOMMENDED ACTION:

- 1) Read Resolution No. 2021-46 by title only
- 2) City Clerk reads Resolution No. 2021-46 by title only (if approved above)
- 3) Adopt Resolution No. 2021-46

Executive Summary:

Staff recommends approval of the IGA with Lockett Ranches. This provides continued contract services including fire and emergency medical responses to the property owners in the County island covered by the Lockett Ranches Fire District. This contract was recently approved by the Lockett Ranches Fire District governing board and is awaiting City of Flagstaff approval.

Financial Impact:

This contract is effective July 1, 2021 and will expire June 30, 2026. Contract services will generate \$218,976.02 for year one of the contract with a 2% increase per year thereafter. FY 22/23 \$223,355.54, FY 23/24 \$227,822.65, FY 24/25 \$232,379.10, FY 25/26 \$237,026.69. City of Flagstaff places no additional needs with the contract.

Policy Impact:

None.

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

Priority Based Budget Key Community Priorities and Objectives

Serve the public by providing high quality internal and external customer service
Provide public safety with the resources, staff, and training to respond to community needs

Regional Plan

Goal PF.2. Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics.

Has There Been Previous Council Decision on This:

RESOLUTION NO. 2021-46

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN LOCKETT RANCH FIRE DISTRICT AND THE CITY OF FLAGSTAFF ON BEHALF OF THE FLAGSTAFF FIRE DEPARTMENT FOR FIRE SERVICES

RECITALS:

WHEREAS, Lockett Ranch Fire District (“the District”), a political subdivision of the State of Arizona, seeks to obtain fire services and emergency medical services; and

WHEREAS, the City of Flagstaff (“the City”), through its Fire Department, operates, manages and maintains fire and emergency medical services; and

WHEREAS, the District and the City are empowered by Arizona Revised Statutes §§ 11-952 to enter into this Agreement; and

WHEREAS, the City Council has read and considered the staff summary report and proposed IGA attached thereto, and finds that it is in the best interests of the City to enter into the Agreement.

ENACTMENTS:

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

SECTION 1. In General

That the Intergovernmental Agreement between the District and the City be hereby accepted and approved.

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental Agreement between Lockett Ranch Fire District and the City of Flagstaff, Arizona, attached hereto as Exhibit A.

SECTION 2. Effective Date.

This resolution shall be immediately effective upon adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of October, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibits:
IGA

After recording, return to:

City Clerk
Flagstaff City Hall
211 W. Aspen Avenue
Flagstaff, AZ 86001

INTERGOVERNMENTAL AGREEMENT

**Between
City of Flagstaff
and
Lockett Ranches Fire District**

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, 2021 by and between the City of Flagstaff ("CITY"), an Arizona municipal corporation, with offices at 211 West Aspen Avenue, Flagstaff, Arizona, on behalf of the Flagstaff Fire Department ("DEPARTMENT"), and the Lockett Ranches Fire District (the "DISTRICT"), a political subdivision of the State of Arizona, created pursuant to A.R.S. §48-261, with offices at 3201 N. Jackrabbit Lane, Flagstaff, Coconino County, Arizona. DISTRICT and the CITY may be referred to as a Party or, collectively, as the Parties in this Agreement.

RECITALS

- A. The DISTRICT, a political subdivision formed pursuant to A.R.S. § 48-261, seeks to obtain fire and emergency medical services for the residents of its district and is authorized to do so by A.R.S. § 48-805(7).
- B. The CITY, through its DEPARTMENT, operates, manages, and maintains fire and emergency medical services.
- C. The DISTRICT desires that the CITY, through the DEPARTMENT, provide fire and emergency medical services for incidents occurring within the boundary response area of the DISTRICT.
- D. The CITY is authorized to enter into agreements to provide fire protection and emergency medical services by Flagstaff City Code Section 5-01-001-0001 and is willing to provide such services to the DISTRICT in accordance with the terms of this Agreement.

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements for services among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Duration and Termination of Agreement.** This Agreement shall become effective upon execution by the parties. The DEPARTMENT will begin service to the DISTRICT at 12:01 AM on July 1, 2021, and, subject to early termination or renewal as provided below, will continue to provide services as described in this Agreement to the DISTRICT with the Agreement terminating at 11:59 PM on June 30, 2026. The CITY has the right to terminate this Agreement upon written notice thereof to DISTRICT in the event the DISTRICT fails to make any payment due the CITY under this Agreement within thirty (30) calendar days after receiving written notice from the City that such payment is past due.
2. **Level of CITY Services.** The CITY, through the DEPARTMENT, agrees to provide fire and emergency medical services to the DISTRICT, twenty-four (24) hours a day, seven (7) days a week as follows:

- 2.1. Personnel. All DEPARTMENT response personnel will be certified as firefighters under state of Arizona guidelines and certified to the level of Emergency Medical Technician. All response personnel will have been trained to the operations level for Hazardous Materials and Weapons of Mass Destruction response.
- 2.2. Staffing Levels. Each fire apparatus responding to an incident within the DISTRICT will be staffed with a minimum of three fire/emergency medical services personnel (collectively, "One Unit"). On confirmed structural fires or larger wild land fires, additional units will be dispatched, as well as a Chief Officer who will assume command operations. A two (2) person rescue vehicle may respond to calls for emergency medical services if it is the closest fire unit available. A two (2) person rescue vehicle may also respond as part of a full force contingent for fire related events.
- 2.3. Station Locations and Response Assignments. The DEPARTMENT will provide services to the DISTRICT from Fire Station No. 5, located at 2525 North Fort Valley Road in Flagstaff. Additional support or back-up personnel will be provided from the CITY'S next closest and available facility. The DEPARTMENT will not have equipment or personnel stationed at existing or proposed Lockett Ranches facilities. The response will be consistent with Fire and EMS responses as determined by the Greater Flagstaff Regional Fire Departments Automatic Aid System.
- 2.4. Emergency Communications Center (911). The DISTRICT will make every effort to ensure that its residents direct all requests for assistance to the combined City/County Emergency 911 Dispatch Center. This facility is staffed and operated by trained emergency dispatchers 24 hours a day, seven days per week. All communications are time-stamped, and radio transmissions are voice recorded. Dispatchers maintain constant contact with responding and on-scene personnel to provide support and to dispatch additional resources.
- 2.5. Fuel Management. The DEPARTMENT will assist groups or businesses within the DISTRICT, such as homeowners' associations, developers and others, with the development and implementation of fuel management maintenance plans and will provide periodic assessments of the plans. The DEPARTMENT will report to the DISTRICT any maintenance or storage concerns that it may observe.
- 2.6. Road Access. The DISTRICT will cooperate with the DEPARTMENT in seeking cooperation from the Lockett Ranches Homeowners Association and property owners that all roadways have clear access for emergency response vehicles.
- 2.7. Personnel and Equipment Shortages. DISTRICT acknowledges and agrees that the occurrence of a major fire, several concurrent fires, other emergency, reduction in force, road closure, or other situation resulting in a shortage of available personnel or equipment may cause DEPARTMENT to respond with fewer units or personnel than specified above.
- 2.8. Response Time. DISTRICT acknowledges and agrees that DEPARTMENT response times are subject to variations due to existing weather conditions, travel distance for fire units already engaged elsewhere, traffic conditions, property identification and the provision of standard access and routing information to property or individuals, and that under these circumstances DEPARTMENT may be unable to respond, or be delayed in responding, to an emergency call in the DISTRICT.

3. **Disposition of Property.** During the term of this Agreement any property purchased by the CITY with its own funds will remain the property of the CITY, and any property purchased by the DISTRICT with its own funds will remain the property of the DISTRICT.

4. **Fee for Service.**

4.1. The DEPARTMENT will provide the services described in this Agreement for the fees described below:

4.1.1. The base rate for year one will be \$218,976.02 and will increase each year thereafter by 2%.

4.2. **Method of Payment.** The DISTRICT shall make bi-annual payments in the amount of fifty percent (50%) of the total annual amount and shall be due no later than November 15 and May 15 each year.

4.2.1. **Late Payment.** All amounts due from the DISTRICT to the CITY that are not paid by DISTRICT when due shall be subject to a penalty of ten percent (10%) of the amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid.

4.3. **Equipment Purchases.** The CITY will be solely responsible for the purchase of its equipment, if any, and will make such purchases within its discretion.

5. **Liability and Indemnification.**

5.1. **Force Majeure.** The CITY, the DEPARTMENT and their agents, officials and employees, shall not be liable to the DISTRICT for failure to comply with any of the terms and conditions of this Agreement where any failure to comply is caused by an act of God, court order, government regulation or requirement, strike or labor difficulty, fire, flood, windstorm, breakdown or other damage to equipment, power failure or any other cause beyond the reasonable control of the CITY.

5.2. **Failure to Comply.** The City desires to serve the District in a manner consistent with service extended to any part of the City's Fire Protection System that provides coverage to residents of the City of Flagstaff, its Mutual Aid Partners, and contract/IGA holders. However, the CITY shall not be liable to the DISTRICT or DISTRICT's residents for failure to comply with any of the terms and conditions of this Agreement where any failure to comply arises from CITY requirements to provide services to any or all parts of the entire service system, including its own residents, Mutual Aid Partners, or contract/IGA holders within its jurisdictional limits.

5.3. **Indemnification.** Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (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. Dispute Resolution.

- 6.1. Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will take place in Flagstaff, Arizona, be self-administered and be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the auspices of the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.
- 6.2. Legal Action. This mediation provision is not intended to 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 a party seeks provisional relief under the Arizona Rules of Civil Procedure.
- 6.3. Litigation and Attorney's Fees. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

- 7. Notices. Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given shall be in writing and sent to the address given below for the party to be notified, or to such other address notice of which is given:

If to the City:

Mark A. Gaillard, Fire Chief
City of Flagstaff
911 E. Sawmill Road
Flagstaff, AZ 86001

If to Lockett Ranches Fire District

Gregg Yensen Chairperson
Lockett Ranches Fire District Board
3201 N. Jackrabbit Lane
Flagstaff, Arizona 86001

Copy to:

City Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

8. General Provisions.

- 8.1. Status of Employees. Employees of the respective parties shall not be considered employees or agents of the other, and the CITY and the DISTRICT agree that they shall retain sole responsibility and authority over their respective employees.

- 8.2. Authorization to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions necessary to authorize the same.
- 8.3. Integration; Modification. Each party acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes the parties' entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement signed by or for both parties and recorded by the County Recorder, and any modification or amendment will become effective on the date so specified, but no earlier than the date of the recording by the County Recorder.
- 8.4. Cancellation for Conflict of Interest. Pursuant to A.R.S. §38-511, either the CITY or DISTRICT may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other party of the Agreement in any capacity or as a consultant to the other party of the Agreement with respect to the subject matter of this Agreement.
- 8.5. Waiver. No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a party to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.
- 8.6. Termination for Lack of Funds. The DISTRICT agrees to levy in good faith an amount sufficient to pay for the services to be provided by the CITY under this Agreement. If the DISTRICT determines, based upon the County Treasurer's tax collection data, and the City concurs that there will not be sufficient tax revenues available to the DISTRICT to pay the fee for services described in this Agreement, the DISTRICT may terminate this Agreement by giving the CITY ninety (90) days' notice of the lack of available funds. Termination of this Agreement will not relieve the DISTRICT of the obligation to pay the CITY the pro rata portion of the annual amount due before the termination date of the Agreement. In the event of termination, CITY agrees to refund to DISTRICT on a pro rata basis fees paid by DISTRICT in advance for any period following the date of termination.
- 8.7. Non-Discrimination. Each Party warrants that it complies with any state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, pregnancy, religion, sex, sexual orientation, gender identify, genetic information, age, national origin, disability, veterans status, care-giving responsibilities, or familial status shall have equal access to employment opportunities. Each Party shall take affirmative action to ensure that it will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Pregnancy Discrimination Act of 1978, Americans with Disabilities Act of 2008 as amended, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Age Discrimination and Employment Act of 1967 as amended, Genetic Information Nondiscrimination Act of 2008.

- 8.8. Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. Sec. 41-4401, each Party warrants to the other Party that the warranting Party and its subcontractors, if any, are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. Sec. 23-214(A). The Parties acknowledge that a breach of this warranty by a Party or any of its subcontractors is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any subcontract. Each Party retains the legal right to inspect the papers of any employee of the other Party or any subcontractor who works on this Agreement to ensure compliance with this warranty.
- 8.9. Compliance with All Laws. Both Parties will comply with all applicable Federal, State, County and City laws, regulations and policies.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written above.

City of Flagstaff

Lockett Ranches Fire District

Paul Deasy

Mayor

Dated: _____

Attest:

City Clerk

Dated: _____

Approved as to form and as being within the powers and authority granted under the laws of the State of Arizona to the City of Flagstaff:

City Attorney

Dated: _____

Name: _____

Title: _____

Dated: _____

Attest:

Dated: _____

Approved as to form as being within the powers and authority granted under the laws of the State of Arizona to Lockett Ranches Fire District:

District Counsel

Dated: _____

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Bryce Doty, Real Estate Manager
Co-Submitter: Anja Wendel
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE:

Consideration and Adoption of Resolution No. 2021-45: A resolution of the City Council of the City of Flagstaff, authorizing determination and offers of relocation benefits to persons displaced to make way for the Lone Tree Overpass project; providing for delegation of authority, subsequent Council ratification, and establishing an effective date.

STAFF RECOMMENDED ACTION:

- 1) Read Resolution No. 2021-45 by title only
- 2) City Clerk reads Resolution No. 2021-45 by title only (if approved above)
- 3) Adopt Resolution No. 2021-45

Executive Summary:

This Resolution delegates authority to City staff and its contractors to present and pay determinations of relocation benefits consistent with the Uniform Relocation Assistance Act of 1970 ("the Act"). The City Manager will have authority to approve payments up to \$50,000, consistent with his contracting authority under City Code and the Procurement Code Manual.

The City Council will approve relocation benefits of \$50,000 or more, with the following exception: the proposed Resolution will allow the City Manager to approve relocation benefits of \$50,000 or more to the persons currently residing at Coconino County Assessor Parcel Number 104-01-019. The City needs to be able to make an offer of relocation benefits for a replacement property that is actually available on the market. To obtain City Council approval of any agenda item typically one to two weeks, and in today's residential real estate market, residential properties are often sold in a few days.

Under the Act, displaced persons are entitled to relocation benefits. There are different requirements for the relocation of businesses, residents, and tenants.

If a person is being displaced from his or her home, the City will provide a functionally equivalent dwelling from the one required for the project. For tenants, the City's contractors identify comparable housing options to the existing dwelling. If the price of a new dwelling exceeds the tenant's current rent, the project covers the difference for 42 months. For owner-occupied houses, comparable houses currently available on the market are used to determine if any differential between the City's purchase price of the existing home and the availability of a replacement house is necessary in order to provide a functionally equivalent dwelling.

Financial Impact:

Relocation benefits are being paid for from the project budget. The Lone Tree Overpass Project (north of Butler Avenue) is currently budgeted in FY2021-2022 in the amount of \$8,686,681 in the Transportation Fund, Account Number 047-05-112-3054-6. The Lone Tree Corridor Project (south of Butler Avenue) is currently budgeted in FY2021-2022 in the amount of \$250,000 in the Transportation Fund, Account Number 048-05-118-3495-6. Both funds will be utilized to complete the attached Project scope from Route 66 to Sawmill Road.

Policy Impact:

None.

Connection to PBB Key Community Priorities/Objectives & Regional Plan:**Priority Based Budget Key Community Priorities and Objectives****Safe and Healthy Community -**

- Foster a safe, secure, and healthy community.
- Ensure the built environment is safe through the use of consistent standards, rules and regulations, and land use practices.

Inclusive and Engaged Community -

- Advance social equity and social justice in Flagstaff.

Sustainable, Innovative Infrastructure -

- Deliver outstanding services to residents through a healthy, well maintained infrastructure system.
- Utilize existing long-range plans that identify the community's future infrastructure needs and all associated costs.
- Identify smart traffic management, multi modal transportation, and alternative energy opportunities.

Environmental Stewardship -

- Implement sustainable building practices and alternative energy and transportation options.
- Implement, maintain and further the Climate Action and Adaptation Plan.

Regional Plan

- Improve transportation safety and efficiency for all modes.

Has There Been Previous Council Decision on This:

The City Council has considered the Lone Tree Overpass Project on numerous occasions.

On February 2, 2021, City Council awarded the Design-Build Services Agreement for Phase I of the project to Ames Construction. As part of this agreement, the contractor is coordinating efforts to acquire real property for the project and to provide relocation benefits to displaced persons.

On July 6, 2021, City Council passed Ordinance 2021-15, authorizing the acquisition of real property for the project.

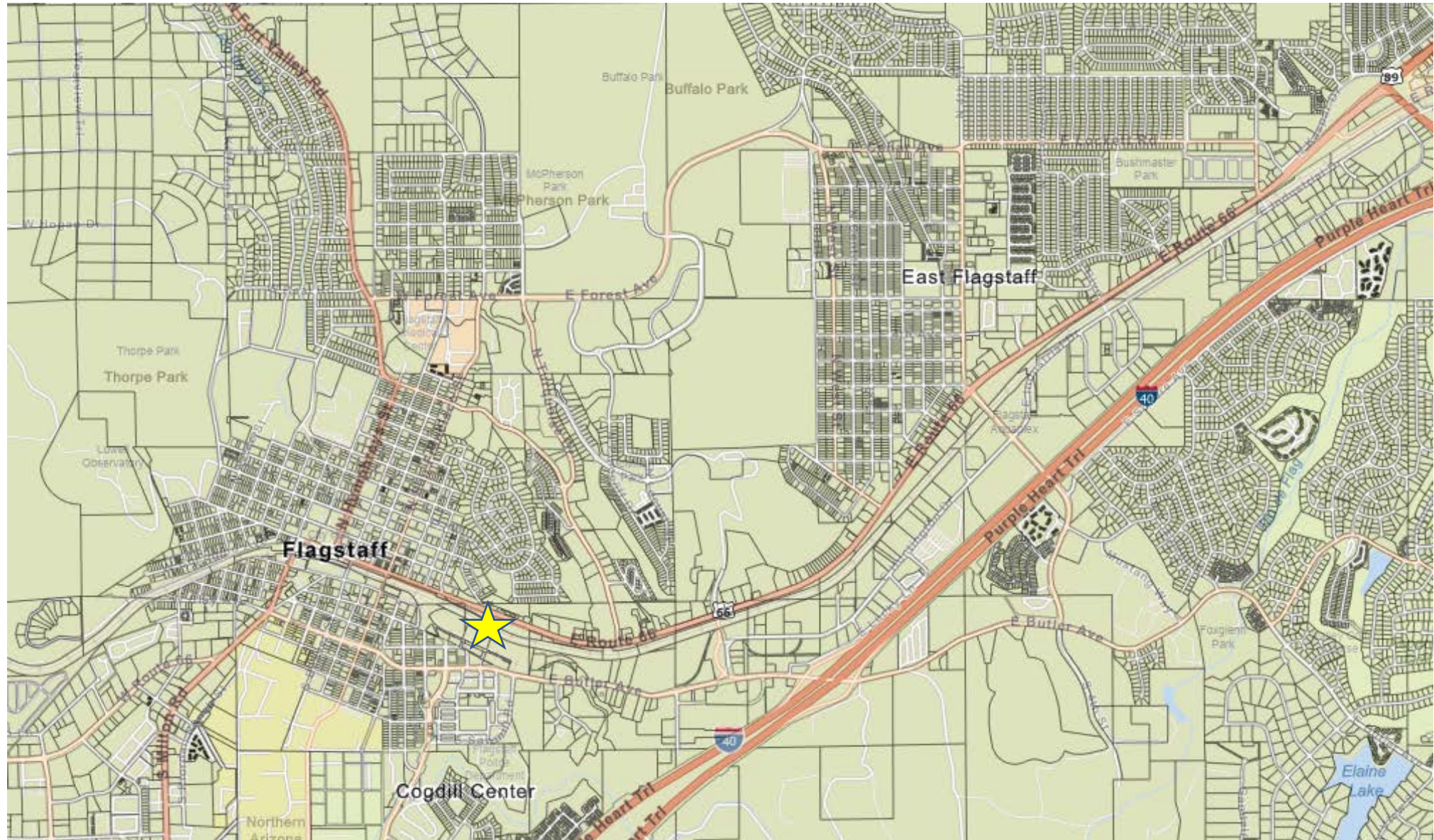
Background/History:

Lone Tree Overpass Relocation Benefits Approval





Vicinity Map





Lone Tree Overpass





Uniform Act Process

Purpose / Benefits

- Minimize Hardships
- Identify replacement housing and 90 day move-out notice
- Provide moving expenses
- Account for increased cost, if any, of replacement housing
- Following Uniform Act protects City's ability to continue to receive Federal and State funds



Uniform Act Process

Steps

- Notice of eligibility
- Appraisal
- Appraisal Review
 - Approved Offer Amount
- Written Offer and Determination of Relocation Benefits,
- Acquisition (purchase or condemnation)
- Relocation



Timeline

Priority 1 Parcels

BNSF Parcels

- Acquisition efforts progressing in same discussions as Rio de Flag flood control project

Priority 2 Parcels

Full Parcel Acquisitions

- Right of Way limits of the LoneTree Overpass will require full acquisition for these parcels
- Offers and Relocation Determinations are being presented

Priority 3-5 Parcels

Partial Acquisitions

- Design work has not fully delineated Right of Way needs. We may not need acquisitions on all parcels.
- Once design is finalized and legal descriptions prepared, we will acquire what is needed



Questions
or
Discussion?

RESOLUTION NO. 2021-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AUTHORIZING DETERMINATION AND OFFERS OF RELOCATION BENEFITS TO PERSONS DISPLACED TO MAKE WAY FOR THE LONE TREE OVERPASS PROJECT; PROVIDING FOR DELEGATION OF AUTHORITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, in November 2018 Flagstaff voters passed Proposition 420, to establish a 0.23% local transaction privilege tax (sales) tax rate for a 20-year period, on the gross revenues derived from engaging in business activities within the city of Flagstaff, and dedicating use of the revenues to pay for the costs of a Lone Tree Railroad Overpass from Butler Avenue to Route 66, along with related pedestrian, bicycle, and street connections (“Lone Tree Overpass Project” or “Project”); and

WHEREAS, the City of Flagstaff has programmed funding for the Project in its 5-year Capital Improvement Program; and

WHEREAS, the City has entered into a contract with Ames Construction, Inc., a Minnesota corporation for construction of Project, and for the coordination of property acquisition and relocation services for persons displaced as a result of the Project; and

WHEREAS, the City Council has authorized acquisition of real property for the Project, pursuant to Ordinance No. 2021-15; and

WHEREAS, to ensure that persons displaced as a direct result of the Project are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of the Project which has been designed for the benefit of the public as a whole, the City is conducting all relocations according to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

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

SECTION 1. Delegation of Authority.

Ames Construction, Inc., along with its subcontractors Todd Belzner and Consulting Engineering, Inc., are hereby authorized and delegated authority to make determinations of relocation benefits to persons displaced as a direct result of the Lone Tree Overpass Project consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act; and

The Mayor, City Manager, City Attorney, City Clerk, Finance Director, City Engineer, Real Estate Manager, or their delegates or agents, are hereby authorized and directed to take all steps and execute all documents necessary to pay or provide the determination of relocation benefits to displaced persons.

If the Determination of Benefits exceeds \$50,000 it will be presented to Council for approval, except the City Manager shall have authority to provide or pay relocation of benefits in excess of \$50,000, for the following property:

Coconino County Assessor Parcel Number(s): 104-01-019

SECTION 2. Effective Date

This resolution shall be immediately effective.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of October, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

13. C.

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

:

Date: 09/30/2021

Meeting Date: 10/05/2021



TITLE:

Consideration and Approval of Contract: Approve the Professional Services Contract with Terros, Inc. dba Terros Health for the Alternate Response Mobile Unit in the amount of \$2,583,300.

STAFF RECOMMENDED ACTION:

1. Approve the Professional Services Contract with Terros, Inc. dba Terros Health (Terros Health) for Mobile Alternative Response Team Services for three years with the ability to renew up to two successive one year terms in the amount of \$2,583,300. The table below outlines the cost per year.

Expense Line Item	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Personnel:	\$274,100	\$289,800	\$298,500	\$307,500	\$316,700	\$1,486,600
Fringe Benefits:	\$67,200	\$69,200	\$71,200	\$73,400	\$75,600	\$356,600
Travel:	\$7,300	\$7,500	\$7,700	\$8,000	\$8,300	\$38,700
Equipment:	\$0	\$0	\$0	\$0	\$0	\$0
Supplies:	\$7,000	\$6,600	\$6,700	\$6,600	\$6,700	\$33,600
Contracts:	\$0	\$0	\$0	\$0	\$0	\$0
Construction:	\$0	\$0	\$0	\$0	\$0	\$0
Other:	\$144,800	\$145,300	\$149,900	\$155,300	\$158,000	\$753,300
Year #1 - Program Startup - Billing Credit (Months 1-5)	\$(85,500)	\$0	\$0	\$0	\$0	\$(85,500)
Total:	\$414,900	\$518,400	\$534,000	\$550,800	\$565,200	\$2,583,300

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

Executive Summary:

City Council requested a future agenda item about Police Operations. One of the three presentations provided by Police Chief Musselman was about Alternate Response Models. The City Council was in support of the concept, so City Staff worked with internal and external partners to create a Request for Proposal (RFP) solicitation for a Public Safety Alternate Response Model, to include alternate care center services and a mobile response unit. The RFPs were evaluated and the evaluation committee recommended the mobile response unit services contract be awarded to Terros Health. The evaluation

committee did not recommend the award of an alternate care center services contract, but suggested City staff continue working with internal and external partners and the community to refine the needs of an alternate care center, then conduct another solicitation process.

Terros Health is a health care company specializing in crisis services, mental health and substance abuse treatment. Terros Health is currently the organization offering Terros Flagstaff Crisis Service for Coconino County. Terros Health is accredited by the Commission on Accreditation of Rehabilitation Facilities and is in good standing with the State of Arizona. Terros Health will provide the management and the oversight for the behavioral health professionals who will partner with the City's Firefighter/Emergency Medical Technician to staff the mobile response unit. The oversight for the mobile response unit will be provided by the Terros Health Director of Northern Arizona Crisis Services and Senior Director of Crisis Services. The clinical guidance and consultation and management of the unit will be provided by the Clinical Manager.

There will be one behavioral health professional and one Firefighter/Emergency Medical Technician who will work together on the mobile response unit to provide the community with crisis intervention and mental health stabilization services. The mobile response unit will provide proactive outreach to the community and also respond to public safety calls, such as, public intoxication, substance use, trauma informed, and mental or behavioral health related events. Calls for service will be dispatched through the Flagstaff Police Department Communication 9-1-1 Dispatch Center. The mobile response unit will run for ten hours a day starting at 10:00 am and ending at 8:00 pm when implemented. City staff and Terros Health will continually evaluate the response data to determine if this is sufficient coverage to address community needs.

The mobile response unit will be conducting proactive outreach and responding to calls in a van. The van will provide enough space for specialized equipment for basic life safety response, in addition to comfort items such as water and snacks, emergency clothing, toiletries, blankets and cultural items like abalone shells, sage and cedar and the ability to transport individuals as needed.

Terros Health will provide ongoing reporting of data collected about outreach conducted and calls for service. Terros Health and City staff have worked together to create three measures to evaluate the effectiveness of the mobile response unit: 1) reduction of crisis recidivism and crisis calls for Flagstaff Fire Department and Flagstaff Police Department; 2) reduction in the number of arrests, bookings, and prosecutions for alcohol use related offenses including public intoxication, trespassing, public urination and public menacing; and 3) reduction in the number of individuals transported to emergency department for intoxication and detox issues. During the first three months of operation a baseline will be created and a metric to determine the appropriate level of reduction for these three measures.

City Council asked during a recent presentation how community policing efforts would be impacted by implementing a mobile response unit. City staff will be presenting information to define community policing and describe Flagstaff Police Department efforts to demonstrate the differences between the two community services.

Financial Impact:

The FY2021-2022 budget includes appropriation for the three Firefighter/Emergency Medical Technicians (\$232,798), behavioral health personnel and management oversight (\$776,000), purchase of a vehicle (\$65,000) and specialized equipment (\$40,000).

Policy Impact:

There will be no impact to City policies with the adoption of a mobile response unit. The dispatch protocols of the Flagstaff Police Department's 9-1-1 Communications Center will be updated to include the dispatching of the mobile response unit.

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

Priority Based Budget Key Community Priorities and Objectives

Safe & Healthy Community: Foster a safe, secure and healthy community, enhance community engagement and community policing efforts, develop alternative diversion programs,

Regional Plan

Goal PF.3 Provide high-quality emergency response and public safety services including law enforcement, fire, medical, and ambulance transport service.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

1. Approve the Professional Services Contract with Terros Health for mobile response unit services;
2. Recommend changes to the Professional Services Contract with Terros Health for mobile response unit service; or
3. Do not proceed with a Professional Services Contract for mobile response unit services.

Background/History:

On February 26, 2021, Purchasing posted a Request for Proposals for a Public Safety Alternate Response Model on the PlanetBids website and advertised the RFP in the Arizona Daily Sun and Arizona Republic on March 7 and 14, 2021; and the Navajo Times on March 11 and 18, 2021. On March 8, 2021 Purchasing held a Pre-Proposal Meeting for fielding questions and discussing the scope that there may be with potential proposers and the public.

On March 26, 2021, Purchasing received four (4) proposals in PlanetBids which were opened electronically. A six-member Selection Committee consisting of four (4) City staff from the Alternate Response Team and two (2) outside community members, one who is also serving on the Alternate Response Team, reviewed and evaluated the proposals. Interviews of all four candidates took place on May 12 and 14, 2021. Additionally, the proposals of all four candidates were evaluated by the Selection Committee.

Based upon the numerical scoring of the proposals and interviews, as well as information received during the interviews and follow-up questions, the Selection Committee determined to only move forward with the mobile response unit portion of the solicitation and to postpone the care center portion of the RFP for a future solicitation once the scope of the care center is more clearly defined. Three candidates were remaining for the mobile response unit portion. The Selection Committee determined that Terros Health was the most qualified based on the scoring. During the summer of 2021, Terros Health and City staff negotiated and discussed final contract scoping and budget for the mobile response unit.

Total scores for each proposal and interview are as followed (* = Mobile Response Unit responders):

*Terros: **1440**

*The Guidance Center: **1390**

NACA: **1255**

*WestCare AZ: **1145**

Expanded Financial Considerations:

The majority of the Professional Service Contract expenses are for staffing payroll, benefits, and related supplies and expenses. The personnel related costs are calculated based on a ten-hour shift seven days a week with merit and cost of living increases included. The supplies and expenses include office supplies, medical supplies/PPE, uniforms, printing of business cards and educational pamphlets, comfort items for customers, shared office space, insurance costs, cell phones and Chromebooks, hiring and training costs, vehicle lease, and Terros Health support staff costs.

The first year of the response mobile unit Professional Services Contract includes a reduced rate for the first four months following approval of the contract until the mobile response unit becomes fully operational. Terros Health is proposing 20% for month one, to include the creation of the behavioral health professional positions, hiring, onboarding and training; 40% for month two to continue this work with additional staff members; 60% for month three to continue hiring and training of new staff, building partnerships with local stakeholders and begin establishing joint protocols; and 75% for month four to build upon efforts started.

Community Benefits and Considerations:

The mobile response unit will benefit the community by providing proactive outreach prior to a crisis or complaint call being made to the Flagstaff Police Department Communication 9-1-1 Dispatch Center. By including a behavioral health professional on the mobile response unit, there will be a higher level of service for those in need in the Flagstaff community.

Community Involvement:

There were community members included on the Alternate Response Team who created the RFP to solicit services for the alternate care center and mobile response unit. The City of Flagstaff held a Town Hall on February 2, 2021, to obtain feedback from community stakeholders who are currently providing services within Flagstaff to finalize the RFP for the alternate care center service and mobile response unit. The Selection Committee reviewing the proposals also included a member from the Indigenous Commission and a local service provider.

Attachments: [Terros Professional Services Contract](#)
 [Mobile Response Unit Presentation](#)

PROFESSIONAL SERVICES CONTRACT

by and between

City of Flagstaff

and

Terros, Inc. dba Terros Health

This Professional Services Contract (“Contract”) is made this ____ day of _____, _____, by and between the CITY OF FLAGSTAFF, a political subdivision of the State of Arizona, of 211 West Aspen Avenue, Flagstaff, Arizona 86001 (“City”) and TERROS, INC. DBA TERROS HEALTH, an Arizona non-profit corporation, of 3003 North Central Avenue, Suite 400, Phoenix, Arizona 85012 (“Terros Health”). In the Contract, the City and Terros Health may be referred to individually as a Party or collectively as Parties.

RECITALS

- A. Terros Health is a health care company specializing in crisis services, mental health, and substance abuse treatment. Terros Health is currently offering Terros Flagstaff Crisis Services for Coconino County. Terros Health is accredited by the Commission on Accreditation of Rehabilitation Facilities and is in good standing with the State of Arizona;
- B. The City desires to provide the community with crisis intervention and mental health stabilization services through a mobile response unit. This mobile response unit will provide proactive outreach to the community and also respond to public safety calls, such as, public intoxication, substance abuse, trauma informed, and mental or behavioral health related events received through the Flagstaff Police Department (“FPD”) Communication Center (or 9-1-1 Dispatch);
- C. Terros Health desires to create a Mobile Alternative Response Team (“Mobile ART”) staffed with Terros Health behavioral health crisis specialists (“Crisis Specialists”) fully qualified by all necessary behavioral health education, training, experience, licensure, and/or certification to work in conjunction with the Flagstaff Fire Department (“FFD”) to provide proactive outreach and respond to public safety calls for individuals in distress; and
- D. The City and Terros Health desire to enter into the Contract establishing the terms and conditions under which FFD Emergency Medical Technicians (“EMTs”) and Crisis Specialists will provide Mobile ART Services.

NOW THEREFORE, for and in consideration of the mutual obligations and covenants set forth herein, the Parties agree as follows:

AGREEMENT

- 1. **Duration.** The Contract will be effective on the date first set forth above and will continue in force and effect for an Initial Term of three (3) years. Upon expiration of the Initial Term and upon mutual written consent of the Parties, the Contract may be renewed for up to two (2) successive one (1) year terms subject to the provisions of the Contract.

2. **Scope of Services.** The City and Terros Health will provide proactive outreach and respond to non-emergent public safety calls for individuals in distress, as identified in the **Scope of Services** (“Mobile ART Services”), attached hereto as **Exhibit A**, in accordance with the **Implementation Plan**, attached hereto as **Exhibit B**. Mobile ART Services may involve a wide range of crisis events, such as primary substance use, suicidality, non-suicidal self-harm, interpersonal/family dynamics, interpersonal violence, and/or psychotic symptoms of an underlying mental health condition.

2.1 Responsibilities of FFD EMTs

- 2.1.1 All EMTs will operate under the direct supervision of FFD. The City will be solely responsible for the actions of the EMTs performing Mobile ART Services.
- 2.1.2 EMTs will provide basic life support assessment and treatment within the scope of Emergency Medical Technician certification.
- 2.1.3 If an EMT performing Mobile ART Services determines that an individual requires medical care greater than basic life support assessment and treatment, the EMT will contact FFD and/or medical transport (e.g., Guardian Medical Transport). The EMT will take responsibility for the medical care of that individual until an appropriate transfer of care can be completed.

2.2 Responsibilities of Terros Health Crisis Specialists

- 2.2.1 All Crisis Specialists will operate under the direct supervision of Terros Health and Terros Health will be solely responsible for all the actions of its Crisis Specialists.
- 2.2.2 No Crisis Specialist will be considered an employee or agent of the City, FFD, or FPD.
- 2.2.3 The relationship between Crisis Specialists and the individuals receiving services is that of a professional behavioral health provider/patient. Crisis Specialists will be solely responsible for providing field-based clinical behavioral health crisis management, care coordination, and crisis intervention services.
- 2.2.4 The Crisis Specialist will be solely responsible for deciding to contact Terros Health RBHA contracted State-funded Crisis Services, or another agency, for a higher level of professional behavioral health care, including suicide response.
- 2.2.5 The Crisis Specialist will consult with Terros Health Behavioral Health Professionals, when needed, and Terros Health will be responsible for all decisions regarding court-ordered evaluation and court-ordered treatment pursuant to Arizona Revised Statutes, Title 36, Chapter 5, Sections 504-544, and. The EMT partnering with the Crisis Specialist shall not be responsible for decisions regarding court-ordered evaluation and court-ordered treatment but

will serve as a witness upon the request of Terros Health, in any application for involuntary evaluation processes that is determined necessary by the Crisis Specialist.

3. **Compensation.** Compensation to Terros Health for satisfactorily performing Mobile ART Services is identified in the **Compensation Schedule**, attached hereto as **Exhibit C**. The City will make payments to Terros Health on or before the fifteenth day of the month.
4. **Termination.** Notwithstanding any other provisions to the contrary, the Contract may be terminated as follows:
 - 4.1 Either Party may terminate the Contract if the other Party is in breach of any provision for more than sixty (60) days after notice of the breach has been given. In the case of a breach which cannot be cured within such sixty (60) day period, the breaching Party must immediately initiate and diligently pursue a plan of curative action that is acceptable to the non-breaching Party. Termination for a recurring breach may be made if the breach is uncured within thirty (30) days after the second notice in any twelve (12) month period and immediately, without opportunity for cure, in the third or any subsequent notice of breach in any twelve (12) month period.
 - 4.2 The City may terminate the Contract immediately, and without prior notice, upon Terros Health's failure to have in force any insurance required by the Contract or if Terros Health fails to maintain any certificate or license required for performance of the Mobile ART Services.
 - 4.3 The City may terminate all or a portion of the Contract, with ninety (90) days written notice, if there is no funding for the Mobile ART Services due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Terros Health.
 - 4.4 The City may terminate all or a portion of the Contract, with ninety (90) days written notice, without penalty or liability to Terros Health, if the City determines, based on the data collected by Terros Health, that there is no longer a sufficient need for the Mobile ART Services in the community. For example, if there is diminishing need for proactive outreach as identified by the Terros Health data or if the Terros Health data identifies that 9-1-1 Dispatch calls are primarily serviced by FFD or FPD rather than the Mobile ART.
 - 4.5 In the event that the City terminates all or a portion of the Contract pursuant to either sections 4.3 or 4.4 above, the City shall pay to Terros Health the sum of the following costs which represent the respective interests of Terros Health to the terminated portion of the Contract:
 - 4.5.1 The portion of the compensation related to the services satisfactorily completed by Terros Health immediately prior to the notice of termination;

4.5.2 The expenses incurred, including, contractual costs that are outlined in the **Compensation Schedule**, attached as **Exhibit C**, for which Terros Health is liable as the result of termination of all or a portion of the Contract.

5. Remedies.

5.1 If Terros Health is deemed in breach of the Contract, Terros Health will be liable for the costs to replace the Mobile ART Services that are not being provided, from the notification of breach to the termination of Contract, through the proportionate reduction of compensation until the breach is remedied or the Contract is terminated. The maximum liability of Terros Health would not exceed the monthly compensation identified in the **Compensation Schedule**, attached hereto as **Exhibit C**.

5.2 The foregoing remedies provided to the City for breach of the Contract by Terros Health will not be exclusive. The City will be entitled to exercise any one or more other legal or equitable remedies available because of Terros Health's breach with or without termination.

5.3 In the event of breach of the Contract by the City, Terros Health's will be entitled to all legal and equitable remedies allowed by law.

6. Records.

6.1 The 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 Terros Health has clearly marked its proprietary information as “confidential,” the City will notify Terros Health prior to release of such information.

6.2 All quality assurance activities shall remain privileged and confidential pursuant to A.R.S. §§ 36-2401-2403, and other applicable confidentiality laws and regulations imposed by other bodies involved in quality assurance activities.

7. Inspection. Upon reasonable advance notice and only to the extent permitted by applicable law, the City, or its authorized representatives, may inspect, and audit, of any Terros Health’s records that relate to the Contract. If any audit by the City identifies that Terros Health received revenues from a third-party for Mobile ART Services provided or that payments to Terros Health were in excess of the amount to which Terros Health was entitled under the Contract, Terros Health will promptly pay to City the amount of such excess.

8. Indemnification.

8.1 Terros Health will indemnify and hold the City, and its officers, agents, employees, subcontractors and volunteers, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys’ fees and other costs of defense, arising out of the acts, errors, or omissions of Terros Health, its officers, agents, employees, subcontractors or volunteers, in performing or failing to perform the responsibilities of Crisis Specialists as identified in Section 2.2 of this Contract. In

the event any such action or claim is brought against the City, Terros Health will, if the City so elects and upon tender by the City: (a) defend the same at Terros Health's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City will notify Terros Health, within a reasonable time, of any claim, threat of claim, or legal action as it relates to Section 2.2 of this Contract.

- 8.2 The City will indemnify and hold Terros Health, its officers, agents, employees, subcontractors and volunteers, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense, arising out of the acts, errors, or omissions, whether alleged or actual, of the City, its officers, agents, employees, subcontractors or volunteers in performing or failing to perform the responsibilities of FFD EMTs as identified in Section 2.1. In the event any such action or claim is brought against Terros Health, the City will, if Terros Health so elects and upon tender by Terros Health: (a) defend the same at the City's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to Terros Health; or (c) reimburse Terros Health for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by Terros Health. Terros Health will notify the City, within a reasonable time, of any claim, threat of claim, or legal action as it relates to Section 2.1 of this Contract.
- 8.3 These indemnity provisions will survive the termination, cancellation, or revocation, whether in whole or in part, of the Contract.
- 8.4 In the event that a claim should arise from the performance of Mobile ART Services, the Parties will make a good faith effort to discuss a joint defense.

9. Insurance.

- 9.1 In General. Each Party will maintain insurance against claims for injury to persons or damage to property arising from performance of, or in connection with, this Contract by such Party's officers, agents, employees, subcontractors or volunteers. Coverage provided by each Party will not be limited to the liability assumed under the indemnification provisions of this Contract.
- 9.2 Requirement to Procure and Maintain. Each insurance policy required by this Contract will be in effect at, or before, commencement of work under this Contract and will remain in effect until all of the applicable Party's obligations under this Contract have been met, including any warranty periods. Either Party's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal upon request will be considered a material breach of this Contract.
- 9.3 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 Terros Health from liabilities

that might arise out of this Contract and Terros Health is free to purchase such additional insurance as Terros Health may determine is necessary.

Terros Health will provide coverage at least as broad and with limits not less than those stated below.

9.3.1 Commercial General Liability - Occurrence Form

General Aggregate	\$5,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$2,000,000

9.3.2 Umbrella Coverage \$2,000,000

9.3.3 Automobile Liability \$1,000,000

Any Automobile or Owned, Hired,
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage

9.3.4 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

9.3.5 Professional Liability \$2,000,000

9.4 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, subcontractors and volunteers. Terros Health will be solely responsible for any self-insured retention amounts. The City, at its option, may require that Terros Health secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

9.5 Other Insurance Requirements. The Terros Health policies will contain, or be endorsed to contain, the following provisions:

9.5.1 Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, agents, employees, subcontractors and volunteers will be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of Terros Health, including products and completed operations of Terros Health, and automobiles owned, leased, hired, or borrowed by Terros Health.

- 9.5.2 Broad Form. Terros Health’s insurance will contain broad form contractual liability coverage.
- 9.5.3 Primary Insurance. With respect to Terros Health’s insurance coverage as described in this Section , such coverage will be primary insurance with respect to the City, its officers, agents, employees, subcontractors and volunteers. Any insurance or self-insurance maintained by the City, its officers, agents, employees, subcontractors and volunteers, will be in excess of the coverage of Terros Health’s insurance and will not contribute to it.
- 9.5.4 Each Insured. Terros Health’s insurance will 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.
- 9.5.5 Waiver of Subrogation. The policies will contain a waiver of subrogation against the City, its officers, agents, employees, subcontractors and volunteers, for losses arising from work performed by Terros Health for the City.
- 9.6 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and will not be suspended, voided, cancelled, reduced in coverage, or in limits unless prior written notice has been given to the applicable Party. Notices required by this section will be sent directly to the individuals identified below and will reference the Contract Number:
- Patrick Brown, Purchasing Director
Contract No. 2021-84
Purchasing Department
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
- Christine Mahlstedte
Director of Payer Relations and Contracting
Terros Health
3003 North Central Avenue, Suite 400
Phoenix, Arizona 85012
- 9.7 Acceptability of Insurers. Terros Health will 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 Terros Health from potential insurer insolvency.
- 9.8 Certificates of Insurance. Terros Health will furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy will be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy that contains additional insured endorsements that restricts

or limits coverage must be approved by the City's Attorney's Office in consultation with the City's Risk Manager, whose decision will be final. The City contract number and project description will be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before Mobile ART Services commence.

9.9 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 will not be obligated, however, to review any insurance policies or to advise Terros Health of any deficiencies in such policies and endorsements. The City's receipt of Terros Health's policies or endorsements will not relieve Terros Health from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Terros Health's obligations under this Contract.

9.10 Modifications. Any modification or variation from the insurance requirements applicable to Terros Health 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 will be final. Any modification or variation from the insurance requirements applicable to the City in this Contract must have the prior approval of Terros Health. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

10. Subcontracting. Terros Health was selected for its special knowledge, skills, and expertise, and will not subcontract the Mobile ART Services required under the Contract, in whole or in part, without the City's prior written approval, which may be withheld for any reason. However, if subcontracting is authorized by the City, Terros Health will require any approved subcontractor to agree, as to the portion subcontracted, to comply with all obligations of Terros Health specified in the Contract. Notwithstanding the City's approval of a subcontractor, Terros Health will remain obligated for full performance of the Contract and the City will incur no obligation to any subcontractor.

11. Assignment. Terros Health was selected for its special knowledge, skills, and expertise, and will not assign the Contract and/or the Mobile ART Services required under the Contract, in whole or in part, without the City's prior written approval, which may be withheld for any reason. Any assignment without such consent will be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment will relieve Terros Health (Assignor) from any of its obligations and liabilities under the Contract with respect to the City.

12. Independent Contractor. Terros Health will 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.

13. Taxes. Terros Health will be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Terros Health's performance of the Contract. Such taxes include, but are not limited to, federal and state income tax, social security tax,

unemployment insurance taxes, use taxes, and any other taxes or business license fees as required. Terros Health qualifies for the Arizona Transaction Privilege Tax Healthcare Exemption and will provide the City certification of such for the period of October 1, 2020 through September 30, 2021. Throughout the term of the Contract, Terros Health will provide the City evidence of renewal of the certification of qualification for the Arizona Transaction Privilege Tax Healthcare Exemption.

14. **Compliance with Laws.** Each Party will, in all material ways, comply with all applicable federal, state, and local laws, rules, codes, ordinances, and regulations at all times and in the performance of the Mobile ART Services.
15. **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. Terros Health personnel will abstain from use or possession of illegal drugs while engaged in performance of the Contract.
16. **Cancellation for Conflict of Interest.** The Contract may be cancelled for conflict of interest in accordance with A.R.S. § 38-511.
17. **Cancellation for Gratuities.** The City may cancel the Contract at any time, without penalty or further liability to Contractor, if the City determines that Terros Health has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
18. **Cooperative Planning Requirements.** Terros Health recognizes that planning within the City, and other state and local agencies, is essential to the success of a coordinated service delivery system, such as the Mobile ART Services. Terros Health agrees to attend and participate in a reasonable number of meetings and planning efforts initiated by the City, and to provide non-confidential data already in Terros Health's possession which may be required by the City and is reasonably necessary to achieve compliance with the City's programmatic goals. Terros Health agrees to maintain open and responsive working relations with the City, FPD, and FFD.
19. **Legal Workers.** As mandated by A.R.S. § 41-4401, each Party (a) warrants the Party's compliance with all federal immigration laws and regulations that relate to the Party's employees and their compliance with A.R.S. § 23-214(A); (b) acknowledges that a breach of the warranty in subsection (a) of this section will be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and (c) retains the legal right to inspect the papers of any contractor or subcontractor employee who works pursuant to the Contract to ensure compliance with the warranty.

- 20. Notices.** Notices will be sent by certified mail and email to the individual designated to receive notices as identified below:

CITY:

Shannon Anderson
Deputy City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001
sanderson@flagstaffaz.gov

Deputy Chief, Operations
Flagstaff Police Department
911 East Sawmill Road
Flagstaff, AZ 86001

Deputy Chief, Operations
Flagstaff Fire Department
211 West Aspen Avenue
Flagstaff, AZ 86001

Patrick Brown, C.P.M., CPPB
Purchasing Director
211 West Aspen Avenue
Flagstaff, AZ 86001
pbrown@flagstaffaz.gov

TERROS HEALTH:

Peggy J. Chase
President and CEO
Terros Health
3003 North Central Avenue, Suite 400
Phoenix, AZ 85012
peggy.chase@terroshealth.org

Each Party will notify the other of any change in the name, address, or email to be used for delivery of notices.

21. Dispute Resolution.

- 21.1 **Continued Performance.** Unless the Contract is terminated, neither Party will suspend performance of its obligations hereunder pending the resolution of a dispute.
- 21.2 **Negotiation.** The Parties will use all reasonable attempts to resolve disputes informally through negotiation.
- 21.3 **Construction of Contract.** The Contract will not be construed against either Party regardless of which party drafted it. The Contract will be governed by and construed in accordance with the laws of the State of Arizona.
- 21.4 **Governing Law.** The Contract will be governed, interpreted, and enforced in accordance with the laws of the State of Arizona.
- 21.5 **Dispute Resolution.** Either Party will have the right to litigate any disputes which arise under the Contract. Any litigation brought by either Party against the other to

enforce the provisions of the Contract must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the Parties in connection with the Contract, the prevailing Party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing Party.

22. **Integration.** The Contract embodies the entire agreement of the Parties concerning the Mobile ART Services. There are no promises, terms, conditions, or obligations other than those contained herein. The Contract will supersede all prior communications, representations, or agreements, either oral or written, between the Parties. The Contract will not be amended except in writing and signed by both Parties.
23. **Survival.** Any duty, liability, or obligation of a Party which arises under the Contract, including without limitation, obligations with respect to indemnification, will survive the termination or expiration of the Contract and will be legally enforceable until satisfied by performance or payment, or until enforcement is legally precluded by lapse of time.
24. **No Third-Party Beneficiaries.** There are no third-party beneficiaries of the Contract. The Parties agree and intend that the Contract will be enforceable only by the Parties and their duly authorized representatives.
25. **No Boycott of Israel.** Pursuant to A.R.S. §§ 35-393 and 35-393.01, the Parties certify that they are not currently engaged in and agree, for the duration of the Contract, not to engage in a boycott of Israel.
26. **Non-Discrimination.** The Parties warrant that they will comply with any state and federal laws, rules, and regulations which mandate that all persons, regardless of race, color, pregnancy, religion, sex, sexual orientation, gender identify, genetic information, age, national origin, disability, veteran status, caregiving responsibilities, or familial status will have equal access to employment opportunities. The Parties will take affirmative action to ensure that it will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Pregnancy Discrimination Act of 1978, Americans with Disabilities Act of 2008 as amended, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Age Discrimination and Employment Act of 1967 as amended, and the Genetic Information Nondiscrimination Act of 2008. In addition, both Parties will also comply with Flagstaff City Code, Chapter 14-02, Civil Rights, which prohibits discrimination based upon sexual orientation or gender identity or expression.

In witness whereof, the Parties have, through their duly authorized representatives, executed the Contract on the dates set forth below.

CITY OF FLAGSTAFF

TERROS HEALTH

Greg Clifton
City Manager

Peggy J. Chase
President and CEO

Attest:

City Clerk

Approved as to form and as to authority granted
by law:

City Attorney

EXHIBIT “A” SCOPE OF WORK

Mobile Alternative Response Team

The City of Flagstaff and Terros Health have come together to address the issues of public intoxication, substance use, trauma, and mental or behavioral health related events in the community. To meet this goal, the City and Terros Health will implement mobile proactive outreach and crisis intervention and stabilization services through the Mobile Alternative Response Team (“Mobile ART”). Mobile ART personnel will be comprised of City of Flagstaff Fire Department Emergency Medical Technicians and Terros Health Crisis Specialists who will utilize a passenger vehicle to engage with community members and provide intervention to individuals who may be experiencing mental health or substance abuse crisis events. Mobile ART personnel will also assist individuals with positive coping skills and identifying resources to reduce instances of recurrent crisis episodes in Flagstaff.

1. Terros Health Staffing for Mobile ART Services.

- 1.1 Terros Health will provide the necessary Crisis Specialists, to include full-time and on-call positions, to meet the operational hours required by the Contract to deliver Mobile ART Services. The City may provide review and feedback regarding the selection of Terros Health personnel, including the Crisis Specialists and the Lead Crisis Specialist, and other individuals directly contributing to the Mobile ART Services, with the exception of emergency and temporary staffing.
- 1.2 Oversight of Terros Health employees will be provided by Terros Health Director of Northern Arizona Crisis Services and Senior Director of Crisis Services.
- 1.3 The Project Director will be the Terros Health Director of Northern Arizona Crisis Services.
- 1.4 The Flagstaff Terros Health Mobile ART Clinical Manager will provide clinical guidance and consultation, scheduling, liaison to stakeholders, direct observation in the field, document clinical and administrative supervision to Crisis Specialists, ongoing training and staff skill development, and will hold a master’s degree in a behavioral health related field and licensure by the Arizona Board of Behavioral Health Examiners.
- 1.5 A Lead Crisis Specialist will work shifts in the field, engage in clinical, administrative, and oversight of tasks, and fulfill a key role in staff training and development.
- 1.6 Crisis Specialists will receive operational support from the Terros Health corporate Human Resources, IT, Informatics, Business Intelligence, Quality/Compliance, Training/Service Excellence, and Facilities teams based out of Phoenix.

2. Terros Health Accreditation and Training.

- 2.1 Terros Health will maintain accreditation by the Commission on Accreditation of Rehabilitation Facilities and provide the City proof of renewal of the accreditation through the entirety of the Contract.
- 2.2 The Crisis Specialists provided by Terros Health will be university master's level licensed behavioral health professionals ("BHPs") or behavioral health technicians ("BHTs").
- 2.3 All Terros Health personnel who will provide Mobile ART Services are, and will always hereunder, be fully qualified by all necessary behavioral health education, training, experience, licensure, and/or certification. This includes training in a national standard of crisis intervention practice utilizing knowledge, skills and abilities guided by Substance Abuse and Mental Health Services Administration or similar nationally recognized best practice model for delivering field-based crisis intervention. Staff training and development will employ utilization of evidence-based practices. Prior to engaging in Mobile ART Services, Terros Health will provide the City written evidence of the Terros Health personnel's qualifications via experience, licensure, training and/or certifications.
- 2.4 Crisis Specialists will be supported by a clinical consultation and supervision behavioral health structure allowing for a layered, effective, ethical, accountable, and quality response. The on-call clinical consultation is available 365 days per year, 24 hours per day.
- 2.5 Crisis Specialists will be supported by other existing Terros Health staff on an as needed basis, including the services of the Terros Flagstaff Crisis Coordinator to assist with day-to-day operations.

3. City Flagstaff Fire Department Staffing for Mobile ART Services.

- 3.1 The City will provide FFD EMTs to deliver basic life support assessment and treatment within the scope of Emergency Medical Technician certification for Mobile ART Services. The cost to provide the EMTs will be included in the overall FFD personnel budget.
- 3.2 EMTs will complete Greater Flagstaff Region Fire Academy prior to providing Mobile ART Services.
- 3.3 EMTs will complete training courses identified by Terros Health and the City prior to providing Mobile ART Services. Every two (2) years, Terros Health will provide the EMTs refresher training of select courses, as needed.
- 3.4 Any FFD employees who will provide Mobile ART Services are, and will always hereunder, maintain an Emergency Medical Technician certification.

4. Use of Facilities and Equipment.

4.1 Facilities.

4.1.1 **Base of Operation.** The base of operation for the vehicle and equipment used to provide Mobile ART Services will be FFD Fire Station #2, located at 1701 Ponderosa Pkwy, Flagstaff, AZ 86001.

4.1.2 **Fuel.** The City will supply the necessary fuel for vehicles used to provide Mobile ART Services.

4.2 Transportation.

4.2.1 **Requirements to Drive.** The City and Terros Health personnel who will be driving any vehicles that will be used for Mobile ART Services will show evidence that they have met the following requirements:

Be at least 22 Years Old

Maintain an Arizona Driver's License

Receive a Positive Annual Motor Vehicle Records Check

Complete a Driver Training Course

4.2.2 General Transportation Protocol.

4.2.2.1 The City-provided vehicle and Terros Health vehicle will be staffed by at least two (2) persons on each shift. At least one (1) personnel will be currently certified as an EMT and one (1) personnel will be a behavioral health Crisis Specialist.

4.2.2.2 Under non-emergency situations, Mobile ART personnel may transport individuals receiving services, family and/or others on-scene to local service providers at the individual's request (such as the Guidance Center, shelters, or food banks) or to the individual's residence or a family member's residence. Mobile ART personnel may use the police radio to notify 9-1-1 Dispatch of the need for police aide transportation assistance.

4.2.2.3 In order to be transported, individuals must be able to self-ambulate into and out of the vehicle. If the individual is unable to self-ambulate, Mobile ART personnel will call 9-1-1 Dispatch for advanced life support from FFD and/or medical transport.

4.2.2.4 The Mobile ART will support ride-alongs and observers of the Mobile Art Services who sign a waiver agreed upon by the Parties.

4.2.2.5 After every shift, Mobile ART personnel will return the vehicle and any other equipment provided by the City for Mobile ART Services to the identified FFD Fire Station, in good working order and general condition.

4.2.3 **Terros Health Vehicle.**

4.2.3.1 Terros Health will make available one (1) passenger vehicle in good working order and general condition for the first six (6) months from the date the Parties begin to provide Mobile ART Services. The City may continue to utilize the Terros Health vehicle on a month-to-month basis until the City-provided vehicle is operational. The **Compensation Schedule**, attached to the Contract as **Exhibit C**, will include the monthly operational cost to Terros Health for the vehicle.

4.2.3.2 Once the City-provided vehicle is operational, during periods of maintenance or repair, and upon written request of the City, Terros Health will make available a vehicle to serve as a back-up. This would be a spare vehicle in the Terros Health fleet and would be available to the City.

4.2.3.3 Terros Health will provide ongoing maintenance and repairs for the Terros Health vehicle according to standard maintenance schedules, including the standard maintenance requirements of any third-party lease contract. The City will bear any costs of any repair necessary due to deliberate or grossly negligent acts by the City's employees.

4.2.3.4 The City will provide removable signage to be applied to the Terros Health vehicle to identify it as a Mobile ART vehicle.

4.2.3.5 The City will install window LED lights for scene lighting and reflective decals (or chevrons) to the rear of the Terros Health vehicle.

4.3.1. **City-Provided Vehicle.**

4.3.1.1 Once operational, the City will provide one (1) passenger vehicle in good working order and general condition for Mobile ART Services.

4.3.1.2 The City will provide ongoing maintenance for the City-provided vehicle according to the City's standard maintenance schedule, except Terros Health will bear any costs of any repair necessary due to deliberate or grossly negligent acts by Terros Health's employees.

5. Mobile ART Personnel Attire. The City will design a Mobile ART logo. Crisis Specialists will wear the Mobile ART logo on Terros Health uniform shirts to identify them as Mobile ART personnel. Mobile ART personnel will wear a reflective vest with the Mobile ART logo while on scene. Terros Health will provide the uniform shirts for Terros Health employees and also provide the reflective vests that will be available for

the on-duty Mobile ART personnel. EMTs will wear normal FFD duty uniforms with reflective vests while on scene.

6. City-Provided Police Radios.

- 6.1 The City will provide Mobile ART personnel with 800mhz radios in good working order and general condition to interact with 911 Dispatchers.
- 6.2 The City will train all Mobile ART personnel to operate the radios and on radio procedures.
- 6.3 At the start of a shift, Mobile ART personnel will collect the radios from the identified FFD Fire Station. At the end of a shift, Mobile ART personnel will return the radios to the identified FFD Fire Station and ensure that the radios are secure and plugged into charging stations.
- 6.4 If a radio does not work properly, Mobile ART personnel will make immediate arrangements to exchange the radio to be fixed by the City. Mobile ART personnel will notify FFD when a radio is out of service.

7. Mobile ART Services Staffing Schedule.

- 7.1 The staffing schedule will cover 365 days per year with built in staffing overlays to reduce staffing gaps based on identified needs. Mobile ART personnel will be scheduled for a ten (10) hour shift which will run from 10:00 AM to 8:00 PM, at the beginning of the Contract term.
- 7.2 The number of shifts and start/end time of shifts will be assessed, as needed, but at the least within six (6) months of initiation of Mobile ART Services, based on the findings of the monthly data reports to match the needs of the community. The City and Terros Health will determine any changes needed in staff scheduling and will adjust the schedule within six (6) weeks of a decision. The City Manager (or designee) and Terros Health administration (or designee) have the authority to modify the staffing schedule identified in the Contract. If staffing requirements are of sufficient magnitude to require a change in compensation, implementation may be delayed until a contract amendment is fully executed. 7.3 The shift will begin when Mobile ART personnel pick up the vehicle and police radios at the identified FFD Fire Station.

8. **Proactive Outreach.** The City and Terros Health will determine locations throughout Flagstaff to provide proactive outreach by reviewing data collected by Terros Health, FPD, and FFD that identify where crisis-related or man-down calls occur more regularly. Upon arrival at a location, the EMT will deliver basic life support assessment and treatment within the scope of Emergency Medical Technician certification and the Crisis Specialist will be responsible for professional behavioral health services. Mobile ART personnel will identify social service resources for individuals and may also distribute items such as blankets, water, and nutrition bars.

9. Crisis Intervention and Stabilization Response - Dispatch Process.

- 9.1 When 9-1-1 Dispatch receives a call, the operator will assess whether the call meets the criteria for Mobile ART, and, if so, will relay the information to Mobile ART personnel via the police radio.
- 9.2 If, while on the scene, the Crisis Specialist determines that it is necessary to provide a deeper assessment and behavioral stabilization, the Crisis Specialist will engage the state-funded crisis system.
- 9.3 If, while on the scene, the EMT determines that it is necessary to provide a heightened level of life support and/or and treatment, the EMT will contact FFD and/or medical transport.
- 9.4 Mobile ART personnel may respond to crisis situations independently as they are working in Flagstaff neighborhoods.

10. Data Collection.

- 10.1 Consistent with applicable law regarding the use and disclosure of protected health and other confidential information, Terros Health will prepare the Monthly, Quarterly, and Annual Reports utilizing the data captured and housed in the Terros Health computer system:
 - Response time
 - Average time on scene
 - Identify the presenting event at the time of service
 - Number of calls generated through 9-1-1 Dispatch
 - Events generated by proactive outreach efforts, including specifically, locations with high numbers of crisis-related or man-down calls and outreach at the shelters
 - Volume of calls per time of year, day of week and time of day
 - Number of calls referred to a care facility or local service provider
 - Number of calls subsequently referred for emergency medical services, such as, intoxication and detoxification
 - Number of calls subsequently referred to FPD, such as, public intoxication, trespassing, public urination, and public menacing
 - Number of individuals seen more than once.
 - How often the same individual is seen more than once within a month, quarter, and/or year (e.g., recidivism)
- 10.2 For the first three (3) months that Mobile ART Services are provided, Terros Health, FPD, and FFD personnel will meet monthly to review data reporting and complete a comparative analysis to capture trends. If necessary, the monthly meetings will extend beyond the three (3) month period to continue to monthly analyze new data collected.
- 10.3 Upon the conclusion of the monthly meetings, Terros Health, FPD, and FFD will meet quarterly to discuss the data collected. Terros Health will present a quarterly report

identifying the key findings from Mobile ART Services, including lessons learned and programmatic recommendations.

10.4 Terros Health will hold an annual meeting to present the City with an annual report to identify the results of the Performance Measures, highlight trends and updates to the model (e.g., staffing schedules), key findings, and recommendations for the following year.

11. Inclusion and Cultural Awareness.

11.1 Mobile ART personnel will strive to provide medical and mental health services while honoring culturally responsive requests for care of unique individuals.

11.2 Mobile ART personnel will receive training related to diversity, inclusion, and cultural awareness to maintain and expand cultural relevance and safeguard the dignity and respect for the individuals they serve.

11.3 The City and Terros Health will continue to build relationships with local resources for referrals, including, the Native American for Community Action, Health Choice Arizona's Tribal Liaison and Sacred Peaks Health Center.

11.4 Terros Health will appropriately procure traditional items such as abalone shells, sage, and cedar to use in the field with individuals as requested.

12. Training Programs.

12.1 Terros Health will develop and provide training programs, at no cost to the City, for the EMTs who will be providing Mobile ART Services, including:

- Mobile ART Mission Orientation: Purpose and Objectives
- Mental Health First Aid
- The 8 Key Actions of Psychological First Aid
- Suicide Assessment
- Implicit Bias
- Cultural Sensitivity, Relevance, and Humility
- T36 Involuntary Petition Process
- Trauma-informed care
- Topics on substance abuse and homelessness

12.2 At least once per year, Terros Health will provide specific training based on emerging trends observed in Mobile ART response and calls for service.

12.3 Twice a year, Terros Health will provide, or coordinate presentation of, a Mental Health First Aid training program, at no cost to the City, for the employees of the City and other individuals who would like to attend.

12.4 The City will provide the meeting space for the trainings.

13. Performance Measure Metrics.

13.1 Within three (3) months of deploying the Mobile ART Services, performance measure metrics will be established and clearly defined based upon mutual agreement of each Party. Performance measure metrics may include:

13.1.1 Reduction of crisis recidivism and crisis calls for FFD and FPD.

13.1.2 Reduction in the number of arrests, bookings, and prosecutions for alcohol use related offenses including public intoxication, trespassing, public urination, and public menacing.

13.1.3 Reduction in the number of individuals transported to emergency department for intoxication and detox issues.

EXHIBIT B
MOBILE ALTERNATIVE RESPONSE TEAM IMPLEMENTATION PLAN

<i>Service</i>	<i>Task</i>	<i>Responsibility</i>	<i>Date Completed</i>	<i>Notes</i>
Mobile ART Deployment	Complete Initial Tasks	Terros Health and City	Six months from execution – Target March 2022	
Terros Health Staff Acquisition	Job Description finalization and posting <ul style="list-style-type: none"> • Crisis Specialists • Lead Crisis Specialist • Clinical Manager 	Terros Health	One month after execution	Identify lead crisis specialist and additional job qualifications
Terros Health Staff Acquisition	Interviewing and Hiring <ul style="list-style-type: none"> • Crisis Specialists • Lead Crisis Specialist • Clinical Manager 	Terros Health clinical management and City representatives	Two or three months after execution	Variable based on candidate pool; backfill
Terros Health Staff Acquisition and Training	Positions start and onboarding and training	Terros Health	Two to Three months after execution	
City EMT Assignments	FFD/Assign EMTs	FFD Leadership	One to Two months after execution	
City EMT Assignments	Positions start and onboarding	FFD Leadership and Terros Health	Two to three months after execution	
City EMT Training	Joint training on behavioral health aspects of crisis intervention to the EMTs and FFD employees.	Terros Health with involvement of FFD	Prior to providing Mobile ART Services	
Mobile ART Ride Alongs	As requested	Mobile ART personnel; Terros Health and City	After initiation of Mobile ART Services	
Monthly Report	Data collection development and process implementation	Terros Health	Monthly from initiation of Mobile ART Services	
Monthly Meetings	Review data and provide operational adjustment and recommendations	Terros Health and FFD/FPD/City	First three months from initiation of Mobile ART Services, may extend if necessary	
Quarterly Report	Data collection	Terros Health	Quarterly after monthly meetings have ended	
Quarterly Meeting	Review data and provide operational adjustments and recommendations	Terros Health and FFD/FPD/City	Quarterly after monthly meetings have ended	
Annual Report	Assess Performance Measures	Terros Health	One year from initiation of Mobile ART Services and each year following	Provide in advance of Annual Meeting
Annual Meeting	Review data and provide operational adjustments and recommendations	Terros Health and FFD/FPD/City	One year from initiation of Mobile ART Services and each year following	

EXHIBIT C COMPENSATION SCHEDULE

Mobile Alternative Response Team

Terros Health shall fully and timely provide all services and deliverables described in this proposal for Solicitation No: 2021-84 - Public Safety Alternate Response Model as it pertains to the section in the Scope of Work related to providing **10 hour/day x 365 days** mobile response unit behavioral health staffing.

The initial contract will be in effect for a term of three (3) years and may be renewed or extended for up to two (2) additional one-year terms by mutual written consent of Terros Health and the City of Flagstaff. **The proposed start date of the program is on or around January 1, 2022 pending required City of Flagstaff approvals.**

\$414,900.00 Year #1 - Initial contract (3 years)
Annualized cost would be \$500,400. Terros Health is offering an initial 5-month phased billing period as the program “ramps up” to be fully functional by the end of month 5.

\$518,400.00 Year #2 - Initial contract (3 years)
 \$534,000.00 Year #3 - Initial contract (3 years)
 \$550,800.00 Year #4 - 1-year extension option
 \$565,200.00 Year #5 - 1-year extension option

Monthly Payment Fee Schedule:

	Month	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Yr 1 Phased Billing - 20%	Month 1	\$ 8,300.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 189,000.00
Yr 1 Phased Billing - 40%	Month 2	\$ 16,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 197,400.00
Yr 1 Phased Billing - 60%	Month 3	\$ 25,000.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 205,700.00
Yr 1 Phased Billing - 75%	Month 4	\$ 31,300.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 212,000.00
Yr 1 Phased Billing - 100%	Month 5	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
Yr 1 - 100%	Month 6	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
Yr 1 - 100%	Month 7	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
Yr 1 - 100%	Month 8	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
Yr 1 - 100%	Month 9	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
Yr 1 - 100%	Month 10	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
Yr 1 - 100%	Month 11	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
Yr 1 - 100%	Month 12	\$ 41,700.00	\$ 43,200.00	\$ 44,500.00	\$ 45,900.00	\$ 47,100.00	\$ 222,400.00
	Total	\$ 414,900.00	\$ 518,400.00	\$ 534,000.00	\$ 550,800.00	\$ 565,200.00	\$ 2,583,300.00

Mobile Alternative Response Team Expense Details

Expense Line Item	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Personnel:	\$ 274,100	\$ 289,800	\$ 298,500	\$ 307,500	\$ 316,700	\$ 1,486,600
Fringe Benefits:	\$ 67,200	\$ 69,200	\$ 71,200	\$ 73,400	\$ 75,600	\$ 356,600
Travel:	\$ 7,300	\$ 7,500	\$ 7,700	\$ 8,000	\$ 8,200	\$ 38,700
Equipment:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Supplies:	\$ 7,000	\$ 6,600	\$ 6,700	\$ 6,600	\$ 6,700	\$ 33,600
Contracts:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Construction:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other:	\$ 144,800	\$ 145,300	\$ 149,900	\$ 155,300	\$ 158,000	\$ 753,300
Year #1 - Program Start Up - Billing Credit (Months 1-5)	\$ (85,500)	\$ -	\$ -	\$ -	\$ -	\$ (85,500)
Total:	\$ 414,900	\$ 518,400	\$ 534,000	\$ 550,800	\$ 565,200	\$ 2,583,300

Personnel:

Terros Health has budgeted for all staff salary annual expenses in order to provide **Mobile ART services** 365 days/year from the hours of 10 am – 8 pm (10-hour shifts). See proposed staff model below.

The personnel expenses include salary expenses for 1 – 1.0 FTE **BHP2 Lead**, 1 1.0 FTE **BHP2**, 1 - .75 FTE **BHT2**, .60 FTE of a **Manager**'s time who will be responsible for the program's day-to-day operations, .05 FTE of a **Mobile Crisis Director** and .05 FTE of a **Sr. Director of Crisis Services**.

The BHT & BHP staff will all be hourly/non-exempt employees. Since the services are provided 365 days/year, the budget includes funding for additional staff to provided coverage as needed through the use of On Call staff and/or overtime. Terros Health employees earn PTO throughout the year. Terros Health has 10 paid holidays each calendar year. In addition, Terros Health pays a \$3/hr nighttime shift differential and a \$4/hr weekend shift differential. Management will staff shifts the most cost-effective manner at times but will need to pay On Call or overtime rates due to staff training, PTO, vacancies, etc.

Terros Health projected a 3% staff merit increase for year's 2-5 and a 3% COLA on a \$250K base salary base due to expected future inflation and staff salary market adjustments to stay competitive in the job market.

Proposed Staffing Model:

10 hr shifts (10:00 am - 8:00 pm) - 7 days a week

	Sunday	Monday	Tuesday	Sunday	Thursday	Friday	Saturday
Day	1	1	2	2	2+L	2	2
Night							

1.00	1	BHP2
0.75	2	BHT2
1.00	L	BHP2 - Lead
0.60	Mgr	60% City of Flagstaff/40% Northern AZ Crisis
0.50	OC & OT	
0.10	Mgmt	
<hr/>		
3.95		
<hr/>		

Fringe Benefits:

Terros Health’s fringe benefits amounts are based on a percent of direct labor dollars. For this proposal the rate is budgeted to be 24.50%. This figure is based on historical costs for the existing Terros Health Mobile Crisis program in Flagstaff.

Fringe benefits costs include: FICA, SUI, health, dental & vision insurance, workers’ compensation, 401K match, STD, LTD and other miscellaneous employee benefit programs offered by Terros Health.

*Costs for health insurance premiums are projected to increase yearly. Since fringe benefits are budgeted as a percentage of salaries, the fringe benefits will include the same 3% COLA increase for years 2-5 as noted in the Personnel section.

Travel:

The travel budget includes employee travel reimbursement for the program at an average 200 miles per month at a per mile reimbursement rate of \$.445/mile (annual total being \$1,068). \$1,000/year is budgeted for the program’s vehicle repairs/maintenance. In addition, \$5,235/year is budgeted for the vehicle’s insurance, licensing & registration costs.

For year’s 2-5 a 3% inflation factor was added.

Supplies:

Office supplies are budgeted at \$900/year annually and Medical Supplies/PPE costs are budgeted at \$1,800 annually. The amounts remain the same for year’s 2-5.

The Supplies expense line item also includes: Polos/uniforms for staff (typically 1 polo issued per employee per shift) and associated costs (badge, etc.). For the winter months staff will be issued a jacket and winter hat. The program will purchase business cards for staff to share with clients and the public. Drug and alcohol education pamphlets will be printed and shared by the program staff. Educational materials from other organizations will also be shared.

For the vehicle, a Sharps disposal kit will be purchased for needle/pill disposal along with a car fire extinguisher, traffic cones, etc. Comfort items such as water and snacks will be purchased for clients along with some emergency clothing, toiletries, blankets and indigenous/Native American cultural items.

Some items budgeted are one-time expenses and other will be ongoing expenses. Below are the amounts budgeted currently by year.

Yr1	\$4,250
Yr2	\$3,870
Yr3	\$4,025
Yr4	\$3,870
Yr5	\$4,025

Other:

The Other expense line item includes:

- Shared occupancy costs (rent, janitorial, utilities, etc.) for the program Manager, program storage and when program staff need to be in the office.
- Insurance costs (Terros Health commercial and malpractice) for the program.
- Cell phone cost reimbursement for Manager (Terros Bring Your Own Device – BYOD program).
- Cell phone and Chromebook cell/data plan costs; other office network connectivity.
- Technology Support (all IT support for IT staff and systems included hardware and software support). Note: Terros Health uses an Electronic Health Record (EHR) called NextGen.
- Staff training and certifications costs.
- Staff recruitment and onboarding costs. Terros Health does random drug testing throughout the year, also.
- Vehicle lease payments (Enterprise) for the Terros Health Vehicle.
- Terros administrative overhead costs (HR, Accounting, Payroll, Finance, Contracts, Legal, etc.).

One-time Costs:

- 2 - Apple iPhones and cases for staff in the field
- 2 – Chromebooks for staff in the field
- 1 – Thin client, monitor, keyboard, etc. for Manager in the office

*Year 5 includes funds to replace the above cell phone and Chromebooks.

Certain line items in the “Other” expense line item include a 3% inflationary factor for year’s 2-5. Exceptions include expenses like the Enterprise vehicle lease payment and other specific costs such as recruitment & training.

Alternate Response Mobile Unit

October 5, 2021





Alternate Response Model

Where did this idea begin?

- ICF identified need in ICF/City Forum on homelessness, housing and wellness
- City Prosecution requested the use different programs to address individuals who are seen repeatedly in the criminal justice system
- 2019 Flagstaff Fire Department drafted a white paper about the benefit of a mobile response unit
- 2019 Criminal Justice Coordinating Council exploration of diversion programs
- 2020 Flagstaff Police Department presented on Alternate Response Models during October 13, 2020 Council meeting
- Heard from City Council and Flagstaff community members a desire to provide an alternate emergency response



Purpose of a Mobile Response

- Proactive outreach to locations within the community where Flagstaff Police and Fire Departments are dispatched for
 - Public intoxication
 - Substance use
 - Trauma informed
 - Mental or behavioral health needs
- Respond to 9-1-1 calls received from Communication Center
- Crisis intervention and stabilization services
- Provides a different emergency response



FFD and FPD Calls for Service

2019 Data – 8,320 calls

- FPD 2,491 mental health related calls
- FPD 2,828 lowest priority alcohol related calls
- FPD spent 480 hours at hospital with 346 arrestees mostly due to substance use
- FFD 2,618 public intoxicant (man down responses)
- FFD 383 behavioral health type responses

2020 Data – 9,078 calls

- FPD 2,896 mental health related calls
- FPD 3,318 lowest priority alcohol related calls
- FPD spent 649 hours at hospital with 1,021 arrestees mostly due to substance use
- FFD 2,438 public intoxicant (man down responses)
- FFD 426 behavioral health type responses



Procurement Process

- Draft scope of work designed by Alternate Response Team
- February 3, 2021 Townhall with local service providers to discuss scope of work and upcoming procurement process
- February 26, 2021 released request for proposal
- March 26, 2021 received 4 proposals
- Evaluation Committee provided a rating for each proposal
- Recommendation for Terros Health to provide mobile response unit services and postpone care center services for further refinement with additional community input

Management & Oversight

- Oversight for mobile unit operations by Terros Health
 - Health Director of Northern Arizona Crisis Services
 - Senior Director of Crisis Services
- Clinical guidance and consultation and management of the unit will be provided by a Clinical Manager
- Lead Crisis Specialist will work in the field providing oversight and play a key role in training in development



Mobile Response Team

- 1 Behavioral Health Professional
- 1 Firefighter/Emergency Medical Technician
- Joint training for team members
- 10-hour shifts
- 7 days per week



Mobile Response Unit

- Specialized equipment for basic life safety response
- Comfort items
 - Water and snacks
 - Emergency clothing
 - Toiletries
 - Blankets
 - Cultural items
- Transportation for individuals receiving services



Reporting & Performance Measures



- Data and reporting provided monthly, quarterly and annually
 - Evaluate data to determine if services are meeting needs
 - Complete comparative analysis to capture trends
- Performance measures will include metrics for
 - reduction of crisis recidivism and crisis calls for Flagstaff Fire Department and Flagstaff Police Department
 - reduction in the number of arrests, bookings, and prosecutions for alcohol use related offenses including public intoxication, trespassing, public urination and public menacing
 - reduction in the number of individuals transported to emergency department for intoxication and detox issues

Professional Service Contract Fees



Expense Line Item	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Personnel:	\$ 274,100	\$ 289,800	\$ 298,500	\$ 307,500	\$ 316,700	\$ 1,486,600
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Travel:	\$ 7,300	\$ 7,500	\$ 7,700	\$ 8,000	\$ 8,200	\$ 38,700
Equipment:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Supplies:	\$ 7,000	\$ 6,600	\$ 6,700	\$ 6,600	\$ 6,700	\$ 33,600
Contracts:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
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Total:	\$ 414,900	\$ 518,400	\$ 534,000	\$ 550,800	\$ 565,200	\$ 2,583,300

Professional Service Contract Fees



- Month 1: 20% of monthly rate to include the creation of the behavioral health professional positions, hiring, onboarding and training
- Month 2: 40% of monthly rate to continue this work with additional staff members
- Month 3: 60% of monthly rate to continue hiring and training of new staff, building partnerships with local stakeholders and begin establishing joint protocols
- Month 4: 75% of monthly rate to build upon efforts

Community Policing





Community Policing

- Definition: Police working with community members to reduce crime, fear of crime, physical and social disorder, and neighborhood decay.
- Calls for the use of creativity, technology, and problem solving.
- Goal is to improve the quality of life for all.



Community Policing Examples



Programs

- Citizens Liaison Committee
- Citizens Police Academy
- Downtown Walking Beat
- Neighborhood Block watch
- School Resource Officer
- Bicycle diversion program
- Mobile ART

Projects

- Traffic safety campaigns
- Graffiti paint overs
- School zone traffic relief
- Pocket Parks clean up
- Safer Bars Training
- Move it or lose it



Mobile Response Unit Impacts

- Mobile Response Unit should reduce calls for service (5-10%)
 - Man down, public intoxication, behavioral health related calls
 - We will still have community needs and concerns
- Other Community Policing Programs and Project should continue

Questions



**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: David Pedersen, Capital Improvements Project Manager
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE

Beulah/University Roadway Project - Bike and Pedestrian Design Discussion

STAFF RECOMMENDED ACTION:

Presentation to share the current roadway design work by Shephard-Wesnitzer Inc. (SWI) and Mark Lenters (Kimley-Horn and Associates, Inc.) which incorporates the Council feedback from the June 29, 2021, Council Meeting concerning bike and pedestrian design. Staff recommendation is to proceed to final design and conclude the design phase of this project.

EXECUTIVE SUMMARY:

This project extends the northern terminus of present-day Beulah Boulevard to connect with University Drive. Furthermore, University Avenue (west of Milton) will be realigned to match up with University Drive (east of Milton). A new roundabout will be constructed where Beulah Boulevard and University Drive will intersect. Since the June 29, 2021, Council meeting, the design team has been working on the bike and pedestrian facilities of the design which will be shared during this presentation.

INFORMATION:

Connection to Key Community Priorities, Objectives, Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:

Sustainable, Innovative Infrastructure

Utilize existing long-range plan(s) that identify the community's future infrastructure needs and all associated costs

Council Goal 2017 – 2019 - Transportation and Other Public Infrastructure

Deliver quality community assets and continue to advocate and implement a highly performing multi-modal transportation system.

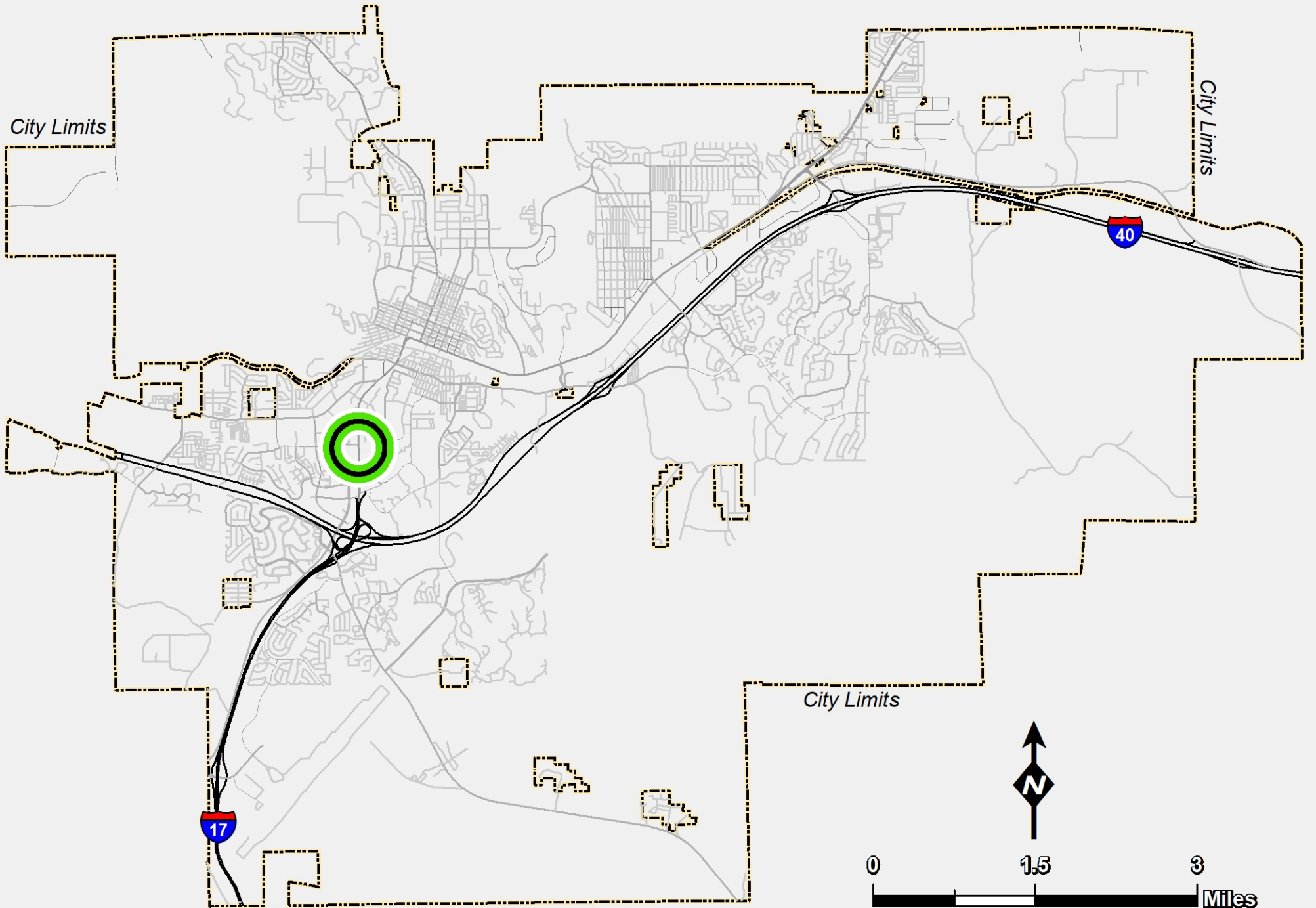
Council Goal 2017 – 2019 - Environmental and Natural Resources

Actively manage and protect all environmental and natural resources

Region Plan Goal – Environmentally Sensitive Lands Goals and Policies

Goal E&C.7. Give special consideration to environmentally sensitive lands in the development design and review process.

Beulah/University Roadway Project

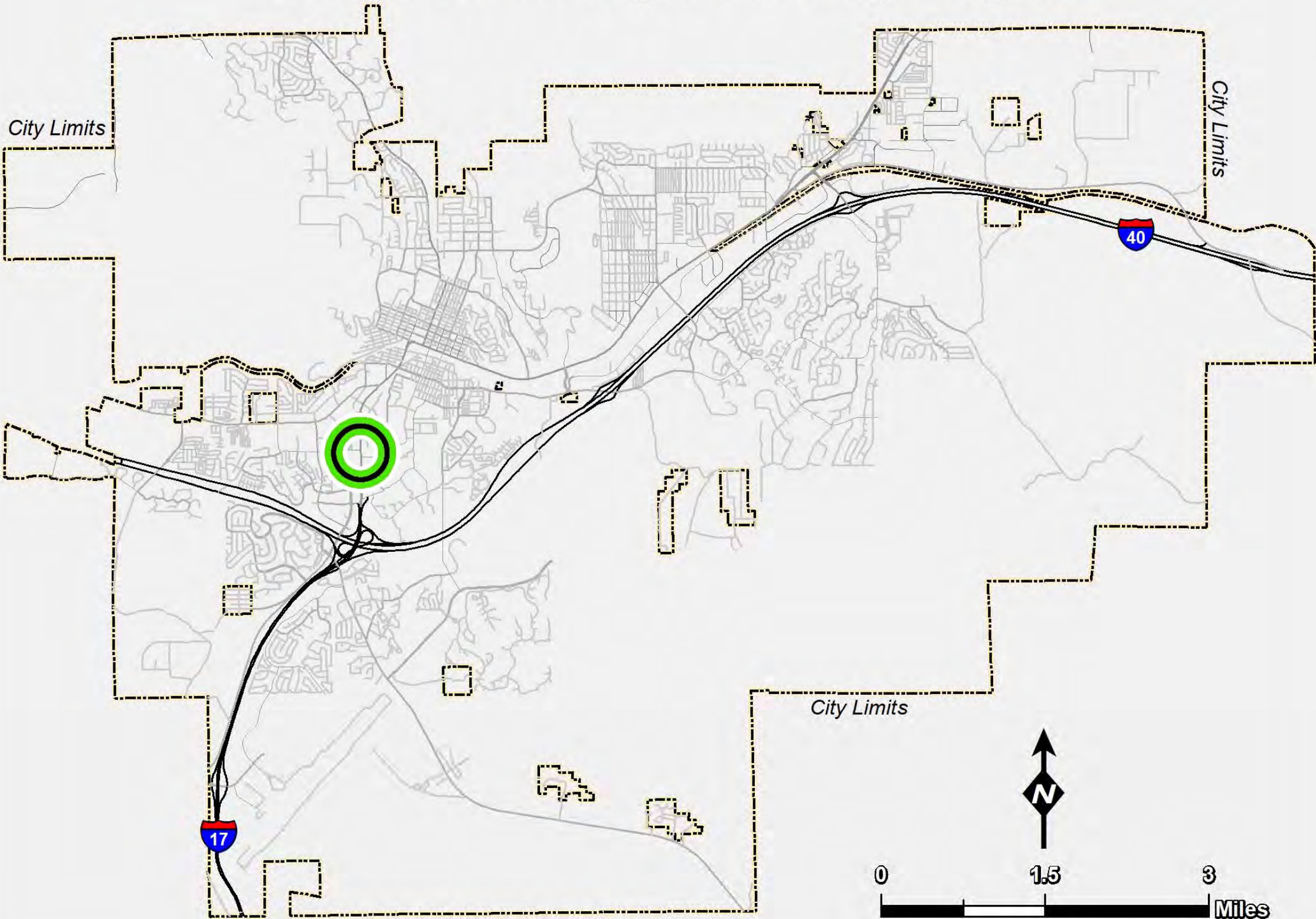


An aerial photograph of a town nestled in a valley. The foreground is dominated by a dense forest of tall, green pine trees. In the middle ground, a residential and commercial area is visible, featuring various houses, buildings, and parking lots. The background consists of a range of rugged, brown mountains under a blue sky with scattered white clouds.

Beulah/University Roadway Project

**Bike and Pedestrian Design Discussion
5 October 2021**

Beulah/University Roadway Project



NORTH →

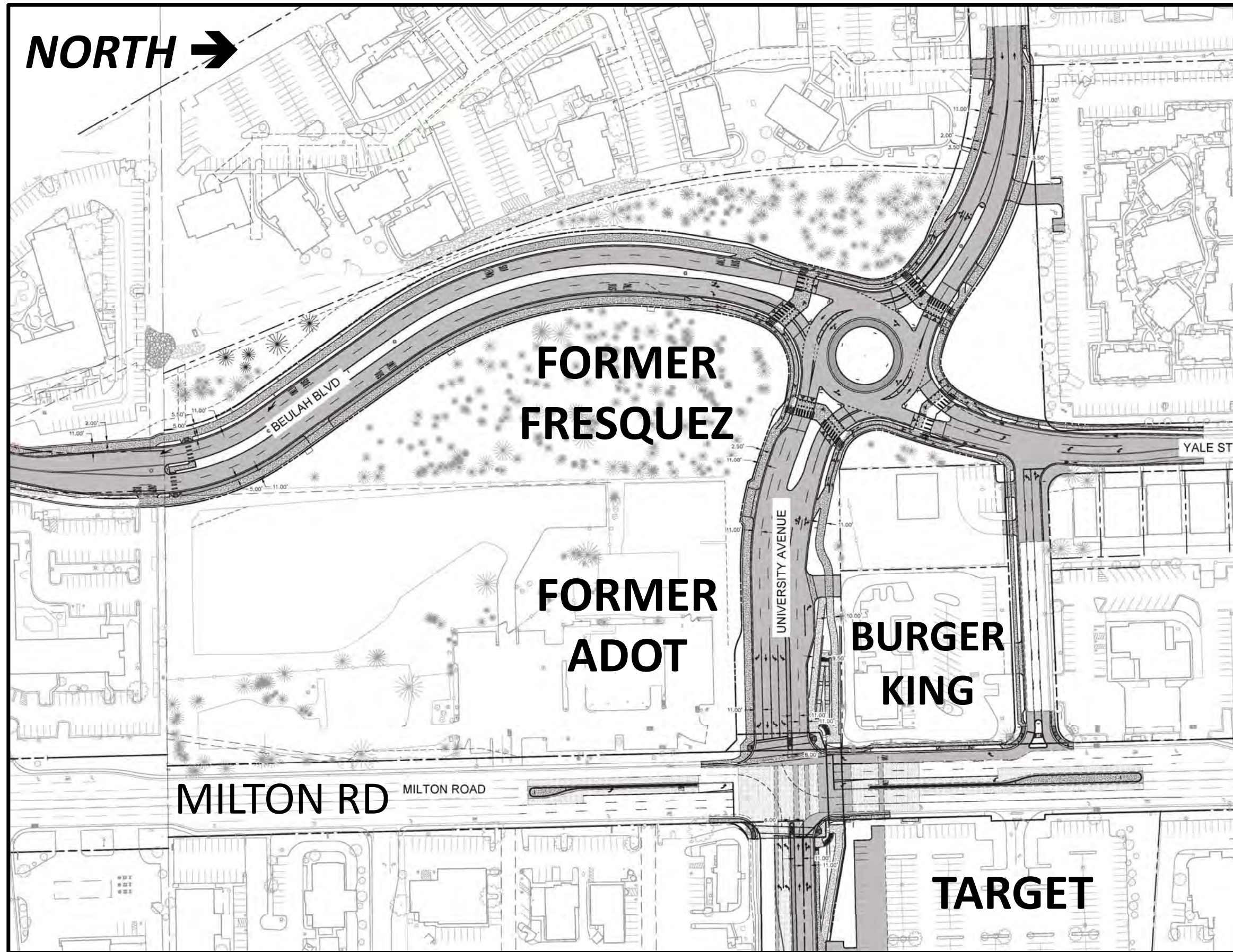
**FORMER
FRESQUEZ**

**FORMER
ADOT**

**BURGER
KING**

MILTON RD MILTON ROAD

TARGET





The Design Team

Shephard-Wesnitzer Inc. (SWI) → *Design Engineer*

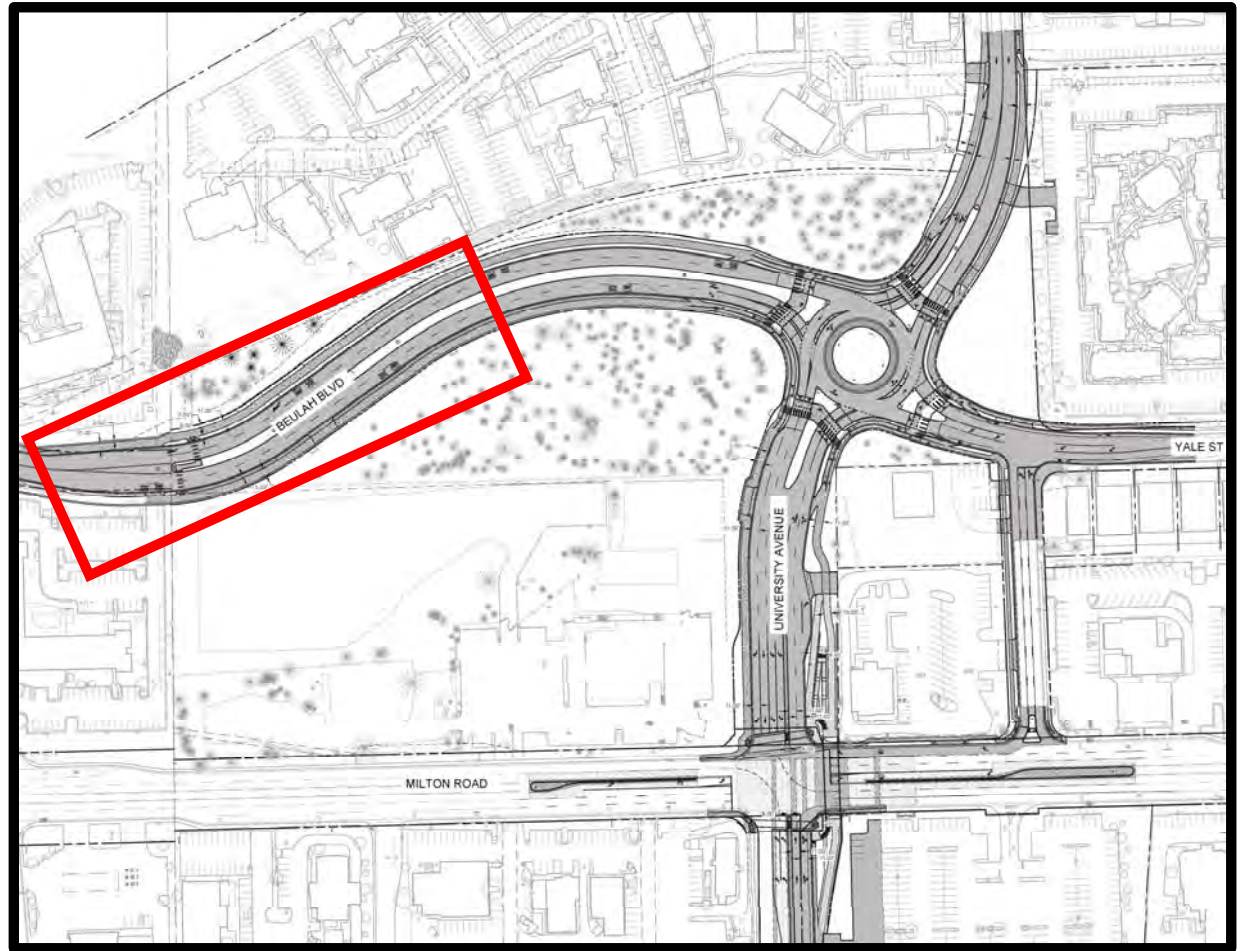
- Contributing Stakeholders
 - Kimley-Horn - *Roundabout Expertise*
 - COF Staff
 - AZ Dept of Transportation (ADOT)
 - Vintage Partners (VP)
 - Mountain Line
 - Northern Arizona University (NAU)
 - Eagle Mountain Construction – CMAR Contractor



Beulah Blvd – *Southern Section 1*

Features:

- 6-Foot Sidewalk, 5-Foot Bike Lane, and 5-Foot Parkway (West Side)
- 6-Foot Sidewalk, 5-Foot Bike Lane, and 5-Foot Parkway (East Side)
- Bus Only Lane
 - Northbound “NB” & Southbound “SB”
- On-Street Bike Lanes removed (NB & SB)
- Signalized Pedestrian Crossing (south end)
- 15-Foot Landscaped Medians



Beulah Blvd – Southern Section 1

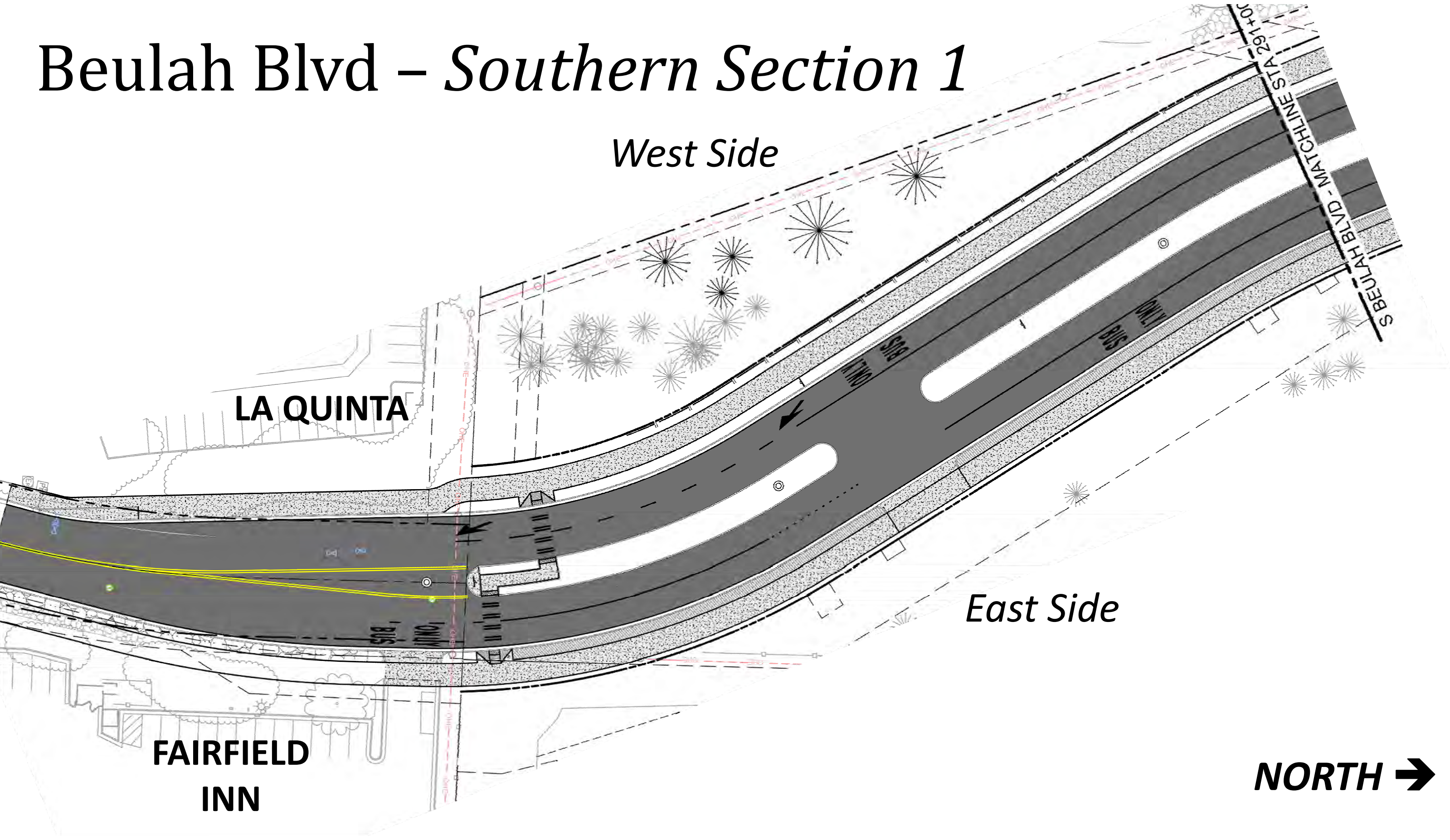
West Side

East Side

LA QUINTA

FAIRFIELD
INN

NORTH →

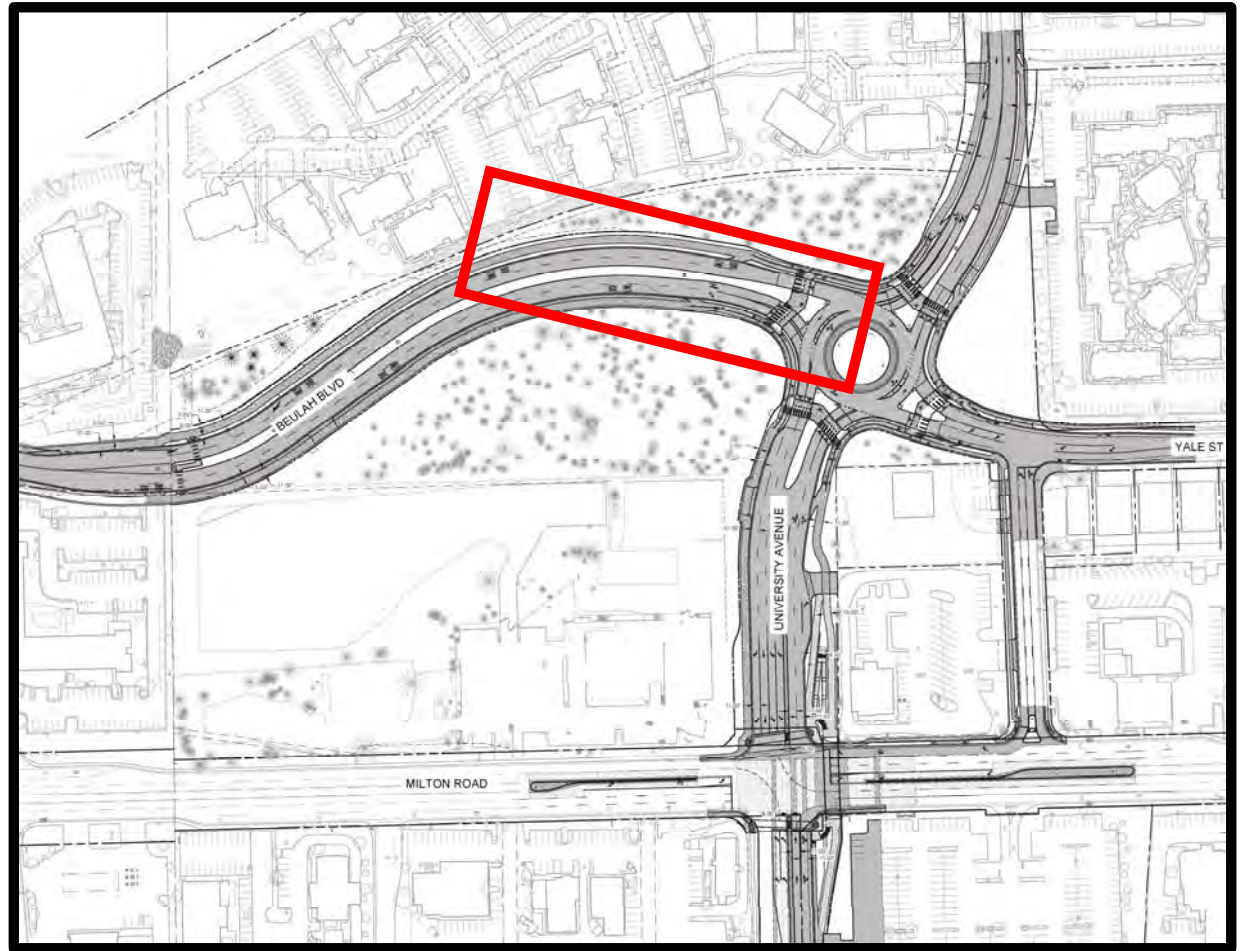




Beulah Blvd – *Southern Section 2*

Features:

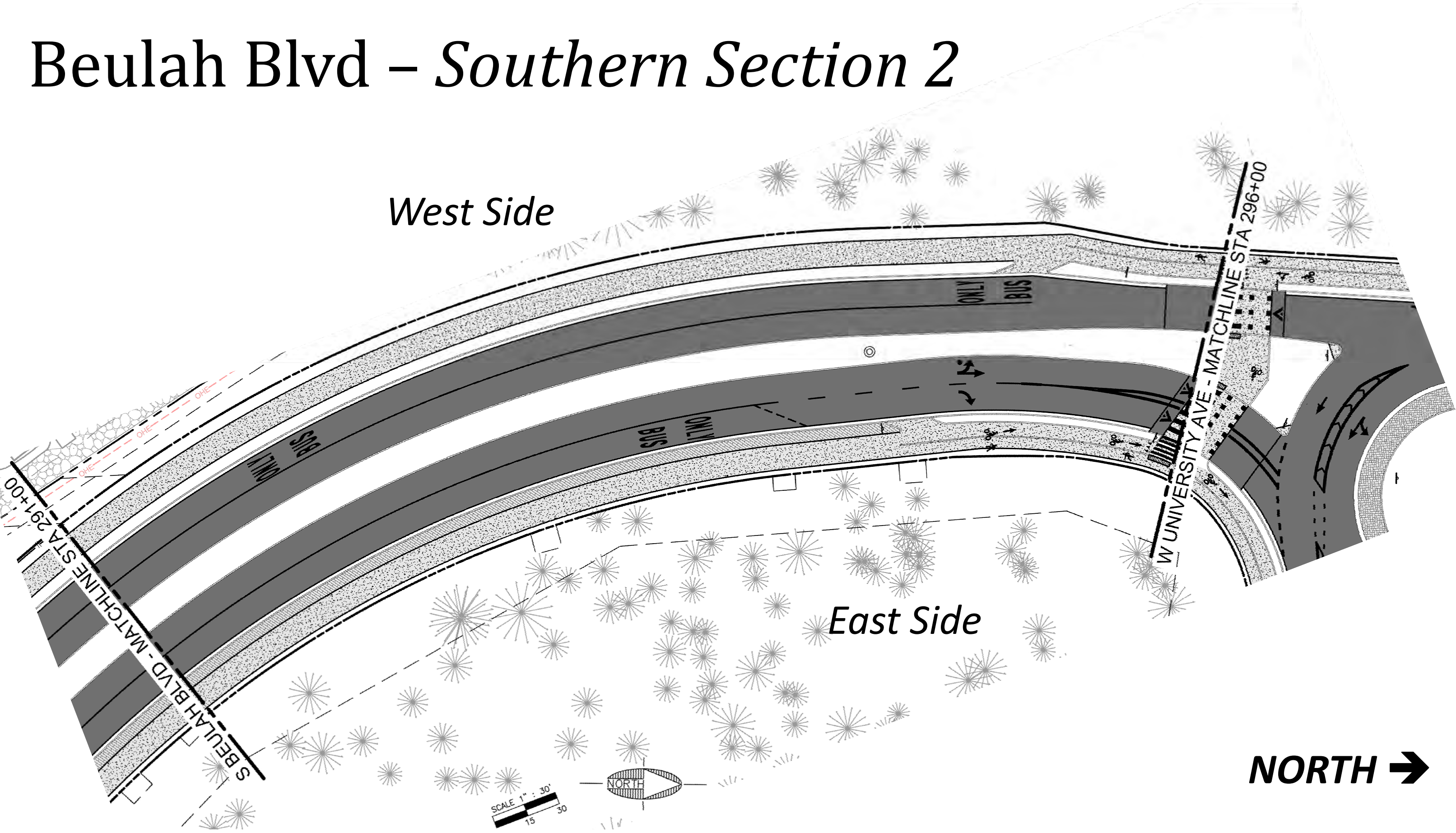
- 6-Foot Sidewalk, 5-Foot Bike Lane, and 5-Foot Parkway (West Side)
- 6-Foot Sidewalk, 5-Foot Bike Lane, and 5-Foot Parkway (East Side)
- Bus Only Lane (Not in Roundabout)
- On-Street Bike Lanes Removed
- 15-Foot Landscaped Medians



Beulah Blvd – *Southern Section 2*

West Side

East Side



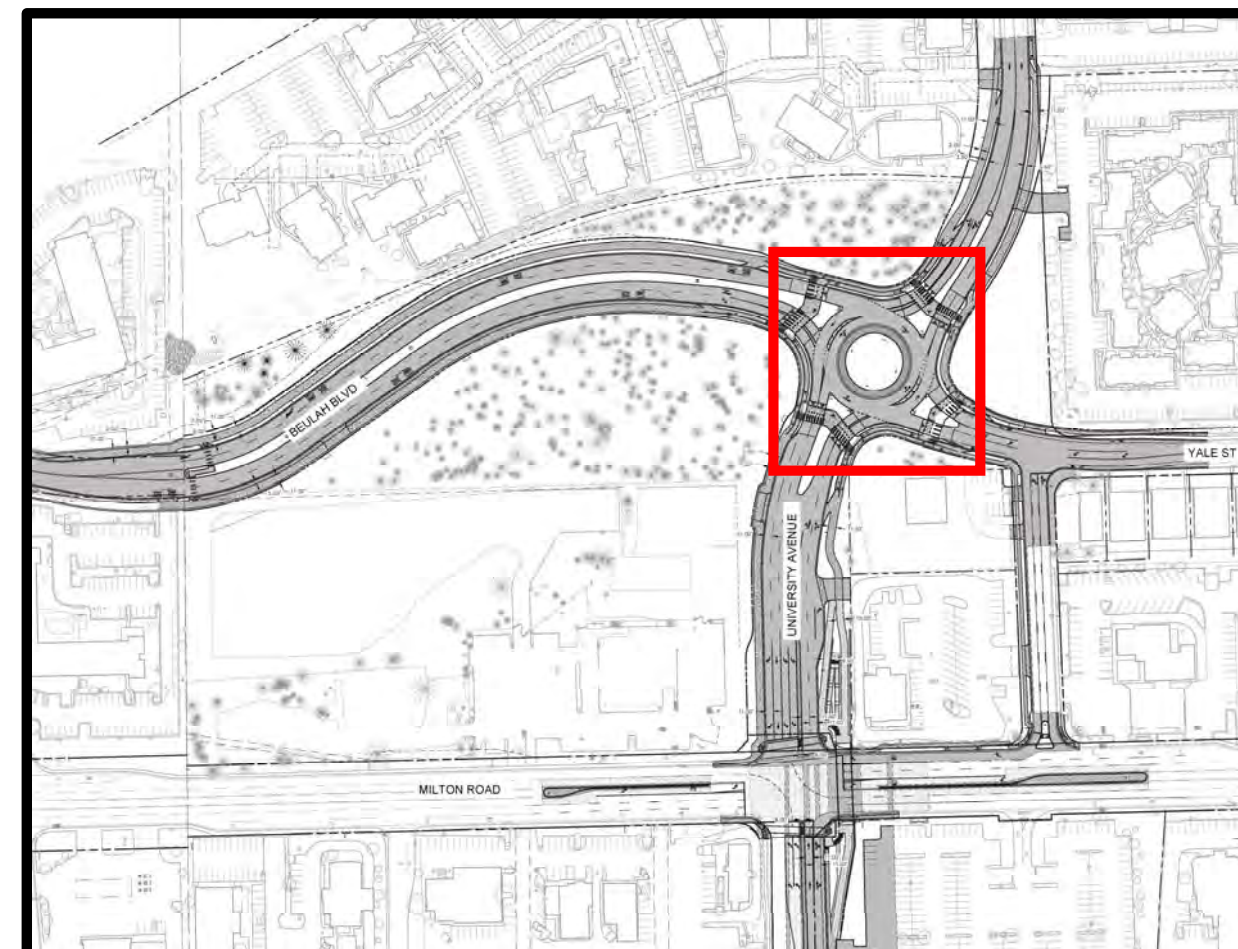


Roundabout



Features:

- Separated Bike and Pedestrian Crosswalks
- Raised Crosswalks
- Colors Shown are for Reference Only not Necessarily the Color "On the Ground"

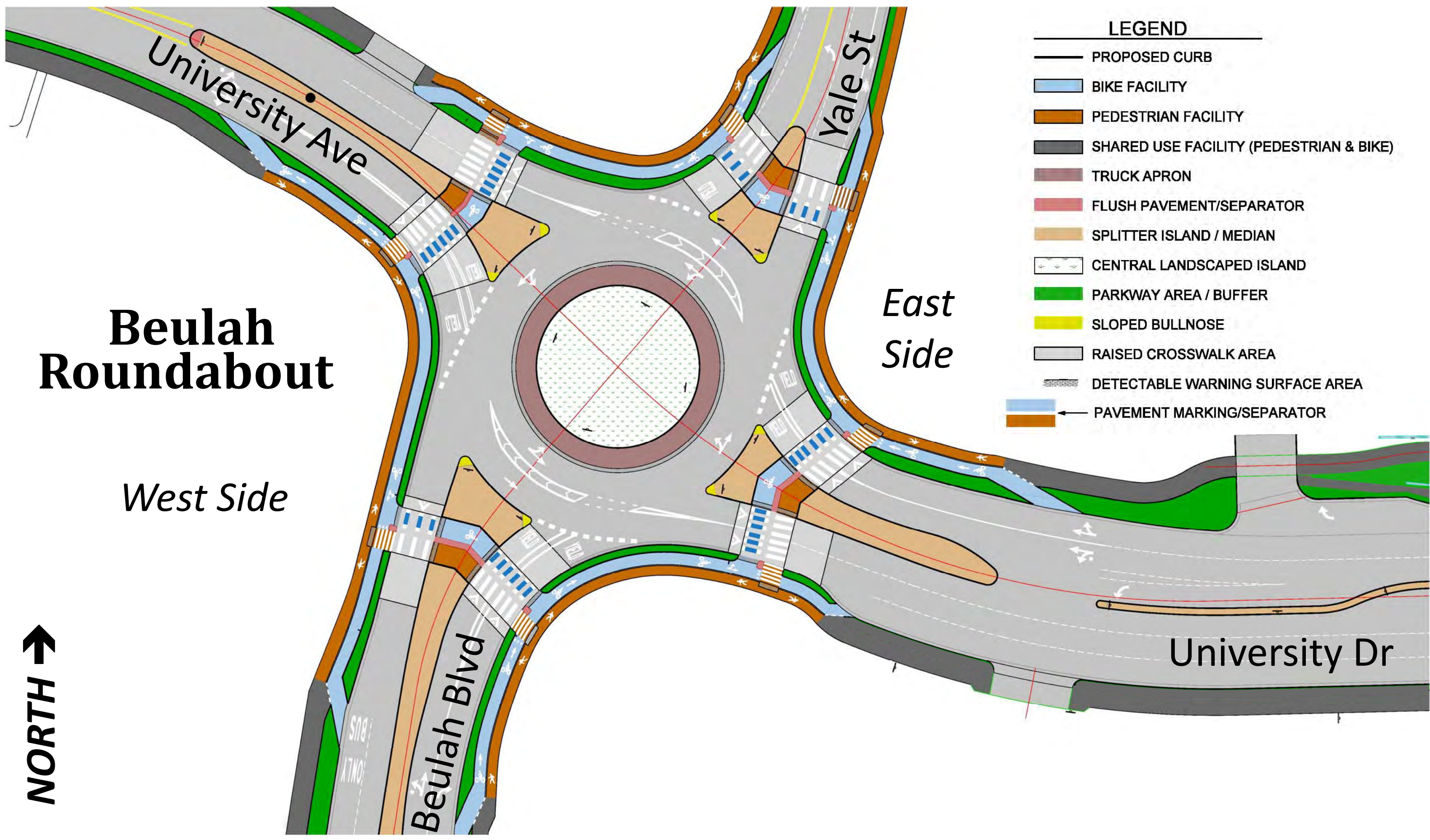


Beulah Roundabout

West Side

East Side

NORTH →



LEGEND

- PROPOSED CURB
- BIKE FACILITY
- PEDESTRIAN FACILITY
- SHARED USE FACILITY (PEDESTRIAN & BIKE)
- TRUCK APRON
- FLUSH PAVEMENT/SEPARATOR
- SPLITTER ISLAND / MEDIAN
- CENTRAL LANDSCAPED ISLAND
- PARKWAY AREA / BUFFER
- SLOPED BULLNOSE
- RAISED CROSSWALK AREA
- DETECTABLE WARNING SURFACE AREA
- PAVEMENT MARKING/SEPARATOR

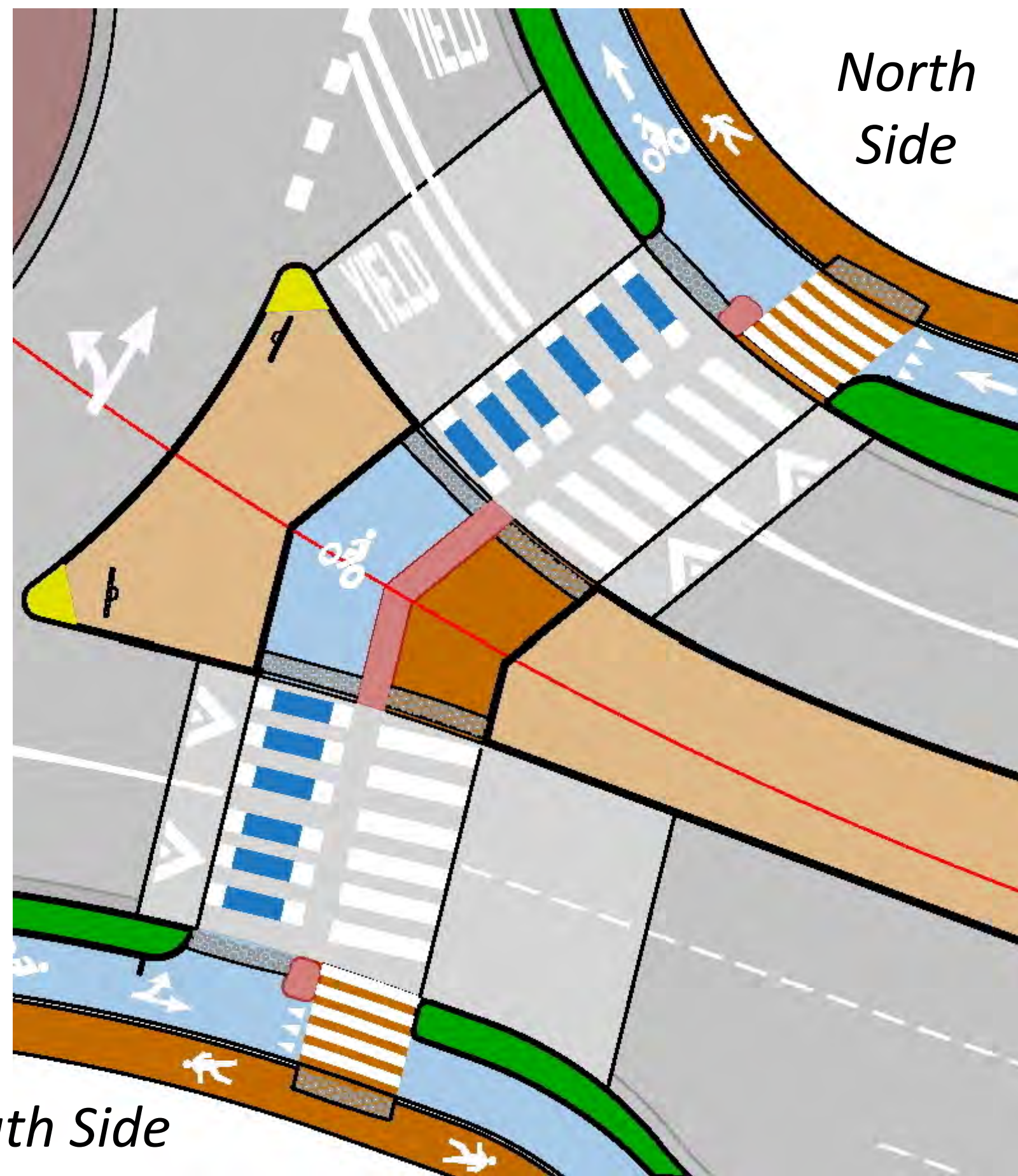
University Ave

Yale St

Beulah Blvd

University Dr

NORTH →



North Side

South Side

LEGEND

- PROPOSED CURB
- BIKE FACILITY
- PEDESTRIAN FACILITY
- SHARED USE FACILITY (PEDESTRIAN & BIKE)
- TRUCK APRON
- FLUSH PAVEMENT/SEPARATOR
- SPLITTER ISLAND / MEDIAN
- CENTRAL LANDSCAPED ISLAND
- PARKWAY AREA / BUFFER
- SLOPED BULLNOSE
- RAISED CROSSWALK AREA
- DETECTABLE WARNING SURFACE AREA
- PAVEMENT MARKING/SEPARATOR

Beulah Roundabout

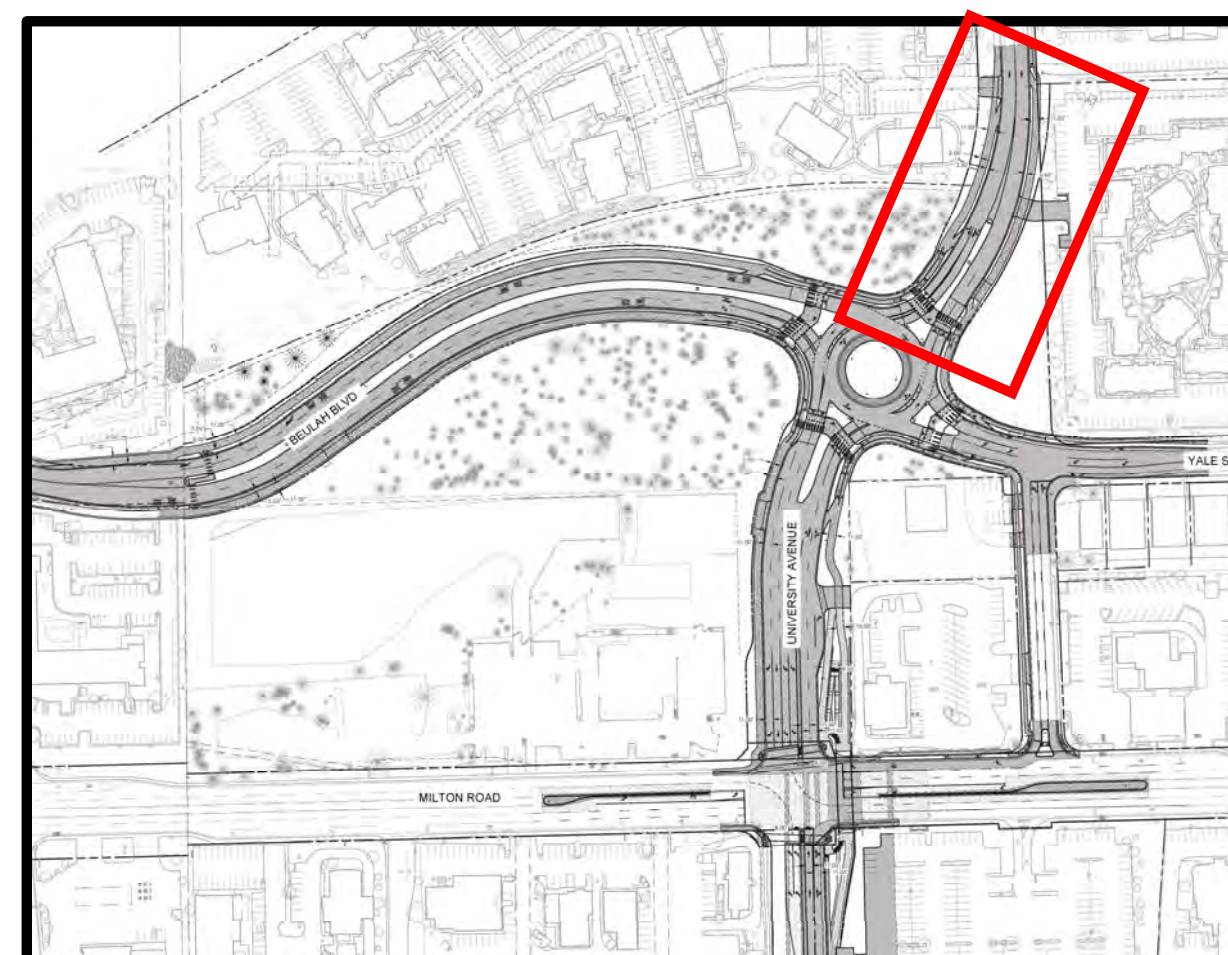
East Leg Crosswalks



West University Avenue

Features:

- 6-Foot Sidewalk, 5-Foot Bike Lane; 3.5-Foot Parkway (South Side)
- 6-Foot Sidewalk, 5-Foot Bike Lane; 3.5-Foot Parkway (North Side)
- On-Street Bike Lanes Removed
- On-Street Bike Lanes Resume at Project Limits



West University Ave



South Side

North Side

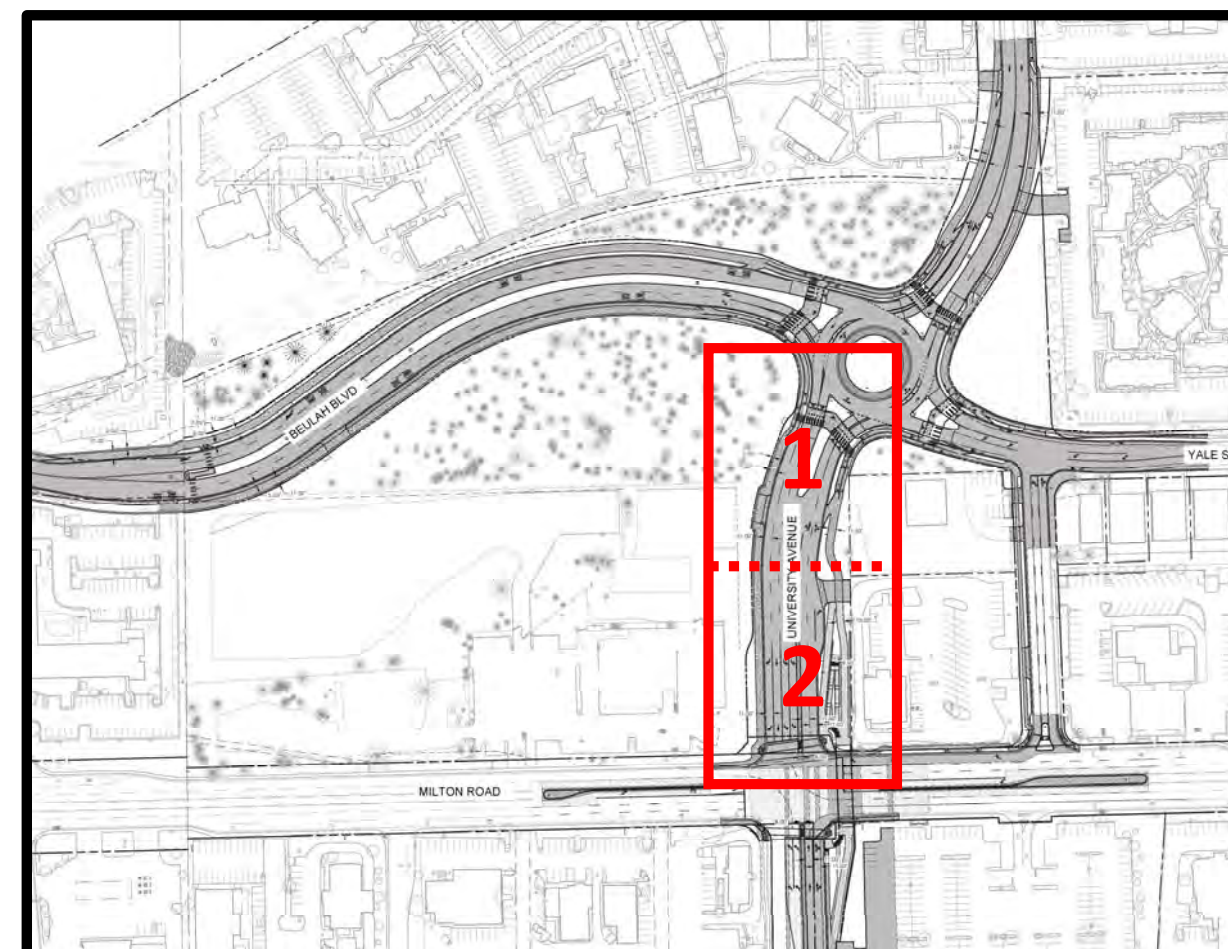
NORTH →



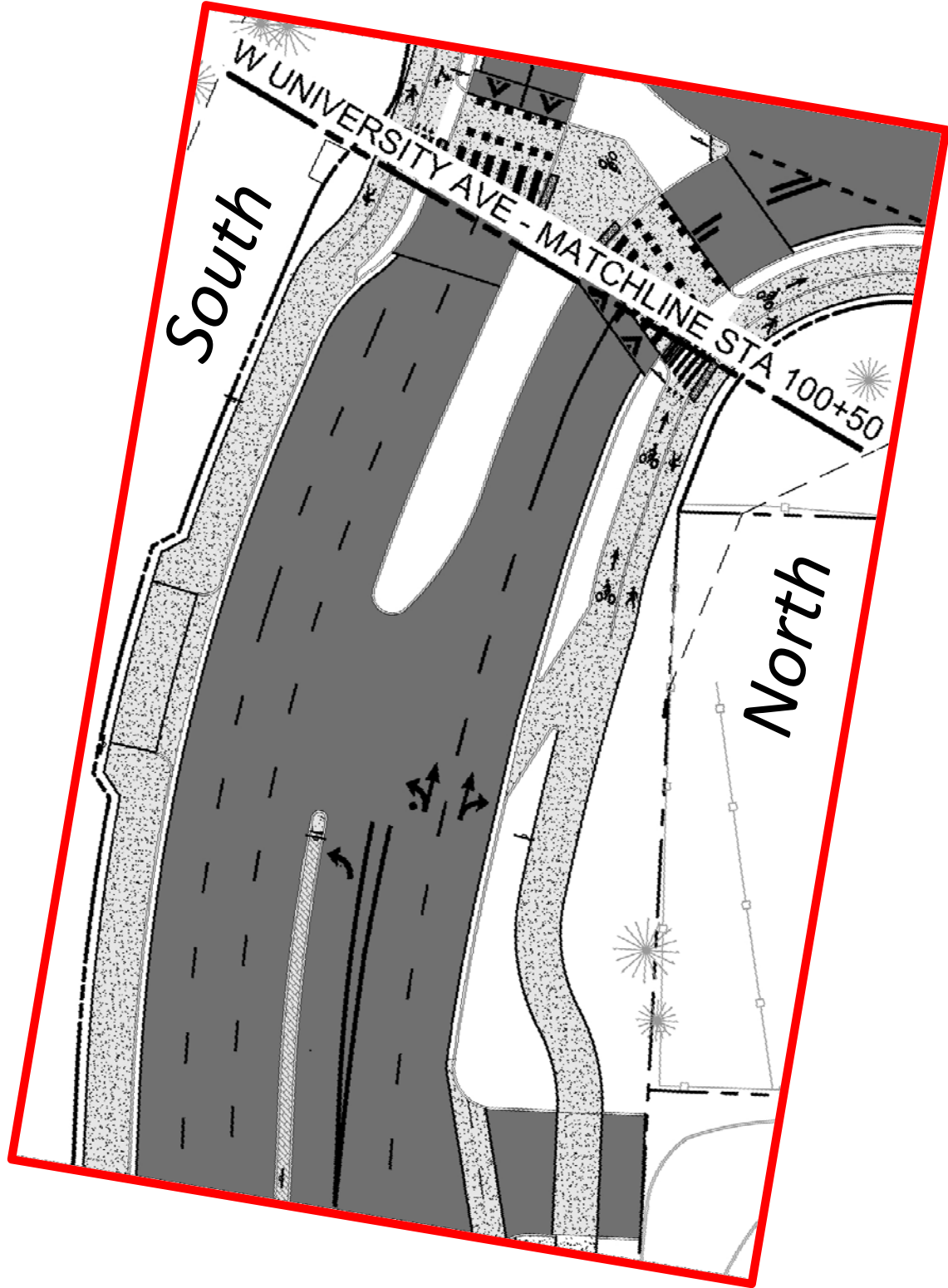
West University Avenue (New)

Features:

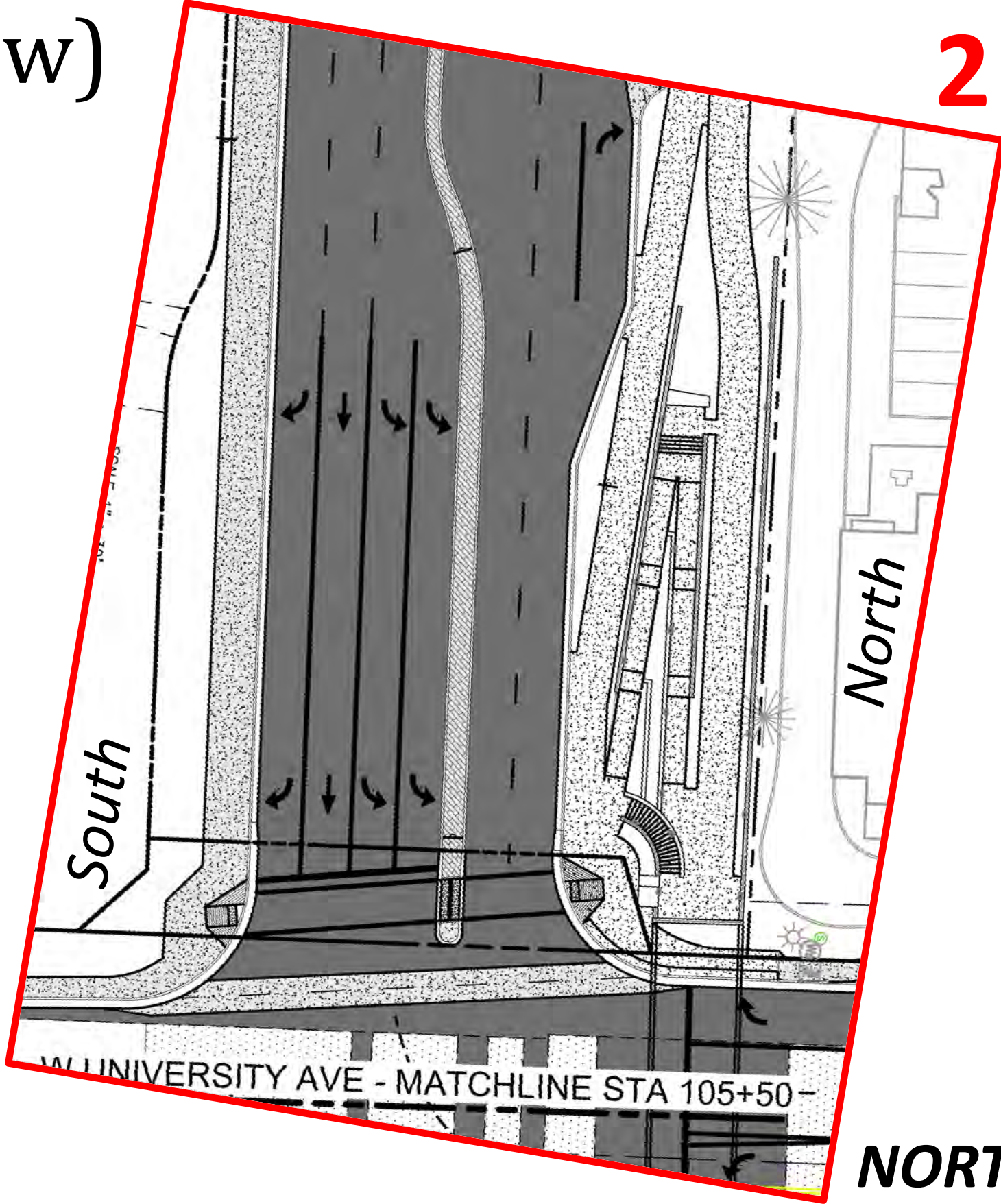
- 6-Foot Sidewalk, 5-Foot Bike Lane (North Side)
- 6-Foot Sidewalk, 5-Foot Bike Lane (South Side)
- Removed On-Street Bike Lanes
- 10-Foot Sidewalk Approach to Pedestrian Underpass (Western Portal)
- No Surface Crossing of Milton Road
- Surface Crosswalk for W. University Avenue
 - 5-Foot Pedestrian Refuge (in Median)



W. University Avenue (New)



1



2

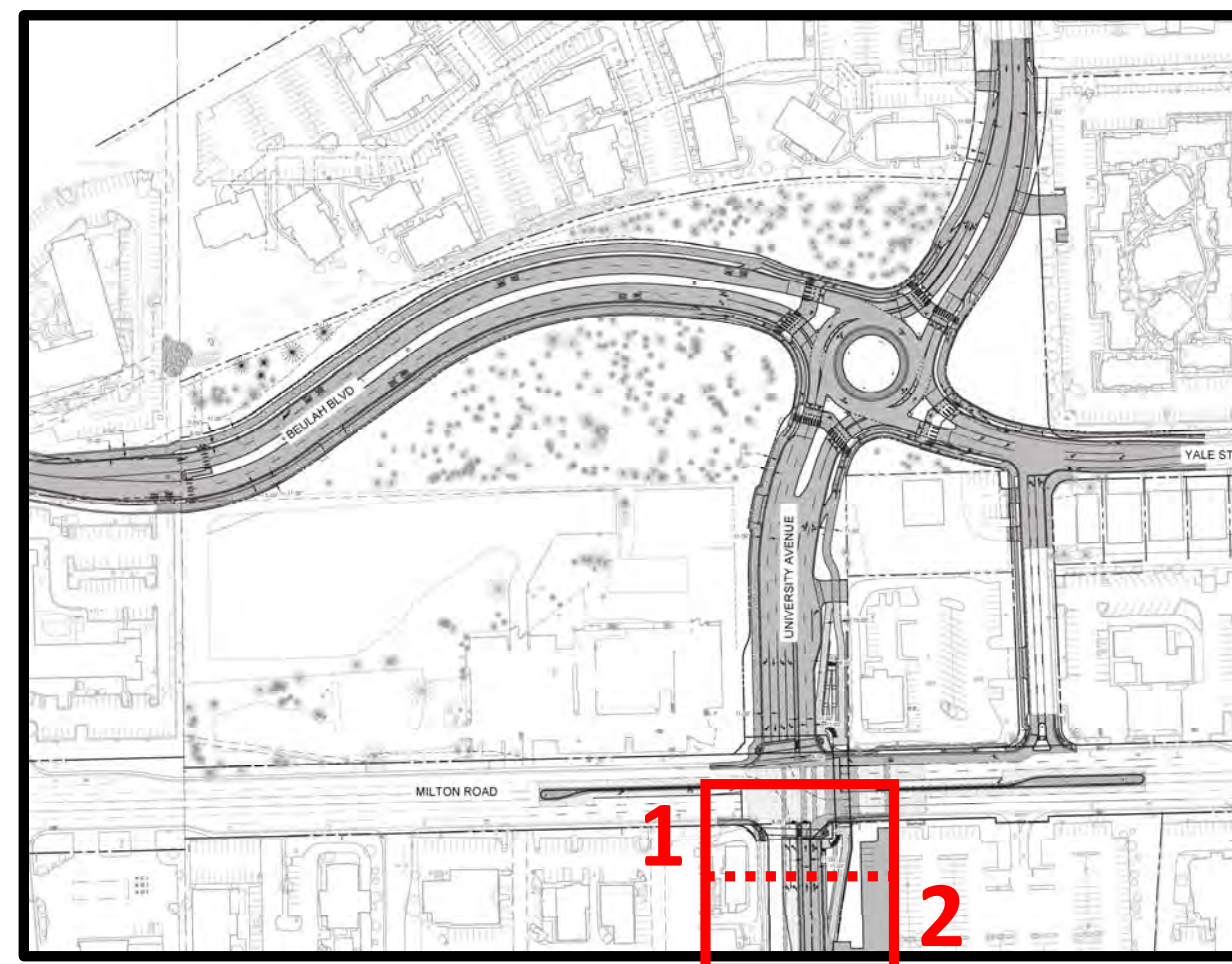
NORTH →



University Drive

Features:

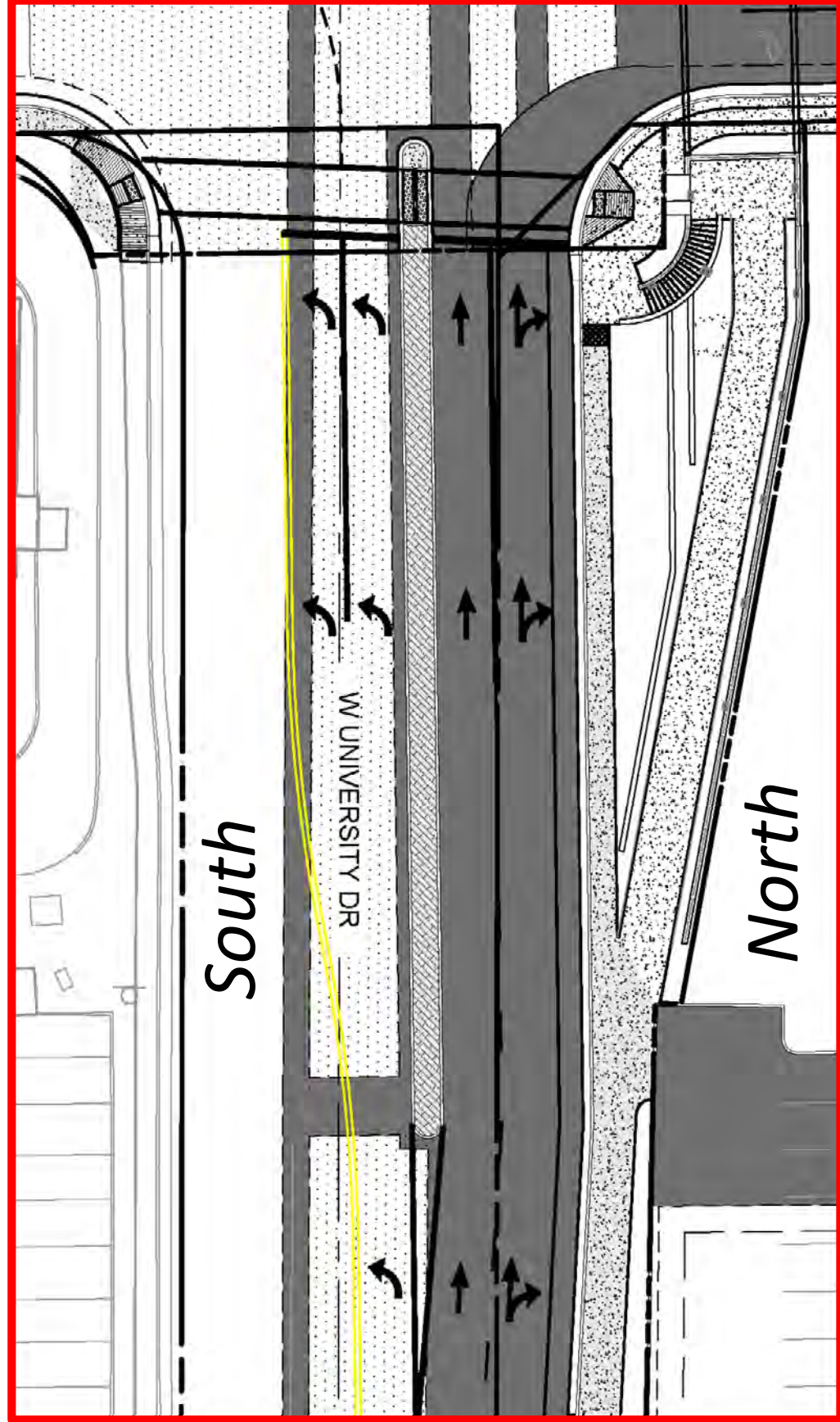
- 10-Foot Sidewalk Transitions to 8-Foot Sidewalk (North Side)
- Existing Sidewalk to Remain (South Side)
- Pedestrian Underpass (Eastern Portal)
- No Surface Crossing of Milton
- Surface Crosswalk for Crossing University Dr.
 - 5-Foot Pedestrian Refuge (in Median)



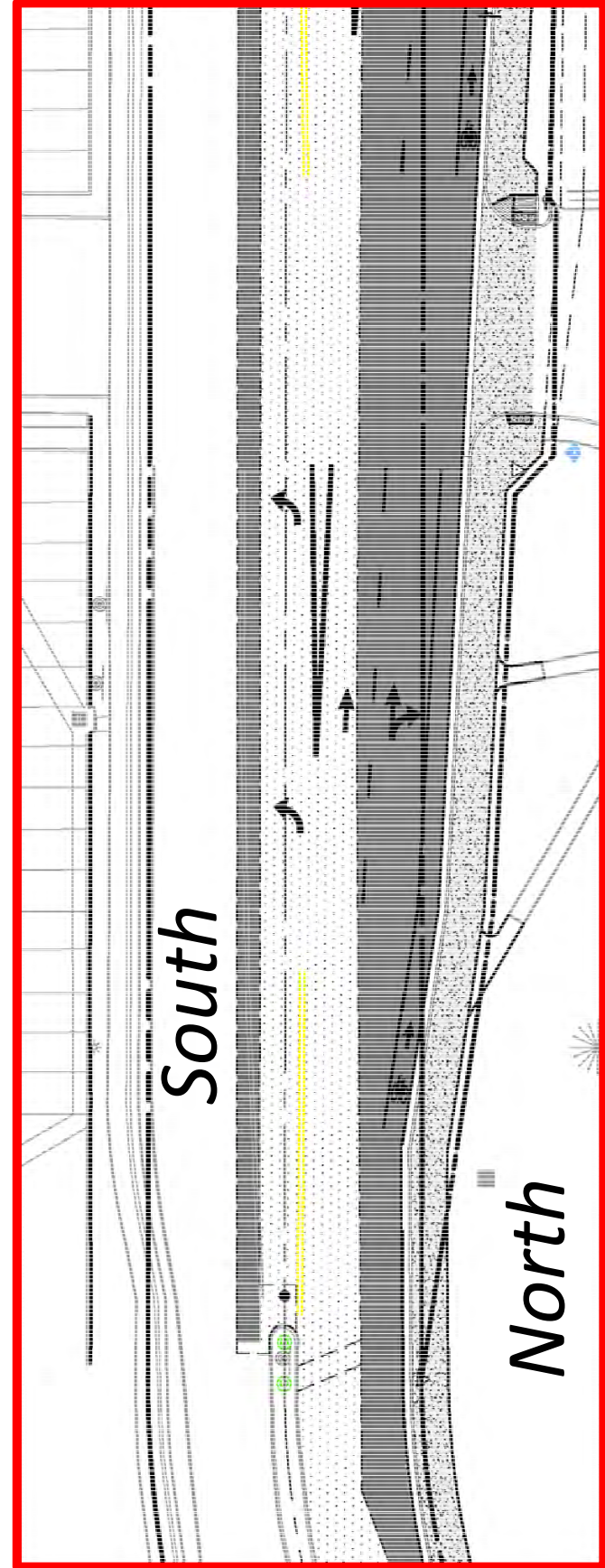
University Drive

NORTH →

1



2



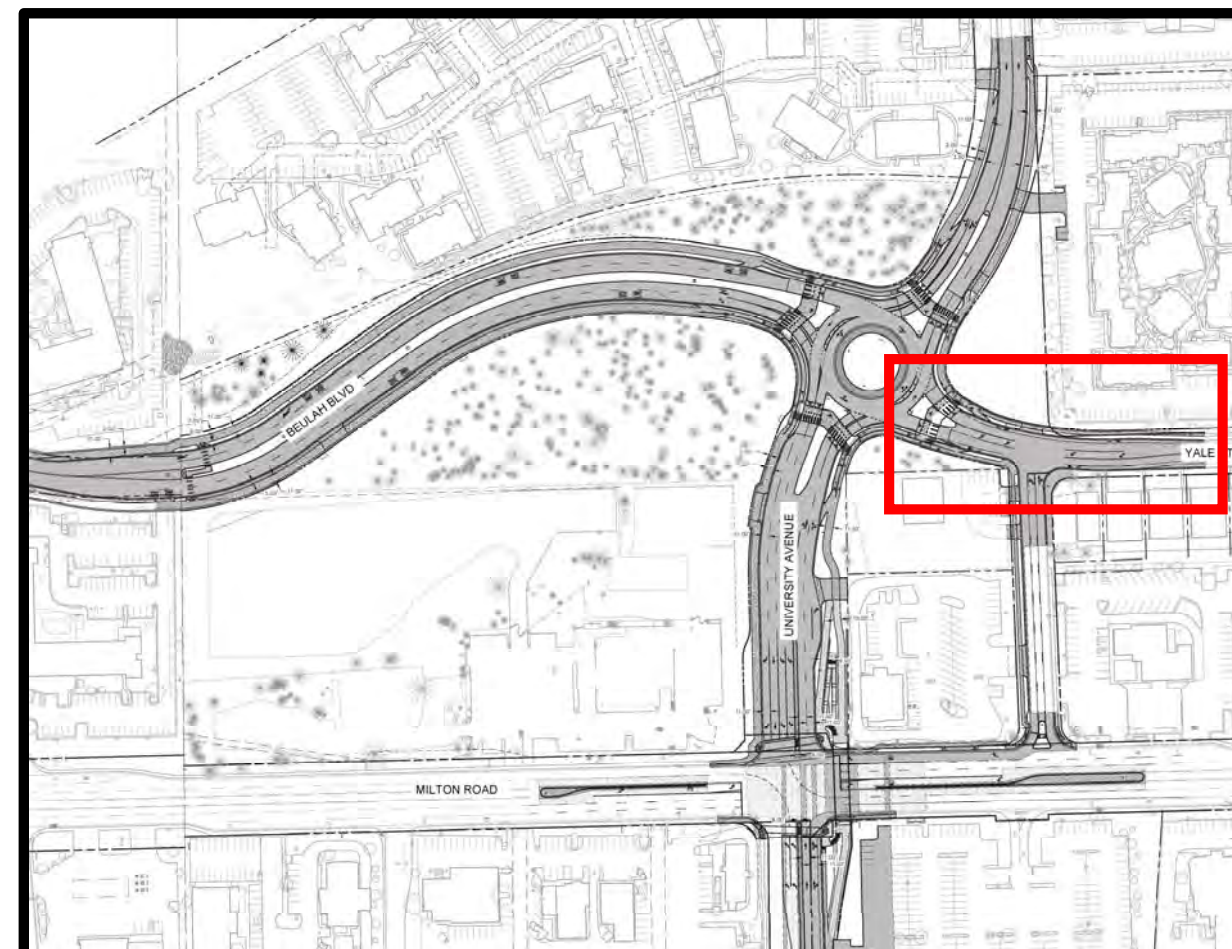


Yale Street

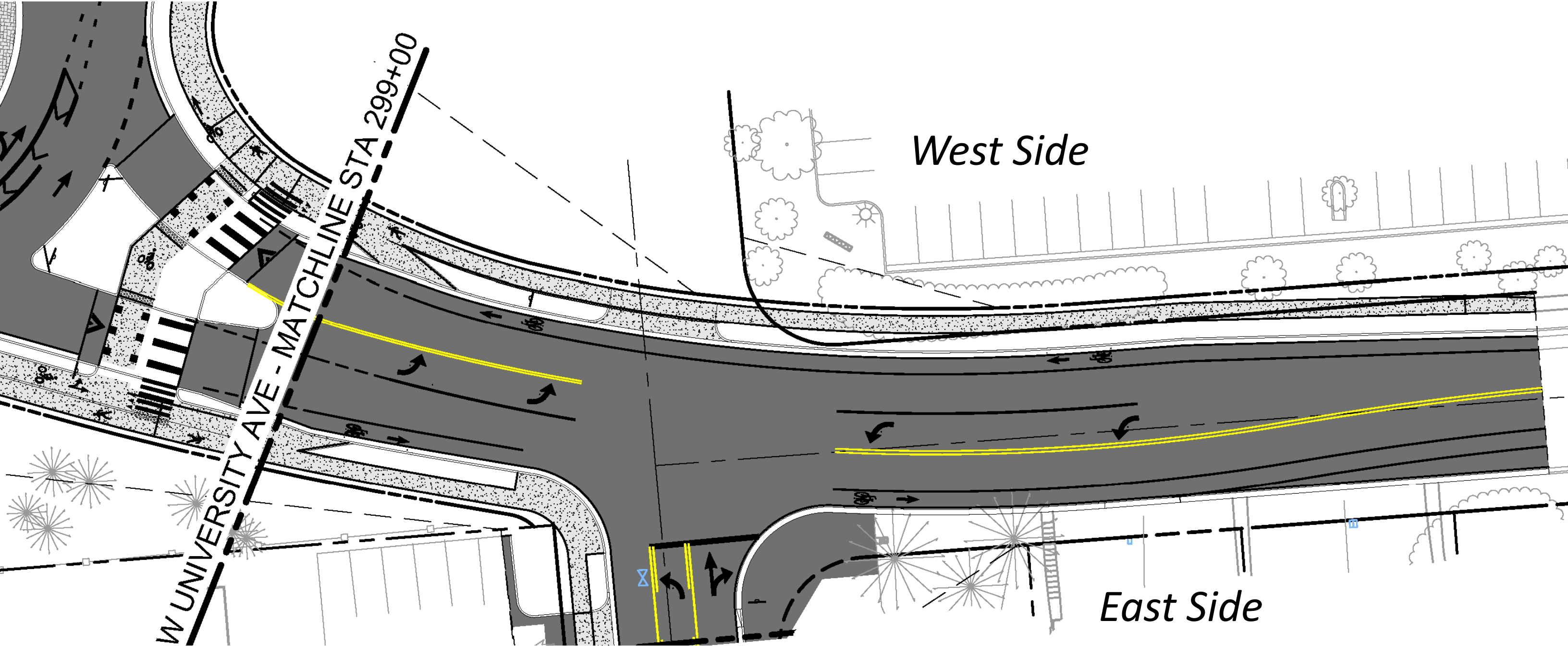


Features:

- 5-Foot Sidewalk (West & East Sides)
- Transitions to 6-Foot Sidewalk with 5-Foot Bike Lane nearing Roundabout
- 5-Foot Parkway (West Side)
- On-Street Bike Lanes Remain (NB & SB)



Yale Street



West Side

East Side

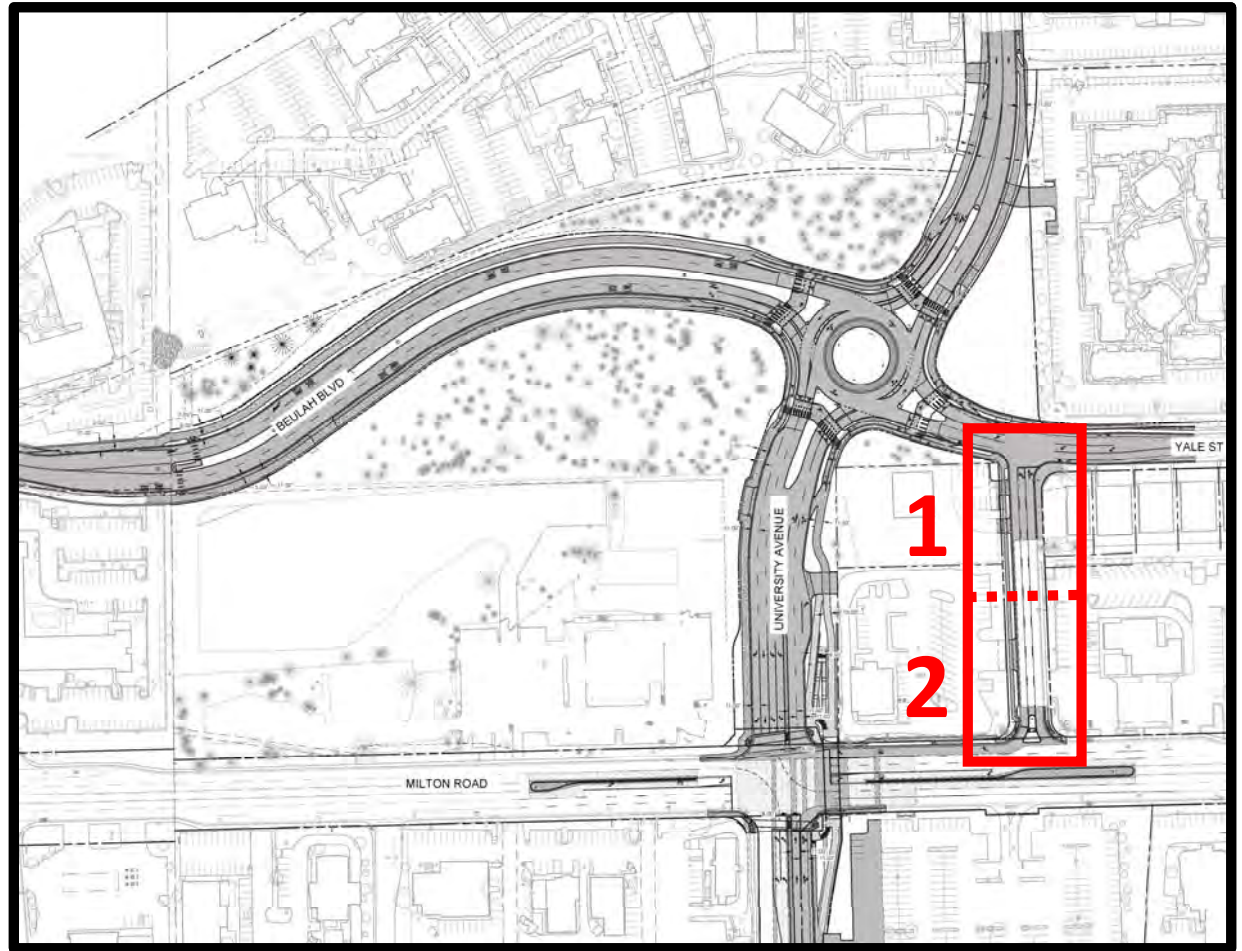
NORTH →



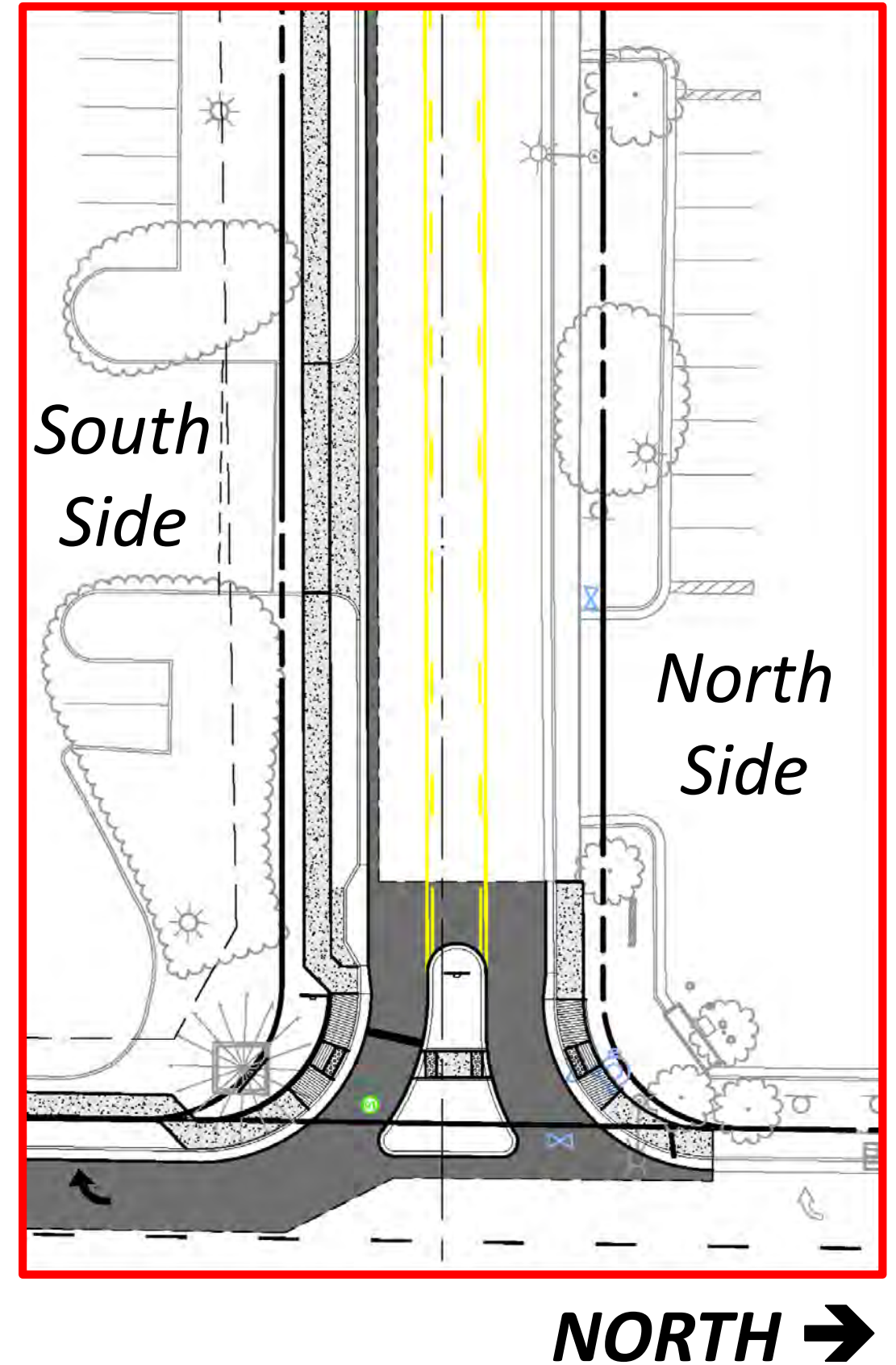
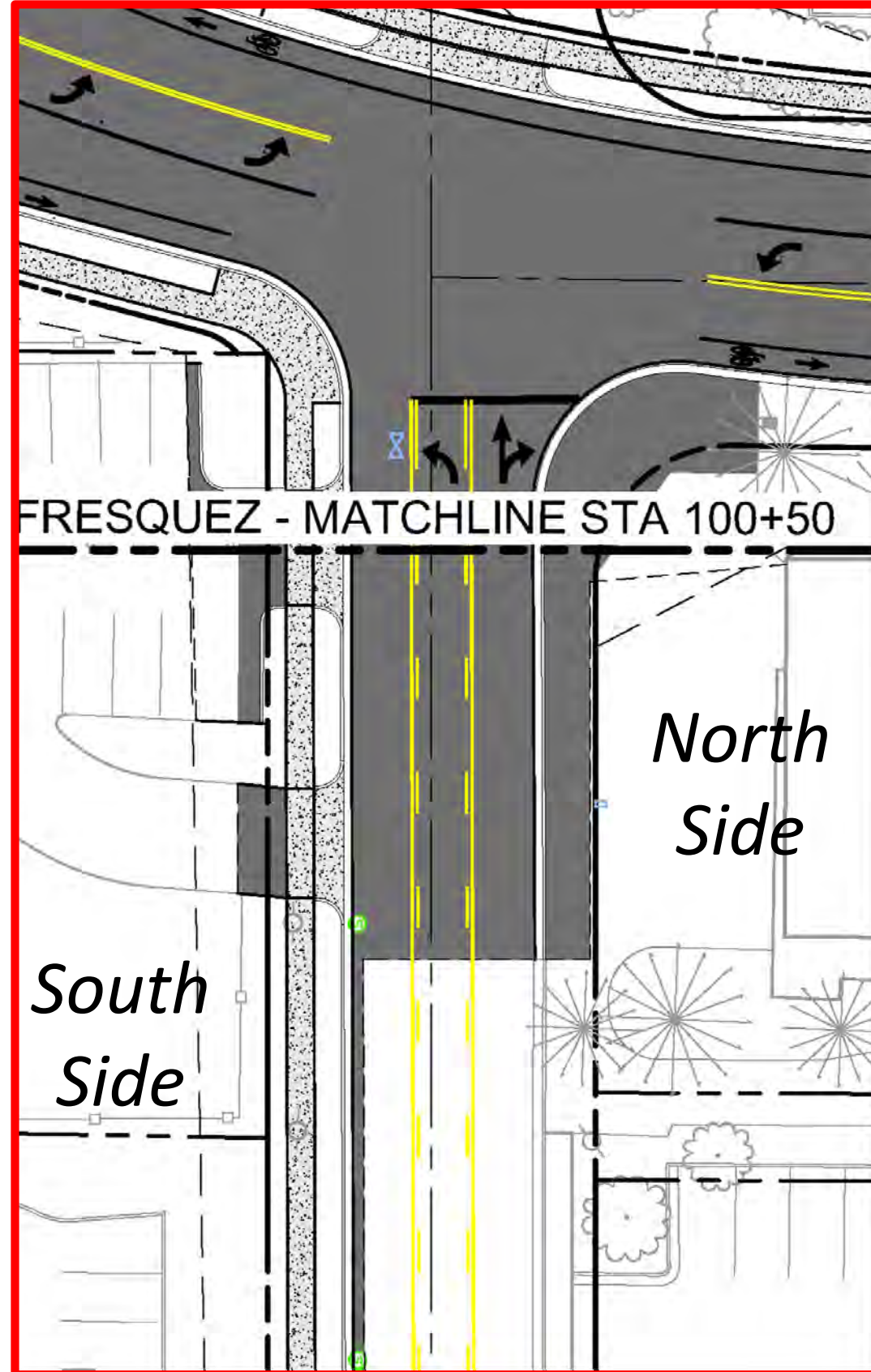
University Avenue (Current)

Features:

- 5-Foot Sidewalk & 5-Foot Parkway (South Side)
- Existing Sidewalk Remains (North Side)
- One Westbound Lane; One Eastbound Lane
- 10-Foot Center Turning Lane
- Milton Road will have a Raised Median
- No NB Left Turns from Milton Road
 - Right-in, Right-out for Vehicular Traffic at Intersection with Milton



University Avenue (Current)



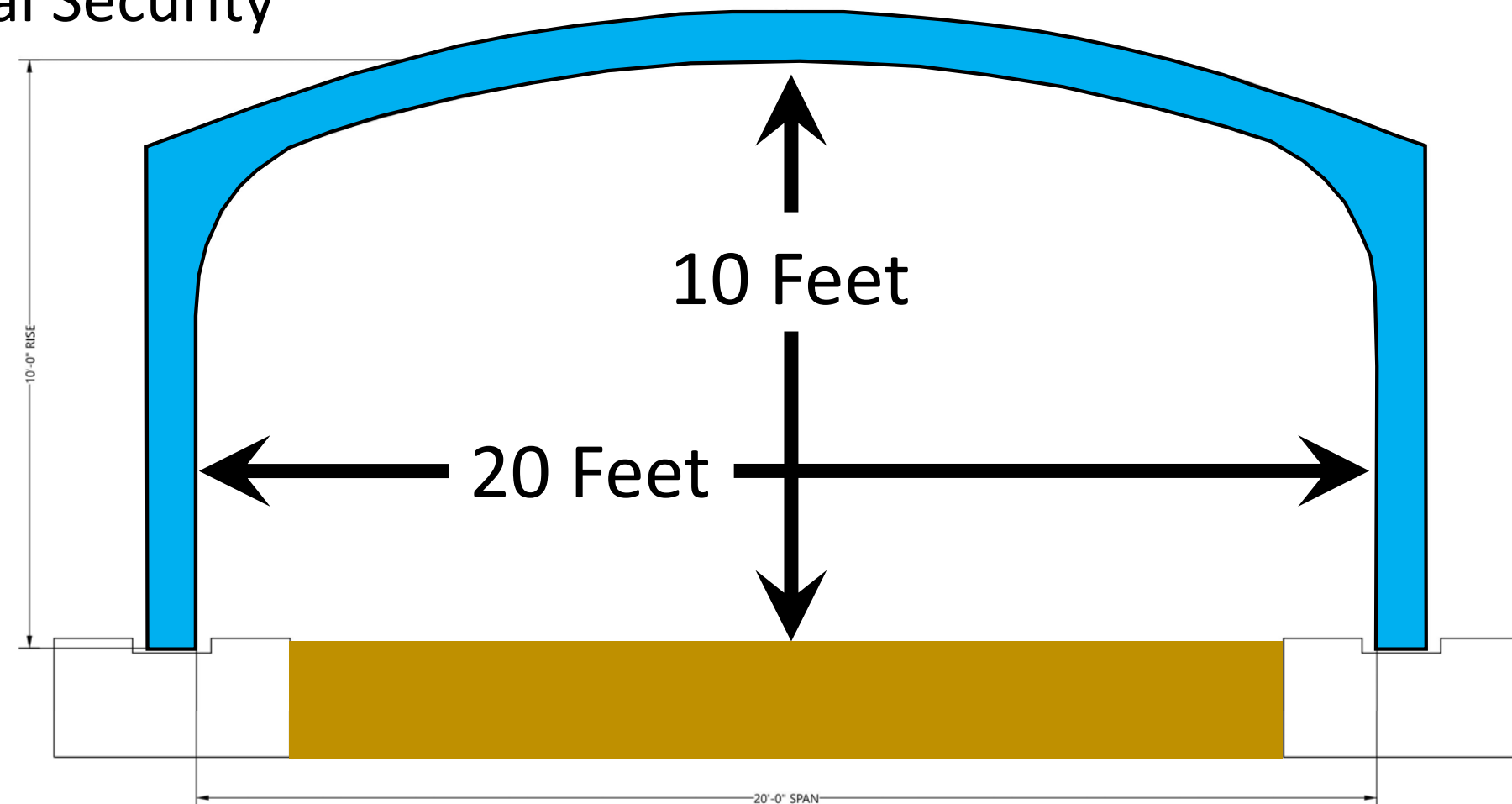
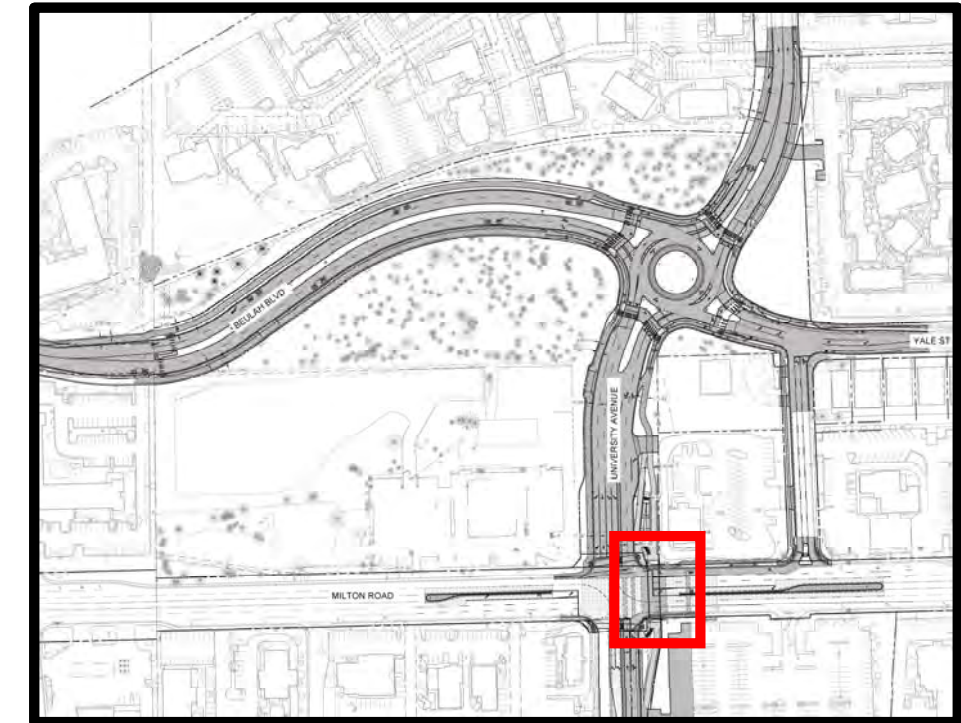
Pedestrian Underpass

Conceptual Exhibit



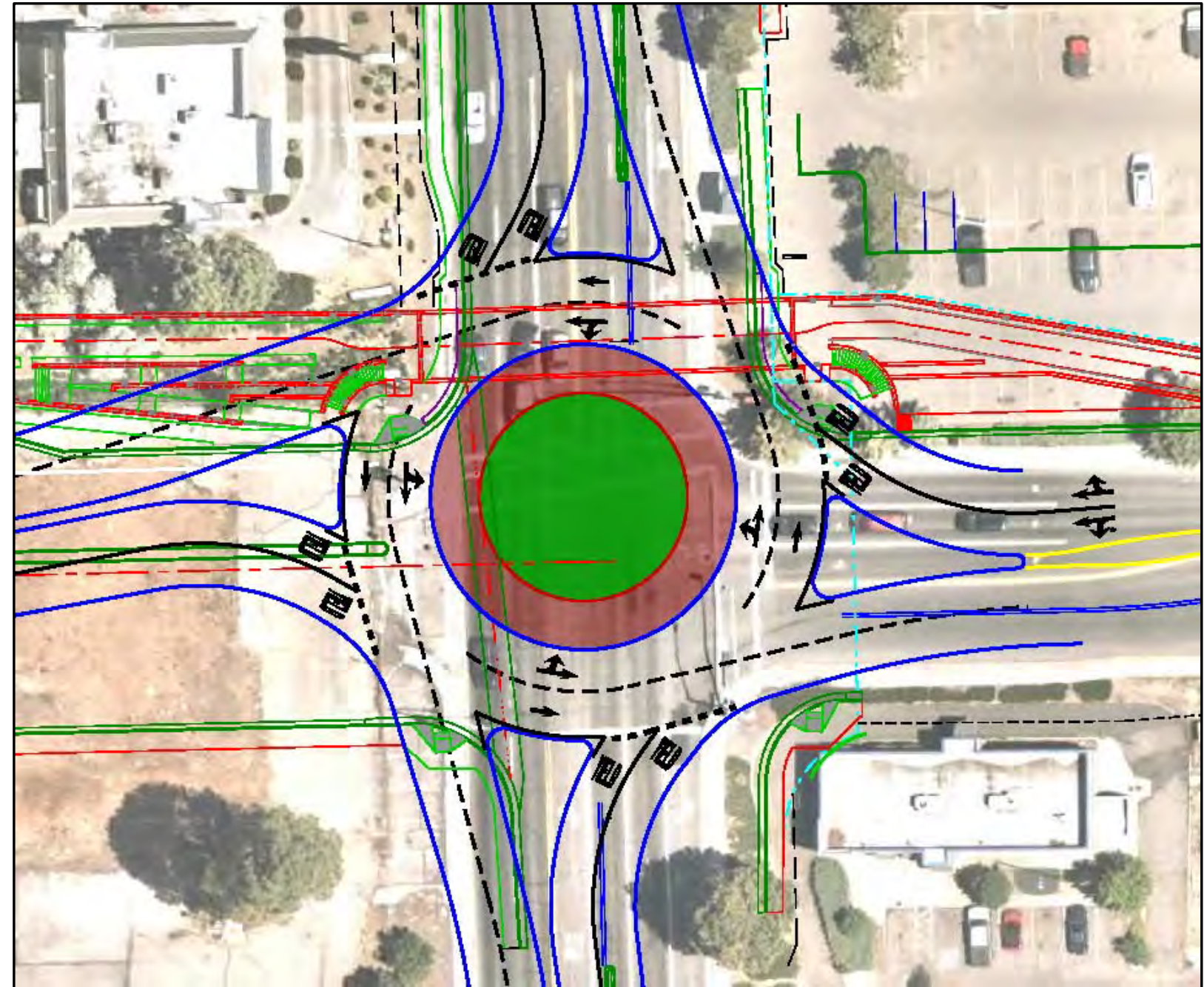
Pedestrian Underpass

- 20-Foot Wide by 10-Foot Tall
- 114-Foot Length
- Precast Concrete Sections
- Tunnel will have Day and Night Lighting
 - Staff Working with PD on Additional Security
 - Features Could Include:
 - Increased Lighting Levels
 - Video Equipment
 - Emergency Phones



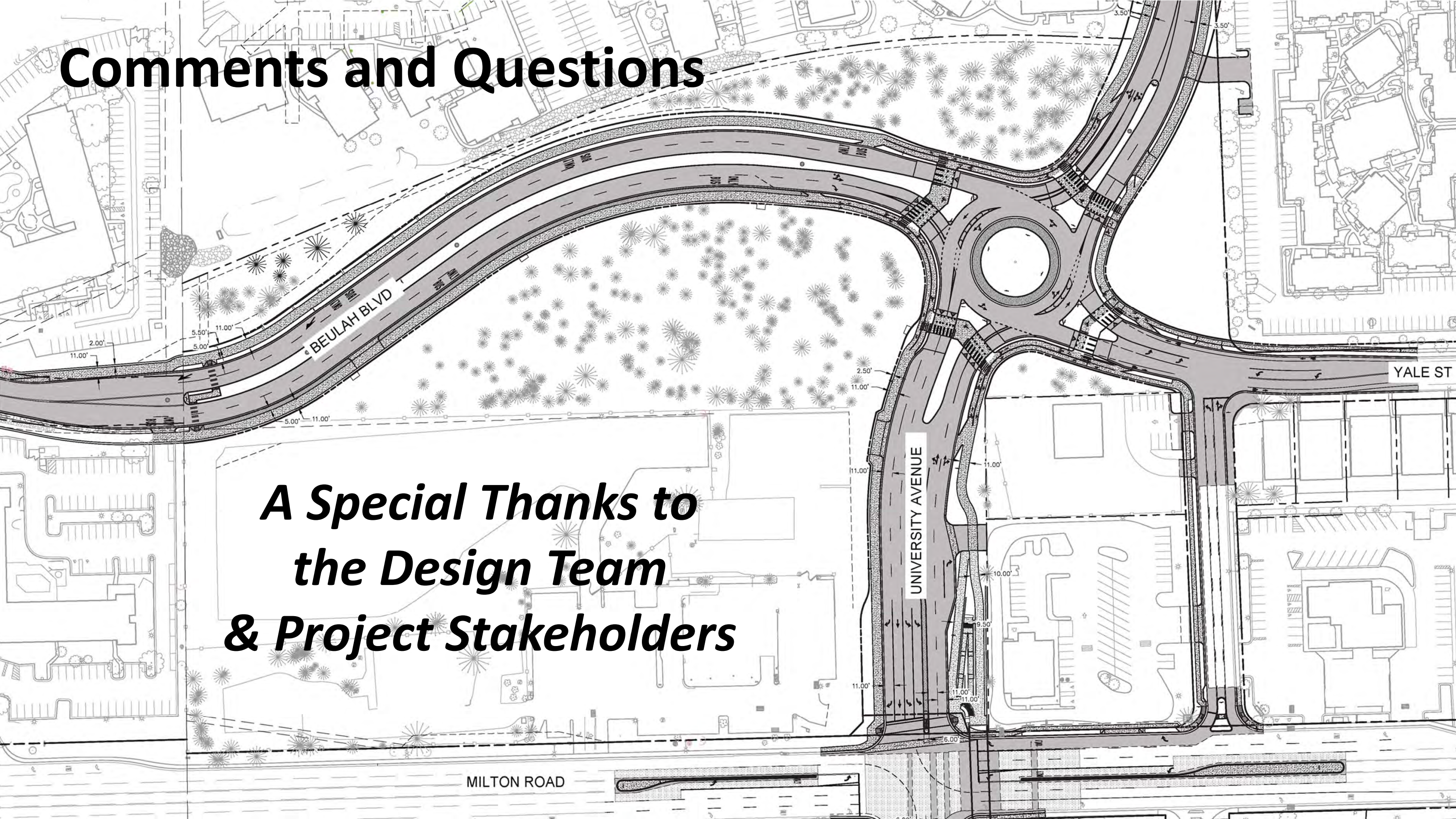
Milton/University Roundabout Study

- Looked at Four Scenarios
 - All Bike/Ped Traffic in Tunnel with No Surface Crossings
 - Surface Crossings on All Legs with HAWK Signals
 - Tunnel on the North with Three Other Legs having Surface Crossings
 - Tunnel on the North with Surface Crossings on the East and West Legs
- ADOT Currently Reviewing Report and in Talks with City Staff
- Due to Significant Project Impacts this is Excluded from Current Design



Comments and Questions

*A Special Thanks to
the Design Team
& Project Stakeholders*



**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Shannon Anderson, Deputy City Manager
Date: 09/29/2021
Meeting Date: 10/05/2021



TITLE

Discussion on the Alternate Response Model and Care Center

STAFF RECOMMENDED ACTION:

City Council discussion on the Alternate Response Model and Care Center.

EXECUTIVE SUMMARY:

City staff will provide a brief background on the alternate response model, the team comprised to work on the program, the procurement process, and the potential services identified for an alternate care center. In addition, City staff will provide a summary of the feedback received from the public Town Hall held on Friday, September 24, 2021.

INFORMATION:

The City held a public Town Hall on Friday, September 24, 2021, to provide an update on the alternate response model program and gather feedback from the community on the models Flagstaff should be considering when creating a care center, what services should be addressed by the care center, where may there be a duplication of services within the City, and the best ways to add capacity to serve the community. A copy of the public Town Hall presentation is attached to this staff summary.

Attachments: Town Hall Presentation
City Council Discussion Presentation

September 24, 2021

Alternate Response Town Hall



Welcome

Mayor Paul Deasy

***Building a Safer & Healthier
Community Together***

- We appreciate your taking the time to join us today
- The City would like to express appreciation for service providers and the great value their agencies add to the community
- We are hosting this Town Hall to share the City's progress on an Alternate Response Model and discuss next steps with a care center
- We are here to answer questions and listen to your feedback on what's important to accomplish with a care center and how a care center fits in with existing services

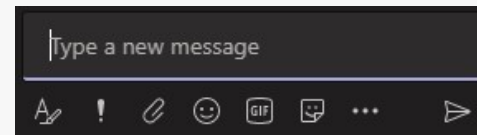
Welcome

*Building a Safer & Healthier
Community Together*

- If you are attending virtually, please type a C for comment or Q for question in chat or raise your hand to share during the Town Hall today
 - Top right of the screen



- Type in text box and use arrow to send



- If in the audience, raise your hand and we will bring a microphone for you to speak, so all can hear

Where did the thought of an Alternate Response Program begin?

Chief Dan Musselman

***Building a Safer & Healthier
Community Together***

- ICF identified need in ICF/City Forum on homelessness, housing and wellness
- Criminal Justice Coordinating Council - 2019
 - Diversion Programs
 - Jail Diversion Program in Florida
- Presentations to City Council on Police Operations - 2020
 - Alternate Response Models

Purpose of an Alternate Response Model

Building a Safer & Healthier Community Together

- Provide culturally sensitive care
- Engage those in need with the most appropriate service
- Keep individuals safe
- Diversion from emergency room and criminal justice system
- COVID has impacted the demand for services

Alcohol and Behavioral Health Related Calls

2019

- FPD 2,491 mental health related calls
- FPD 2,828 lowest priority alcohol related calls
- FPD spent 480 hours at hospital with 346 arrestees mostly due to substance use
- FFD 2,618 public intoxicant (man down responses)
- FFD 383 behavioral health type responses

2020

- FPD 2,896 mental health related calls
- FPD 3,318 lowest priority alcohol related calls
- FPD spent 649 hours at hospital with 1,021 arrestees mostly due to substance use
- FFD 2,438 public intoxicant (man down responses)
- FFD 426 behavioral health type responses

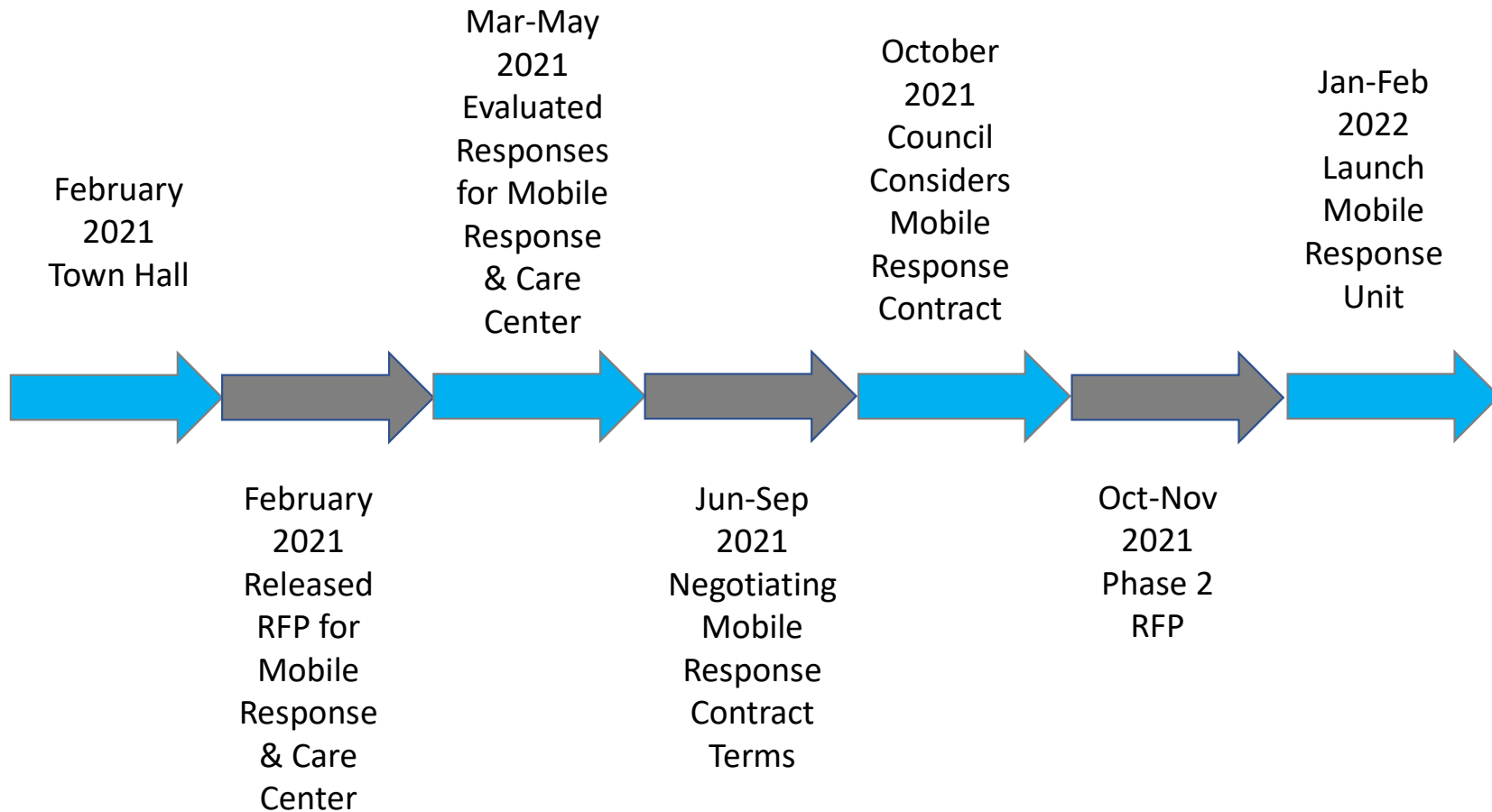
What models influenced the idea of an Alternate Response Model?

Shannon Anderson

- Friendship House
- Native American Connections
- CAHOOTS/White Bird Clinic

***Building a Safer & Healthier
Community Together***

Where are we now in 2021?



Where are we going?

- Phase 1
 - Open temporary facility
 - Complete RARE Assessment in partnership with NACA
 - Launch mobile response unit
 - Release Phase 2 RFP
- Phase 2
 - Identify additional capacity needs or gaps
 - Release Phase 3 RFP
- Phase 3
 - Open a care center to provide full scope of services

***Building a Safer & Healthier
Community Together***

Why consider an Alternate Response Model?

Chief Mark Gaillard

Building a Safer & Healthier Community Together

- Build on community trust by providing a better public safety response
- Benefits citizens and those who may be vulnerable
- Emergency responders need more options to take people for appropriate services
- Tie behavioral health best practices with non-traditional medicine

Alternate Response Care Center

*Building a Safer & Healthier
Community Together*

- Location for gathering
- Food service
- Shower & Washroom areas
- Crisis stabilization
- Outpatient services
- Support services
- Substance use and behavioral health treatment
- Connection to services
 - Housing
 - Job assistance
 - Long-term care

Discussion

*Vice Mayor Becky Daggett
Councilmember Adam Shimoni*

***Building a Safer & Healthier
Community Together***

- Are these the best models for Flagstaff?
- What other important services are needed that may have been missed?
- Where may there be a duplication of services?
- Best ways to coordinate adding capacity to serve the community?

Thank you

Thank you for your participation today

*Building a Safer & Healthier
Community Together*

October 5, 2021

Alternate Response Model and Care Center Discussion



Alternate Response Model

*Building a Safer & Healthier
Community Together*

- In response to Council and community request for a different type of emergency response
- Another team responding to calls for assistance with a behavioral health professional
- Ability to provide culturally sensitive care to those in crisis or needing mental health or substance use assistance
- Desire to divert individuals from the criminal justice system and the emergency room
- Keep individuals safe
- Engage those in need with the most appropriate service

Alternate Response Team

*Building a Safer & Healthier
Community Together*

- Police Chief
- Fire Chief
- Deputy Fire Chief
- City Prosecutor
- Coordinator of Indigenous Affairs
- Indigenous Commissioner
- 2 community members
- Deputy City Manager
- City Manager
- 3 Councilmembers
- Criminal Justice Institute
- The NARBHA Institute

Alternate Response Procurement Process

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Community Together*

- Invited 30 stakeholders to a Town Hall in February 2021
- Received 4 responses
 - The Guidance Center
 - NACA with subcontractors Flagstaff Shelter Services and Family Food Center
 - Terros Health
 - WestCare AZ
- Evaluation Committee
 - 4 City staff members
 - 1 local service provider
 - 1 Indigenous Commissioner
 - Assistance from local Psychiatrist
- Recommended mobile response unit contract but to continue work to define needs for a care center

Potential Alternate Response Care Center Services

*Building a Safer & Healthier
Community Together*

- Provide culturally sensitive care
- Location for gathering
- Food service
- Shower & Washroom areas
- Crisis stabilization
- Outpatient services
- Support services
- Substance use and behavioral health treatment
- Connection to services
 - Housing
 - Job assistance
 - Long-term care

Town Hall – September 24th

*Building a Safer & Healthier
Community Together*

- 50 virtual and 23 in-person attendees
- Invite a public conversation with the community about Flagstaff's needs
- Background of alternate response program
 - Where did the idea begin
 - Purpose
 - FPD & FFD calls for service
 - Influential models
- Timeline of process and where we are going
- Anticipated services for a care center

Town Hall participants expressed needs

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Community Together*

- Place to rest
- Place to access computers
- Ability to exchange information between treating providers
- Identify number of individuals the care center will serve
- Ways to serve those without identification or estranged from family
- Housing has to be part of the model
- Request to provide more data about FPD & FFD calls for service
- Data on crime reduction when individuals were housed in hotels during COVID

Concern
about
transparency
and team
members

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Community Together*

- Suggested the following individuals being added to the team
 - Behavioral Health Providers
 - Those who are aware of what's happening on the streets
 - Social Service Providers
 - City Housing Staff
- Create a steering committee or task force

Other models
mentioned
for
consideration

- Tucson, AZ
- Sobering Center in Austin, TX
- Friendship House helped many Navajo Nation People

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Community Together*

Service Information Shared

- Flagstaff Shelter Service stated they provide the potential services being discussed
- NACA received funding for a drop in center
- Flagstaff Shelter Service has purchased a hotel to expand services
- Invitation to City by numerous Social Service Providers to participate in a facilitated meeting to discuss needs

*Building a Safer & Healthier
Community Together*

Council Discussion



**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, City Clerk
Date: 09/30/2021
Meeting Date: 10/05/2021



TITLE

Future Agenda Item Request (F.A.I.R.) A Citizens' Petition requesting "a meeting with City and County representatives to obtain a comprehensive report of what mitigation has been done on the Museum Fire burn scar and watershed and what the outcomes have been, and what the short, mid, and long term plans for funding are."

STAFF RECOMMENDED ACTION:

Council direction.

EXECUTIVE SUMMARY:

In accordance with Art. II, Sect. 17 of the Flagstaff City Charter, any citizen may present a written petition to the City Manager, signed by a minimum of 25 citizens from the City...who shall present it to the Council at its next regular meeting. The attached petition was filed with the City Clerk's Office on September 15, 2021, requesting "a meeting with City and County representatives to obtain a comprehensive report of what mitigation has been done on the Museum Fire burn scar and watershed and what the outcomes have been, and what the short, mid, and long term plans for funding are."

INFORMATION:

Chapter 1-12 of the Flagstaff City Code formalizes the information to be required, and the attached petition conforms to those requirements. As outlined in this chapter, the petition is to be submitted to the Council under Future Agenda Item Request (F.A.I.R.) to determine if there is Council interest in placing the item on a future agenda for consideration.

Attachments: [Petition #2021-09](#)

12


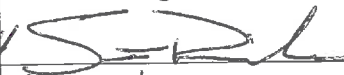
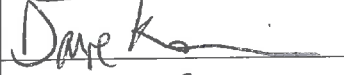



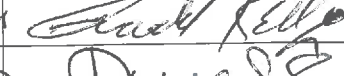


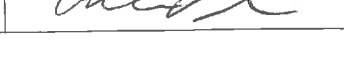
PETITION TO FLAGSTAFF CITY COUNCIL
 Pursuant to Flagstaff City Charter Article II Section 17
 and Flagstaff City Code Title I Chapter 12

RECEIVED
 SEP 15 2021
 BY: 

Pursuant to the Flagstaff City Charter and the City Code, any citizen (resident) of the City may present a written petition to the City Manager, signed by a minimum of 25 citizens from the City of Flagstaff, which shall be presented to the City Council.

Title of Issue: Museum Flood Mitigation Plan - Answers to Attached
 Action Requested: Request for a meeting with city and county representatives
to obtain a comprehensive report of what mitigation has been
done on the museum fire burn scar and watershed and what
the outcomes have been. what are the short, mid and long term plans, for
 Printed Name of Submitter: Tara Roark, Museum Flood Coalition
 of Submitter: flooding?
 Contact Information: (630) 247-5204 / roarkte@yahoo.com
 (Phone Number and/or e-mail address)

PETITION SIGNATURES

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
9/8/2021	KIMBERLY KATLER	3513 N. GRANDVIEW DR	
09-08-21	SCOTT RICHARDS	3505 N. GRANDVIEW DR	
9/8/21	Dave Kahler	3513 N. Grandview Dr	
9/8/21	Brett Campbell	777 N. Canyon Terrace	
9/8/21	Anissa Doten	1131 E Linda Vista Dr	
9/8/21	Tess McDaniel	3509 N. Grandview Dr	
9-8-21	RANDAL KELLEY	3119 N. Grandview Dr	
9-8-21	Paige Snodgrass	3123 N. Grandview Dr	
9-8-21	Louise Lovelace	3110 N. Grandview Dr	
9-8-21	Cullen Kirk	3128 N. Grandview Dr.	

RECEIVED BY CITY OF FLAGSTAFF		
DATE RECEIVED	BY	COUNCIL MEETING DATE
9/15/21	Stacy Saltyburg	10/5/2021

Request for a meeting with city and county representatives to obtain a comprehensive report of what mitigation has been done on the museum fire burn scar and watershed and what the outcomes have been. What are the short-, mid- and long-term mitigation plans for flooding?

1. Including answers to the following questions:
2. What state and federal entities, including but not limited to FEMA, DEMA, NRCS, National Guard and Army Corp of Engineers, have the city and county reached out to for assistance and what has been the response/outcome? We are requesting names and emails of the individuals the city and county have contacted to date.
3. Where will the funding for these projects come from and what has been done to secure these funds?
4. What assistance will be provided for sandbag and Jersey barrier removal after monsoon seasons?
5. What agreement has been reached with the owners of the Safeway building complex regarding residents parking there? What alternative plan does the city have for parking when the snow removal ordinance starts November 1st?
6. What consideration have the city and county given to accessibility to homes for elderly and disabled in alignment with American Disabilities Act related to current sandbags and Jersey barrier placements?
7. How much of the storm water fees collected from property taxes are being used to mitigate flooding?
8. How much of the storm water fees go to maintaining the inadequate storm water drainage system south of Cedar? What amount from the ARPA funding is going to go towards this storm water system?
9. The Museum Fire occurred on federal land and was caused by Smith Forestry Services under the direction of FWPP, a project funded by a bond measure and run by the city, county, and state. Why isn't the city, county and state sponsoring FEMA Flood Mitigation Assistance (FMA) and Building Resilient Infrastructure (BRIC) grants?
10. We are requesting the contract between FWPP and the Forest Service. Specifically what was in the contract related to timely removal of timber decks and slash piles? If this won't be provided a FOIA will be filed for the contract.
11. Residents of Grandview were originally told in 2019 and as late as June 2021 that the street would only "see overflow from the channel". In August of 2021 residents were told that the city and county had always planned to use Grandview and Linda Vista as their floodway. How is the city and county planning to support the neighborhoods effected by catastrophic flooding that was consciously and intentionally channeled?

12. The mitigation the city and county did at the top of Paradise changed the flow, height and velocity of water coming down to Grandview, instead of letting it spread out across multiple properties and streets. Knowing the culvert was a choke point why was the decision made to divert the flow?
13. Who decides which streets will become the main floodways and how is that decision reached?
14. What is the city and county doing to address the public safety issue of possible loss of life due to drowning from raging floodwaters?
15. What were the original amounts given to the city and county through state and federal aid to mitigate post fire flooding and what was that money used for? In addition, how much money does the city currently have set aside from the two state declarations?
16. What are the damage amounts the city and county reported to the state for each emergency declaration? How much of that money has been spent on paying the city and county back for debris cleanup and other streets/public works mitigation? How much is being set aside to actually put in use for the residents impacted?
17. What is the trash services plan going forward? Residents should not have to buy new cans when they float away. Residents should not be forced to place garbage in the street due to not being able to lift cans over sandbag walls. Residence of Grandview pay for city and county waste disposal services that have been canceled or interrupted without notice during the monsoon season.
18. What financial assistance can be given to those residents wanting to build masonry walls to protect their properties from future flooding? Why are residents being told that they cannot submit for a permit to build a wall without speaking first with a city engineer when there are no engineers or city officials speaking with us?
19. What assistance can be offered to the business owners who work out of their homes in the impacted neighborhoods since they don't qualify for the grant money generated by The Back to Work Small Business Hiring and Retention Grant?
20. Why isn't the call center following up with each call placed by homeowners? There is documentation of homeowners in different impacted areas still waiting for a call or email back for assistance and guidance.
21. Who at the city and county is responsible for completing full damage assessments of properties that have interior damage? Why aren't these reports being given to homeowners after the assessments are done? Is there a list of homeowners with damage and dollar amounts attached? How does the community get a copy of this report?
22. Why is the city and county advising residents to "sue" their neighbors? Why are the city and county telling residents specific property owners to blame for changing downstream flows? The city

and county either did the sandbag mitigation or guided the homeowners on what to do.

23. How do homeowners that signed the sandbag and barrier mitigation forms opt out of the contracts?
24. How are the engineering plans responding to the ever changing topography of the Spruce Ave Wash after the August 17th storm? Will the models be updated with the new topography and the erosion of the original alluvial fan mitigation work?
25. Has JE Fuller done an updated modeling of flow through the current topography? Our understanding is that this modeling can be done and were told it would take about six hours to do. If so, we would like a copy of that report.
26. How long are the sandbags intended to remain in place? We want a direct answer to their permanent or semi-permanent status. We want to know is the city and county going to remove them and help replace as the bags degrade. To date Grandview has had to rebuild the walls multiple times due to breach, destruction, and inadequate protection.
27. How do the sandbags on private property protecting public property factor into the City's flood control mitigation plan – is this plan written into their planning?
28. Has there been a formal adverse impact analysis done for any of the sandbagging or placing of concrete barriers and if so who completed it and when was it completed? We would like a copy.
29. We know FMA/BRIC grants are competitive but having watched the webinar on how to obtain them it is felt the city would qualify if a major disaster declaration is made. There is a specific section that talks about undersized culverts. Knowing the city has to have a 25% match why isn't the city setting aside 1.5 million in existing money to do so. We know that ARPA funding has a sub section for storm water and infrastructure funding why isn't any of that money being put towards those impacted by flooding? Council has not discussed any assistance for those impacted by flooding. It is foolhardy to think the infrastructure bill is going to be the saving grace. It is a mistake to be counting on this knowing it will delay funding, projects or put projects at risk of not being funded if the proposed legislation does not pass.
30. 27. What funding is the county receiving from ARPA and are they planning on using any to match grant funding or for use in the flood district?
31. Knowing the feasibility studies are going to take up to two years what is the cities plan in the short term in regards to mitigation for the private property they decided to use as public use for their flood channel? IE assisting with building walls on public property for the homeowners with 4-6 foot flows.

32. What is that status update on the legislation being written to cut through the red tape in regards to NRCS being able to mitigate immediately on Federal Lands? Is it true that Paul Babbitt is trying to streamline this process?
33. Does the city or county have contacts the public can reach out to for staffers under President Biden to write to in regards to the update on receiving the letter from our Arizona Representatives related to declaring a Major Disaster Declaration? Has the city and county asked Governor Ducey for Joint Preliminary Damage Assessment? If not why not?
34. The community impacted would like a sediment analysis from different areas. Breathing the dried sediment particulate matter along Grandview and more specifically Sunnyside is causing substantial breathing impacts for the elderly, those post COVID infection and those with lung disease. People would like to know what it is they are inhaling and possible health impacts.
35. Mold mitigation for renters and owners. The \$1000 dollars from United Way although appreciated doesn't even scratch the surface of what is needed. People need to do drywall replacement and have their homes inspected. Many don't even know where to begin. Meanwhile mold is growing in their walls. The long-term impacts to children and adults breathing mold is a health emergency. FEMA has funding specifically for this issue. What is the city doing to assist with this issue other than telling homeowners to civil suit each other? Those that have received quotes have been told it will be as high as 50K to do mold mitigation.
36. Per Ms. Leid a consultant hired by the county/city a permanent barrier at the top of Paradise road is being discussed. Those downstream want to know how this diversion is going to impact hitting the culvert that can only handle 325 cfs? With this choke point in place the widening may temporarily slow flows but once it hits the culvert those flows will hit the corner of Grandview with the same intensity and velocity correct?
37. Ms. Leid also discussed bypass and additional conveyance at the Linda Vista crossing. "The conveyance would be an underground storm drain or pipe that goes east or west of Grandview Drive". Knowing there is a gas line and water line under the culvert how will this be possible without moving the utilities? If you look at the culvert now the storm drain or pipes that are currently present cannot handle the sediment/debris and clog quickly what makes the city/county think adding another one will make the situation different. Besides adding another alluvial fan upstream to reduce sediment how will the pipe or storm drain stay clear?

