

## AGREEMENT OF INTENT FOR A DIRECT SALE

U. S. DEPARTMENT OF AGRICULTURE  
Forest Service

5570  
Coconino National Forest  
City of Flagstaff

### AGREEMENT OF INTENT PROPOSED SALE OF FOREST SERVICE PROPERTY Flagstaff, Arizona

Proposed Direct Sale of Land

Authority: Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005, P.L. 109-110, 11-22-05, 119 Stat. 2351

We, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona, 86001, hereinafter called the non-Federal party, and the Forest Service, U.S. Department of Agriculture, acting through their authorized representatives, intend to enter into a sale agreement to convey to the non-Federal party the Federal property described in **Exhibit A**, attached hereto and made a part hereof, and under the terms and conditions described herein and in the Implementation Schedule, attached hereto and made a part hereof as **Exhibit B**.

The basis of this Agreement of Intent is the offer for purchase of the Federal property made by the non-Federal party by letter dated December 5, 2018. The parties have made minor adjustments to the property boundaries to address fencing and other improvements adjacent to West Lake Mary Road. **Exhibit A** accurately represents the Federal property that is the subject of this proposed land sale.

#### GENERAL PROVISIONS:

1. It is understood that the basis for value (sale price) of the Federal property shall be an appraisal which has been approved by the Forest Service.
2. This Agreement of Intent authorizes the non-Federal party and its contractors to enter on Federal lands for such purposes as preparing environmental site assessments, historic and cultural investigations, land line surveys, wildlife and wetland inventories and other evaluations deemed necessary by the Forest Service to fully evaluate the affects and merits of the sale proposal.
3. It is understood that upon approval of the sale price, terms and conditions by the appropriate Forest Service official, the parties will enter into a Purchase and Sale Agreement that shall be binding to both parties. It is understood that prior to the Purchase

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and Sale Agreement, or issuance of a deed by the United States, if no Purchase and Sale Agreement is executed, no action taken shall create or establish any contractual or other obligations against the non-Federal party or the United States. Either the non-Federal party or the Forest Service may withdraw from the sale at any time prior to execution of the Purchase and Sale Agreement, or conveyance from the United States.

4. Title will be conveyed by quitclaim deed issued by the USDA Forest Service, unless some other form of deed is approved by the USDA, Office of the General Counsel.
5. The United States does not furnish title insurance for the property it conveys. If title insurance is desired by the non-Federal party, it must be procured at its own expense.
6. A timeline for processing this proposal and the agreement on responsibility for costs on specified items is provided for in **Exhibit B**, the Implementation Schedule.
7. The Forest Service is responsible for compliance with Section 120(h) or the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA). Prior to entering into the Purchase and Sale Agreement, the Forest Service will conduct an environmental investigation of the Federal property, as appropriate to comply with Section 120(h) of CERCLA, concerning any release or threatened release of hazardous substances or petroleum products on the Federal property. In the event that the Forest Service determines that any hazardous substance was stored for one year or more, known to have been released, or disposed of on the Federal property, the Purchase and Sale Agreement shall include a notice of the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.
8. When required pursuant to Section 120(h)(3)(A) of CERCLA, the Forest Service must also include a covenant in the conveyance document providing that the United States shall conduct, after the conveyance, any response or corrective action found to be necessary to protect human health and the environment from associated releases or threatened releases attributable to the time the United States owned and operated the property and a clause granting the United States access to the property to conduct the response or corrective action on the property.
9. No member of Congress, or Resident Commissioner, shall be admitted to any share or part of this proposal or to any benefit that may arise therefrom unless it is made with a corporation for its general benefit (18 U.S.C. 431, 433).
10. The undersigned is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof, and is 21 years old or over.
11. Notification Statement: Public Availability of Property-Related Information. Any party who has signed below acknowledges receipt of this notification: All documents pertaining to Federal lands necessary for the evaluation, processing and consummation of a land adjustment transaction, including but not limited to appraisals, timber cruises, specialist

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reports, geology/mineral reports, title and other property information, are subject to public availability at the discretion of the Federal party. This includes information which may be contained in a system of records exempted from the requirements of the Privacy Act (5 U.S.C. 552a), and information which may qualify for exemption from disclosure under the Freedom of Information Act (5 U.S.C. 552b).

However, it is the general intent of all parties that land adjustment transaction documents will be considered "pre-decisional working papers" not subject to premature availability prior to the point which concludes evaluation of the proposal through the agency's established, required processes and policy.

SPECIFIC PROVISIONS:

1. The non-Federal party will remove any portions of the fencing around the water treatment plant that are not located on Federal property described in **Exhibit A**.

This Agreement of Intent may be amended by mutual agreement of the parties.

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Greg Clifton  
City Manager  
City of Flagstaff

RECOMMENDED BY: \_\_\_\_\_ Date \_\_\_\_\_  
Laura Jo West  
Forest Supervisor, Coconino National Forest  
U.S. Department of Agriculture  
Forest Service

APPROVED BY: \_\_\_\_\_ Date \_\_\_\_\_  
Tracy Parker  
Director of Lands and Minerals  
Southwestern Region

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0105. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

## **EXHIBIT A**

Federal property that the Forest Service is proposing to sell:

National Forest: **Coconino**  
District: **Flagstaff**

### **A. LEGAL DESCRIPTION AND STATUS**

#### **Parcel 1**

##### **Gila and Salt River Meridian**

##### **Township 20 North, Range 7 East, Coconino County, Arizona**

That portion of Section 4 described as follows:

All that portion of Lot 1 in said section 4, lying north and east of the centerline of Lake Mary Road, a City of Flagstaff highway, 200 feet wide, as described in Highway Easement Deed recorded 01/15/1991, in Docket 1377 at Pages 820-832, Official Records of Coconino County.

Containing 24.81 acres, more or less.

#### **Parcel 2**

##### **Gila and Salt River Meridian**

##### **Township 21 North, Range 7 East, Coconino County, Arizona**

That portion of Section 33 described as follows:

The SW1/4 of the SE1/4 of the SE1/4, and that portion of the S1/2 of the SW1/4 of the SE1/4 of said section 33, lying north and east of the northeasterly right-of-way line of Lake Mary Road, a City of Flagstaff highway, 200 feet wide, as described in Highway Easement Deed recorded 01/15/1991, in Docket 1377 at Pages 820-832, Official Records of Coconino County.

Containing 24.42 acres

### **B. RIGHTS PREVIOUSLY CONVEYED OR PERMITTED BY THE UNITED STATES**

#### **1. Recorded outstanding rights**

SUBJECT TO an existing Highway (Forest Highway 3), and rights incident thereto, 200 feet wide, 100 feet each side of centerline, as it crosses portions of sec. 4, T. 20 N., R. 7 E., and a portion of sec. 33, T. 21 N., R. 7 E., outstanding to the United States of America, acting by and through the Department of Transportation, Federal Highway Administration, and the City of Flagstaff, State of Arizona, acting by and through its Public Works Department, as set forth in that certain Highway Easement Deed dated June 20, 1990, recorded January 15, 1991, Coconino County, Docket 1377, pages 820-832.

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SUBJECT TO an existing Avigation Easement, and rights incident thereto, as it affects portions of sec. 33, T. 21 N., R. 7 E., outstanding to the City of Flagstaff, County of Coconino, State of Arizona, as set forth in that certain Avigation Easement dated September 21, 1956, recorded April 4, 1957, Coconino County, Book 103, pages 344-350.

(Note: Wording for the Avigation Easement is as follows: A perpetual Avigation easement and right-of-way for the unobstructed and unrestricted flight of aircraft in, through and across the airspace ... at any altitude or height above the surface of the land.)

**2. Unrecorded outstanding rights**

None known.

**3. Existing roads including public roads and other rights not covered by recorded documents or permits**

No existing roads not covered by recorded documents or permits known.

**4. Forest Development Roads**

Forest Development Road 9013P (aka East YX Ranch Road) crosses the northern portion of the Federal property. A right-of-way will be reserved for this road.

**5. Special-use permits**

Rights of Prior Use and/or Special-use permits to be recognized by third-party easement(s) in favor of the outstanding rights holder(s):

Existing Powerline Rights-of-Way, 20 feet wide, 10 feet each side of centerline, over and across portions of sec. 4, T. 20 N., R. 7 E.; portions of sec. 33, T. 21 N., R. 7 E.; authorized under Master Special Use Permit No. PEA401918 dated April 14, 1997, to Arizona Public Service Company. Although the permit expired December 31, 2016, the line has been in continual use since that time and a new permit is being prepared. An easement will be executed by the non-Federal party in favor of the outstanding rights holder.

Existing Communication lines right-of-way and associated improvements, 20 feet wide, 10 feet each side of centerline, over and across portions of sec. 4, T. 20 N., R. 7 E.; and portions of sec. 33, T. 21 N., R. 7 E. authorized under Master Special Use Permit No. COC0362 dated February 5, 2004, to Qwest Corporation. The permit expires on December 31, 2023. An easement will be executed by the non-Federal party in favor of the outstanding rights holder.

Existing Natural Gas Line Right-of-Way, 20 feet wide, 10 feet each side of centerline, over and across portions of sec. 4, T 20 N., R. 7 E., and across portions of sec. 33, T. 21 N., R. 7 E., authorized under Master Special Use Permit No. COC0361 dated August 23, 2004, to Unisource Energy Corporation (previously Citizen's Utilities). Although the permit expired December 31, 2014, the natural gas line has been in continual use since

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that time and a new permit is being prepared. An easement will be executed by the non-Federal party in favor of the outstanding rights holder.

Rights of Prior Use and/or Special-use permits that will merge with title when the non-Federal party acquires the Federal property currently encumbered by the facilities noted above. The Master Special Use Permit to the non-Federal party will be amended upon completion of the sale to reflect these changes:

Existing facilities including power lines of less than 33 KV; water transmission lines; well site including access road to the well site; sewer transmission lines; and wastewater treatment plant including sedimentation tanks, water storage tank, and associated facilities authorized under Master Special Use Permit No. COC0365 dated October 19, 2004, to the City of Flagstaff.

30" water transmission line, 20 feet wide, 10 feet each side of centerline, over and across a portions of section 4, T. 20 N., R. 7 E., and a portion of sec. 33, T. 21 N., R. 7 E. (waterline is located within the FH3 roadbed and along the east side of FH3);

27" water transmission lines, 20 feet wide, 10 feet each side of centerline, over and across a portion of section 4, T. 20 N., R. 7 E., and a portion of sec. 33, T. 21 N., R. 7 E.;

12" water transmission line, 20 feet wide, 10 feet each side of centerline, over and across a portion of section 4, T. 20 N., R. 7 E., and a portion of sec. 33, T. 21 N., R. 7 E., (waterline is located within the FH3 roadbed and along the east side of FH3);

8" water transmission line, 20 feet wide, 10 feet each side of centerline, over and across portions of section 4, T. 20 N., R. 7 E. (Waterline from HES 619 to Water Treatment Plant);

8" water transmission line, 20 feet wide, 10 feet each side of centerline, over and across portions of section 4, T. 20 N., R. 7 E. (Waterline in Lake Mary Road and J. Diamond Road);

Various Sewer Transmission Lines, 20 feet wide, 10 feet each side of centerline, over and across portions of section 4, T. 20 N., R. 7 E. and section 33 T. 21 N., R. 7 E. (Airport Sewer Line, Lake Mary Road Sewer Line, and J W Powell Blvd Sewer Line);

Water treatment plant, sedimentation tanks and associated facilities (site comprises 22 acres) located within a portion of sec. 4, T. 20 N., R. 7 E., and a portion of sec. 33, T. 21 N., R. 7 E.

## **6. Grazing permits**

No grazing permit is associated with the Federal property. This property was formerly within the Lake Mary Allotment, which is a forage reserve. The Federal property can still be used as a grassbank at this time, although use does not appear likely in the foreseeable future.

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**7. Unpatented mining claims**

There are no unpatented mining claims on the Federal property.

**8. Oil and gas leases**

Any and all mineral rights, oil, gas, geothermal, et al., that are appurtenant to the Federal property will be conveyed with the surface.

**9. Minerals**

Any and all mineral rights, oil, gas, geothermal, et al., that are appurtenant to the Federal property will be conveyed with the surface.

**10. Water rights**

Any and all associated appurtenant water rights will be conveyed with the surface. There are no known water rights associated with the Federal property.

**11. Withdrawals**

The legislation authorizing this sale clears away any existing withdrawals that could impede this sale. The legislation also imposes a withdrawal that protects the Federal property from any other form of entry or appropriation until the sale is completed. Public Law 109-110, November 22, 2005, 119 Stat. 2351 (Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005) under Sec. 106, Miscellaneous Provisions contains the following provisions: (a) Revocation of Orders. Any public orders withdrawing any of the Federal land from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land. (b) Withdrawal of Federal Land. Subject to valid existing rights, the Federal land is withdrawn from all forms of entry and appropriation under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing and geothermal leasing laws, until the date on which the land exchange (or sale) is complete.

**12. Agreements**

The Flagstaff Loop Trail crosses the Federal property being considered for sale. A right-of-way for the trail will be reserved by the Forest Service. There is a Memorandum of Understanding (MOU) associated with the Flagstaff Loop Trail. This MOU is related to the planning, funding, development, and maintenances of non-motorized trail systems associated with local and regional planning efforts in and around Flagstaff, Arizona. The parties to the MOU include the Coconino National Forest, Coconino County, City of Flagstaff, and Flag Velo Incorporated, an Arizona non-profit corporation, doing business as Flagstaff Biking Organization.

**13. Legal Access**

Legal access to the Federal property is available through adjacent National Forest System land. Forest Highway 3 (Lake Mary Road) and East YX Road (Forest Road 9013P) provide developed access to and across the Federal property.

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**14. Other encumbrances**

A portion of the Flagstaff Loop Trail crosses the Federal property. A right-of-way will be reserved for this portion of the Flagstaff Loop Trail, Segment 34 – Skunk Canyon Passage.

**C. RIGHTS TO BE RESERVED BY UNITED STATES**

SUBJECT TO the following reservations by the United States:

- EXCEPTING AND RESERVING TO THE UNITED STATES, a right-of-way thereon for ditches or canals constructed by the authority of the United States according to the provisions of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).
- EXCEPTING AND RESERVING TO THE UNITED STATES, a right-of-way for Forest Development Road 9013P (aka East YX Ranch Road), to be located over and across a portion of sec. 33, T. 21 N., R. 7 E., being 66 feet wide, 33 feet each side of centerline.
- EXCEPTING AND RESERVING TO THE UNITED STATES, a right-of-way for Forest Trail (aka Flagstaff Loop Trail, Segment 34 – Skunk Canyon Passage), to be located over and across a portion of sec. 33, T. 21 N., R. 7 E., being 66 feet wide, 33 feet each side of centerline.

**D. OTHER ENCUMBRANCES**

None known at this time.

**EXHIBIT B**

**ESTIMATED IMPLEMENTATION SCHEDULE**

Case Name: Flagstaff Water Treatment Direct Sale _____				
Forest/District: Coconino NF, Flagstaff RD _____ Case No. _____				
Sale Authority: Direct Sale PL 109-110 Northern AZ Land Exchange Act _____				
Total Acres: 49.23_ Land Status: PD Acres: 49.23__ Acquired Acres: 0.0_____				
Action Item/Step Implementation Strategy (Items 1-8)	Responsible for Preparation	Estimate of Costs*	Due Dates	
			Target	Actual
1. Property identified for disposal	Non-Federal party			12/5/18, 1/6/22
2. Forest Plan Compliance Review	N/A	N/A	N/A	N/A
3. Verify/Certify Federal Land Acreage & Legal Description (FS 5400-41)	FS			Prelim 1/6/22
4. Federal Land Status Report/Title Report (Acquired)	FS		3/1/22	3/23/22
5. Civil Rights Impact Analysis	FS	N/A	N/A	N/A
6. Notice of Proposed Realty Action (Public Scoping ) County & Congressional notification	FS		4/1/22	
7. Federal Land Water Rights Analysis	FS			8/11/21
8. Prepare Sale Implementation Strategy report	N/A	N/A	N/A	N/A
9. Oversight Implementation Strategy, including Appraisal Staff Market Analysis	N/A	N/A	N/A	N/A
10. Request BLM Serialization and Segregation	FS			2/8/06; 12/5/19
11. Request Appraisal	FS		4/1/22	
12. Request Withdrawal Revocations (if any)	FS	N/A	N/A	N/A
13. Prepare Mineral Potential Report (Request BLM Concurrence	FS		3/1/22	
14. Prepare Cultural Report/SHPO Consultation	FS		8/1/22	
15. Prepare TES Report/Consultation	FS		8/1/22	
16. Prepare Wetlands/Floodplains Report	FS		8/1/22	

\*Approximate costs and responsibility for costs is addressed in Exhibit C.

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Action Item/Step	Responsible for Preparation	Estimate of Costs*	Due Dates	
			Target	Actual
17. Conduct Environmental Site Assessment & LPB Risk Assessment. Submit to RO Env. Eng. for approval	FS		3/1/23	
18. Access Analysis	FS		4/1/22	
19. Prepare NEPA Analysis (CE or EA)	FS		10/1/22	
20. NEPA Comment Period (EA)	N/A	N/A	N/A	N/A
21. Respond to NEPA Comments (EA)	N/A	N/A	N/A	N/A
22. Review Appraisal	FS		10/1/22	
23. Prepare Decision Document (DM or DN)	N/A	N/A	N/A	N/A
24. Oversight Review of Decision Document	N/A	N/A	N/A	N/A
25. Issue Decision Document – Publish Notice of Availability of Decision (EA)	N/A	N/A	N/A	N/A
26. Decision Appeal Period (EA)	N/A	N/A	N/A	N/A
27. Establish Account for Deposit of Proceeds	FS Fiscal		4/15/23	
28. Letter Offering Direct Sale	FS		10/15/22	
29. Terminate Special Use Permits (if needed)	FS		5/15/23	
30. Preparation of Purchase and Sale Agreement	FS/OGC		2/1/23	
31. Execution of Purchase and Sale Agreement	FS		4/1/23	
32. Submission of Purchase Price	Non-Fed Party		5/1/23	
33. Deposit of Sale Proceeds to Special Account	FS Fiscal		5/1/23	
34. Preparation of Quitclaim Deed, Req. for Patent, Easement Deeds	RO/OGC		2/1/23	
35. Execute Quitclaim Deed or Patent	FS		5/15/23	
36. Transmit Deed to Purchaser for Recording	FS		5/15/23	

\*Approximate costs and responsibility for costs is addressed in Exhibit C.

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Action Item/Step	Responsible for Preparation	Estimate of Costs*	Due Dates	
			Target	Actual
37. Execute & Record Easements	FS		5/10/23	
38. Remove any FS Personal Property	FS		5/10/23	
39. File Water Right Transfer/Use Docs	N/A	N/A	N/A	N/A
40. Provide Copy of Deed to BLM for Record Notation	FS		6/1/23	
41. Complete FS-5500-1, Sale or Conveyance Digest	FS		6/1/23	
40. Remove/Adjust FS Boundary Signs	FS		7/1/23	
41. Post to Status LADS and LARS	FS		7/1/23	
42. Close Case	FS		8/1/23	

\*Approximate costs and responsibility for costs is addressed in Exhibit C.

**EXHIBIT C**

**APPROXIMATE PRO-RATED COSTS**

<u>TASK</u>	<u>Forest Service*</u>	<u>Non-Federal Party**</u>
Notification of adjacent landowners	\$	\$ 200
Mineral Report	\$ 4,000	\$
T&E Reports	\$	\$ 2,191
Cultural Surveys	\$	\$ 865
Consultation w/ SHPO & Tribes	\$	\$ 1,900
Environmental Site Assessment	\$	\$11,000
Floodplain and Wetlands Report	\$	\$ 1,245
Legislative Conveyance Memo	\$	\$ 2,555
Publication	\$ 500	\$
Land Status Report/case processing	\$ 1,000	\$ 5,386
Prepare Appraisal Contract/Review Appraisal	\$ 3,000	\$
Appraisal (contract)	\$	\$12,000
Survey and corner monumentation	\$	\$ ***
GIS mapping & Land Description Verification	\$ 2,000	\$ 1,500
Title Preparation	\$ 1,500	\$ 500
Title Review	\$ 1,500	\$
Misc. Costs / Overhead	\$ 3,000	\$ 5,564
<b>TOTAL</b>	<b>\$ 16,500</b>	<b>\$ 44,906</b>

\*in-house expenditures.

\*\*Collection agreement w/ FS. Any unused funds will be returned to the non-Federal party

\*\*\*Estimate for direct contract with Northland Exploration Surveys by non-Federal party, not included in the collection agreement.

The approximate share of processing costs for this land sale is:

Non-Federal party's share: 73%

Forest Service share: 27%