CITY COUNCIL REGULAR MEETING AGENDA
A M E N D E D

REGULAR COUNCIL MEETING
TUESDAY
AUGUST 23, 2022

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

All City Council Meetings are live streamed on the city's website (https://www.flagstaff.az.gov/1461/Streaming-City-Council-Meetings)

PUBLIC COMMENT

Verbal public comments may be given through a virtual public comment platform or in-person

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.

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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 through other technological means.

MAYOR DEASY
VICE MAYOR SWEET
COUNCILMEMBER ASLAN
COUNCILMEMBER HOUSE
COUNCILMEMBER MCCARTHY
COUNCILMEMBER SALAS
COUNCILMEMBER SHIMONI

3. PLEDGE OF ALLEGIANCE, MISSION STATEMENT, AND LAND ACKNOWLEDGEMENT

MISSION STATEMENT

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

LAND ACKNOWLEDGEMENT

The Flagstaff City Council humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.

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. August Work Anniversaries

STAFF RECOMMENDED ACTION:

Recognize employees who are celebrating their work anniversaries in August.

6. COUNCIL LIAISON REPORTS

7. APPOINTMENTS

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

A. Consideration of Appointments: Housing Commission

STAFF RECOMMENDED ACTION:

Make two appointments to Low Income Housing Expert seats to terms expiring in September 2025.
Make one appointment to a Building & Real Estate Professional - Residential Multi-Family/Property Management Representative seat expiring in September 2025.
Make one appointment to a Building & Real Estate Professional - Other seat expiring in September 2025.
Make one appointment to a Building & Real Estate Professional - Builder seat expiring in September 2024.
Make one appointment to a Building & Real Estate Professional - Developer seat expiring in September 2023.

B. **Consideration of Appointments:** Personnel Board.

STAFF RECOMMENDED ACTION:

Make two appointments to terms expiring October 2022.
Make two appointments to terms expiring October 2023.
Make one appointment to a term expiring October 2024.
Make two appointments to terms expiring October 2025.

8. LIQUOR LICENSE PUBLIC HEARINGS

A. **Consideration and Action on Liquor License Application:** Kyle Wayne Palmer, "Mill Golf," 1790 E. Route 66, Series 07 (Beer and Wine Bar), 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 no recommendation; or
3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

B. **Consideration and Action on Liquor License Application:** Sasiwimon Chanthaqong Tirakul, "Big Bowl Noodles," 7 N San Francisco Street, 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 no recommendation; or
3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

C. **Consideration and Action on Liquor License Application:** Cecily Maniaci, "Plantasia Eatery," 126 W. Cottage Ave., 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 no recommendation;
(3) Forward the application to the State with a recommendation for denial based on information from staff, the testimony received at the public hearing and/or other factors.

D. **Consideration and Action on Liquor License Application:** Chad Earl Doyle, "Swift Travel Center," 3099 W. Shamrell Boulevard, Series 10 (beer and wine store), New License.

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 no recommendation;
(3) Forward the application to the State with a recommendation for denial based on information from staff, the testimony received at the public hearing and/or other factors.

9. CONSENT ITEMS

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

A. **Consideration and Approval of Contract:** Approve the Annual Master Agreement for Software Maintenance with Hexagon for software utilized by the City Police Department in the amount of $239,598.24 (plus any applicable sales tax).

STAFF RECOMMENDED ACTION:

1. Approve the Annual Master Agreement for Software Maintenance with Hexagon in the amount of $239,598.24 (plus any applicable sale tax); and
2. Authorize the City Manager to execute all necessary documents.

B. **Consideration and Approval of Contract:** Approve First Amendment to the Cooperative Purchase Contract for Executive Recruiting with The Keller Group, LLC, in an amount not to exceed $60,000.

STAFF RECOMMENDED ACTION:

1. Approve the First Amendment to the Cooperative Purchase Contract for Executive Recruiting for the Human Resources and Risk Management Director position for an estimated not to exceed amount $60,000; and
2. Authorize the City Manager to execute the necessary documents.

C. **Consideration and Approval of Contract:** Approve the Cooperative Purchase Contract with PFVT Motors, LLC dba Peoria Ford for the purchase of one (1) fully electric 2022 Ford F-150 Lightning pickup in the amount of $53,541.53.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with PFVT Motors, LLC dba Peoria Ford for the purchase of one (1) fully electric Ford F-150 Lightning pickup in the amount of $53,541.53; and
2. Authorize the City Manager to execute the necessary documents

D. **Consideration and Approval of Ratification:** Letter of support for funding for additional rain gauges

STAFF RECOMMENDED ACTION:

Retroactively approve the letter of support

E. **Consideration and Approval of Contract:** Approval of a professional services contract with Gary R. Anglemyer & Associates, LLC in the amount of $68,500.00 for appraisal services for the Rio de Flag Flood Control Project (railroad properties).

STAFF RECOMMENDED ACTION:

1. Approve the professional services contract with Gary R. Anglemyer & Associates, LLC in the amount of $68,500.00 for appraisal services for the Rio de Flag Flood Control Project (railroad properties); and
2. Authorize the Mayor to execute the necessary documents.

F. **Consideration and Approval of Cooperative Contract:** Approve a Cooperative Purchase Contract with Baker & Taylor, LLC for the purchase of library materials and services in the amount not to exceed $300,000 through the City of Mesa Cooperative Contract #2017201.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract for the purchase of library materials and services from Baker & Taylor, LLC in the amount not to exceed $300,000 through City of Mesa Cooperative Contract #2017201; and
2. Authorize the City Manager to execute the necessary documents.

G. **Consideration and Approval of Contract:** Approve the First Amendment to the Master Services and Purchasing Agreement with AXON Enterprise, Inc. (f/k/a Taser International, Inc.) in the amount of $136,143 for the AXON Virtual Reality (VR) Training Platform.

STAFF RECOMMENDED ACTION:

1. Approve the First Amendment to the Master Services and Purchasing Agreement with AXON Enterprise, Inc. (f/k/a Taser International, Inc.) in the amount of $136,143.00 for the AXON VR Training Platform; and
2. Authorize the City Manager to execute the necessary documents.

10. **ROUTINE ITEMS**

A. **Consideration and Approval of Ratifying the Grant Agreement:** Ratifying the Grant Agreement between the City of Flagstaff and the U.S. Department of Agriculture, Natural Resources Conservation Service, Emergency Watershed Protection Program for the Schultz Creek Sediment and Flood Detention Basins Project.

STAFF RECOMMENDED ACTION:

Ratify the Grant Agreement with the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) in the amount of $2,408,180.75.

B. **Consideration and Approval of Ratifying the Contract:** Ratify the Emergency Construction Contract between the City of Flagstaff and Fann Contracting, Inc. in the amount of $2,274,445 for the Schultz Creek Sediment and Flood Detention Basins Project.

STAFF RECOMMENDED ACTION:

1. Ratify the Emergency Construction Contract with Fann Contracting, Inc. in the amount of $2,024,445, and an Owner's Contingency of $250,000, for a total amount of $2,274.445 which amount includes all federal, state, and local taxes, as applicable.
2. Approve the Administrative Change Order Authority to the City Manager in the amount of $177,444.50 (10% of the Contract Amount, less the Contract Allowance); and
3. Authorize the City Manager to execute the necessary documents.

C. **Consideration and Approval of Preliminary Plat PZ-15-00015-24 Sirius at Timber Sky - Block 4:** Capstone Homes requests Preliminary Plat approval for Sirius at Timber Sky - Block 4 located at 3191 McAllister Ranch Road, a 63 lot single-family subdivision on 21.82 acres in the Single-Family Residential (R1) Zone.

STAFF RECOMMENDED ACTION:

In accordance with the findings presented in this report, approve the Preliminary Plat with the following conditions:

1. The applicant shall provide the purpose of each tract on the final plat.
2. The final plat shall show the patent as shown on Sheet 2 of the preliminary plat and on the Timber Sky Final Block Plat.
3. All lots shown with less than a 60-foot lot width at the 25-foot front setback shall have building envelopes with front setbacks set at the point where the lot width is 60 feet. A note shall be added to the lot typical identifying which lots have alternative front setbacks.

11. REGULAR AGENDA

A. **Consideration and Adoption of Resolution No. 2022-39:** A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement between Coconino County and the City of Flagstaff to establish an advisory Library Board for the Coconino County Free Library District.

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2022-39 by title only
2) City Clerk reads Resolution No. 2022-39 by title only (if approved above)
3) Adopt Resolution No. 2022-39

B. **Consideration and Adoption of Resolution No. 2022-38:** A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement between Coconino County and the City of Flagstaff for the Application for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2022 Local Solicitation/ CFDA #16.738

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2022-38 by title only
2) City Clerk reads Resolution No. 2022-38 by title only (if approved above)
3) Adopt Resolution No. 2022-38

C. ~~**Consideration and Adoption of Resolution No. 2022-40:** A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement (IGA) Between Coconino Community College and Flagstaff Police Department for High Country Training Academy. This is a Arizona POST accredited basic training academy for police certification operated out of Coconino Community College.~~

STAFF RECOMMENDED ACTION:

~~1) Read Resolution No. 2022-40 by title only~~
~~2) City Clerk reads Resolution No. 2022-40 by title only (if approved above)~~
~~3) Adopt Resolution No. 2022-40~~

D. **Consideration and Adoption of Resolution No. 2022-41:** A resolution of the Flagstaff City Council adopting a Notice of Intention to increase stormwater rates or rate components, fees or service charges and establishing a date for a public hearing on the proposed changes for November 15, 2022

STAFF RECOMMENDED ACTION:

1. Read Resolution No. 2022-41 by title only
2. City Clerk reads Resolution No. 2022-41 by title only (if approved above)
3. Adopt Resolution No.2022-41

E. **Consideration and Adoption of Ordinance No. 2022-18:** An ordinance of the City Council of the City of Flagstaff amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code, Division 10-40.60: Specific to Uses, Section 10-40.60.220 Marijuana Establishments Subsection C. Hours of Operation for Marijuana Dispensaries, providing for penalties, repeal of conflicting ordinances, severability, and establishing an effective date.

STAFF RECOMMENDED ACTION:

At the August 23, 2022, Council Meeting:
1) Read Ordinance No. 2022-18 by title only for the first time
2) City Clerk reads Ordinance No. 2022-18 by title only (if approved above)
At the September 6, 2022, Council Meeting:
3) Read Ordinance No. 2022-18 by title only for the final time
4) City Clerk reads Ordinance No. 2022-18 by title only (if approved above)
5) Adopt Ordinance No. 2022-18

F. **Consideration and Adoption of Resolution No. 2022-37 and Ordinance No. 2022-19:** A Resolution of the Flagstaff City Council declaring as a public record that certain document filed with the City Clerk and entitled "PZ-22-00089 Marijuana Operations and Retail Establishments" and an Ordinance of the Flagstaff City Council amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code, to allow recreational marijuana retail sales by establishments that may not be dual licensees and clarify definitions and terms in relation to Marijuana Operations.

STAFF RECOMMENDED ACTION:

At the August 23, 2022, Council Meeting:
1) Read Resolution No. 2022-37 by title only for the first time
2) City Clerk reads Resolution No. 2022-37 by title only (if approved above)
3) Read Ordinance No. 2022-19 by title only for the first time
4) City Clear reads Ordinance No. 2022-19 by title only for the first time
At the September 6, 2022, Council Meeting:
5) Adopt Resolution No. 2022-37
6) Read Ordinance No. 2022-19 by title only for the final time

7) City Clerk reads Ordinance No. 2022-19 by title only (if approved above)
8) Adopt Ordinance No. 2022-19

G. **Consideration and Adoption of Ordinance No. 2022-22:** An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title 6, Police Regulations, Chapter 6-10, Regulation of Recreational Marijuana; providing for repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.

STAFF RECOMMENDED ACTION:

At the August 23, 2022 Council Meeting:
1) Read Ordinance No. 2022-22 by title only for the first time
2) City Clerk reads Ordinance No. 2022-22 by title only (if approved above)
At the September 6, 2022 Council Meeting:
3) Read Ordinance No. 2022-22 by title only for the final time
4) City Clerk reads Ordinance No. 2022-22 by title only (if approved above)
5) Adopt Ordinance No. 2022-22

12. DISCUSSION ITEMS

A. Bond Public Outreach Plan

STAFF RECOMMENDED ACTION:

City staff will inform City Council what is included in the bond public outreach plan.

13. 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 titled "Nuclear Weapons: Existential Threat"

STAFF RECOMMENDED ACTION:

Council direction.

B. **Future Agenda Item Request (F.A.I.R.):** A Citizens' Petition titled "Protect Abortion Access"

STAFF RECOMMENDED ACTION:

Council direction.

14. PUBLIC PARTICIPATION

15. INFORMATIONAL ITEMS TO/FROM MAYOR, COUNCIL, AND STAFF, AND FUTURE AGENDA ITEM REQUESTS

16. 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 _____, 2022.

_____
Stacy Saltzburg, MMC, City Clerk

5. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Saltzburg, City Clerk
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE

August Work Anniversaries

STAFF RECOMMENDED ACTION:

Recognize employees who are celebrating their work anniversaries in August.

EXECUTIVE SUMMARY:

INFORMATION:

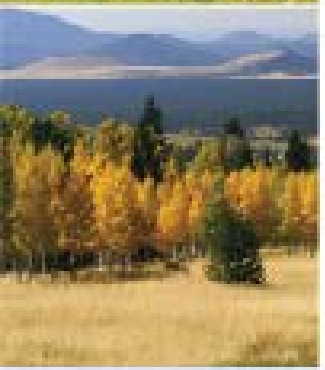
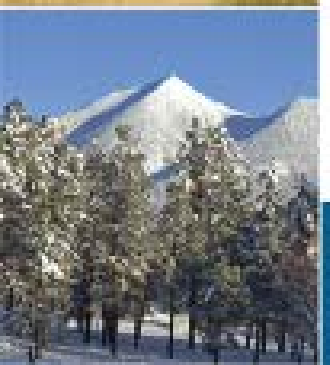
Attachments: Presentation

August Employee Work Anniversaries!

Five Year Anniversaries

Barbara Sheeley
Temporary Library Page

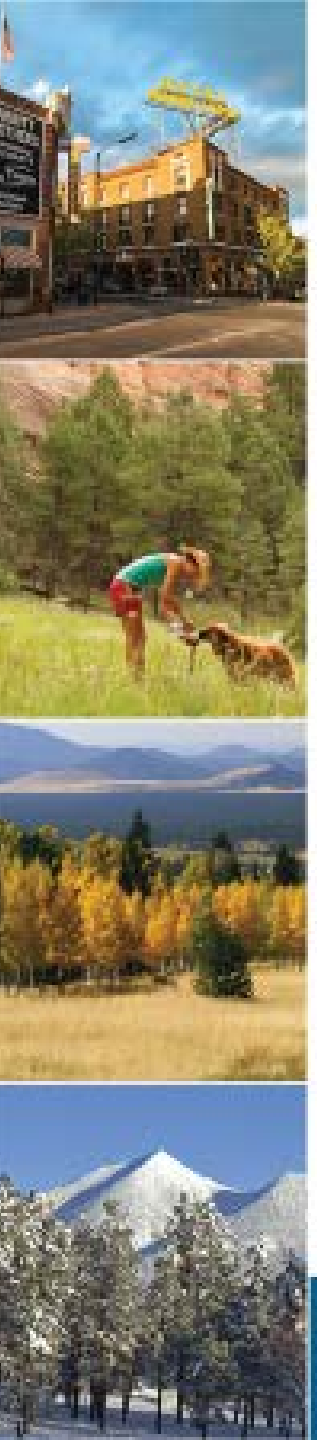
Steve Teich
Specialized Temp

Five Year Anniversaries

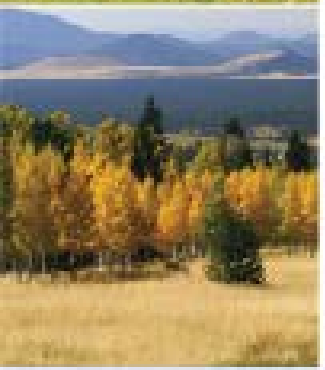
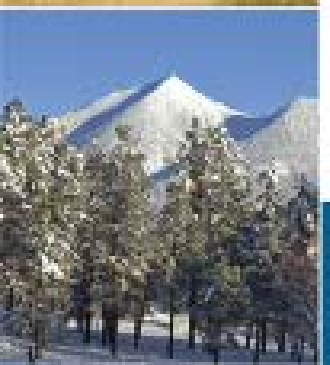
Juan Rubalcava
Water Services Operator IV

Charles Chaiken
Police Officer



Five Year Anniversaries

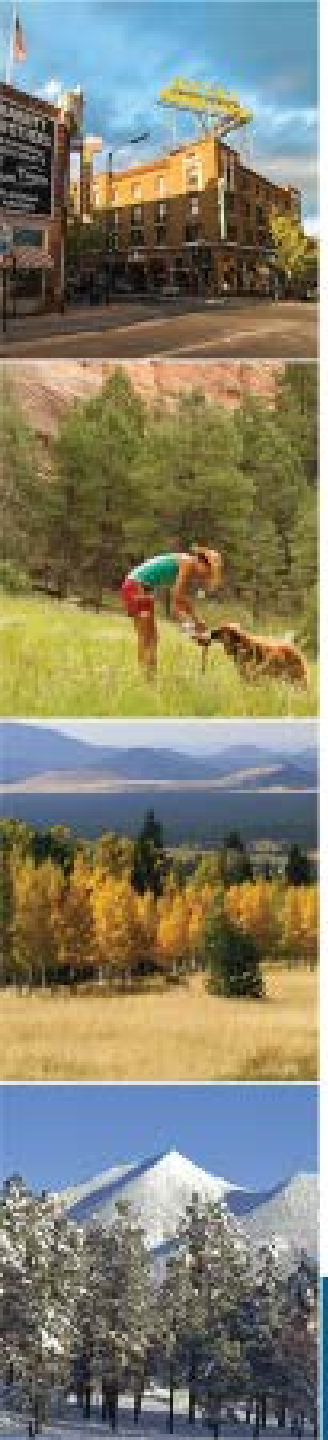
Lauren Clementino
Library Supervisor

Ten Year Anniversaries

Tanner Callan
Fire Engineer Paramedic

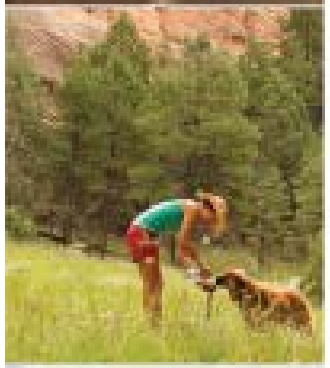
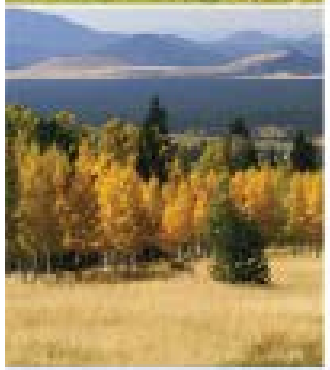
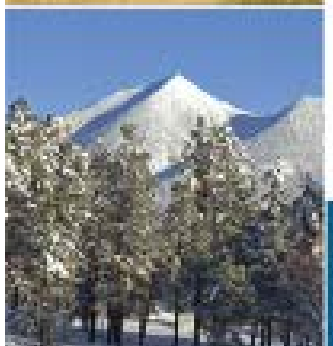
Carol Harvey
Executive Assistant II



Ten Year Anniversaries

Paul Sanders

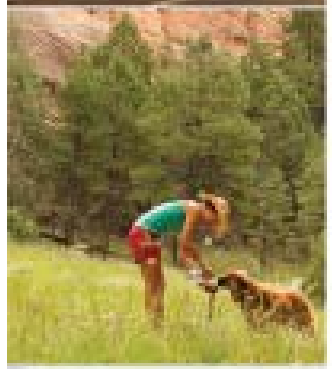
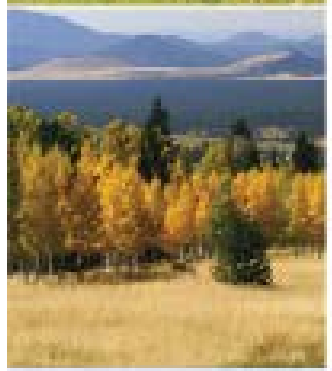
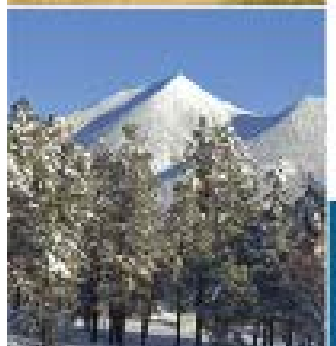
Fire Captain Paramedic

Fifteen Year Anniversaries

Jeff Castro
Streets Operations Tech III

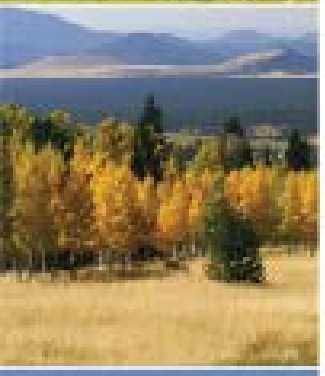
Stacy Saltzburg
City Clerk

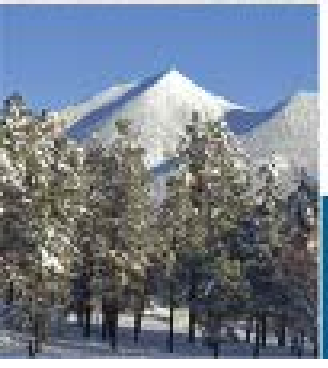




Twenty Year Anniversaries

Robert Romero
Fire Captain Paramedic

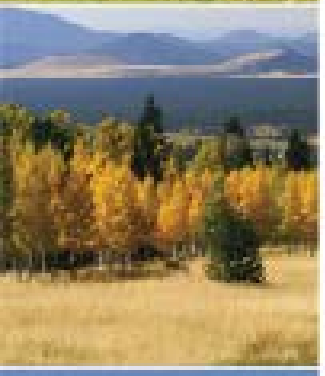
Jess Maier
Firefighter

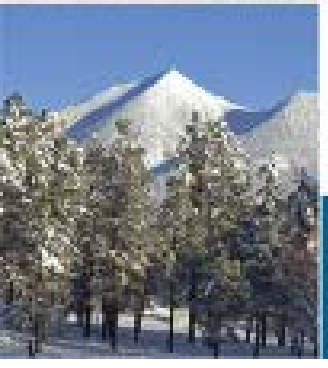




25 years plus!!!

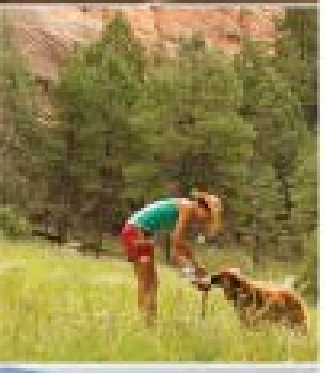
Sergeant Todd Bishop began his career with the Flagstaff Police Department August 24, 1997. Todd began his career as a patrol officer and was later promoted to the rank of corporal acting as a supervisor on patrol shifts. Todd was later transferred to the detective division where he spent several years serving as one of our top investigators. Todd investigated numerous high-profile cases including several homicides. Todd served on our departments SWAT team for several years and responded to several critical incidents. In 2013, Todd was promoted to the rank of Sergeant where he served as a patrol supervisor and currently assigned as the Criminal Investigations Sergeant. During Todd's career he has been awarded the VFW Officer of the year, Meritorious Service Award, Purple Heart, and the highest award at our department, the Medal of Valor.





25 years plus!!!

Sergeant Odis Brockman began his career with the Flagstaff Police department August 24, 1997. Odis began his career as a patrol officer before being selected as a D.A.R.E. Officer in 2000. After serving as a D.A.R.E Officer, Odis was promoted to the rank of Patrol Corporal. Odis was transferred to the Criminal Investigation division and served as a Detective for approximately two years investigating a wide variety of felony cases. Odis was promoted to the rank of Sergeant where he served as a patrol supervisor and in his current position as the Flagstaff Police Department Public Information Officer. Odis has been a member of the departments Bomb Team for approximately 20 years and is currently the bomb squad commander. He served 28 years in the National Guard and was deployed multiple times over seas to Afghanistan and Iraq prior to his retirement.

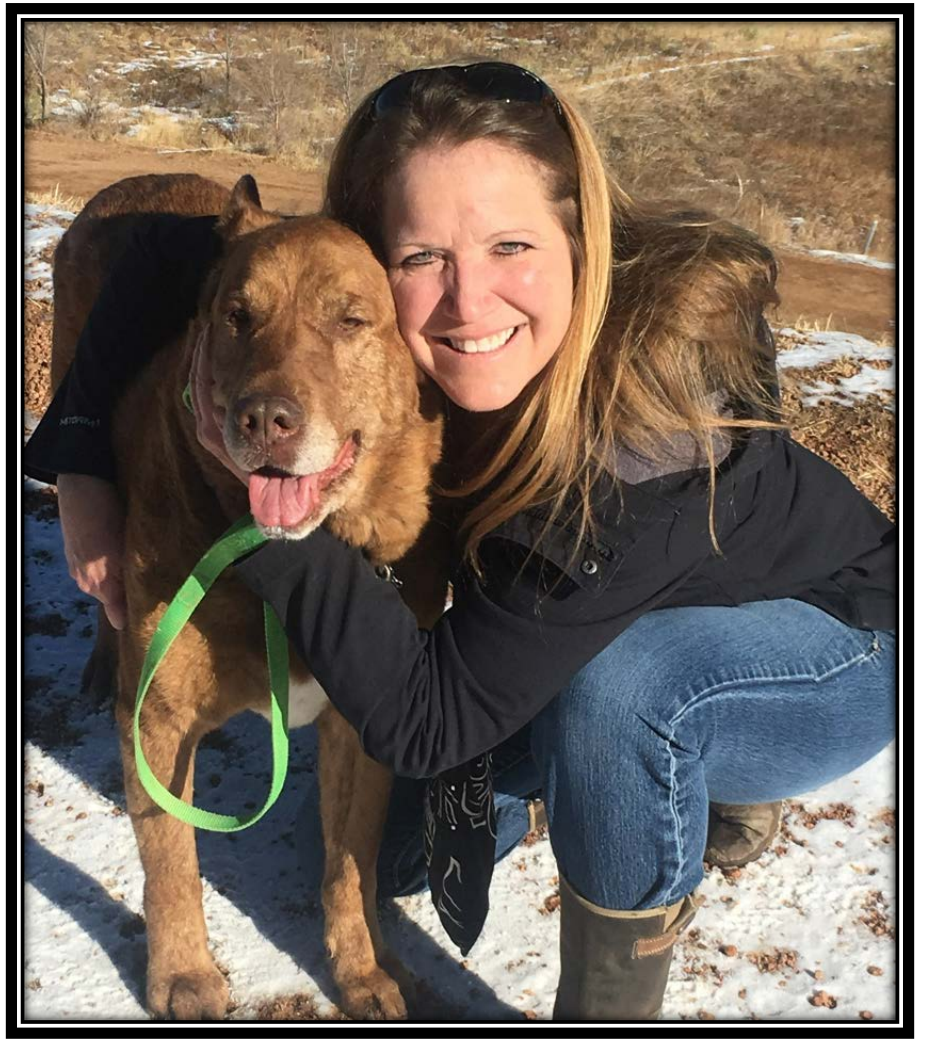


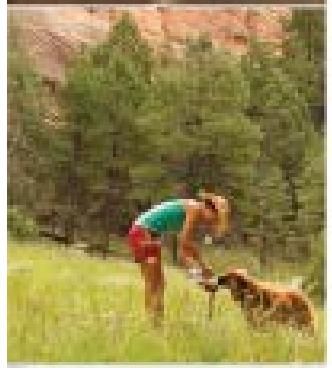
25 Years Plus!!!

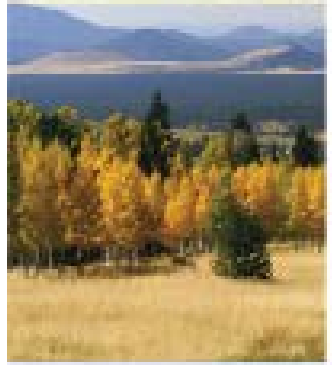
Debby came to work for the City of Flagstaff in August of 1997 as a Customer Service Representative. Three years later, she accepted a job as Administrative Specialist in Water Services.

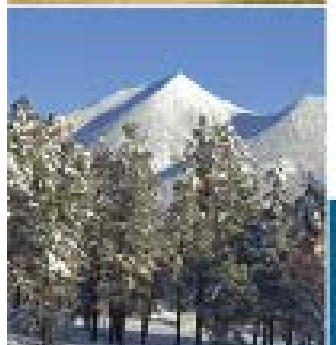
She's remained in Water Services because "I love the people I've worked for and with". She enjoys the level of commitment and dedication Water Services staff gives to our community every day. She feels fortunate to have lived in Flagstaff 38 years, marking a 25-year milestone with the city, establishing work relationships and many amazing friendships. In her time off, she spends time with my family as much as possible. She enjoys hiking and exploring in the woods with her husband and their 2 dogs.

This is Debby with her dog "Maddie" – so cute!









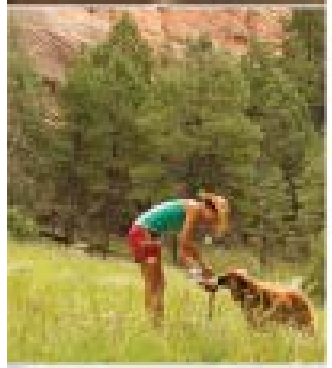
25 Years Plus!!!

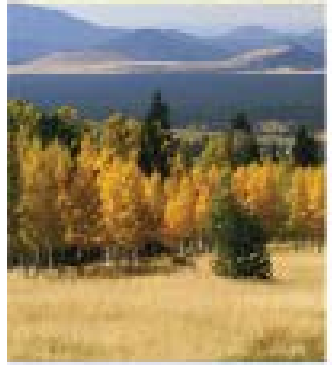
Diana Wood began her employment with the Flagstaff Municipal Court in August of 1997. Through the years she promoted into her current position as Finance Specialist. Diana does an outstanding job ensuring that the Court is in compliance with all financial regulations.

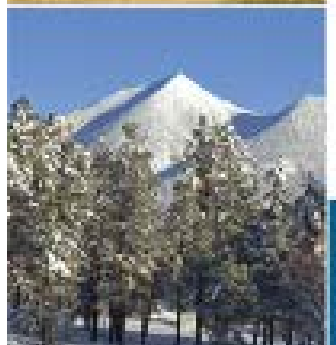
Diana is a highly valued and respected member of our Court Services Department. The Court is appreciative of Diana's hard work and thanks her for her dedication.

When Diana is not working, she enjoys traveling and spending time with her family, including her grandchildren.

Diana, congratulations on your 25-year work anniversary!







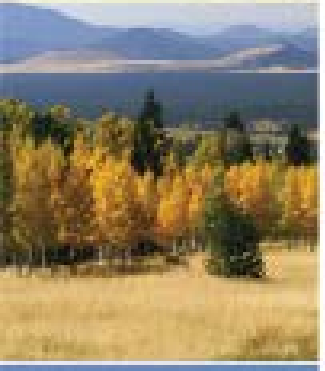
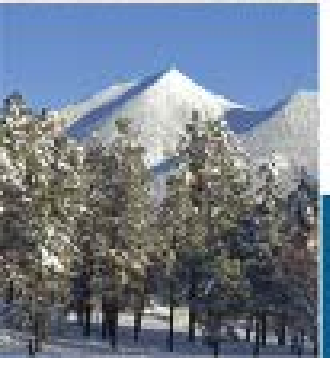
25 Years Plus!!!

Local folklore indicates that it was the summer of ’85 that roped Paul McGuire into the Flagstaff community. After a few seasonal “gigs” in speaking the “just a quickie” dialect that those of us in Parks have learned over the years with decoding Paul, this celebrated tenure began on August 19, 1991, with the City of Flagstaff in the Parks department.

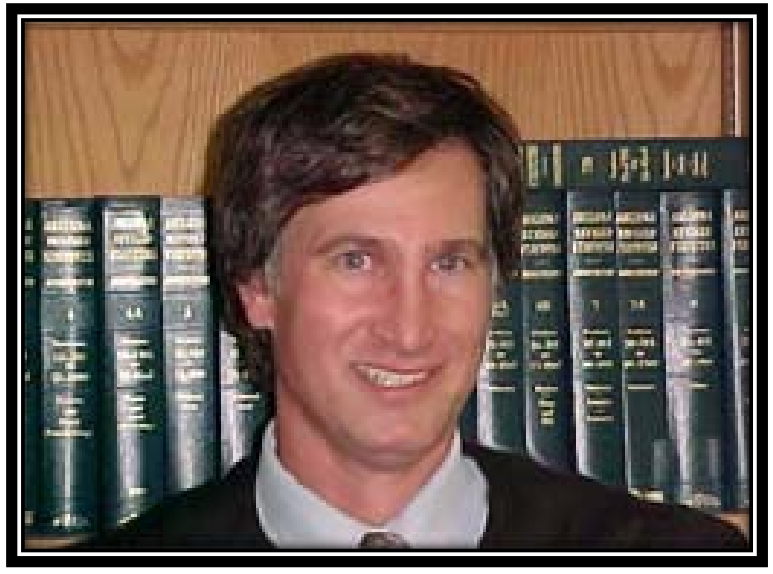
Paul has been present for many changes in the community and the city holistically over the past 31-years while always bringing his amazing attitude, knowledge, and desire to help anyone. Paul consistently helps to keep us all in Parks not only feeling like a work family but also ensuring that we remain passionate on our own delights.

One of Paul’s most admirable passions is his family with the adventures of his children, Talitha and Flint, who both share an exploratory spirit of the outdoors with Paul and his spouse, Florence. Another passion that many of the community may recognize are the two-wheels that keep Paul pedaling around town as well as the “panda life”, indicating appreciation, playfulness, abundance, gentle strength, nurture, and lastly enjoying life.

We are all lucky to have the opportunity to work side by side gigs with Paul!

25 years plus!!!



Thomas L Chotena, Presiding Magistrate of the Flagstaff Municipal Court, is celebrating 32 years working for the City of Flagstaff this August. After beginning his legal career as a lawyer in Phoenix, including serving as a law clerk to two Superior Court Trial Judges and the Vice Chief Justice of the Arizona Supreme Court, Tom started working as an Assistant City Attorney for Flagstaff in August 1990. Beginning as a prosecutor and also working on various civil law matters, Tom advanced to the position of Chief Prosecutor over a six-year period, before being appointed by the City Council as a Magistrate in March 1996. Judge Chotena has been a Flagstaff Municipal Court Magistrate for 26 years, during which he became the Presiding Magistrate in August of 2002. Tom is grateful for the trust reposed in him to serve as Judge by the City Council, legal community, and the citizens of Flagstaff. He also greatly appreciates the facility from which the court now operates that has been provided by accomplishment and foresight of the city and the community, as well as the dedicated public servants he has been fortunate to serve alongside.

Congratulations Presiding Magistrate Thomas L. Chotena for your 32-year work anniversary!

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration of Appointments: Housing Commission

STAFF RECOMMENDED ACTION:

Make two appointments to Low Income Housing Expert seats to terms expiring in September 2025.
Make one appointment to a Building & Real Estate Professional - Residential Multi-Family/Property Management Representative seat expiring in September 2025.
Make one appointment to a Building & Real Estate Professional - Other seat expiring in September 2025.
Make one appointment to a Building & Real Estate Professional - Builder seat expiring in September 2024.
Make one appointment to a Building & Real Estate Professional - Developer seat expiring in September 2023.

Executive Summary:

The Housing Commission consists of thirteen (13) voting members; twelve (12) members appointed by the City Council and one (1) representative from the Flagstaff Housing Authority Board of Commissioners. The Commission serves as an advisory board to City Council regarding housing policies, needs, and programs in Flagstaff. There are currently six seats available; two seats for Low Income Housing Experts and four seats for Building and Real Estate Professionals with the requirement to have at least one Residential Multi-Family/Property Management Repressive, one Builder, and one Developer. W

The authority for the commission requires that the members shall be appointed into one of three professional categories: Building and Real Estate Professionals (6 members requiring at least one builder, one developer, one realtor, one lender, and one residential multi-family/property management representative); Low Income Housing Experts (3 members); and Community Representatives (3 members).

There are two (2) Low Income Housing Expert applications, one (1) Building and Real Estate Professional - Builder application, one (1) Building and Real Estate Professional - Developer application, four (4) Building and Real Estate Professional - Residential Multi-Family/Property Management Representative applications, and one (1) Building and Real Estate Professional - Other application on file for consideration by the Council. The applications are as follows:

- Caitlin Hailey - Building and Real Estate Professional - Residential Multi-Family/Property Management Representative (new applicant)
- Matthew Handwerk - Building and Real Estate Professional - Residential Multi-Family/Property

Management Representative (new applicant)
- Sheila Harris - Low Income Housing Expert (new applicant)
- Jacquie Kellogg - Building and Real Estate Professional - Residential Multi-Family/Property Management Representative (current commissioner)
- ~~Sydney Pickens - Building and Real Estate Professional - Residential Multi-Family/Property Management Representative (new applicant)~~
- Rebecca Pyrz - Building and Real Estate Professional - Other (new applicant)
- Ross Schafer - Low Income Housing Expert (current commissioner)
- Glenn Silvers - Low Income Housing Expert (new applicant)
- Sean Slawson - Building and Real Estate Professional - Builder (new applicant)
- Hayley Zoroya- Building and Real Estate Professional - Developer (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 Shimoni, Mayor Deasy, Councilmember House, Councilmember Salas, Councilmember Aslan, 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 Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

There is no Council goal that specifically addresses appointments to boards and commissions; however, boards and commissions do 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.

Options and Alternatives:

1) Appoint six Commissioners: By appointing members at this time, the Housing Commission will be at full capacity, allowing the group to meet and provide recommendations to the City Council.
2) Table the action to allow for further discussion or expand the list of candidates.

Community Benefits and Considerations:

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

Community Involvement:

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

Attachments: Housing Commission Authority

ORDINANCE NO. 2019-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 2, *BOARDS AND COMMISSIONS*, BY ADDING A NEW CHAPTER 2-25, CREATING A HOUSING COMMISSION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the Council has an Affordable Housing goal to "Support development and increase the inventory of public and private affordable housing for renters and home-owners"; and

WHEREAS, the Regional Plan includes goal NH.3. "Make available a variety of housing types at different price points, to provide housing opportunity for all economic sectors"; and

WHEREAS, affordable/workforce housing is integral to the community regional quality of life and sustainability; and

WHEREAS, the creation of the Housing Commission will assure that an open, inclusive, and transparent process is utilized in the discussion, prioritization, and presentation of recommendations that address the community's housing needs.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

Flagstaff City Code, Title 2, *Boards and Commissions*, is hereby amended by adding a new chapter to read as follows:

CHAPTER 2-25
FLAGSTAFF HOUSING COMMISSION

2-25-001-0001 CREATION OF COMMITTEE

A Housing Commission is hereby created.

2-25-001-0002 MEMBERS AND OFFICERS

The Housing Commission shall have thirteen (13) voting members; twelve (12) members appointed by the City Council and one (1) representative from the Flagstaff Housing Authority Board of Commissioners. All members shall reside within the Flagstaff City limits.

A. Members shall be appointed to fit into one of the professional categories listed below, however, the members identified as required must be appointed. Any member may satisfy

more than one (1) of the below qualifications and any "professional" category may be filled by a person who is retired from that profession.

1. Building and Real Estate Professionals (6 members)
    a. Builders (required)
    b. Developers (required)
    c. Architects
    d. Land Use Experts
    e. Realtors (required)
    f. Lenders (required)
    g. Residential Multi-Family/Property Management Representative (required)
    h. Other Building or Real Estate Professional

2. Low Income Housing Experts (4 members)
    a. Housing Nonprofits
    b. Low Income Representatives
    c. Flagstaff Housing Authority Board of Commissioners member (required)
    d. Other Low Income Housing Expert

3. Community Representatives (3 members)
    a. General Public
    b. Private Business Representatives
    c. Workforce Representatives
    d. Neighborhood Associations
    e. HOA Representatives

B. Appointed members shall have an interest in housing and be committed to represent not only their specific areas of expertise, but also the community at large.

2-25-001-0003 TERMS AND OFFICERS

A. Appointments to the Housing Commission from the Housing Authority Board of Commissioners shall be for no longer than the remaining term of the appointing Commission's designee. Terms of all other appointees shall be for three years except for the first appointments creating staggered terms as follows: The City Council shall appoint four members for three year (3) terms, four members for two (2) year terms, and four members for one (1) year terms. After the initial appointment all terms thereafter will be three (3) year terms.

B. The Commission shall, during its first meeting, elect a chairperson and a vice-chairperson 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.

2-25-001-0004 ELIGIBILITY

Any resident of the City of Flagstaff shall be eligible for appointment by the City Council to the

Committee, in accordance with the membership requirements outlined above, and shall serve at the pleasure of the City Council and without compensation.

2-25-001-0005 PURPOSE AND DUTIES

A. The Housing Commission serves as an advisory board to City Council, makes recommendations with respect to housing policies, needs, and programs in Flagstaff, and furnishes the Council with information through the Housing Director.

B. The Housing Commission shall:

1. Examine funding sources available for housing in Flagstaff, make recommendations to City Council on potential funding sources, including bond measures, and provide oversight of any funds approved by the electorate for housing purposes.
2. Make recommendations on the creation and implementation of housing and housing policies and programs for the benefit of Flagstaff and its citizens.
3. Make recommendations regarding the prioritization of the community's housing needs.
4. Make recommendations regarding how affordable market rate housing can be responsibly stimulated through changes in the City Code as well as other potential solutions.
5. Examine and make recommendations regarding increasing the affordability of housing in Flagstaff.
6. Explore alternative models of housing and make recommendations to Council.
7. Advise and assist the City Council on ways to educate the community on housing, including the role housing plays as infrastructure in Flagstaff.
8. Upon request, serve as a resource on implementation of housing policy and programs.

C. To further assist the Commission in carrying out its duties, the Commission may request the assistance of technical experts and/or employees and agents of the City and other entities.

2-25-001-0006 MEETINGS; ATTENDANCE

A. The Commission shall meet no less than quarterly from the first month following the initial appointment of Commission members.

B. The Housing Commission shall not conduct any business at a meeting unless a quorum is present. A quorum shall consist of a simple majority of the voting membership of the Commission, excluding current vacancies.

C. Official business shall be conducted pursuant to the Board and Commission Members' Rules and Operations Manual adopted by Resolution No. 2016-33 of the City Council, as may be amended from time to time, and in accordance with meeting procedures, if any, adopted by the Commission insofar as they are not in conflict with the Board and Commission Members' Rules and Operations Manual. In the event of any such conflict, the provisions of the Board and Commission Members' Rules and Operations Manual shall prevail.

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 code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. 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 2nd day of July, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

7. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration of Appointments: Personnel Board.

STAFF RECOMMENDED ACTION:

Make two appointments to terms expiring October 2022.
Make two appointments to terms expiring October 2023.
Make one appointment to a term expiring October 2024.
Make two appointments to terms expiring October 2025.

Executive Summary:

The Personnel Board consists of seven citizen members and conducts hearings on an as-needed basis to ensure due process for regular, classified employees who are dismissed, demoted, or suspended without pay. The Board forwards all recommendations to the City Manager who has final authority in all personnel matters. There are currently seven seats available. It is important to fill vacancies on the Board quickly so as to allow the Board to meet as needed.

There are eight applications on file for consideration by the Council.

- Anita Burns (new applicant)
- Cynthia Chilcoat (new applicant)
- Patricia Crofford (new applicant)
- Mark Culbertson (new applicant)
- Allison Eckert (new applicant)
- Wil Hernandez (new applicant)
- Corey Ringenberg (current commissioner)
- Cathy Speirs (current commissioner)

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

COUNCIL APPOINTMENT ASSIGNMENT: Councilmember Aslan, Vice Mayor Sweet, Councilmember House, Councilmember McCarthy, Councilmember Shimoni, Councilmember Salas, and Mayor Deasy

Financial Impact:

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

Policy Impact:

None.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

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

Has There Been Previous Council Decision on This:

None.

Options and Alternatives:

1) Appoint seven Commissioners: By appointing seven members at this time, the Personnel Board will be at full membership, allowing the group to meet and provide recommendations to the City Manager.

2) Postpone the action to allow for further discussion or expand the list of candidates.

Community Benefits and Considerations:

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

Community Involvement:

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

Attachments: Personnel Board Authority

D. Temporary employees may be dismissed at any time, without cause, without notice, and without a statement of reasons or access to the Personnel Board. However, temporary employees shall have the right to file formal grievances under the Grievance Procedure (Article 1-90).

E. For those temporary employees who are assigned to work twenty (20) or more hours per week for a continuous period of one (1) year or more (i.e., grant personnel or military replacements) are eligible for employee benefits, however, they do not have access to the Personnel Board.

5. EMPLOYMENT STATUS

A. Tenured Employees: Tenured employees are those who are in the Classified Service and who are assigned to work twenty (20) or more hours per week, occupy budgeted positions, and who are not serving a probationary period. (All City positions, with the exception of some grant-funded positions, are budgeted on a fiscal year basis.) Employees in this category are entitled to City–defined employee benefits. Employees in this category have the right to appeal to the Personnel Board as indicated in Article 1-10 and the right to the Grievance Procedure in Article 1-90.

B. Probationary Employees: Probationary employees are those who have been hired as classified employees and have been employed for fewer than six (6) months or fewer than twelve (12) months for Public Safety and/or who are serving a subsequent probationary period in accordance with an extension of an initial probation. Time served while on temporary status does not count toward completion of probationary status time requirements. An employee who is completing his/her probationary period may be dismissed at any time and for any cause and does not have access to the Personnel Board. However, he/she may petition for review by the City Manager within five (5) calendar days from receipt of the notice of dismissal.

Employees who are completing an administrative review due to a promotion shall have access to the Personnel Board as outlined in Article 1-10-040.

C. Exempt Employees: Exempt employees are those who are employed in an administrative, technical, or professional position or any other FLSA category (Unclassified Service). The grievance procedure and right of appeal to the Personnel Board do not apply to this group of employees.

1-10-040. PERSONNEL BOARD

A. The Personnel Board is appointed by the City Council. The Personnel Board is responsible for determining that the City has followed proper procedures in matters concerning the dismissal, demotion, or suspension without pay of ten (10) working days or more.

B. Membership and Responsibility of the Personnel Board

1. The City Council shall appoint seven (7) individuals to serve on the Personnel Board and the terms shall be for five years.

2. Any member who misses two consecutive hearings may cease to be a member of the Board, contingent upon Council action.

3. No member of the Personnel Board shall hold any other paid municipal position.

4. The Human Resources Director shall be an ex officio member of the Board and shall be allowed to take part in all actions of the Board, except for making motions and voting.

5. A majority of the Board shall constitute a quorum for the transaction of business.

6. The Personnel Board shall determine the order of business for the conduct of its meetings.

7. The Board shall meet on call by the Chair or Secretary or a majority of the members of the Board.

8. The Board shall hear appeals submitted by any tenured employee in the classified service in relation to dismissal, demotion, or suspension.

9. The provisions of this Section shall not apply to reductions in pay via reclassifications or other matters described in Article 1-90 (Grievance Procedure).

C. Request for Hearing

1. Any tenured employee in the classified service who has been dismissed, demoted, or suspended, and any classified employee who has been disciplined under Sections 1-40-090, 1-40-110, or 1-40-120, shall be entitled to a written statement of the reasons for such action.

2. The employee shall have up to seven (7) calendar days from receipt of reasons to answer the charges and request a hearing before the Personnel

Board. The response must be in writing and state why the employee believes the discipline is improper and the relief requested and must be submitted to the Human Resources Director.

3. Upon the filing of an appeal, the Human Resources Director shall set a date and place, with concurrence of the Board Chair, for a hearing on the appeal, not less than ten (10) calendar days nor more than thirty (30) calendar days from the date of filing. The Human Resources Director shall notify all interested parties of the date, time, and place of hearing.

D. Form of Hearing

1. The employee shall appear personally, unless physically unable to do so, before the Personnel Board at the time and place of the hearing. Hearings shall be conducted by rules set by the Personnel Board and approved by the City Council. All such rules shall be reviewed by the City Attorney and forwarded to the Council with comments.

2. The employee has the right to be represented by any willing person of his/her choice; however, the City is not liable for any cost or expense incurred for such representation. The employee must notify the Human Resources Director as to whom, if anyone, will be representing him/her at the hearing at least two (2) working days prior to the commencement of the hearing.

3. When a case is brought before the Personnel Board, the Department Head or a City representative, shall prepare and present the City's case to the Personnel Board.

E. Witnesses and Exhibits

1. The Board, shall have the power to examine witnesses under oath when conducting a hearing.

2. The Chair or Acting Chair of the Personnel Board shall have the power to administer oaths to witnesses.

3. A list of witnesses must be submitted to the Human Resources Director prior to the hearing. Once both parties have provided their witness lists, copies will be exchanged between the employee and the supervisor.

4. All documents/exhibits that will be presented as evidence during the hearing will be submitted to the Human Resources Director prior to the hearing. Once these documents/exhibits have been submitted they will be provided to both parties.

F. Closing Decision

1. Upon conclusion of the hearing the findings and recommendations of the Personnel Board shall be forwarded to the City Manager or designee for action. The City Manager or designee shall accept in whole or in part, or deny, said findings and recommendations. The decision of the City Manager or designee shall be final. No additional evidence, testimony, or comments will be considered by the City Manager or designee once the hearing has been officially closed. When the hearing is closed, only the evidence, testimony, and comments made prior to the official closing will be considered.

G. Disposition of Records

1. All records pertaining to the hearing will be maintained by the Human Resources Division and will not become part of the employee's personnel record. All documents provided to the City Manager or designee and/or Board shall be returned to the Human Resources Division at the completion of the process.

1-10-050. POSITION CLASSIFICATION PLAN

A. The Human Resources Director shall be responsible for the classification of all positions on the basis of the kind and level of the duties and responsibilities of the positions, to the end that all positions in the same class shall be sufficiently alike to permit use of a single descriptive title, the same qualification requirements, the same method of evaluation for competence, and the same salary range.

1. A job class may contain one or more positions.

2. Classification of all positions shall require a study and recommendation by the Human Resources Director and approval of the City Manager.

B. The classification plan of all positions shall provide class titles, descriptions of duties and responsibilities, qualifications, and other requirements as deemed necessary by the Human Resources Director. The plan shall be amended as the duties, responsibilities, and employment conditions change. The plan shall be audited as required for changes which may have occurred.

1. The Human Resources Division shall maintain copies of current specifications for all classes of employment.

2. The specifications shall include title; example of work performed; distinguishing features of work; required knowledge, skills, and abilities;

8. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Action on Liquor License Application: Kyle Wayne Palmer, "Mill Golf," 1790 E. Route 66, Series 07 (Beer and Wine Bar), 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 no recommendation; or
3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Executive Summary:

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. A Series 07 beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A Series 07 license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Mill Golf purchased the Series 7 license from Hillside Enterprises, LLC and is an existing business in Flagstaff. If approved, it will be the 27th active series 07 license in Flagstaff.

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

Financial Impact:

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

Policy Impact:

Not applicable.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

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

Has There Been Previous Council Decision on This:

Not applicable.

Key Considerations:

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

The deadline for issuing a recommendation on this application is August 24, 2022.

Community Benefits and Considerations:

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

Community Involvement:

The application was properly posted on July 29, 2022. No written protests have been received to date.

Attachments:

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

City of Flagstaff

OFFICE OF THE CITY CLERK

8/16/2022

Kyle Wayne Palmer
1790 E. Route 66
Flagstaff, AZ 86004

Dear Mr. Palmer,

Your application for a Series 7 Liquor License for Mill Golf located 1790 E. Route 66, Flagstaff, AZ was posted on July 29, 2022. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, August 23, 2022, which is scheduled to begin at 3:00 p.m.**

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

The twenty-day posting period for your liquor license application is set to expire on August 19, 2022, 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 07 Beer and Wine Bar License

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

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

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

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

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

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

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

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

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

FLAGSTAFF POLICE DEPARTMENT
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ADMIN FAX (928)213-3372
TDD 1-800-842-4681

Chief of Police
Dan Musselman

MEMORANDUM

Memo #22-054

TO: **Acting Chief Scott Mansfield**

FROM: **Sgt. Kevin Sapp**

DATE: **August 8, 2022**

RE: **New Application – Series 7 Liquor License Application – Mill Golf**

On August 8, 2022, I initiated an investigation into an application for a series 7 (Beer and Wine Bar) liquor license filed by Kyle Palmer (Controlling Person and Agent) and Stephen Palmer (Controlling Person). This is a new application, and the application number is 197920. It is for Mill Golf located at 1790 E Route 66., Flagstaff, AZ.

I conducted a query through local systems and public access on Kyle and discovered no derogatory records. I also conducted the same query on Stephen and discovered no derogatory records. I conducted a search for current or historical liquor violations on the business and found no violations.

I found evidence that the applicant has taken the mandatory liquor license training. This business is not located within 300 feet of a school or church.

A representative for the business will be present for the council meeting on August 23rd.

Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Michelle McNulty, Planning Director

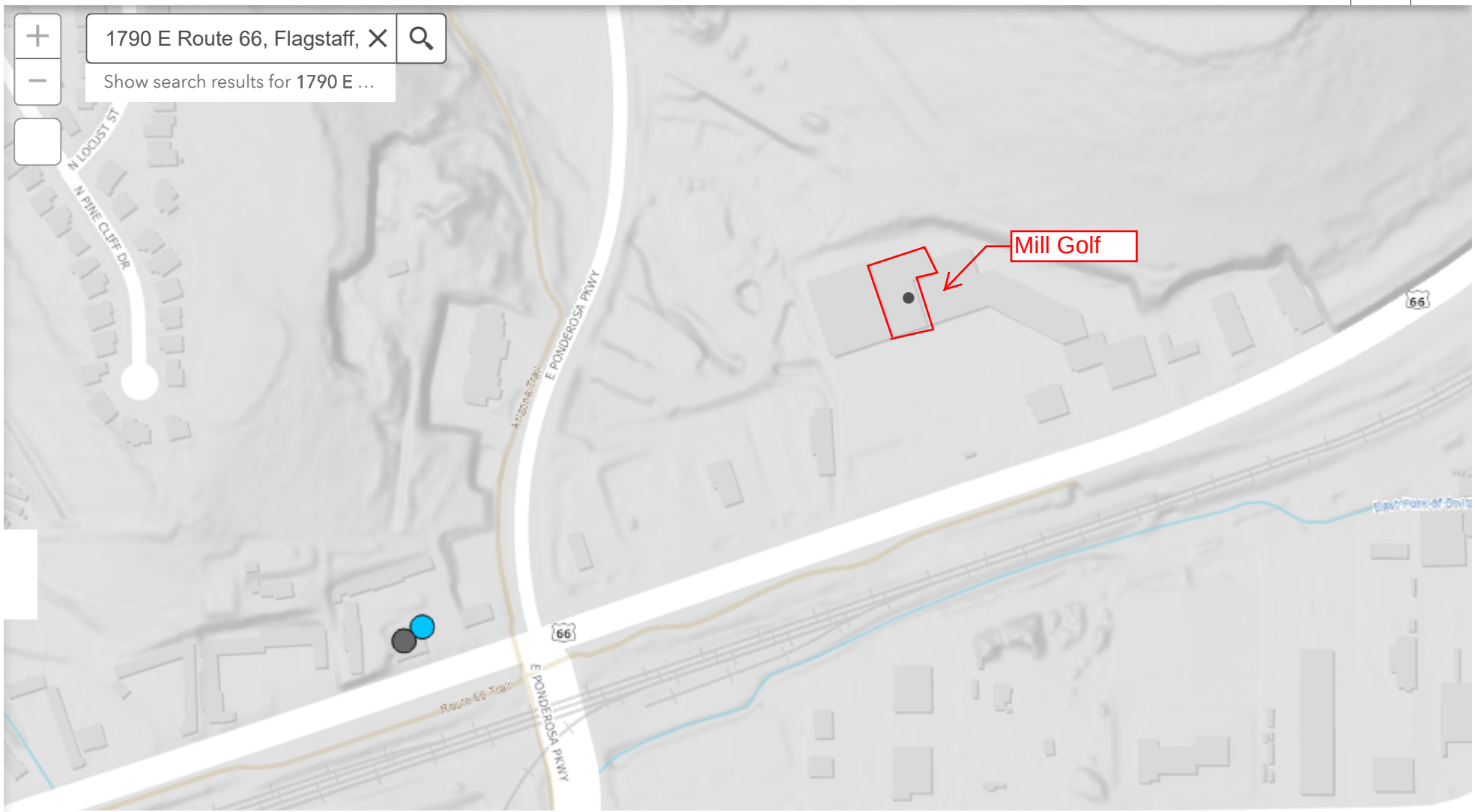
Date: Aug. 11, 2022

Re: Application for Liquor License #197920
1790 E. Rte.66, Flagstaff, Arizona 86001
Assessor's Parcel Number 107-09-001F
Kyle Wayne Palmer on behalf of Mill Golf

This application is a request for a new Series 7 Beer & Wine Bar liquor license by Kyle Wayne Palmer on behalf of Mill Golf. 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



8. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Action on Liquor License Application: Sasiwimon Chanthaqong Tirakul, "Big Bowl Noodles," 7 N San Francisco Street, 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 no recommendation; or
3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Executive Summary:

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting 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. Big Bowl Noodles an existing business in Flagstaff. If approved it will be the 91st 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 Priorities/Objectives, Carbon Neutrality Plan & 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 August 24, 2022.

Community Benefits and Considerations:
This business will contribute to the tax base of the community.

Community Involvement:
The application was properly posted on July 29, 2022. 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

8/16/2022

Sasiwimon Chanthawong Tirakul
7 N. San Francisco Street
Flagstaff, AZ 86001

Dear Ms. Tirakul,

Your application for a Series 12 Liquor License for Big Bowl Noodles located 7 N. San Francisco Street, Flagstaff, AZ was posted on July 29, 2022. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, August 23, 2022, which is scheduled to begin at 3:00 p.m.**

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

The twenty-day posting period for your liquor license application is set to expire on August 19, 2022, 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.

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TDD 1-800-842-4681

Chief of Police
Dan Musselman

MEMORANDUM

Memo #22-053

TO: **Acting Chief Scott Mansfield**

FROM: **Sgt. Kevin Sapp**

DATE: **August 8, 2022**

RE: **New Application – Series 12 Liquor License Application – Big Bowl Noodles**

On August 8, 2022, I initiated an investigation into an application for a series 12 (Restaurant) liquor license filed by Sasiwimon Tirakul (Controlling Person and Agent). This is a new application, and the application number is 201796. It is for Big Bowl Noodles located at 7 N San Francisco St; Flagstaff, AZ.

I conducted a query through local systems and public access on Sasiwimon and discovered no derogatory records. I conducted a search for current or historical liquor violations on the business and found no violations. It should be noted that Sasiwimon is the Licensee for Dara Thai Restaurant located at 14 S San Francisco St. It has received 3 liquor violations (4-244.9 Sell, give, furnish underage person with alcohol, 4-241.a Failure to request ID from underage buyer and R19-1-302 Knowledge of Liquor Laws and Rules) that are documented under the same case number (30-22) and dated 2/09/2022. The case status is closed. Dara Thai restaurant has not been suspended.

I found evidence that the applicant has taken the mandatory liquor license training. This business is not located within 300 feet of a school or church.

A representative for the business will be present for the council meeting on August 23rd.

Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Michelle McNulty, Planning Director

Date: Aug.11, 2022

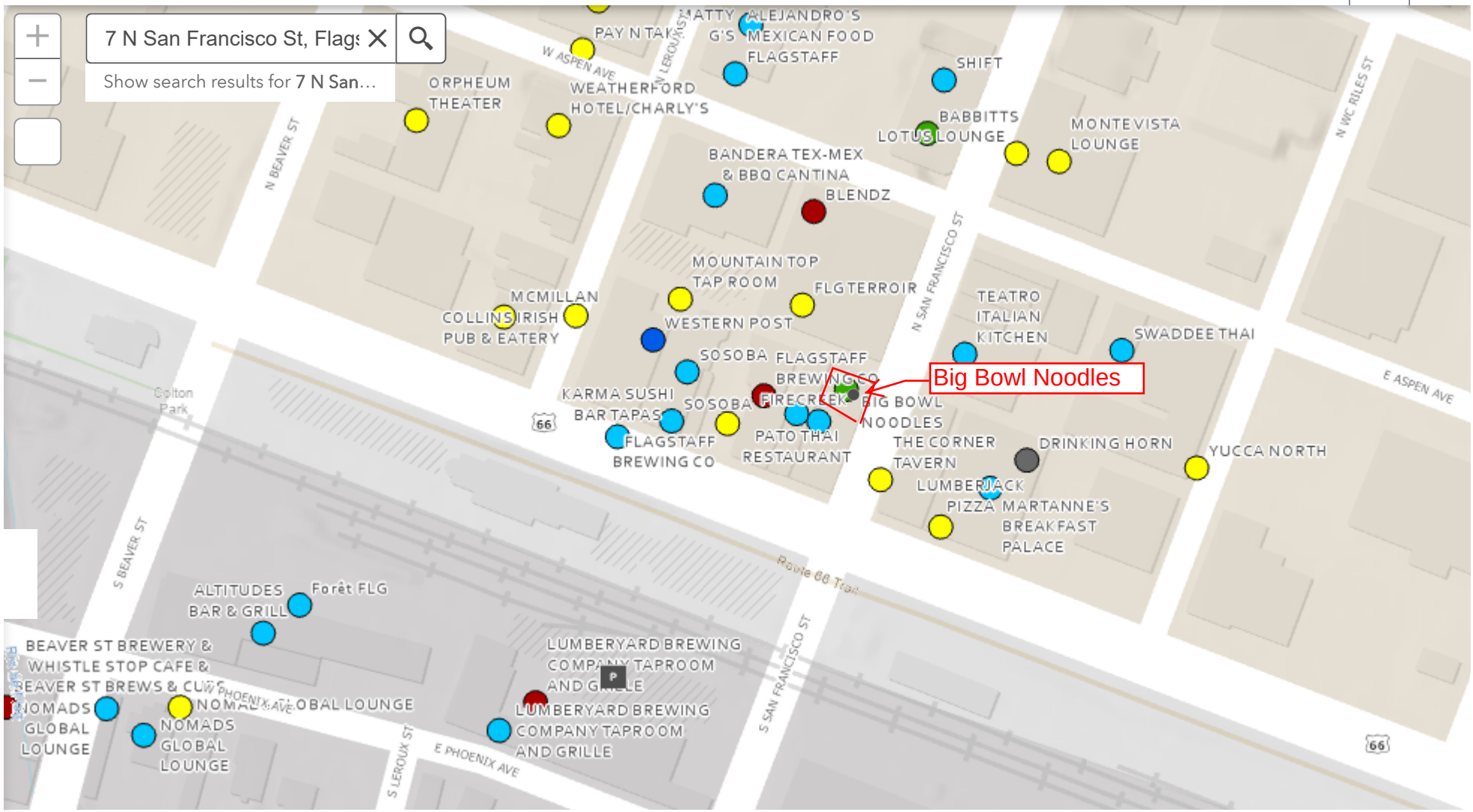
Re: Application for Liquor License #201796
7 N. San Francisco St., Flagstaff, Arizona 86001
Assessor's Parcel Number 100-20-001B
Sasiwimon Tirakul on behalf of Big Bowl Noodles

This application is a request for a new Series 12 Restaurant liquor license by Sasiwimon Tirakul on behalf of Big Bowl Noodles. This business is located within the Central Business 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



8. C.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Action on Liquor License Application: Cecily Maniaci, "Plantasia Eatery," 126 W. Cottage Ave., 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 no recommendation;
(3) Forward the application to the State with a recommendation for denial based on information from staff, 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. Plantasia Eatery 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 Priorities/Objectives, Carbon Neutrality Plan & 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 August 24, 2022.

Community Benefits and Considerations:
This business will contribute to the tax base of the community.

Community Involvement:
The application was properly posted on July 29, 2022. 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

8/16/2022

Cecily Clift-Maniaci
PO Box 340
Flagstaff, AZ 86002

Dear Ms. Maniaci,

Your application for a Series 12 Liquor License for Plantasia Eatery located 126 W. Cottage Avenue, Flagstaff, AZ was posted on July 29, 2022. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, August 23, 2022, which is scheduled to begin at 3:00 p.m.**

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

The twenty-day posting period for your liquor license application is set to expire on August 19, 2022, 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 #22-052

TO: **Acting Chief Scott Mansfield**

FROM: **Sgt. Kevin Sapp**

DATE: **August 8, 2022**

RE: **New Application – Series 12 Liquor License Application – Plantasia Eatery**

On August 8, 2022, I initiated an investigation into an application for a series 12 (Restaurant) liquor license filed by Cecily Clift-Maniaci (Controlling Person and Agent). This is a new application, and the application number is 201589. It is for the Plantasia Eatery located at 126 W Cottage Ave., Flagstaff, AZ.

I conducted a query through local systems and public access on Cecily and discovered no derogatory records. I conducted a search for current or historical liquor violations on the business found no violations.

I found evidence that the applicant has taken the mandatory liquor license training. This business is not located within 300 feet of a school or church.

A representative for the business will be present for the council meeting on August 23rd.

Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Michelle McNulty, Planning Director

Date: Aug.11, 2022

Re: Application for Liquor License #201589
126 W. Cottage Ave., Flagstaff, Arizona 86001
Assessor's Parcel Number 100-40-006
Cecily Olivia Clift Maniaci on behalf of Plantasia Eatery

This application is a request for a new Series 12 Restaurant liquor license by Cecily Olivia Clift Maniaci on behalf of Plantasia Eatery. This business is located within the Community Service 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.

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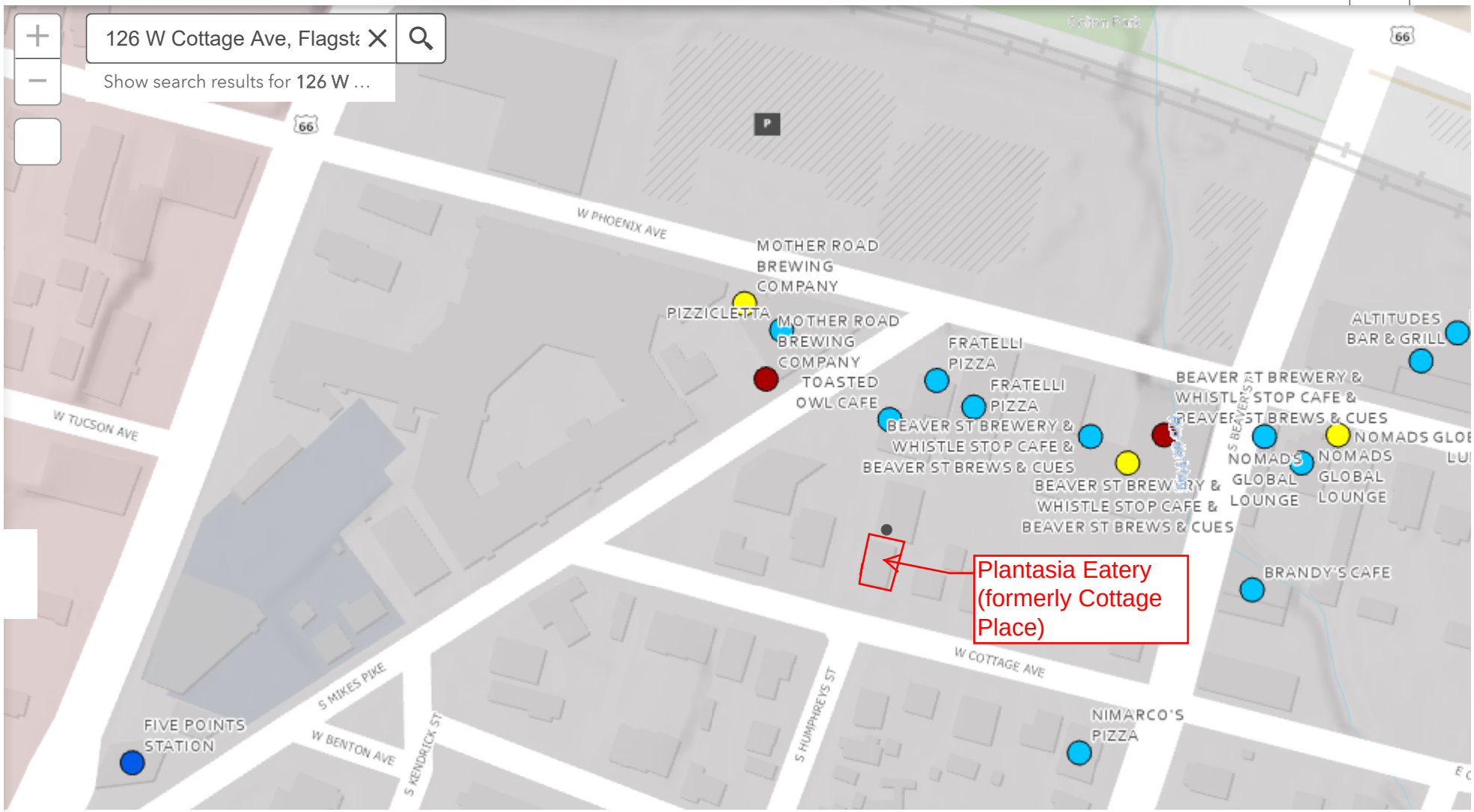
Active Liquor Licenses

City of Flagstaff GIS



8. D.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Action on Liquor License Application: Chad Earl Doyle, "Swift Travel Center," 3099 W. Shamrell Boulevard, Series 10 (beer and wine store), New License.

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 no recommendation;
(3) Forward the application to the State with a recommendation for denial based on information from staff, the testimony received at the public hearing and/or other factors.

Executive Summary:

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. A series 10 license allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises. This is a non-quota type of license.

Swift Travel Center is an existing business in Flagstaff. If approved, it will be the 30th active series 10 license in Flagstaff. To view surrounding liquor licenses, please visit the Active Liquor Licenses 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 Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Liquor licenses are a regulatory action and there are no Community Priorities that directly apply.

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 applicant's personal qualifications and the location.

The deadline for issuing a recommendation on this application is August 24, 2022.

Community Benefits and Considerations:

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

Community Involvement:

The application was properly posted on July 29, 2022. No written protests have been received to date.

Attachments:

Letter to Applicant
Hearing Procedures
Series 10 Description
PD Memo
Zoning Memo
Map

City of Flagstaff

OFFICE OF THE CITY CLERK

8/16/2022

Chad Earl Doyle
10458 W. Via Montoya Drive
Peoria, AZ 85383

Dear Mr. Doyle,

Your application for a Series 10 Liquor License for Swift Travel Center located at 3099 W. Shamrell Boulevard, Flagstaff, AZ was posted on July 29, 2022. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, August 23, 2022, which is scheduled to begin at 3:00 p.m.**

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

The twenty-day posting period for your liquor license application is set to expire on August 19, 2022, 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 10 Beer and Wine Store License (Beer and wine only)

Non-transferable
Off-sale retail privileges
Note: Terms in **BOLD CAPITALS** are defined in the glossary.

PURPOSE:
Allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

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

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

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

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

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 #22-051

TO: **Acting Chief Scott Mansfield**

FROM: **Sgt. Kevin Sapp**

DATE: **August 8, 2022**

RE: **New Application – Series 10 Liquor License Application – Swift Travel Center**

On August 8, 2022, I initiated an investigation into an application for a series 10 (Beer and Wine Store) liquor license filed by Chad Doyle (Controlling Person and Agent). This is a new application, and the application number is 201687. It is for the Swift Travel Center located at 3099 W Shamrell Blvd., Flagstaff, AZ.

I conducted a query through local systems and public access on Mr. Doyle and discovered no derogatory records. I conducted a search for current or historical liquor violations on the business found no violations.

I found evidence that the applicant has taken the mandatory liquor license training. This business is not located within 300 feet of a school or church.

A representative for the business will be present for the council meeting on August 23rd.

Planning and Development Services Memorandum

To: Stacy Fobar, Deputy City Clerk

From: Reggie Eccleston, Code Compliance Manager

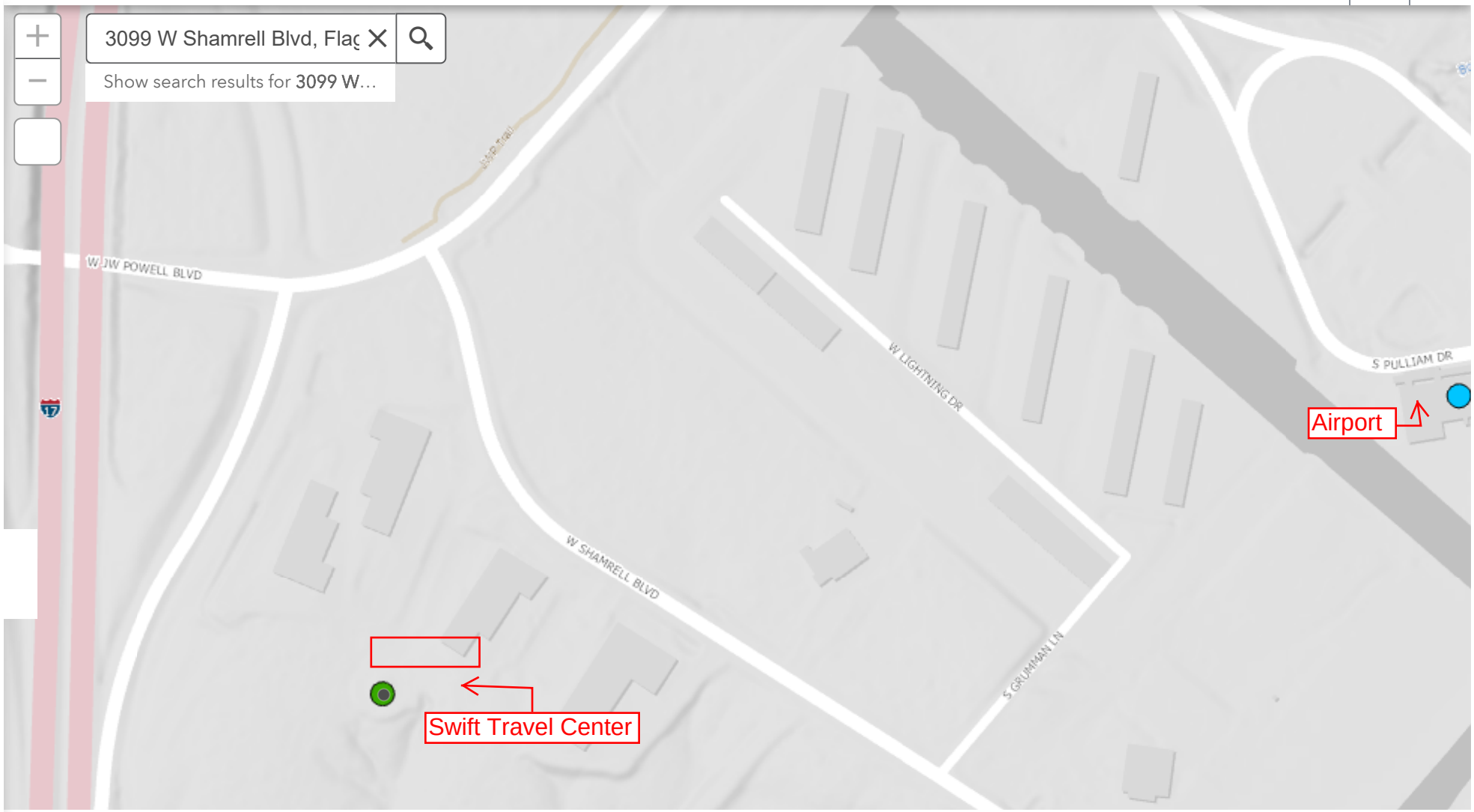
CC: Michelle McNulty, Planning Director

Date: Aug.11, 2022

Re: Application for Liquor License #201687
3099 W. Shamrell Blvd., Flagstaff, Arizona 86001
Assessor's Parcel Number 116-61-013
Chad Earl Doyle on behalf of Swift Travel Center

This application is a request for a new Series 10 Beer & Wine Store liquor license by Chad Earl Doyle on behalf of Swift Travel Center. 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.


3099 W Shamrell Blvd, Flag
Show search results for 3099 W...
W LIGHTNING DR
S PULLIAM DR
Airport
W SHAMRELL BLVD
S GRUMMAN LN
Swift Travel Center

9. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Allison Hughes, Support Services Manager
Co-Submitter:	Shawn Armour
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Contract: Approve the Annual Master Agreement for Software Maintenance with Hexagon for software utilized by the City Police Department in the amount of $239,598.24 (plus any applicable sales tax).

STAFF RECOMMENDED ACTION:

1. Approve the Annual Master Agreement for Software Maintenance with Hexagon in the amount of $239,598.24 (plus any applicable sale tax); and
2. Authorize the City Manager to execute all necessary documents.

Executive Summary:

Hexagon software manages all of the Computer Aided Dispatch (CAD) and Records Management System (RMS) for public safety. 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 2022-2023. 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:

This is an annual Software Agreement with an annual maintenance cost of $239,598.24. This expense is currently budgeted in FY23 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:

N/A

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

High Performing Governance: Serve the public by providing high quality internal and external customer service.

- High Performing Governance: Encourage public trust through transparency, accessibility and use of the City's public participation policy.
- High Performing Governance: Become an employer of choice and provide employees with the necessary tools, training and support.
- Safe and Healthy Community: Provide public safety with the resources, staff and training to respond to community needs.
- Team Flagstaff Strategic Plan: Provide exceptional service

Has There Been Previous Council Decision on This:

Yes, as this is an annual software contract that has been before Council every year since 2013.

Options and Alternatives:

1. Approve the Software Agreement with Hexagon for the Police Department software; or
2. The Flagstaff Police Department can coordinate with Coconino County Sheriff and Northern Arizona University on alternative options moving forward.

Background/History:

The Flagstaff Police Department, Coconino County Sheriff and Northern Arizona University have used Hexagon, formally Intergraph, since before 2013 and is part of an intergovernmental agreement #A2005 between the Flagstaff Police Department, Coconino County Sheriff, and Northern Arizona University. Hexagon requires a new Software Agreement on an annual basis.

Key Considerations:

The Hexagon software was selected jointly by the Flagstaff Police Department, Coconino County Sheriff and Northern Arizona University through intergovernmental agreement #A2005 and any change to another software would need to be coordinated in conjunction with the partner agencies.

Expanded Financial Considerations:

N/A

Community Benefits and Considerations:

Hexagon is the company that provides and supports the Flagstaff Police Department's computer aided dispatch and records management system. The Software Agreement provides the Flagstaff Police Department with the technical support to the dispatch and records systems to provide exemplary customer service to the Flagstaff community.

Community Involvement:

N/A

Expanded Options and Alternatives:

N/A

Attachments: Hexagon Master Terms & Conditions
Data processing Addendum

SAP Support & Services Addendum
Hexagon Quote

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:

$$\frac{\textit{Hours of Cloud Program Availability for a given Month}}{\textit{Hours of Cloud Program Availability + downtime hours for such Month which are not related to an Exception}} \times 100$$

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 Statements(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	*No workaround available and either:* ▸ *Productive use prohibited, or* ▸ *Aborts.*
▸ Level Two	*No workaround available and either:* ▸ 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 indentified 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 Importer[1]

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

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[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 of 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 indentified 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:	2022-88152
Quote Date:	08/10/2022
Expiration Date:	09/30/2022

This quotation has been prepared for:
Flagstaff Coconino AZ
911 E. Sawmill

Flagstaff AZ 86001
United States
Lori Spencer
Crime Analyst

Ship To:

Flagstaff Coconino AZ
Allison Hughes
Support Services Manager
911 E. Sawmill
Flagstaff Arizona 86001
United States

Bill To:

Flagstaff Coconino AZ
Allison Hughes
Support Services Manager
ACCOUNTS PAYABLE DEPARTMENT
211 W. ASPEN AVE
Flagstaff Arizona 86001
United States

This Quotation is issued by:
Intergraph Corporation
305 Intergraph Way
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Customer:	Flagstaff Coconino AZ
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Quote Date:	08/10/2022
Expiration Date:	09/30/2022

Renewal Configuration Listing

Line	Base Part	Description	Begin	End	Service Level	Months	Qty	Monthly Price	Extended Net Price
1	IPS2043TST	HxGN OnCall Records - Xalt Interface - TST	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
4	IPS0012BCK	I/Page - Backup License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
5	IPS0012TST	I/Page - Test License	07/01/2022	06/30/2023	PRM	12	2	$0.00	$0.00
6	IPS0012	I/Page NL	07/01/2022	06/30/2023	PRM	12	1	$518.18	$6,218.16
7	IPS0048BCK	I/FRMS-CADlink NL - Backup License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
8	IPS0048TST	I/FRMS-CADlink NL - Test License	07/01/2022	06/30/2023	PRM	12	2	$0.00	$0.00
9	IPS0048	I/FRMS-CADlink CC	07/01/2022	06/30/2023	PRM	12	1	$260.37	$3,124.44

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10	IPS3042-TST	Xalt - Integration Runtime Engine NL - Test License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
12	IPS0002BCK	I/Dispatcher - Backup License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
14	IPS0002TST	I/Dispatcher - Test License	07/01/2022	06/30/2023	PRM	12	15	$0.00	$0.00
15	IPS0002	I/Dispatcher CC	07/01/2022	06/30/2023	PRM	12	14	$427.56	$71,830.08
16	IPS0004BCK	I/Informer - Backup License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
17	IPS0004TST	I/Informer - Test License	07/01/2022	06/30/2023	PRM	12	3	$0.00	$0.00
18	IPS0004	I/Informer CC	07/01/2022	06/30/2023	PRM	12	2	$571.78	$13,722.72
20	IPS0042IBCK	I/NetViewer - Backup License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
21	IPS0042ITST	I/NetViewer - Test License	07/01/2022	06/30/2023	PRM	12	16	$0.00	$0.00

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22	IPS0042I	I/NetViewer CC	07/01/2022	06/30/2023	PRM	12	15	$43.05	$7,749.00
23	IPS0082TST	Map Administration Utility CC - Test License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
24	IPS0082	Map Administration Utility CC	07/01/2022	06/30/2023	PRM	12	1	$234.83	$2,817.96
28	IPS0009BCK	I/Mobile Data Terminal NL - Backup License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
29	IPS0009TST	I/Mobile Data Terminal NL - Test License	07/01/2022	06/30/2023	PRM	12	2	$0.00	$0.00
30	IPS0009	I/Mobile Data Terminal NL	07/01/2022	06/30/2023	PRM	12	1	$1,142.27	$13,707.24
31	IPS0015BCK	I/Tracker - I/CAD - Backup License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00

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32	IPS0015TST	I/Tracker - I/CAD - Test License	07/01/2022	06/30/2023	PRM	12	2	$0.00	$0.00
33	IPS0015	I/Tracker - I/CAD NL	07/01/2022	06/30/2023	PRM	12	1	$645.80	$7,749.60
36	GSPX5007	GeoMedia Professional CC	07/01/2022	06/30/2023	SND	12	1	$282.05	$3,384.60
37	ESCROW	Annual Software Escrow Fee	07/01/2022	06/30/2023	PRM	12	1	$45.00	$540.00
38	IPS2304C	HxGN OnCall Analytics - Records Essentials NL 4 Core Comp	07/01/2022	06/30/2023	PRM	12	1	$283.34	$3,400.08
39	IPS2304TSTC	HxGN OnCall Analytics - Records Essentials NL 4 CoreTSTComp	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00

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40	IPS2043	Intergraph WebRMS Connect for EdgeFrontier	07/01/2022	06/30/2023	PRM	12	1	$768.44	$9,221.28
41	RMS0018TST	HxGN OnCall Records - Jail CC - Test	07/01/2022	06/30/2023	PRM	12	20	$0.00	$0.00
42	RMS0018	Intergraph WebJMS User License	07/01/2022	06/30/2023	PRM	12	20	$16.54	$3,969.60
43	RMSCUSTOM15	TraCS Interface	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
44	PSA2100TST	HxGN OnCall Records - NIBRS - Federal - Test	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
45	PSA2100	HxGN OnCall Records - NIBRS - Federal	07/01/2022	06/30/2023	PRM	12	1	$209.48	$2,513.76

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46	RMS0016C	Exchange I/ LEADS Server for WebRMS Server	07/01/2022	06/30/2023	PRM	12	1	$1,970.17	$23,642.04
47	RMS0016TST	HxGN OnCall Records - Server CC License - Test License	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
48	RMS0017C	Exchange I/ LEADS RMS Client for WebRMS Concurrent User	07/01/2022	06/30/2023	PRM	12	60	$36.38	$26,193.60
49	RMS0017TST	HxGN OnCall Records - Concurrent User License - Test License	07/01/2022	06/30/2023	PRM	12	60	$0.00	$0.00
50	IPS3042	EdgeFrontier Runtime Engine	07/01/2022	06/30/2023	PRM	12	1	$441.00	$5,292.00
51	IPSCUSTOM10	OnCall Records Livescan Interface	07/01/2022	06/30/2023	PRM	12	1	$113.59	$1,363.08

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52	IPS0080TST	Mobile for Public Safety CC - Test License	12/01/2022	06/30/2023	PRM	7	32	$0.00	$0.00
53	IPS0080BCK	Mobile for Public Safety CC - Backup License	12/01/2022	06/30/2023	PRM	7	32	$0.00	$0.00
54	IPS1184BCK	I/Map Editor for ArcGIS CC - Backup License	03/01/2023	06/30/2023	PRM	4	1	$0.00	$0.00
55	IPS1184TST	I/Map Editor for ArcGIS CC - Test License	03/01/2023	06/30/2023	PRM	4	1	$0.00	$0.00
56	IPS1184	I/Map Editor for ArcGIS CC	03/01/2023	06/30/2023	PRM	4	1	$102.90	$411.60
63	IPS0028A	RapidSOS for I/CAD - Essentials	07/01/2022	06/30/2023	PRM	12	1	$108.15	$1,297.80
64	IPS0028ABCK	RapidSOS for I/CAD - Essentials - Backup	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00

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65	IPS0028ATST	RapidSOS for I/CAD - Essentials - Test	07/01/2022	06/30/2023	PRM	12	1	$0.00	$0.00
68	IPS0012BCK	I/Page - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
69	IPS0012TST	I/Page - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
70	IPS0048BCK	I/FRMS-CADlink NL - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
71	IPS0048TST	I/FRMS-CADlink NL - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
72	IPS0001HABCK	I/Executive for High Availability - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
73	IPS0001HAC	I/Executive for High Availability - Component	10/01/2022	06/30/2023	PRM	9	1	$1,704.15	$15,337.35

This Quotation is issued by:
Intergraph Corporation
305 Intergraph Way
Madison, Alabama 35758 USA
Tel: (256) 730-2000

HEXAGON

Customer:	Flagstaff Coconino AZ
Quote Number:	2022-88152
Quote Date:	08/10/2022
Expiration Date:	09/30/2022

74	IPS0001HATST	I/Executive for High Availability - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
75	IPS0002BCK	I/Dispatcher - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
76	IPS0002TST	I/Dispatcher - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
77	IPS0004BCK	I/Informer - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
78	IPS0004TST	I/Informer - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
79	IPS0035	I/Backup NL	10/01/2022	06/30/2023	PRM	9	1	$580.65	$5,225.85
80	IPS0042IBCK	I/NetViewer - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
81	IPS0042ITST	I/NetViewer - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
82	IPS0009BCK	I/Mobile Data Terminal NL - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00

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Expiration Date:	09/30/2022

83	IPS0009TST	I/Mobile Data Terminal NL - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
84	IPS0015BCK	I/Tracker - I/CAD - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
85	IPS0015TST	I/Tracker - I/CAD - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
86	IPS0080C	Mobile for Public Safety CC - Comp	10/01/2022	06/30/2023	PRM	9	32	$37.80	$10,886.40
87	IPS1183	Intergraph Remote Content Management CC	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00
88	IPS1183BCK	Intergraph Remote Content Management CC - Backup License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00

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HEXAGON

Customer:	Flagstaff Coconino AZ
Quote Number:	2022-88152
Quote Date:	08/10/2022
Expiration Date:	09/30/2022

89	IPS1183TST	Intergraph Remote Content Management CC - Test License	10/01/2022	06/30/2023	PRM	9	1	$0.00	$0.00

$239,598.24

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	$239,598.24
Total Price*:	$239,598.24

This Quotation is issued by:
Intergraph Corporation
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Tel: (256) 730-2000

Customer:	Flagstaff Coconino AZ
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Quote Date:	08/10/2022
Expiration Date:	09/30/2022

*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 the City of Flagstaff, AZ ("Customer") and Intergraph Corporation, through its Hexagon Safety, Infrastructure & Geospatial division ("Hexagon")

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.

This Quotation is issued by:
Intergraph Corporation
305 Intergraph Way
Madison, Alabama 35758 USA
Tel: (256) 730-2000

Customer:	Flagstaff Coconino AZ
Quote Number:	2022-88152
Quote Date:	08/10/2022
Expiration Date:	09/30/2022

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

This Quotation is issued by:
Intergraph Corporation
305 Intergraph Way
Madison, Alabama 35758 USA
Tel: (256) 730-2000

Customer:	Flagstaff Coconino AZ
Quote Number:	2022-88152
Quote Date:	08/10/2022
Expiration Date:	09/30/2022

Signature: _____

Flagstaff Coconino AZ

Date: _____

Signature: _____

Date: _____

This Quotation is issued by:
Intergraph Corporation
305 Intergraph Way
Madison, Alabama 35758 USA
Tel: (256) 730-2000

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, 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.)

9. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Shannon Anderson, Senior Deputy City Manager
Co-Submitter:	Patrick Brown, Purchasing Director
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Contract: Approve First Amendment to the Cooperative Purchase Contract for Executive Recruiting with The Keller Group, LLC, in an amount not to exceed $60,000.

STAFF RECOMMENDED ACTION:

1. Approve the First Amendment to the Cooperative Purchase Contract for Executive Recruiting for the Human Resources and Risk Management Director position for an estimated not to exceed amount $60,000; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

Jeanie Gallagher retired as the City's Human Resources and Risk Management Director in October 2021. The City entered into a Cooperative Service Agreement with The Keller Group, LLC for the recruitment of the Human Resources and Risk Management Director in February 2022 following a failed recruitment process. The position was filled in May 2022, but became vacant again in July 2022. The Keller Group contract specifies in the scope of work, or Direct Hire Agreement, they will provide a best effort replacement up to sixty (60) days of the candidates' start date. The Keller Group's fee due upon successful placement of the candidate, irrespective of its replacement commitment. The City has engaged The Keller Group to recruit a new Human Resources and Risk Management Director replacement.

Financial Impact:

The City will be responsible for The Keller Group's fee and proposes to use salary savings within the Human Resources and Risk Management Division to pay for the Executive Recruiting services.

The City paid $27,930 for the first recruitment and is estimating approximately $30,000 for the second recruitment. Staff is seeking this First Amendment because the total payment to The Keller Group will likely exceed $50,000, the amount required to be approved by the City Council in the Procurement Code Manual.

Policy Impact:

This First Amendment does not impact City policies.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

- Enhance the organization's fiscal stability and increase efficiency and effectiveness
- Become an employer of choice and provide employees with the necessary tools, training, and support

Has There Been Previous Council Decision on This:

No.

Attachments: First Amendment
COF Executed Contract

FIRST AMENDMENT

City of Flagstaff
Cooperative Purchase Contract
The Keller Group, LLC

Executive Recruiting Services

Contract No. 2022-79

This First Amendment ("First Amendment") to the fully executed Cooperative Purchase Contract No. 2022-79 dated February 25, 2022 ("Contract") for Executive Recruiting is made and entered into this ___ day of _____, 2022, by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona, and The Keller Group, LLC, an Arizona Limited Liability Company.

The parties to the Contract hereby agree to the following amendment **(identified in all-caps and bold)**:

Paragraph 3. Payment

A. Payment to the Contractor for the materials and/or services provided under this Cooperative Purchase Contract at a rate of 19% of total salary offered in accordance with the "ADPO ATTACHMENT 4 – PRICING SHEET" and terms set forth in the Arizona State Agency Contract, attached as *Exhibit B*.

B. INCREASE THE PAYMENT TO AN ESTIMATED NOT TO EXCEED SIXTY THOUSAND DOLLARS ($60,000).

All other provisions of the Contract shall remain unchanged in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized representatives as of the date first written above. This First Amendment will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

City of Flagstaff

By:_____
Greg Clifton, City Manager

Dated:_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

The Keller Group

By:_____

Title:_____

Dated:_____

COOPERATIVE PURCHASE CONTRACT
Contract No. 2022-79

This Cooperative Purchase Contract is made and entered into this 25 day of February, 2022 by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and The Keller Group, LLC, an Arizona Limited Liability Corporation ("Contractor").

RECITALS:

A. Contractor has Contract No. CTR041467 with the State of Arizona to provide executive level recruiting services ("Agency Contract"), which was awarded through a competitive and open procurement process; and

B. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

AGREEMENT:

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

1. Materials and/or Services Purchased. Contractor shall provide the City with the materials and/or services specified in the Scope of Work, attached as *Exhibit A*, the Schedules agreed to by the Parties, and the Agency Contract. A general description of materials and/or services being purchased is:

Executive Recruiting

2. Specific Requirements of City. Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Scope of Work, attached as *Exhibit A*, the Schedules agreed to by the Parties, and the Agency Contract.

3. Payment. Payment to the Contractor for the materials and/or services provided under this Cooperative Purchase Contract at a rate of 19% of total salary offered in accordance with the "ADPO ATTACHMENT 4 – PRICING SHEET" and terms set forth in the Arizona State Agency Contract, attached as *Exhibit B*.

4. Terms and Conditions of Agency Contract Apply. All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Cooperative Purchase Contract as though fully set forth herein. The Agency Contract documents are attached hereto as *Exhibit B*. The Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract.

5. Contractor Warranty: Contractor warrants that should the placed candidate terminate employment with the City for any reason within ninety (90) days from the candidate's start date, Contractor will present two (2) additional candidates who possess the qualifications previously agreed upon within sixty (60) days after notification from the City.

6. Certificates of Insurance. All insurance provisions of the Agency Contract shall apply,

including any requirement to name the City as an additional insured. Prior to commencing performance under this Contract, Contractor shall furnish the City with a copy of the current Certificate of Insurance required by the Agency Contract.

7. Term. This Cooperative Purchase Contract shall commence upon execution by the parties and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.

8. Renewal. This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

The Keller Group LLC:

By: rashin keller

Title: Director

CITY OF FLAGSTAFF

By: _____

Title: Shannon Anderson, Deputy City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

EXHIBIT A

SCOPE OF WORK

1. City of Flagstaff HR Org Chart (attached)
2. Scope of Work – Direct Hire Agreement (attached)

Human Resources/Risk Management
1 Human Resources/Risk Management Director
Administration
1 Human Resources Manager
1 Human Resources Generalist
1 Human Resources Recruiter
1 Human Resources Analyst
Risk Management
1 Risk Management Director
1 Risk Management Specialist
1 Human Resources Analyst
Administration
1 Human Resources Manager
1 Administrative Specialist
1 Human Resources Generalist
1 Human Resources Analyst

Direct Hire Agreement

Date: February 24, 2022

Attention: Patrick Brown, Purchasing Director

Thank you for the opportunity to assist The City of Flagstaff (hereinafter, “Client”) with your staffing needs. This letter outlines the terms and conditions of our staffing partnership.

The Keller Group will charge a one-time fee of 19% of annual salary for placements made with Client. We will invoice you for our services upon successful placement of the candidate, defined as Client employing the placement. Payment will be due net 30. Client agrees to treat confidential all information received about a candidate, including the identity of a candidate, and will not disclose such information without the prior consent of The Keller Group. If a candidate is hired after our referral for any position in Client’s company or any subsidiaries within one year from the date of referral, you agree to pay The Keller Group a fee equal to the amount stated above. Referrals are defined as a verbal or other introduction of a candidate, along with a resume, from an employee of The Keller Group to an authorized agent of Client’s company.

The Keller Group will provide a replacement, at no further cost, or provide 100% cash back (upon Client request) if termination should occur within 30 days of start date due to lack of satisfactory performance by candidate or because he/she leaves for personal reasons, excluding placed candidates who leave due to changes made by Client that substantially alter the position for which they were hired, e.g., employees supervisor leaves, duties are changed, position is relocated, restructures, etc. The Keller Group will also provide a best effort replacement up to 60 days of candidate start date. Note that The Keller Group’s fee is still due upon successful placement of the candidate, irrespective of its replacement commitment.

The Keller Group is not responsible for fraud or misrepresentations made by a candidate and does not warrant the truth of any information provided by a candidate in the resume or otherwise. The Keller Group will not be directly or indirectly liable for the acts or omissions of candidates, or the accuracy of information provided by candidates referred to Client, and/ will not incur liability for any consequential damages resulting from the actions or inaction of The Keller Group employees.

The Keller Group will represent Client as an equal opportunity employer. The Keller Group will consider applicants for all positions without discrimination on the basis of race, color, religion, sex, national origin, age, disability, marital status, or veteran status, or any other legally protected status.

Thank you for the opportunity to partner with you. We value your trust in our staffing service, and we look forward to providing qualified candidates.

Sincerely,

Rashin June Keller
Founder & Director
The Keller Group

Patrick Brow, Purchasing Director	February 24, 2022

EXHIBIT B

AGENCY CONTRACT

1. Keller Group Agency Contract State of Arizona Contract Number: CTR041467 (attached)
2. Keller Group Extension (attached)
3. Keller Group Offer and Acceptance (attached)

Part 2: Scope, Pricing and Terms and Conditions

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SECTION 2-D: Uniform Terms and Conditions 40

SECTION 2-A: Scope of Work

1.0 PURPOSE AND BACKGROUND

1.1 **Purpose:** The State of Arizona ("State") is seeking to establish one or more 'statewide" contracts to provide Executive-Specialty Professional and Hard to Fill Recruitment Services for all state agencies, boards, and commissions, as well as participating State Cooperative Members.

1.2 **Background**: The State periodically has need for outside Recruitment Services particularly for Executive level, Specialty Professional and other hard to fill positions in a wide variety of types of positions and locations throughout the State of Arizona.

Currently the State does not have a "statewide" contract, meaning a single contract for use by all Eligible Entities, from which to purchase the Recruitment services to be covered under this solicitation. Therefore, an estimated number of fulfillments or total potential dollar value cannot be provided.

A *sampling* of the type of positions that have required outside recruiters in the recent past includes:

- Agency Director
- Assistant Director
- Deputy Assistant Director
- Medical Director
- Health Care Management Professionals
- Health Care Professional – all levels
- Information Technology Professionals – all levels

1.3 **Definitions:**

1.3.1 "Eligible Entity (**EE)**" "Eligible Agency (**EA)**" and "**Customer**" are used interchangeably in this document and refer to state agencies, boards, and commissions, as well as participating State Cooperative Members, utilizing the Contract.

1.3.2 "Eligible Entities' Designated Representative **(EEDR)**" means an Eligible Entity's designated representative who serves as a single point of contact with the Contractor on issues pertaining to services provided to the Eligible Entity by the Contractor.

1.3.3 "Supplier" means a Recruiting Firm awarded a Contract for these services.

1.3.4 "Qualified Candidate" means a candidate who meets mutually agreed upon written requirements by Eligible Entity (EE) and Contractor.

2.0 SCOPE SUMMARY

2.1 Objective
The objective is to contract with a pool of Suppliers who are able to recruit all of the types of positions that may be needed by the Eligible Entities or a combination of Suppliers who can provide all types of positions and other Suppliers who specialize in specific types of positions (e.g. Executive level only, Medical Specialties, Technology Specialties, etc.)

2.1.1 Each EE reserves the right to direct the consultant to perform only specific and select portions of the search/selection process or to conduct an entire search/selection process. This option will be exercised on a recruitment-by-recruitment basis and will be specified by the EE in the Task Order.

2.1.2 Prior to each recruitment, the applicable EEDR will approve the Contractor's personnel assigned to a particular recruitment project.

2.1.3 The applicable EEDR will ensure that all decisions, recommendations, questions, complaints, and all other pertinent EE's information is provided to the Contractor.

2.1.3.1 This requirement will not limit other of the EE's staff from interacting, as appropriate, with the Contractor for day-to-day transactions within the scope of the Contract.

2.1.4 Contractor will be the exclusive search resource utilized by the EE during the course of the specific Task Order (e.g. documentation of retained search tasks/activities/requirements/parameters):

2.1.4.1 Candidates identified or referred to Eligible Entity (EE) outside of the Contractor during the course of the Task Order will be submitted by the EE to Contractor for completion of Task Order requirements, and, if hired, credited to the Contractor who will then be compensated in accordance with the terms of the Task Order.

2.1.4.2 Eligible Entity's (EE's) receipt of a candidate's resume for consideration, prior to or during the course of the search, from any source (including EE's internal resources/employees, external resources, referrals, candidate-generated referrals, or any other source outside of Contractor shall not affect Eligible Entity's (EE's) obligation to pay that portion of the Contractor's Placement Fee for which Contractor has completed the Milestone(s) required in the Task Order..

2.1.5 Cancellation of a Task Order

2.1.5.1 Cancellation by the Eligible Entity (EE) of a Task Order may occur at any time. EE shall be entitled to a pro-rata (percentage) refund of Total Placement Fee stated in Task Order.

2.1.5.2 If candidate presented to Eligible Entity (EE) by Contractor is hired within two (2) months from the date of submission the placement fee as originally stated in the Task Order minus any payments previously made on the Task Order

(such as the "Engagement Fee") will be due and payable to Contractor when candidate begins work with EE.

3.0 SCOPE OF SERVICES

3.1 Task Order Process

For each recruitment, the Contractor shall provide the Eligible Entity (EE) with a mutually agreed upon Task Order (TO) for all activities to be provided. The Task Order (TO) document shall be completed and executed (signed by both parties) prior to services being provided. The TO shall contain at a minimum:

- Begin and End Dates of service;
- Contact information for each party;
- The position for which the recruitment is being made;
- Timeline with major Milestones with dates under which are listed specific Tasks/Activities;
- Pricing points and Fees, as applicable, which shall be no more than the Maximum Rates stated in the Statewide Master Contract;
- Any other Contractor performance and/or guarantees agreed to by both parties that are within the Scope of the Statewide Master Contract.
- The date and signature of each authorized representative from both the Eligible Entity and from the Contractor.

3.1.1 **Written approval of all designated aspects contained in the Task Order process:**

3.1.1.1 The Eligible Entity will specify in the written Task Order all tasks/activities upon which the Contractor must obtain final approval on from the Eligible Entity.

3.1.1.2 The Contractor shall comply with obtaining final approval from the Eligible Entity on all aspects that the Eligible Entity has designated in the Task Order.

3.2 Process Search/Selection

3.2.1 Development of Profile and Process

3.2.1.1 In coordination with and approval of the EEDR on behalf of the EE, interview stakeholders to help develop candidate profile which will include:

3.2.1.1.1 The job requirements;

3.2.1.1.2 The compensation package; and,

3.2.1.1.3 An appropriate candidate profile;

3.2.1.1.4 EEDR will advise the Contractor, during the initial consultation for the specific recruitment, if background / identification / security checks, are required for the final candidate. The EEDR will provide the Contractor with the specific requirements for any required background / identification / security checks.

3.2.1.2 Draft a job posting for review and approval of the EE.

3.2.1.3 Establish an aggressive recruitment schedule.

3.2.1.4 Advise EE on process for reviewing internal Candidates.

3.2.1.5 Advise EE on budget, as requested.

3.2.2 Recruitment

3.2.2.1 Recruitment Plan – The Contractor shall develop and implement an aggressive recruitment plan to identify potential qualified candidates.

3.2.2.2 Receive initial screenings of all applications – provide to EEDR per agreed upon process.

3.2.2.3 Acknowledge all applications, and maintain active communications with promising candidates.

3.2.2.4 Maintain active communication regarding progress of the search with the EEDR

3.2.2.5 Provide the EEDR with the top (semi-finalist) resumes (number to be determined by EE) together with a summary document of candidates for review by EE.

3.2.2.6 Phone interview with top semi-finalist candidates selected by EE.

3.2.2.6.1 Provide EEDR with a written report on phone interviews.

3.2.2.6.2 Participate in a joint review of the phone interviews with EEDR and other applicable stakeholders.

3.2.2.7 Assist EEDR, as requested, in selecting finalist candidates for in person review by EE.

3.2.2.8 Marketing - The Contractor shall develop and implement an aggressive marketing plan which shall include at least the following:

3.2.2.8.1 The preparation and placement of advertisements in appropriate local government magazines, professional journals, publications and all web-based/technology- based forms of communication. Each EE reserves the right to suggest which forms of advertisement are necessary for a particular recruitment.

3.2.2.8.2 Develop a recruitment flyer and brochure that fully describes the requirements of the position, the State, the EE's organizational structure and the issues/challenges facing both the State and the EE.

- Recruitment flyers and/or brochures may be required to be full color including photos, if deemed appropriate for the level of the recruitment search
- The EEDR, with the oversight of the EE's Human Resource Representative, will have the final approval of the recruitment flyer and brochure.

3.2.2.9 Place position announcement on agreed upon electronic sites and state government job boards

3.2.3 Selection – The Contractor shall:

3.2.3.1 Provide professional expertise in the design of the assessment/selection process in conjunction with the EEDR and with oversight of the EE's Human Resource Representative.

3.2.3.2 Compile information packet to be provided to finalists upon review and approval by EE.

3.2.3.3 Draft questions to be asked of finalists for review/revision/approval by EE.

3.2.3.4 In Coordination with EEDR, develop an interview schedule to include a tour, as appropriate.

3.2.3.5 Conduct reference checks.

3.2.3.6 Assist in obtaining other background/identification/security checks as required by EE. These requirements may include, as required by EE:

a) Complete and detailed reference and background checks of those candidates who appear to be best qualified for the position being recruited.
   - A review of the applicant's technical ability;
   - Applicant's ability to effectively interact and communicate with the community and co-workers, both publicly and privately; and,
   - A minimum of three reference checks;

b) Final candidate:
   - Criminal background check; and/or,
   - Obtain a fingerprint card, and/or participate in a drug screen.

3.2.3.7 Participate, as an advisor to EE, in the in person interviews.

3.2.3.8 Advise the EE regarding the final selection and offer.

3.2.3.9 As requested by the EE, assist in negotiating terms of employment with selected candidate.

3.3 Fees and Expenses

3.3.1 Fees:

3.3.1.1 Travel expenses shall not exceed the budget amount established by the EE. Said EE budget amount will be in accordance with the Arizona General Accounting Office's Travel Policies.

3.3.1.1.1 Transportation, food and lodging expenses shall be:
- Pre-approved by EE
- Reimbursed according to Arizona Department of Administration-General Accounting Office's (ADOA/GAO's) Travel Policies which can be found at: https://gao.az.gov/travel/welcome-gao-travel .

3.3.1.2 Advertising administration and expenses shall not exceed the budget amount established by the EE.

3.4 Performance Guarantee

3.4.1 Performance Guarantee:

3.4.1.1 If Contractor presents two (2) qualified candidates within sixty (60 days from receipt of Engagement Fee; and,

3.4.1.2 Eligible Entity (EE) states in writing that they are discontinuing the retained search, one hundred percent (100%) of the Engagement Fee shall be refunded to EE.

3.5 Warranty

3.5.1 Contractor warrants that should the placed candidate terminate employment with the Client for any reason within ninety (90) days from the candidate's start date, the contractor will present two (2) additional candidates who possess the qualifications previously agreed upon within sixty (60) days after notification, provided Eligible Entity (EE):

3.5.1.1 Gives written notice of the termination and reasons within five (5) business days after termination; and,

3.5.1.2 The fee was paid within the confirmed timeframe.

3.5.1.3 The only exceptions would be for misrepresentation by Eligible Entity (EE), a material change in the content of the position, or the death or disability of the candidate.

3.6 Reporting

3.6.1 Reporting for Arizona Department of Administration-Human Resources Division

3.6.1.1 Provide the Arizona Department of Administration-Human Resources Division with a quarterly report of all recruitments in progress and all placements. Refer to EXHIBIT I for REPORTING FORM.

ADOA-Division of Human Resources
Attn: Executive-Specialty Professional and Hard to Fill Recruitment Team
100 N. 15th Avenue, Suite 401
Phoenix, AZ 85008

3.6.2 Reporting to Eligible Entity (EE)

3.6.1.2 Provide status reports to the EE upon request.

SECTION 2-A SUPPLEMENTS:

(OFFEROR TO INSERT AS REQUIRED AND LIST HERE OR TYPE "NONE" ON FIRST LINE)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"	X	x	X
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			
4.	Enter or delete row if not needed			
5.	Enter or delete row if not needed			
6.	Enter or delete row if not needed			
7.	Enter or delete row if not needed			

The following Exhibit applies to the Scope of Work:

SECTION 2-A_EXHIBIT I – Quarterly Reporting Format

End of Section 2-A

SECTION 2-B: Pricing Document

1.0 COMPENSATION

1.1 COMPENSATION METHOD

Contractor will be compensated based on the final detailed written quote approved by the Eligible Entity/Customer. Pricing shall not exceed the labor rates indicated on the Pricing Document.

2.0 PRICING

2.1 CONTRACTOR'S BEST PRICING. Supplier warrants that, for the term of the Contract, the prices set out in Attachments/Exhibits titled ATTACHMENT 4_PRICING including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent services, items of equipment and materials.

2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.1.2 If Contractor's Best Pricing for equivalent services, items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

2.2 PRICING-ALL-INCLUSIVE:

2.2.1 Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

2.3 PRICE INCREASES:

2.3.1 The SPO may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Contractor must provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

(a) Initial Contract prices will be honored for one year after award of Contract.

(b) All written requests for price adjustments made by the contractor shall be initiated thirty (30) days in advance of any desired price increase to allow State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.

(c) All price adjustments will be implemented by a formal contract change order. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

2.4 PRICE REDUCTIONS:

2.4.1 Price reductions shall be immediately passed along to State and may be submitted in writing to State for consideration at any time during the Contract period. The contractor shall offer State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include difference in pricing, begin, and end date of promotion along with the products covered.

2.5 ADDITIONAL CHARGES:

2.5.1 Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract.

2.6 TRAVEL.

2.6.1 Contractor shall get written approval prior to any travel under the Contract in which reimbursement of expenses will be requested. Contractor will be reimbursed for actual expenses incurred in accordance with the current rates specified in State's Travel Policy. Contractor shall itemize all per diem and lodging charges. State Travel Policy, including State rates, may be located at https://gao.az.gov/travel . The Eligible Entity / Customer shall reject any claim for travel reimbursement without prior written approval.

2.7 SEPARATE AGREEMENTS FOR OR RELATED TO SERVICES PROVIDED UNDER THIS CONTRACT

2.7.1 Buying Entity (e.g. Eligible Agency or Co-Op Buyer) may not be required by Contractor to authorize or sign Agreements for the services covered under this Contract unless first approved and signed by the Procurement Officer for this Contract. In general, all Terms and Conditions contained in this Contract apply to all services purchased by

3.0 FUNDING

No particular funding considerations apart from paragraph 4.3 of the Uniform Terms and Conditions [*Availability of Funds*] have been identified as of the Solicitation date.

4.0 INVOICING

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document.

4.2 MINIMUM INVOICE REQUIREMENTS. Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the ProcureAZ PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes as applicable *(list as a separate invoice line item)*	●
Upcharge shipping/freight, etc. *(as a separate invoice line item)*	Materials only
Total invoice amount due	●

4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:

1. Materials or Services that have not been authorized on an acknowledged Order;
2. Expediting, overtime, premiums, or upcharges absent State's express prior approval; or
3. Materials or Services that are the subject of a Contract Amendment or Change Order that has not been fully signed.

4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.

4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.

4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.

4.6.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.

4.6.2 Invoices will be deemed automatically rejected upon delivery if they:

(a) are sent to an incorrect address;

(b) do not reference the correct State contract number; or

(c) are payable to any Person other than the Contractor.

4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

5.0 PAYMENTS

5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions

5.2 JOINT CHECKS OR DIRECT PAY. applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.

5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.

5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.

5.5 PURCHASING CARD. applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.

5.6 AUTOMATED CLEARING HOUSE. applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible

Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:

https://gao.az.gov/afis/vendor-information

6.0 EXHIBITS TO THE PRICING DOCUMENT

■ **None**

End of Section 2-B

SECTION 2-C: Special Terms and Conditions

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

1.1	**Acceptance**	"Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
1.2	**Accepted Offer**	If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer. If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer. If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
1.3	**Arizona Procurement Code; A.R.S.; A.A.C.**	"Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
1.4	**Arizona TPT**	"Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: https://www.azdor.gov/business/transactionprivilegetax.aspx.
1.5	**Attachment**	"Attachment" means any item that: 1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO); 2. was attached to an Offer when submitted; and 3. was included in the Accepted Offer.
1.6	**Pricing Document**	"Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
1.7	**Contract Amendment**	"Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in ProcureAZ is to be construed as being synonymous with "Contract Amendment".
1.8	**Contract Terms and Conditions**	"Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
1.9	**Contractor**	"Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.

1.10	**Contractor Indemnitor**	"Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
1.11	**Co-Op Buyer**	"Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing "eligible procurement unit" under A.A.C. R2-7-101(23). NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.
1.12	**Eligible Agency**	If the Special Terms and Conditions indicates that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.
1.13	**Indemnified Basic Claims**	"Indemnified Basic Claims" means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
1.14	**Instructions to Offerors**	"Instructions to Offerors" is Section 3-a of Part 3 of the Solicitation Documents.
1.15	**Order**	"Order" means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an "Order": 1. "Release" or "Release Purchase Order" in ProcureAZ; 2. "task order", "service order," or "job order" when a Release Purchase Order for Services has already been committed in ProcureAZ; or 3. "purchase order" for buying by Co-Op Buyers, if co-op buying applies.
1.16	**ProcureAZ**	"ProcureAZ" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, ProcureAZ – The Official State eProcurement System*. NOTE (1): Technical Bulletin No. 020 is available online at: https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations NOTE (2): The URL for ProcureAZ itself is: https://procure.az.gov/
1.17	**State**	With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each of Eligible Agency or Co-Op Buyer who has issued the Order.

1.18	**State Indemnitees**	"State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
1.19	**Subcontractor**	"Subcontractor" has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is "… a person who contracts to perform work or render service to … [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . ."The Contract is to be construed as "a contract with a state governmental unit" for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
1.20	**Work**	"Work" means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2.0 CONTRACT INTERPRETATION

2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to "Contractor" is to be construed to be a reference to "Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor's and the Subcontractors' respective agents, representatives, and employees" in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
2. uses the permissive "may" with respect to a party's actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [*Definitions*]. For clarity of intent, any right given to State using "State may" or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written "may, at its discretion," the discretion extends to whatever is most advantageous to State; and (b) where written only as "may," the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative "shall" with respect to a party's actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [*Definitions*]. Conversely, the phrase "shall not" is to be interpreted as an imperative prohibition.
4. uses the term "must" with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written "*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*" in every instance;
5. uses the term "might" with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term "will" or the phrases "is to be" or "are to be" with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that "shall" is either unnecessary or irrelevant in that instance.

2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements,

obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

(a) Contract Amendments;

(b) the Solicitation Documents, in the order:

(1) Special Terms and Conditions;

(2) Exhibits to the Special Terms and Conditions;

(3) Uniform Terms and Conditions;

(4) Scope of Work;

(5) Exhibits to the Scope of Work;

(6) Pricing Document;

(7) Exhibits to the Pricing Document;

(8) Specifications; and

(9) any other documents referenced or included in the Solicitation;

(c) Orders, in reverse chronological order; and

(d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

2.3 Independent Contractor

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

2.4 Complete Integration

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3.0 Contract Administration and Operation

3.1 Term of Contract

The term of the Contract will commence on the date indicated on the Acceptance and continue **for twenty (20) months (Initial Contract Term).unless canceled, terminated, or permissibly extended**.

3.2 Contract Extensions

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of 5 (five) years.

3.3 Notices and Correspondence

3.3.1 TO CONTRACTOR. State shall:

(a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding ProcureAZ Vendor Profile; and

(b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall :

(a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the ProcureAZ Summary for State; and

(b) address any required notices to State to Procurement Officer identified as "Purchaser" in the ProcureAZ Summary at the following mailing address:

Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 201
Phoenix, AZ 85007

3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

3.4 Signing of Contract Amendments

Contractor's counter-signature – or "approval" in ProcureAZ, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;
2. revision to Procurement Officer appointment or contact information; or,
3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in *(1)*, *(2)*, and *(3)* above, both parties' signature – or "approval" in ProcureAZ, in the case of a Change Order – are required to give it effect.

3.5 Click-Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6 Books and Records

3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under

the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

(a) "Government Purpose Rights" are:

i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;

ii. the right to release or disclose that work product to third parties for any State government purpose; and

iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

(b) "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

(a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;

(b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and

(c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing materials.

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor's candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case *(a)* or *(b)*, Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.11 Offshore Performance of Certain Work Prohibited

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.12 Orders

3.12.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct

State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in ProcureAZ as something other than a "Master/ Blanket" type.

3.12.5 NO MINIMUMS OR COMMITMENTS. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.13 Statewide Contract Provisions

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a "delivery order" sub-type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services.

1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

   https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative

2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9.

Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

   https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) "approving" the Order electronically in ProcureAZ, which will indicate Contractor's unqualified acceptance of the Order as-issued; or (b) "rejecting" the Order electronically in ProcureAZ, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in ProcureAZ, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in ProcureAZ within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in ProcureAZ and if it does so the rejection will be void.

6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in ProcureAZ. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in *(2)* above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either

sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.

4. As described in *(3)* above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under *(3)* and *(4)* above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

3.15 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.16 Work on State Premises

3.16.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*].

4.0 COSTS AND PAYMENTS

4.1 Payments

4.1.1 PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statues Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in ProcureAZ and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2 PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

4.2 Applicable Taxes

4.2.1 CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.2.2 TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5.0 CONTRACT CHANGES

5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

5.2 Assignment and Delegation

5.2.1 IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

5.2.2 IN PART. Subject to paragraph 3.10 [*Subcontracts*] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6.0 RISK AND LIABILITY

6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

General Aggregate	$2,000,000
Products – Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Damage to Rented Premises	$ 50,000
Each Occurrence	$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	$1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

Workers' Compensation……	Statutory
Each Accident	$1,000,000
Disease – Each Employee	$1,000,000
Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

4. Professional Liability (Errors and Omissions Liability)

Each Claim	$ 2,000,000
Annual Aggregate	$ 2,000,000

a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract; and, either continuous coverage will be maintained or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

c. The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Contract.

5. Technology Errors & Omissions Insurance – *Required as applicable to the services provided*.

Each Claim	$ 2,000,000
Annual Aggregate	$ 2,000,000

a. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed progrms under this contract.

b. Coverage shall include copyright infringement, infringement of trade dress, domain name, title or slogan.

c. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period willb e exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

d. Technology Errors and Omissions insurance coverage shall only be required from each Contractor or subcontractor who is providing one of the following Training Delivery Formats:

1. Computer Based training (CBT) and/or
2. E-Learning (E).

6. Network Security (Cyber) and Privacy Liability – *Required as applicable to the services provided*.

Each Claim	$ 2,000,000

Annual Aggregate	$ 2,000,000

a. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

b. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.

d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its department, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

e. Network Security (Cyber) and Privacy Liability coverage shall only be required from each Contractor or subcontractor who is providing one of the following Training Delivery Formats:

   1. Computer Based training (CBT) and/or
   2. E-Learning (E).

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

ACCEPTABILITY OF INSURERS: Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to , commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State Procurement Office. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

APPROVAL and MODIFICATIONS: The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be

indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay

to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

6.6 Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

7.0 WARRANTIES

7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

7.2 Contractor Personnel

Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

7.3 Intellectual Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.4 Licenses and Permits

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.

7.5 Operational Continuity

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and* Delegation] that expressly recognizes the event.

7.6 Performance in Public Health Emergency

Contractor warrants that it will:

1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance

responses in the event of sudden and significant decrease in workforce; and
(c) alternative avenues to keep sufficient product on hand or in the supply chain; and

2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of forge majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

7.7 Lobbying

7.7.1 PROHIBITION.

(a) Contractor warrants that:

i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and

ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

(b) Contractor shall implement and maintain adequate controls to assure compliance with *(a)* above.

(c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.8 Survival of Warranties

All representations and warrants made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

8.0 STATE'S CONTRACTUAL REMEDIES

No modifications to uniform terms and conditions section

9.0 CONTRACT TERMINATION

No modifications to uniform terms and conditions section

10.0 CONTRACT CLAIMS

10.1 Claim Resolution

Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.

10.2 Mandatory Arbitration

In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11.0 RESERVED

12.0 GENERAL PROVISIONS FOR SERVICES

12.1 Applicability

Article 12 applies to the extent the Work is or includes Services.

12.2 Comprehensive Services Offering

Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.

12.3 Additional Services

State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.4 Off-Contract Services

Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded service" refers to any service expressly excluded from the scope of the Contract.

12.5 Removal of Personnel

Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.6 Transitions

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

12.7 Accuracy of Work

Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

12.8 Requirements at Services Location

Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

12.9 Services Acceptance

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.

12.10 Corrective Action Required

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

13.0 Data and Information Handling

13.1 Applicability

Article 13 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.

13.2 Data Protection and Confidentiality of Information

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this

paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P* 2180*.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf

NOTE (2): For convenience of reference only, the GSA directive is available at:

http://www.gsa.gov/portal/directive/d0/content/658222

13.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in *(1)* above; and

3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in *(1)* above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

http://www.hhs.gov/hipaa/for-professionals/privacy/index.html

14.0 INFORMATION TECHNOLOGY WORK

14.1 Applicability

Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6) 6: " . . . computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects" if and to the extent that the Work is or includes Information Technology.

14.2 Background Checks

Each of Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.

14.3 Information Access

14.3.1 SYSTEM MEASURES. Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.

14.3.2 INDIVIDUAL MEASURES. Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.

14.3.3 ACCESS CONTROL. Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

14.4 Pass-Through Indemnity

14.4.1 INDEMNITY FROM THIRD PARTY. For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent

and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.

14.4.2 NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:

(a) State reserves the right to elect to participate in the action at its own expense;

(b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and

(c) State shall in any case cooperate in the defense and any related settlement negotiations.

14.5 Systems and Controls

In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.6 Redress of Infringement.

14.6.1 REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:

(a) replace any infringing items with non-infringing ones;

(b) obtain for State the right to continue using the infringing items; or

(c) modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.

14.6.2 CANCELLATION OPTION. In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:

(a) for any software created for State under the Contract, the amount State paid to Contactor for creating it;

(b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and

(c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.

14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:

(a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;

(b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or

(c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

14.7 First Party Liability Limitation

14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of $1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.

14.7.2 PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:

(a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;

(b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or

(c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.2 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.3 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

14.8 Information Technology Warranty

14.8.1 SPECIFIED DESIGN. Where the Scope of Work for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:

(a) modified or altered by anyone not authorized by Contractor to do so;

(b) maintained in a way inconsistent to any applicable manufacturer recommendations; or

(c) operated in a manner not within its intended use or environment.

14.8.2 COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:

(a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;

(b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and

(c) it will provide a new or clean install of any COTS software that State has reason to believes contains harmful code.

14.8.3 PAYMENT HAS NO EFFECT. The warranties in this paragraph are not affected by State's inspection, testing, or payment.

14.9 Specific Remedies

Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 14.8 includes, at State's discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the forgoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

14.10 Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

14.11 Cloud Applications

The following are required for Contractor of any "cloud" solution that hosts State data outside of the State's network, or transmits and/or receives State data.

1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: https://aset.az.gov/resources/policies-standards-and-procedures, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.
2. State reserves the right to conduct Penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.
3. Contractor must submit copy of system logs from cloud system to State of AZ security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

End of Section 2-B

SECTION 2-D:

Uniform Terms and Conditions

Version: 9 (7/1/2013)

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

1.1	**Attachment**	"Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
1.2	**Contract**	"Contract" " means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
1.3	**Contract Amendment**	"Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
1.4	**Contractor**	"Contractor" means any Person who has a Contract with the State.
1.5	**Days**	"Days" means calendar days unless otherwise specified.
1.6	**Exhibit**	"Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
1.7	**Gratuity**	"Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
1.8	**Materials**	"Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
1.9	**Procurement Officer**	"Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
1.10	**Services**	"Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "… the furnishing of labor, time, or effort by [the] [C]ontractor or [S}ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
1.11	**State**	"State" means the State of Arizona and Department or Agency of the State that executes the Contract.
1.12	**State Fiscal Year**	"State Fiscal Year" means the period beginning with July 1 and ending June 30.
1.13	**Subcontract**	"Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

2.0 CONTRACT INTERPRETATION

2.1 Arizona Law

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Terms

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1. Special Terms and Conditions;

2.3.2. Uniform Terms and Conditions;

2.3.3. Statement or Scope of Work;

2.3.4. Specifications;

2.3.5. Attachments;

2.3.6. Exhibits;

2.3.7. Documents referenced or included in the Solicitation.

2.4 Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..

2.6 No Parole Evidence

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3.0 CONTRACT ADMINISTRATION AND OPERATION

3.1 Records

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or

	and Materials Testing	materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
3.5	**Notices**	Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
3.6	**Advertising, Publishing and Promotion of Contract**	The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
3.7	**Property of the State**	Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
3.8	**Ownership of Intellectual Property**	Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
3.9	**Federal Immigration and Nationality Act**	The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
3.10	**E-Verify Requirements**	In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
3.11	**Offshore Performance of Work Prohibited.**	Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically

stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4.0 COSTS AND PAYMENTS

4.1 Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

4.4 Availability of Funds for the Next State fiscal year

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements

5.0 CONTRACT CHANGES

5.1 Amendments

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6.0 RISK AND LIABILITY

6.1 Risk of Loss

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3 Indemnification – Patent and Copyright

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall **not** include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof

and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7.0 WARRANTIES

7.1 Liens

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance with Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8.0 STATE'S CONTRACTUAL REMEDIES

8.1 Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies

The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9.0 CONTRACT TERMINATION

9.1 Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3	**Suspension or Debarment**	The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
9.4	**Termination for Convenience**	The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
9.5	**Termination for Default**	9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor. 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand. 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
9.6	**Continuation of Performance Through Termination**	The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10.0 CONTRACT CLAIMS

10.1	**Contract Claims**	All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11.0 ARBITRATION

11.1	**Arbitration**	The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12.0 COMMENTS WELCOME

12.1	**Comments Welcome**	The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

Contract Amendment

CTR041467 Amendment #2

Effective Date: 7/26/2021

Arizona Department of Administration
State Procurement Office
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Executive-Specialty Professional and Hard to Fill Recruitment Services
The Keller Group

In accordance with the Uniform Terms and Conditions, Section 5.1, Amendments, this contract is amended as follows:

The term of the contract is hereby extended for one (1) year to August 20, 2022.

ALL OTHER REQUIREMENTS, SPECIFICATIONS, TERMS AND CONDITIONS REMAIN UNCHANGED

ACKNOWLEDGEMENT AND AUTHORIZATION

This amendment shall be fully executed upon the electronic approval in the State e-Procurement system by an authorized representative of the Contractor and applied to the contract in the State e-Procurement systems by the Procurement Officer or delegate.

KELLER GROUP
STAFFING

REQUEST FOR PROPOSAL- THE KELLER GROUP

ACCOUNTING, FINANCE, AND ADMINISTRATIVE SPECIALIZED STAFFING SOLUTIONS

Attachment 1
Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide Executive-Specialty Professional and Hard to Fill Recruitment Services in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	**1.** Rashin Keller Date 11/5/18	**RK** initial					
Revised Offers:	**2.** x date #1	 initial	**3.** x date #1	 initial	**4.** x date #1	 initial	
	5. x date #4	 initial	**6.** x date #5	 initial	**7.** x date #6	 initial	
Best and Final Offer:	**8.** x date	 initial					

The Keller Group LLC Offeror company name	Rashin Keller **RK** Signature of person authorized to sign Offer — Initials
PO Box 15953 Address	Rashin Keller Director Printed name and title
Phoenix, Arizona 85060 City | State | ZIP	Rashin Keller Director Contact name and title
82-3765434 Federal tax identifier (EIN or SSN)	Rashin@kellergroupstaffing.com — 480.712.3535 Contact Email Address — Contact phone number

CERTIFICATION: By signature in the above, Offeror certifies that it:

1. will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
2. has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
3. complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
4. is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by number # at the top of this form, and which was dated date (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: CTR041467 **The effective date of the Contract is:** 12.21.18 **Contract awarded** 12.21.2018

Delia A. Walters
Procurement Officer signature

Delia A. Walters
Procurement Officer,

9. C.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Trevor Henry, Acting Capital Improvements Engineer

Co-Submitter: Jeff Bauman

Date: 08/19/2022

Meeting Date: 08/23/2022

TITLE:

Consideration and Approval of Contract: Approve the Cooperative Purchase Contract with PFVT Motors, LLC dba Peoria Ford for the purchase of one (1) fully electric 2022 Ford F-150 Lightning pickup in the amount of $53,541.53.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with PFVT Motors, LLC dba Peoria Ford for the purchase of one (1) fully electric Ford F-150 Lightning pickup in the amount of $53,541.53; and
2. Authorize the City Manager to execute the necessary documents

Executive Summary:

City Engineering is always looking for ways to enhance our service capabilities, develop innovative practices and strive to meet City Council's goal of carbon neutrality. The Construction Inspection team is one of the front-line contacts for City contractors and residents, and prides ourselves on being leaders within the community. This requires that Construction Inspection bring the best representation of the City when interacting with contractors and residents.

Construction Inspection has the opportunity to purchase one of the first fully electric pick-up trucks to enter the City fleet. This electric vehicle will help Construction Inspection be a great example of how the City is leading the effort of a carbon neutral workforce. This electric vehicle will be primarily driven by the Construction Inspection Supervisor, but will also be available to City Engineering staff for out of town travel to meetings and trainings.

Financial Impact:

The electric vehicle purchase is funded with Acct# 001-10-102-0314-4-4401 for a budgeted amount of $100,000.00 in FY 2022-2023.

Policy Impact:

This electric vehicle is the first fully electric pick-up to be added to the Construction Inspection section. The electric vehicle is a great testing opportunity for all our Construction Inspection staff to determine how electric vehicles can support the mission of the City Engineering moving forward.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Transportation and Public Infrastructure - Deliver quality community assets and continue to advocate and implement a highly performing multi-model transportation system. This purchase would also directly align with the City's carbon neutrality plan and move us in the right direction to meet our 2030 electric vehicle goal.

Carbon Neutrality Plan

The purchase of an electric vehicle would directly align with the Carbon Neutrality Plan as this electric vehicle would be the first fully electric pick-up to be purchased for operations. The purchase of this truck aligns with the City's electric vehicle goals and sustainability goals.

Has There Been Previous Council Decision on This:

Yes, City Council has discussed the transition of City fleet to all electric vehicles on many occasions, including, in the approval of the Carbon Neutrality Plan. The Carbon Neutrality Plan outlines aggressive and industry leading goals to reduce the carbon footprint by the City. The City continues to see major growth in public infrastructure and Construction Inspection works to support the new infrastructure and to meet the highest levels of service possible to City contractors and residents. The purchase of the electric vehicle will support the City's goals.

Options and Alternatives:

1. Approve the Cooperative Purchase Contract with PFVT Motors, Inc. dba Peoria Ford for the purchase of one (1) Ford F-150 Lighting (fully electric vehicle) in the amount of $53,541.53; or
2. Do not approve the purchase.

Background/History:

City Council has discussed on many occasions transitioning the City fleet from combustion engine vehicles to electric vehicles which led to the development and adoption of the Carbon Neutrality Plan. This Carbon Neutrality Plan stands on the backbone of electric vehicles and the transition to by 2030.

The State of Arizona, Procurement Department, Public Sector conducted a competitive and open procurement process through Request for Proposal Solicitation No. ADSPO17-00006937 that resulted in Contract No. ADSP017-166117 with PFVT Motors, Inc. dba Peoria Ford. The City of Flagstaff Procurement department utilized this cooperative purchase contract to obtain the best pricing for the electric vehicle.

Key Considerations:

The purchase of this fully electric Ford F-150 pick-up will support City Engineering administration.

Expanded Financial Considerations:

There are no expanded financial considerations with this purchase. It is proposed to be fully funded in the FY2022-2023 budget.

Community Benefits and Considerations:

This purchase would not only benefit the community by utilizing carbon efficient equipment while supporting operations, it will also be utilized for City Engineering staff traveling to attend trainings. Construction Inspection intends to utilize the electric vehicle to make it very visible to City residents that the City is moving towards the "Big Shift".

Community Involvement:

The Flagstaff Carbon Neutrality Plan was presented several times in draft and for approval in open meetings by City Council. The community has had many opportunities for engagement of this Carbon Neutrality Plan.

Attachments: Cooperative Purchase Contract

COOPERATIVE PURCHASE CONTRACT
Contract No. 2022-153

This Cooperative Purchase Contract is made and entered into this _____ day of _____, 20_____by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and PFVT Motors, LLC a Delaware Limited Liability Corporation DBA Peoria Ford ("Contractor").

RECITALS:

A. Contractor is a fully authorized vendor of Ford vehicles; and

B. The State of Arizona, Procurement Department, Public Sector conducted a competitive and open procurement process through Request for Proposal Solicitation No. BPM004157 that resulted in Contract No. CTR059322 with Contractor ("Agency Contract"); and

C. Contractor is a dealer as described in the Agency Contract; and

D. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

AGREEMENT:

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

1. Materials and or Services Purchased: Contractor shall provide to City the materials and or services, as specified in the Purchase Order(s) submitted by the City in accordance with the Agency Contract. General description of materials and or services being purchased:

2022 Ford F-150 Crew Cab 4x4 – 145" WB

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Purchase Order(s) submitted to Contractor or *Exhibit A* attached hereto and incorporated by reference.

3. Payment: Payment to the Contractor for the materials and or services provided for fifty-three thousand five hundred forty-one dollars and fifty-three cents **($53,541.53) in addition to other fees and taxes**; made in accordance with the price list and terms set forth in the Agency Contract.

4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents are set forth in *Exhibit B* attached hereto and incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract, including, specifically changes in price for the materials.

5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance

under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.

7. Renewal: This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

PFVT Motors, LLC a Delaware Limited Liability Corporation DBA Peoria Ford:

By:_____

Title:_____

CITY OF FLAGSTAFF

By:_____

Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

EXHIBIT A
QUOTE (attached)

PFVT MOTORS, INC.

CONTRACT # ***CTR059322***
QUOTE DATE: 6/14/2022

CUSTOMER: CITY OF FLAGSTAFF AIRPORT
E-MAIL: TSKINNERR@FLAGSTAFFAZ.GOV

SANDRA GONZALEZ
9130 West Bell Road
Peoria, Arizona 85382
Direct: 480-696-5930
Text: 505-850-5504
Fax: 480-393-5536
Email: sgonzalez@peoriaford.com

REFERENCE: F-150 CREW ENGINEERING

LEAD TIME: 30+ WEEKS

LINE ITEM	ORDER CODE	DESCRIPTION	PRICE
1	W1E	2022 FORD F-150 CREW CAB 4X4 - 145" WB	$ 49,525.00
2	99L	DUAL E-MOTORS	INC
3	44L	SINGLE SPEED TRANSMISSION	INC
4	311A	XLT TRIM	INC
5	STD	LOCKING REAR	INC
6	STD	TRAILER TOW PACKAGE	INC
7	DIO	2 ADDITIONAL BASIC KEYS	INC
8	DIO	WINDOW TINT	INC
10	US	CLOTH SEATS	INC
11	YZ	OXFORD WHITE	INC
12	STD	POWER EQUIPMENT PACKAGE	INC
13	STD	CRUISE CONTROL	INC
14	INC	NO CHARGE FOR DELIVERY	INC

TAXABLE TOTAL	$	49,525.00
SALES TAX	$	4,011.53
WARRANTY COST	$	-
TIRE TAX	$	5.00
FREIGHT	$	-
TOTAL PER UNIT	$	53,541.53
QUANTITY OF UNITS		1
PO TOTAL	**$**	**53,541.53**

***ALL VEHICLES PURCHASED ON STATE CONTRACT SHALL INCLUDE FOLLOWING OPTIONS, UNLESS OPTION IS ELECTED TO BE DELETED:**

- BLUETOOTH - AM/FM/RADIO, CRUISE CONTROL, POWER DOORS AND WINDOWS, 4 ENTRANCE KEYS, FRONT AND REAR A/C - WHEN AVAILABLE, CLOTH SEATS, REAR CAMERA, SPARE TIRE, FLOOR MATS, ARIZONA LEGAL TINT

ALL TRUCKS WILL INCLUDE ADDITIONAL OPTIONS:

- ANTI-SLIP DIFFERENTIAL AND TOW HOOKS (2WD/4WD)

EXHIBIT B
AGENCY CONTRACT

1. March 17, 2022, Agency Contract Award Request for Proposal Solicitation No. BPM004157
2. Award Letter to PFVT Motors LLC. DBA Peoria Ford
3. PFVT Motors, LLC DBA Peoria Ford 2022 Pricing

DocuSign Envelope ID: 7AE6D603-F496-4243-9920-A7948B4C771C

ADOT
Procurement

OFFER AND ACCEPTANCE

OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

PFVT Motors, LLC dba Peoria Ford
Offeror (Company) Name

Signature of Person Authorized to Sign Offer

9130 W Bell Rd
Address

Sandra Gonzalez 1/18/22
Printed Name Date

Peoria AZ 85382
City State Zip

Government Manager
Title

sgonzalez@peoriaford.com
Email Address

480-696-5930
Phone Number

Jmoser@ytaig.com
Company Email Address

NA
Fax Number

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR059322 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 17th day of March 2022

DocuSigned by:
[signature]
Procurement Officer

3/10/2022
Awarded Date

Procurement

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson St., Ste. A
Phoenix, AZ 85007

REQUEST FOR PROPOSAL

SOLICITATION NUMBER: BPM004157

DESCRIPTION: New Vehicle Purchases

QUESTIONS: Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (https://app.az.gov/) using the Discussion Forum tab.

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Thomas Kornell
Procurement Officer
Phone: 602-712-8520
Email: Tkornell@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2534 and A.A.C. R2-7-C301 et seq., Competitive Sealed Proposals.

"An Equal Opportunity Agency"

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Americans with Disabilities Act (ADA), hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.

Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.

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1. Statement of Need

1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for New Vehicle Purchase.

2. Introduction and Background

2.1 The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.

2.2 Background: The State and its Eligible Agencies currently spend an estimated twenty-one million dollars in the purchase of new vehicles annually.

2.3 The following are the Three Categories covered in this Scope of Work:

- **Category One: Phase One (1) Vehicle Purchases**
- **Category Two: Phase Two (2) Vehicle Purchases**
- **Category Three: FTA Funded Vehicles**

3 General Requirements

3.1 Vehicles shall be new and supplied with all equipment and accessories indicated as standard equipment in the manufacturer's published literature (or website). Optional equipment necessary to meet the minimum requirements shall be included.

3.2 All vehicles ordered through Phase 1 (off the line) shall be Manufacturer's current year models in production throughout the term of this contract and shall be serviced completely by the vendor before delivery and ready in all respects for use. For the initial contract period; vehicles shall be new model year 2022 or greater.

3.3 Vehicles ordered through Phase 2 (on the lot) shall have less than 100 original odometer miles and be new (have never been previously owned) unless pre-approved in writing by the Eligible Agency.

3.4 All vehicles shall meet requirements of applicable Arizona Motor Vehicle laws and all other applicable Federal Motor Vehicle Safety Standards (including the Federal Bridge Formula), whether or not such requirements are specified in detail.

3.5 For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.

3.6 Delivery location shall be identified on the issuing agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the ordering agency of such delays along with a revised delivery estimate from the factory immediately after it becomes known. If the manufacturer has a website available to check order status, this information will be shown in space provided on Offer Response Form.

3.7 All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M. The Contractor shall be required to give the using agency a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.

3.8 All vehicles shall be delivered with four (4) entrance tools and a full tank(s) of fuel, less delivery fuel.

3.9 The following documents shall be provided upon delivery of the vehicle(s):

3.9.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
3.9.2 Warranty Document
3.9.3 Manufacturers unaltered invoice
3.9.4 Delayed warranty / in service start request form (if requested by ordering entity)
3.9.5 Level 1 Inspection if applicable, completed before delivery

3.10 For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

4 Specific Requirements

4.1 The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.

4.2 As new model year vehicles become available, vendor shall submit pricing at either the same rate as the previous model, or submit a request for an increase or decrease based only on the manufacturer's increase or decrease. Documentation must be submitted to the Procurement Officer within 30 days of the effective date of change. New model year vehicles cannot be offered without approval from the Procurement Officer.

4.3 The following fuel types are allowable under this contract are to include but are not limited too.

4.3.1 Flexible Fuel Vehicles (FFV) also called Ethanol or E85
4.3.2 Diesel

4.3.3 Gasoline
4.3.4 Compressed Natural Gas (CNG): CNG systems must be O.E.M. or O.E.M. approved
4.3.5 Hybrid-Electric Vehicles (HEV)
4.3.6 Plug-in Hybrid Electric Vehicles (PHEV)
4.3.7 Electric Vehicles (EV) also called Battery Electric Vehicles (BEV)
4.3.8 Fuel Cell Vehicles (FCV)

4.4 Vehicle Up-fit / Modifications

4.4.1 The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency.

4.4.2 The Eligible Agency will supply all up-fit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the up-fit/modification on a quotation to the Eligible Agency for review before any work commences.

4.5 Minimum Vehicle Requirements: All prices shall include the following equipment:

4.5.1 All standard factory equipment

4.5.2 Automatic transmission [maximum towing/payload capacity shall be provided upon request)

4.5.3 Bluetooth capabilities

4.5.4 AM/FM radio

4.5.5 Cruise Control

4.5.6 Power Door Locks/Power Windows
4.5.7 Power Mirrors when available

4.5.8 Four (4) entrance tools (in any combination allowed; keyless entry remotes, integrated or smart keys, standard cut keys) per vehicle.
a. Type of keys to be provided shall be indicated on quote.

4.5.9 Air conditioning
a. Rear air conditioning on all vehicles, when available

4.5.10 Cloth seats

4.5.11 Rear view mirrors including on driver and passenger doors
a. FOR TRUCKS: Rear view mirrors on driver front and passenger front doors, largest available without upgrading vehicle options package.
b. Back up Camera

4.5.12 Spare tire
a. Full size standard steel wheel with matching Original Equipment Manufacturer spare tire identical to standard equipment with the trim level of the delivered vehicle.
b. If full spare is not available due to space or manufacturer standards, an alternative shall be provided and noted on quote provided.

4.5.13 Floor Mats

a. O.E.M. floor mat sets installed in all seating rows where the vehicle comes with carpeted floors.

b. Fixed driver floor mat

4.5.14 Arizona legal tinted glass

4.5.15 Minimum of 2 USB charging Ports

4.6 Specific Requirements for Trucks (when available)

4.6.1 Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW.

4.6.2 Skid plate package and anti-slip differential for four-wheel drive vehicles

4.6.3 Front tow hooks

5 Contractor's Responsibilities

Contractor shall be responsible for processing the registration, licensing, title and plating of all new vehicles ordered only if requested by the Eligible Agency.

6 Department's Responsibilities

The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered

SPECIAL TERMS AND CONDITIONS

1. CONTRACT TERM

The term of any resultant contract shall commence on the effective day of award and shall continue for a period of twelve months (12) thereafter, unless terminated, cancelled or extended as otherwise provided herein.

2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

3. ELIGIBLE AGENCIES

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes §41-2632.

4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Department reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

5. ORDERING PROCESS

The Department shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for the Department to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of but not limited to contract cancellation, suspension and/or debarment of the Contractor.

6. SHIPPING TERMS

Delivery shall be F.O.B. Destination to the location designated herein. Contractor shall retain title and control of all goods until they are delivered. All risk of transportation and related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The Department will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. DELIVERY

Contract prices shown for each vehicle include delivery cost within a sixty (60) mile radius of Phoenix.

For the purpose of this contract, the address used for mapping the radius within Phoenix will be as follows:

Equipment services shop/ADOT
2225 S 22nd Ave, Phoenix, AZ 85009

Delivery costs for each county outside of the Phoenix area shall be indicated on Offer Response form.

This will be an added cost to the contract price.

Deliveries shall be completed In accordance with the requirements of the contract.
Delivery of the product does not constitute acceptance.

8. INSPECTION AND ACCEPTANCE

Each item delivered shall be subject to a complete inspection by the Department within 10 days after delivery. Inspection criteria shall include, but not be limited to, conformity to the specifications, workmanship, quality and materials.

If the delivered product is not accepted and returned for corrective action, an additional fifteen (15) calendar days shall be allowed for inspection of the corrected or replacement product.

The Contractor shall be responsible for the transport of the material to and from the Department for the correction of items or workmanship not in compliance with the specifications.

Product returned for corrective action may delay payment. Invoices will be processed for payment only after the product is accepted.

9. INVOICING and PAYMENT

Contractor shall submit all billing notices or invoices to the Eligible Agency or Co-Op Buyer at the address Indicated on the applicable Order document.

Separate invoices are required for each shipment of product or delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Applicable payment terms
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased

- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes (as a separate invoice line item)
- Applicable Shipping/Freight Charges etc. (as a separate invoice line item) Materials only.
- Total Invoice Amount Due

Invoices not sent to the proper address, or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment for the purchase of product within thirty (30) calendar days after the Department has conducted the necessary reviews, inspections and acceptance as described herein.

The department acceptance date will be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department's warrant is mailed.

10. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

11. PRICING

1 Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.

a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.
b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order.

2 CONTRACTOR'S BEST PRICING: Supplier warrants that, for the term of the Contract, the prices and discounts set out in the Pricing Documents, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.

2.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

3 PRICING-ALL-INCLUSIVE: Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

4 LARGE VOLUME DISCOUNT PRICING: An Eligible Agency may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible Agency for large volume purchases.

5 A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice through a written contract amendment.

12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be

clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State. All pricing should reflect the minimum percentage of MSRP.

13. SAFETY STANDARDS

Items supplied under this contract shall comply with all current applicable safety standards and regulations including the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

14. WARRANTY

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.

2 At a minimum all equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of thirty-six (36) months from the date vehicle is placed in service.

3 This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot.

4 Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the state agency or political subdivision.

5 The written warranty shall be included with the delivered vehicles to the Eligible Agency. The warranty terms shall be stated on Attachment 3-A, where indicated. Failure to provide this general information may result in the offer being rejected.

6 Hybrid / Electric Vehicle Warranty: Hybrid-related components including catalytic convertor, electronic control unit, onboard emissions diagnostic device, high voltage battery, transmission, DC/DC convertor for hybrid vehicles shall be covered for 8 years/100,000 miles, battery for electric vehicles shall be 8/years/100,000 miles and bidder shall indicate limitation of warranty due to voltage and amps. The warranty terms shall be stated where indicated on Attachment 3-A. Failure to provide this general information may result in the bid being rejected.

15. CURRENT PRODUCTS

All products supplied under this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in the contract.

16. PRODUCT DISCONTINUANCE

In the event that a product or model is discontinued by the manufacturer, the Department at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request authorization to substitute a new product or model and provide the following:

1. A formal announcement from the manufacturer that the product or model has been discontinued.

2. Documentation from the manufacturer that names the replacement product or model.

3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.

4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

17. CONTRACT ADMINISTRATION

The Contractor shall contact the assigned Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

18. NOTICES

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called "Notices"), shall be in writing and shall be sent by certified United States mail, return receipt requested, or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

A. If intended for the State, to:

Arizona Department of Transportation, Procurement Group
1739 W. Jackson Street, MD 100P
Phoenix, Arizona 85007-3276

B. If intended for the Contractor, to the address as identified in the Contractor's electronic vendor profile. Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

This contract may be cancelled if Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractors or subcontractors are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, "Criminal trespass in the third degree; classification."

20. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. INSURANCE REQUIREMENTS

21.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

21.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way

warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.3 Minimum Scope and Limits of Insurance Contractor shall provide coverage with limits of liability not less than those stated below.

21.3.1 Commercial General Liability (CGL) – Occurrence Form

The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within 10 calendar days of notification of contract award by the Procurement Officer.

Policy shall include bodily injury, property damage, and broad form

contractual liability coverage.

- General Aggregate $2,000,000
- Products – Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Damage to Rented Premises $50,000
- Each Occurrence $1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) $1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving

automobiles owned, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.3 Workers' Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
o Each Accident	$1,000,000
o Disease – Each Employee	$1,000,000
o Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

21.4 Additional Insurance Requirements The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

21.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

21.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

21.5 Notice of Cancellation Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

21.6 Acceptability of Insurers Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of

not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

21.7 Verification of Coverage Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

21.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

21.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

21.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

21.8 Subcontractors Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

21.9 Approval and Modifications the Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

21.10 Exceptions In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. USAGE REPORT

The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

23. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by the Department and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

24. LICENSES, PERMITS, CERTIFICATIONS

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the Contractor.

25. CO-OP USAGE

Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

Contractor shall sell to Co-Op Buyers at the same price, and with the same lead times and other terms and conditions under which it sells to Eligible Agencies. With the sole exception of any legitimate additional costs for extraordinary shipping, or delivery requirements, if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

26. POST AWARD MEETING

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3. "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4. *"Contractor"* means any person who has a Contract with the State.

1.5. *"Days"* means calendar days unless otherwise specified.

1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8. "*Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona

Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the

State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if

applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification - Patent and Copyright**.** The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the

materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The

Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

FEDERAL PROVISIONS

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 available at: https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

The Federal Terms and Conditions under this Contract shall be incorporated in any sub-contractor, or lower-tier agreement for any federally-funded task assignment / project awarded under this Contract.

2. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Department and Contractor acknowledge and agree that, notwithstanding any concurrence b the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by Federal Funding Agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project.

Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) (5323(l)) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS AND REPORTS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor shall - provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also , pursuant to 49 C. F. R. 633.15, provide authorized FTA representative including any PMO Contractor access to Contractor's records and construction sites pertaining to a capital project, defined at 49
U.S.C. 5302(a)1, which is receiving assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor shall provide the Purchaser, authorized FTA representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which receives FTA assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at
$250,000.00.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non- profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor shall provide the Purchaser, FTA, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor shall retain, and shall require its subcontractors at all tiers, all books, records, accounts and reports required under this contract for a period of not less than five years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. TERMS OF THE MASTER AGREEMENT AND COMPLIANCE

Contractor shall at all times comply with all applicable Federal Funding Agency laws, regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, available at https://www.transit.dot.gov/funding/grantee-resources/sample-fta- agreements/fta-grant-agreements, between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment to this Master Agreement or the Underlying Agreement. To assure compliance the Recipient must take measures to assure that other participants in its Underlying Agreements (*e.g.*, Third Party Participants) comply. Contractor's failure to so comply shall constitute a material breach of this contract.

All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. In the event of additional funding provided by FHWA, the applicable requirements of the Stewardship Agreement, available at https://www.fhwa.dot.gov/federalaid/stewardship, between the Department and FHWA are incorporated by reference.

6. CIVIL RIGHTS REQUIREMENTS

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply

with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Equal Employment Opportunity

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex(including sexual orientation and gender identity), age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements Federal Funding Agency may issue.

2. Race, Color, religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42
U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided, modified only if necessary to identify the affected parties.

7. TERMINATION

Termination of the contract shall be in accordance with the Uniform Terms and Conditions, Section 9., paragraph 9.1 through 9.6.

8. DEBARMENT OR SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;

b) Suspended from participation in any federally assisted Award;

c) Proposed for debarment from participation in any federally assisted Award;

d) Declared ineligible to participate in any federally assisted Award;

e) Voluntarily excluded from participation in any federally assisted Award; or

f) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, the

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8.1 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The Contractor agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and

(c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

(1) Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

If the Department suspends, debars, or takes any similar action against a Third Party Participant or individual, the Department will provide immediate written notice to the:

(a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
(b) FTA Project Manager if the Project is

administered by an FTA Headquarters Office, or

(c) FTA Chief Counsel.

9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER

POLLUTION CONTROL ACT Clean Water

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with FTA assistance.

Clean Air

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with FTA assistance.

10. BUY AMERICA

In any task assignment / project for construction, acquisition of goods, or rolling stock valued at more than $150,000, the contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than $150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 65% domestic content for FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed a certification shall be rejected as

nonresponsive. This requirement does not apply to lower tier subcontractors.

11. BREACHES AND DISPUTE RESOLUTION

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Department. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Department. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Department and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Department or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12. LOBBYING

The Contractor agrees to comply with the provisions of Title 31, U.S. C 1352 as

amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.] and (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier sub- recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to the Department.

Contractors who apply or propose/bid for an award of $100,000 or more in value shall file the attached Lobbying Certification {01Lobbying Certification document} required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government- financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not
available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

14. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

15. CONFLICTS OF INTEREST / EMPLOYMENT OF FEDERAL PERSONNEL

Contractors will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Department or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

16. COPYRIGHT AND PATENT

To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless ADOT against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of this contract performance or use by ADOT of materials furnished or work performed under this contract. ADOT shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

Copyrights pursuant to 23 CFR 420.121 (b): The Department, as a State DOT may copyright any books, publications, or other copyrightable materials developed in the course of the project, and does herein exercise that right. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents pursuant to 23 CFR 420.121 (i): The Department, as a State DOT is subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: “The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions.”

Standard Patent Rights required pursuant to 37 CFR 401.14:

(a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C.

2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15
U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(8) The term contractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

(b) Allocation of Principal Rights

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention

throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under

paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

(d) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(3) In any country in which the contractor decides not to continue the prosecution of any non- provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor and Protection of the Contractor Right to File

(1) The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the sucessor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic

subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest

(1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non- provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a

post-issuance submission, and supplemental examination.

(4) The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention.”

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither

it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;

(2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

17. RECOVERED MATERIALS

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

18. SAFE OPERATION OF MOTOR VEHICLES

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),

(2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

(b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

19. CERTIFICATION AND ASSURANCES

The FTA Certifications and Assurances are incorporated herein by reference. Upon award or contract renewal, the Contractor must agree to comply with the most current FTA Certifications and Assurances by signing and submitting the signature page provided by the Department. In the event FTA issues new Certifications and Assurances, the Department reserves the right to require submission of a new signature page agreeing to comply; to be added to the terms and conditions by Amendment. All such requests are a condition of continued award.

20. DISADVANTAGED BUSINESS ENTERPRISES

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein, in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;

3. Liquidated damages;
4. Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding; and/or
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

(B) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

(1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(D) Non-DBE: any firm that is not a DBE.

(E) Race-Conscious (RC): a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.

(F) Race-Neutral (RN): a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

(G) Small Business Concern (SBC): a business that meets all of the following conditions:

(1) Operates as a for-profit business registered to do business in Arizona;

(2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes

or use of American products, materials, or labor;

(3) Is independently owned and operated;

(4) Is not dominant in its field on a national basis; and

(5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(H) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) "Women;"

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business

Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction. All proposers should contact the Department's Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

Arizona Department of Transportation Business Engagement and Compliance Office 1801 W. Jefferson St., Ste. 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712-7761
FAX (602) 712-8429
Email: contractorcompliance@azdot.gov Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

The Department has established a Mentor- Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime contractors to provide certain types of assistance to certified DBE subcontractors. ADOT encourages contractors and certified DBE subcontractors to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities. The program does not diminish the DBE rules or regulations, and participants may not circumvent these rules.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the contractor uses a percentage of DBEs, as defined herein, to meet the contract specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract

on a prime contract that does not carry a DBE contract goal.

Prime contractors are encouraged to obtain DBE participation even if a DBE goal was not established on a contract.

The DBE provisions are applicable to all contractors including DBE contractors.

6.0 Certification and Registration:

6.1 DBE Certification:

Certification as a DBE shall be predicated on:

(1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".

(2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.

(3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm's eligibility to participate in the DBE program.

(4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at http://www.azutracs.com.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at http://www.azutracs.com/. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for

DBE certification as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.2 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for- profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT strongly encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The contractor may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward DBE participation.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part
26. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward DBE participation.

The Department encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. In circumstances where the Department's offices are closed for all or part of the last day, the period extends to the next day on which the Department's offices are open.

10.0 Contractor and Subcontractor Requirements:

10.1 General:

Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.2 DBE Liaison:

The contractor shall designate a DBE Liaison responsible for the administration of the contractor's DBE program. The name of the designated DBE Liaison shall be included in the DBE Intended Participation Affidavit Summary.

11.0 DBE Goals

The Department has not established contract goals for DBE participation in this contract.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

11.1 Race Neutral Contract (With No DBE Goal)

The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts.

NO CONTRACT DBE GOAL HAS BEEN ESTABLISHED FOR DBE PARTICIPATION ON THIS CONTRACT.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at http://www.azutracs.com/ a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime contractors and all subcontractors, including DBEs listed in the offer must be registered in AZUTRACS. Proposers may verify that their firm and each subcontractor is registered using the AZUTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting BECO.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use the those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Offer submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Offer.

13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with below.

Subcontracts:

a. Sub-Contract Terms:

1. The Contractor agrees to execute a written Contract with all Subcontractors for work to be completed under this Contract. The executed Contract shall include Subcontractor's Scope of Work and all the Uniform Terms and Conditions set forth in this Contract.

2. The Contractor shall provide electronic copies of signed subcontract agreements with all Subcontractors to ADOT Business Engagement and Compliance Office (BECO) by uploading them to the BECO's online DBE Contract & Labor Compliance Management System (**DBE System**) at https://adot.dbesystem.com. Subcontract agreements shall include all required assurances and required clauses as outlined in this Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

3. The Contractor may be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department.

b. Sub-Contract Payments

1. Retention: If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the Department may retain under the prime contract. Retainage shall be paid to the subcontractor within 7 days of satisfactory completion of the work performed by the subcontractor.

2. No Set-offs Arising from Other Contracts: If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

3. Partial Payment: The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the Department. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.

4. Final Payment: The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.

5. Payment Reporting: For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any

tier with a DBE material or service supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the Department's web- based DBE System. The DBE System can be accessed from the Department's BECO website. No later than fifteen calendar days after the Notice to Proceed is issued, the contractor shall log into the Department's web based DBE System and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter them in the system. Reportable contracts shall be entered into the system no later than five calendar days after approval by the Department.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract by the last day of the month and the contractor shall actively monitor the Department's DBE System to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract activity is reported to the Department. This includes all lower-tier Reportable Contracts, regardless of whether a DBE is involved or not.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the DBE System.

The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DBE System.

For each Reportable Contract on which the contractor fails to submit timely payment information the Department will retain $1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non- reporting, the liquidated damages will increase to $2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages

shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

Payment reporting requirements apply to all contracts, federal and non-federal funded.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the Department will retain $1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to $2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

6. Completion of Work: A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the Department.

7. Disputes: If disputes arise regarding payment of subcontractors, the contractor shall immediately provide the ADOT Project Manager with a written, verifiable explanation if:

   - The contractor does not pay the full amount of any invoice from a subcontractor within seven days of receipt of a progress payment from the Department, or
   - The monthly estimate does not include all work claimed by a subcontractor to have been performed.

   The Department will determine whether the contractor has acted in good faith concerning any such explanations. The Department reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether termination requirements were met. The contractor shall implement and use the dispute resolution process outlined in the subcontract, as described in Uniform Terms and Conditions Paragraph, to resolve payment disputes.

8. Non-Compliance: Failure to make prompt partial payment or prompt final payment including any retention, within the time frames established in this contract, will result in remedies, as the Department deems appropriate, which may include, but are not limited to:

   - Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the

contract.

(i) The Department will withhold two times the disputed dollar amount not paid to each subcontractor.
(ii) If full payment is made within 30 days of the Department's payment to the contractor, the amount withheld by the Department will be released.
(iii) If full payment is made after 30 days of the Department's payment to the contractor, the Department will release 75 percent of the funds withheld. The Department will retain 25 percent of the monies withheld as liquidated damages.

- Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more contracts within 24 months, the Department may, in addition, invoke the following remedies:

(i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors and vendors subject to the requirements outlined under "Liquidated Damages" above,
(ii) Terminate the contract for default in accordance with this Contract, and/or
(iii) Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding temporarily or permanently, depending on the number and severity of violation.
(iv) Reflect the contractor's performance in submitting payment reports and making subcontractor payments utilizing the Department's Vendor Performance Report.

14.0 Crediting DBE Participation:

14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Offer submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at http://www.naics.com/search/.

Credit is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation.

The contractor bears the responsibility to determine whether the DBE possesses the

proper contractor's license(s) to perform the work and, if DBE credit is requested, that the DBE subcontractor is certified for the requested type of work.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards DBE participation only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 DBE Prime Contractor:

When a certified DBE firm proposes on a contract/Task Assignment all the work that is performed by the DBE contractor or any other DBE subcontractors and DBE suppliers will count toward DBE participation.

14.03 Effect of Loss of DBE Eligibility:

For On-Call Task Assignment contracts, if a DBE is deemed ineligible (decertified) or suspended by ADOT or one of its UCP Partner Agencies in accordance with 49 CFR 26.87 and 26.88, the DBE may not be count toward DBE participation on a new Task Assignment, but may be considered for the contract/Task Assignment DBE participation if a subcontract or contract modification for the work to be completed on the Task Assignment was executed before the DBE suspension or decertification is effective.

A subcontract or contract modification for work on the task assignment means, any subcontract or agreement for the task assignment, which includes a specific ADOT TRACS/Project Number, defined scope, duration and budget for the work to be completed under the Task Assignment that is duly signed by the contractor/contractor and subcontractor/subcontractor.

When the contractor/contractor intents to use an ineligible DBE firm or ADOT made a commitment to use an ineligible DBE prime contractor/contractor, but a subcontract or Contract Modification for the work to be completed on the Task Assignment has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation. When a subcontract or contract modification is executed with the DBE firm for the work to be completed on the Task Assignment before ADOT notified the firm of its ineligibility, the DBE's work on the Task Assignment may continue to be credited toward DBE participation for the firm's work.

14.04 Notifying the Contractor of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually

performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The Department will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the Chief Procurement Officer (CPO). The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the CPO. The appeal must be received by the CPO no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the CPO reverses or modifies BECO's decision. CPO will promptly consider any appeals under this subsection and notify the contractor of CPO's findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The BECO may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the BECO's staff will make every effort not to disrupt work on the project.

15.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such

remedy as the deemed appropriate as outlined in DBE Subsection 2.0 of these DBE provisions.

The Department reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The Contractor shall provide electronic copies of subcontract agreements with all Subcontractors by uploading them within 15 calendar days of an executed contract to the ADOT DBE System. Subcontract agreements shall include all required assurances and clauses as outlined in DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits of the Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

The Contractor shall be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The contractor shall submit the “Certification of Final DBE Payments” form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the Engineer no later than 30 days after the DBE completes its work.

The contractor will not be released from the obligations of the contract until the ”Certification of Final DBE Payments” forms are received and deemed acceptable by the Engineer and BECO.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of “Program Fraud and Civil Penalties” rules provided in 49 CFR Part 31.

21. NONDISCRIMINATION

1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:

   a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, disqualification from proposing on other Contracts or other remedy as the State deems appropriate.

   b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.

   c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

   d. Post in conspicuous places available to employees and applicants for employment, the following notice:

      "It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying- off or termination; rates of pay or other compensation; and selection for training, and on-the- job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion."

   e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the
      U.S. Department of Transportation (hereinafter USDOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

   f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or

indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

g. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.

h. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.

2. In the event of the Consultant's noncompliance with the NONDISCRIMININATION provision (Section A) of this Contract, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:

   a. Withholding of payments to the Consultant under the Contract until the Consultant complies,

   and/or;

   b. Cancellation, termination, or suspension of the Contract, in whole or in part.

3. The Consultant shall include the provisions of paragraph 1.a. through 1.h. in every subcontract with Subconsultants, DBEs and non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.

4. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

22. AFFIRMATIVE ACTION

Contractor shall take the following affirmative action steps with respect to securing supplies, equipment, or services under the terms of this contract:

a. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.

b. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.

c. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.

d. Where the requirement permits, establish delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.

e. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration, as required.

23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed

with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

24. FEDERAL CHANGES

The Contactor and its sub-contractors shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

25. PROMPT PAY

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

26. FULL AND OPEN COMPETITION

In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be

conducted in a manner that provides full and open competition.

27. PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

28. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

29. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

30. NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

31. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

32. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors (https://www.sam.gov/SAM/) for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

33. OTHER CONTRACT REQUIREMENTS

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the Department.

34. COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT- required contractual provisions, as set forth in FTA Circular 4220, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

35. REAL PROPERTY

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

36. ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP)

Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

37. ENVIROMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42
U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

38. ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

39. GEORGRAPHIC INFORMATION RELATED TO SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

40. GEOGRAPHIC PREFERENCE

Pursuant to 2 CFR 200.319(b), all procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract).

41. ORGANIZATIONAL CONFLICTS OF INTEREST

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

(1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:

(a) To that Third Party Participant or another Third Party Participant performing the Project work, and
(b) That impairs that Third Party Participant's objectivity in performing the Project work, or

(2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,

(3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:

(a) Any instances of organizational conflict of interest, or
(b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and

(4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

42. VETRANS PREFERENCE

As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

43. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

44. AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

45. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency."

46. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

44. BUS TESTING

The operator of the bust testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus

model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final acceptance of the first bus by the Agency. The complete bus testing report requirements are provide in 49 C.F.R. § 665.11.

45. CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

46. E-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

EXHIBIT 1
Title VI/Non-Discrimination Assurances
Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the *Federal Highway Administration,* as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration,* as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration* ,may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that **if** the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT 2
Title VI/Non-Discrimination Assurances
Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin): and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *etseq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et. seq).

EXHIBIT 3
ADOT Procurement Quarterly Usage Report

This exhibit outlines the content required for the quarterly usage report. Usage reports will be submitted to the appropriate Procurement Officer in accordance with the requirements specified in Special Terms and Conditions. The Department reserves the right to make additions, deletions and changes as deemed necessary.

Reporting Period:

Contract ID/Code:		Contact Name:		Alternate Contact Name:	
Contract Label/Description:		Contact Phone Number:		Alternate Contact Phone Number:	
Contractor:		Contact Email:		Alternate Contact Email:	
Contractor Address:					

Agency/Org/Unit	Customer Name	Delivery Address	PO Number or Identify as "P-Card"	Order Date	Contract Item Number	Contract Item Description	Quantity	Unit of Measure	Contract Unit Price	Contract Extended Price	Invoice Number

EXHIBIT 4
ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)

As required by 49 CFR Part 663Subpart C, the

_____

(Recipient's name)

Certifies that a resident inspector,

_____

(Name of inspector)

Was at

_____

(the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____

(description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)

As required by 49 CFR Part 663 Subpart C, the

_____

(Recipient's name)

Certifies that a resident inspector,

_____

(Name of inspector)

Was at

_____

(the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____

(description of buses).

The inspector visually inspecting the buses, the

_____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

Signature _____ Date _____/ _____/ _____

Title _____

EXHIBIT 5
PRE-AWARD AUDIT AND CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
PRE-AWARD AUDIT (before issuing purchase order)		
Pre-award audit requirements. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.		Master Agreement; 49 CFR §663.21
49 CFR 661.13 Grantee Responsibility (a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA Section 16. Preference for United States Products and Services. a. Buy America. Domestic preference procurement requirements of: (1) 49 U.S.C. § 5323(j), as amended by FAST Act, and (2) FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with FAST Act,		49 CFR §663.13
49 CFR §663.23 Description of pre-award audit. A pre-award audit under this part includes— (a) A Buy America certification as described in §663.25 of this part; (b) A purchaser's requirements certification as described in §663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in §663.41 or §663.43 of this part.		49 CFR §663.23
Met? Y/N (if NO 1b, 1 REQ'D)	(1) A Buy America certification:	49 CFR §663.25
	a) There is a letter from FTA which grants a waive OR	
Met? Y/N (if NO 1a, 2 REQ'D)	b) ADOT reviewed documentation provided by the manufacturer which lists—	
	1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and	
	2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	
Met? Y/N (2 REQ'D)	(2) A purchaser's requirements certification:	49 CFR §663.27
	a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and	
	b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's	
Met? Y/N (1 REQ'D)	(3) A manufacturer's Federal Motor Vehicle Safety certification or Certification that Federal motor vehicle standards do not apply.	
	a) If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	49 CFR §663.41
	a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.	49 CFR §663.43

EXHIBIT 6
PURCHASER'S PRE-AWARD REQUIREMENTS CERTIFICATION

Subrecipient	
Description	
Program/Phase/Amounts	

Purchaser's Pre-Award Requirements Certification
49 CFR §663.27

I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and

I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's

Signature

Date Signed

EXHIBIT 7
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis' (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
	(a) A post-delivery Buy America certification as described in §663.35 of this part;	
	§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—	
	(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; **or**	
	(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists— (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.	
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; **and**	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 7
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis' (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
	(a) A post-delivery Buy America certification as described in §663.35 of this part;	
	§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—	
	(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; **or**	
	(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists— (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.	
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; **and**	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 8
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient	
Description	
Program/Phase/Amounts	

Purchaser's Post-Award Requirements Certification
49 CFR §663.37

I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and

I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's

Signature

Date Signed

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: One (1)**
DESCRIPTION: New Vehicles Purchase	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. The solicitation due date has been changed from January 17, 2022 at 3:00 PM MST to January 19, 2022 at 3:00 PM MST.

2. All other terms, conditions and provisions of this solicitation remain unchanged.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 2.1** "The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures."
   b. **Paragraph 3.3.1, 3.5.1 and 3.5.2** is hereby removed.
   c. **Paragraph 4.1**: "The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency."
   d. **Paragraph 4.1.1** is hereby removed.
   e. **Paragraph 4.4.1:"** The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency. "
   f. **Paragraph 4.6.1**: " Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW."

2. **Special Terms and Conditions**

   The following sections are hereby modified to read:

   a. Paragraph 11.1, (a-g): "Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.
      a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Three (3)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."

   b. **Paragraph 3.10**: "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.

ADOT
Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.

f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order. "

b. Paragraph 22 is hereby replaced with the following: "The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee"

c. Paragraph 25: Co-op administrative fee has hereby been removed.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

3. **Offer Response Form** is hereby replaced with Revision Two (2) attachment.

4. All other terms, conditions and provisions of this solicitation remain unchanged.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Three (3)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."

   b. **Paragraph 3.10**: "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.

9. D.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Sarah Langley, Management Analyst
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Ratification: Letter of support for funding for additional rain gauges

STAFF RECOMMENDED ACTION:

Retroactively approve the letter of support

Executive Summary:

City staff are requesting retroactive approval of a letter of support for funding for additional rain gauges. These gauges would provide critical information to warn residents of imminent flooding and provide data to inform the design of potential long-term mitigations. The letter was sent to Congressman O'Halleran over the Council break during monsoon season.

Financial Impact:

None

Policy Impact:

None

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

Safe and Healthy community

Previous Council Decision on This:

None

Attachments: Letter of support

CITY OF
FLAGSTAFF

FLAGSTAFF CITY COUNCIL
211 West Aspen Avenue, Flagstaff, Arizona 86001
Main Line: 928-213-2000
Website: https://www.flagstaff.az.gov

August 1, 2022

The Honorable Tom O'Halleran
Member of Congress
318 Cannon HOB
Washington DC 20515

RE: Rain Gauges for Pipeline West Flooding Area

Representative O'Halleran,

In the last few years, the Flagstaff community has been subjected to extreme flash floods emanating from the 2019 Museum Fire burn scar. Sadly, the risk of devastating flooding was expanded to the west side of Flagstaff this summer following the Pipeline fire.

The Pipeline Fire was reported on June 12, 2022, approximately 6 miles north of Flagstaff within the Coconino National Forest. It burned 26,532 acres, including portions of the Schultz Creek and Chimney watersheds. A burn scar assessment and flood modeling subsequently showed potential post-wildfire flood risk to neighborhoods on the west side of Flagstaff. Both the City of Flagstaff and the Coconino County Flood Control District are collaborating with public and private partners and taking extensive measures and precautions to mitigate damage from future potential flood events.

One tool that has proven to be instrumental in countering the effects of flooding from the Museum Fire Scar is the use of real-time rain gauges. The City and County have used the data from strategically placed gauges to monitor the prospect of floods and to warn residents of imminent flooding in real-time when certain rainfall thresholds are reported. For this reason, the City of Flagstaff is requesting $200,000 for the purpose of installing up to 10 rain gauges in the Pipeline Fire burn area and other disturbed watersheds so that City and County officials can collect crucial data and send out emergency notifications when flash floods are imminent. Expanding the rain gauge system in the Pipeline Fire burn area and other watersheds disturbed in the last five years would be an invaluable and cost-effective tool for informing Flagstaff residents about dangerous and potentially life-threatening flash floods.

Thank you for your consideration of this critical project for the City of Flagstaff. If you have any questions or concerns, please contact Public Affairs Director Sarah Langley at 928-213-2019 or sarah.langley@flagstaffaz.gov. We look forward to working with your office to enhance the quality of life for all in our community.

Sincerely,

Paul Deasy,
Mayor, City of Flagstaff, on behalf of the Flagstaff City Council

9. E.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Bryce Doty, Real Estate Manager
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Contract: Approval of a professional services contract with Gary R. Anglemyer & Associates, LLC in the amount of $68,500.00 for appraisal services for the Rio de Flag Flood Control Project (railroad properties).

STAFF RECOMMENDED ACTION:

1. Approve the professional services contract with Gary R. Anglemyer & Associates, LLC in the amount of $68,500.00 for appraisal services for the Rio de Flag Flood Control Project (railroad properties); and
2. Authorize the Mayor to execute the necessary documents.

Executive Summary:

The City of Flagstaff, as the Non-Federal Sponsor for the United States Army Corps of Engineers ("USACE") Rio de Flag Flood Control Project is responsible for delivering the real estate necessary to construct the project under the guidance and approval of the USACE. Real estate needed for the project impacts fifteen (15) parcels owned by the Burlington Northern Santa Fe Railway Company (BNSF). Valuation of railroad property interests requires specialized expertise, as value is tied to the transportation corridor owned by BNSF. This contract procures a transportation corridor appraiser approved by the USACE to prepare appraisals for the property interests needed for the project. These appraisals will establish the just compensation the City will offer to BNSF for the property interests needed for the project.

The City of Flagstaff was given the names of three companies which hold the credentials needed for the BNSF appraisal, per USACE. Of the three companies, Gary R. Anglemyer & Associates, LLC was determined to be the most responsive and responsible bidder and was chosen for the work.

Financial Impact:

The Contract will be funded by the Rio de Flag Flood Control Stormwater Capital Improvements FY 2022-2023 account budget of $4,085,744.00. Account (206-08-385-3236-0).

Policy Impact:

No Impact

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

Safe and Healthy Community: Provide public safety
Sustainable, Innovative Infrastructure: Deliver outstanding services to residents through a healthy, well maintained infrastructure system

Carbon Neutrality Plan

CR-2: Strengthen existing community systems to create resilience to both short-term shocks and long-term change.

Regional Plan

Policy WR 5

Manage watersheds and stormwater to address flooding concerns, water quality, environmental protections, and rainwater harvesting

Has There Been Previous Council Decision on This:

There have been several council decisions related to real estate necessary for the Rio de Flag Flood Control Project:

- October 6, 1998, the City Council adopted Ordinance No. 1983 authorizing the acquisition of real property for flood control and to provide the opportunity for future development along the Rio de Flag and the Clay Avenue Wash.
- August 4, 2009, the City Council adopted an Ordinance No. 2009-22 amending Ordinance No. 1983 to add parcels of real property for flood control and redevelopment within the Rio de Flag Flood Control Project.
- February 18, 2020, the City Council adopted resolution 2020-05 authorizing the acquisition of real property interests necessary for the Rio de Flag Flood Control Project.

Key Considerations:

The Rio de Flag Flood Control Project is included in the City's Stormwater Management Capital Improvement Program. The project has been the subject of numerous Council Meetings, City to Citizen communications and newspaper articles.

The USACE has received $52 million for its share (65%) of the project costs, per the Project Cooperation Agreement. The City has the capacity and commitment to fund our share of the project. In 2018, the City Council approved a rate increase to provide additional funding for the Stormwater Capital Improvement Program (CIP). In 2019, the rate increase went into effect. The value of the property interests acquired for the project will be credited towards our share of the project costs.

On April 12, 2021, the USACE submitted to the City of Flagstaff the real estate "take letter" outlining the property interests that need to be acquired for the project. It is the City's responsibility to acquire the project corridor. After the project corridor is acquired, USACE will solicit, award and construct the project.

Attachments: Appraisal Services Contract

CONTRACT FOR PROFESSIONAL SERVICES
Contract No.: 2023-17

This Contract is entered into this _____ day of _____, 20___ by and between the City of Flagstaff, a political subdivision of the State or Arizona ("City"), and Gary R. Anglemyer & Associates, LLC, a Maryland Limited Liability Company ("Contractor").

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

NOW THEREFORE, in consideration for the mutual promises contained herein, the City and Contractor (the "parties") agree as follows:

SERVICES

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

   APPRAISAL SERVICES FOR
   RIO DE FLAG FLOOD RISK-MANAGMENT PROJECT (BNSF RAILWAY PROPERTY)

   and as more specifically described in the scope of work attached hereto as *Exhibit A.* A list and legal descriptions of the property interests to be appraised are attached. If City requests that additional property interests be appraised, a contract amendment is required.

2. Schedule of Services: Contractor shall perform all work per the schedule set forth in *Exhibit A.*

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

4. Key Personnel/Subcontractors: Contractor's Key Personnel, Subcontractors (if any), and contact information are designated in *Exhibit A.* Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this Contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

5. City Representative: The City Representative is Bryce Doty, Real Estate Manager, or his/her designee. All communications to the City shall be through the City Representative. The City Representative is responsible for bringing any request for a Contract amendment or price adjustment to the attention of the Procurement Agent.

6. City Cooperation: The City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Contractor's performance of this Contract.

CONTRACT TERM

7. Contract Term: The Contract term is for a period of two (2) years unless terminated pursuant to the Standard Terms and Conditions. This Contract will be effective as of the date signed by both parties. Performance shall commence within ten (10) days from City's issuance of the Notice to Proceed.

8. Renewal: This Contract may be renewed or extended for up to one (1) additional one (1) year term by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.

PAYMENT

9. Compensation: Contractor shall be paid Sixty-Eight Thousand Five Hundred Dollars and Zero Cents **($68,500.00)** for satisfactory performance of the services in accordance with the Scope of Work identified in *Exhibit A.* Payment shall be made as follows:

    $17,125.00 upon issuance of the Notice to Proceed;

    $34,250.00 upon submittal of draft appraisal to the USACE Review Appraiser;

    $17,125.00 upon approval of the appraisal by the USACE Review Appraiser.

10. Price Adjustment: Any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds $50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

DATA AND RECORDS

11. City Ownership of Document and Data: Any original documents prepared or collected by Contractor in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of the City ("City's work product"), unless otherwise agreed by the parties in writing. Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the City all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.

12. Re-Use: The City may use the City's work product without further compensation to Contractor; provided, however, that the City's reuse without written verification or adaption by Contractor for purposes other than contemplated herein is at the City's sole risk and without liability to Contractor. Contractor shall not engage in any conflict of interest nor appropriate any portion of the City's work product for the benefit of Contractor or any third parties without the City's prior written consent.

13. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to the City copies all of the City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

INSURANCE

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

MISCELLANEOUS

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

To the City:
Bryce Doty
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Bryce.Doty@flagstaffaz.gov

To Contractor:
Gary A. Anglemyer & Associates, LLC
5237 Downing Road
Baltimore, MD 21212
GRAALLC.com
410.652.3046

With a copy to:
Brian Eilerts
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Brian.Eilerts@flagstaffaz.gov

With a copy to:

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

CONTRACTOR

_____

Print name:_____

Title:_____

CITY OF FLAGSTAFF

_____

Print name:_____

Title:_____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney's Office

Notice to Proceed issued:_____, 20___

EXHIBIT A
SCOPE OF WORK

Attachments:

1. Statement of Work
2. Standard Estates
3. Spreadsheet
4. Legal Descriptions (legal descriptions for Phase 2 to follow)
5. Quote from Gary R. Anglemyer & Associates, LLC

Attachment 1 – Statement of Work

Statement of Work - SOW
Rio de Flag
Railroad Properties

SECTION 1 – SUBJECT IDENTIFICATION & GENERAL INFORMATION

Client: City of Flagstaff

Intended Users: City of Flagstaff, the United States Army Corps of Engineers (USACE), and their authorized agents.

Intended Use: The intended use of the appraisal is to provide an estimate of value for the purposes of negotiating the acquisition of Channel Improvement Easements (permanent easements) and Temporary Work Area Easements in conjunction with the Rio de Flag – Flood Risk Management Project. The appraisal report is not intended for any other use.

Project Description: The Rio de Flag – Flood Risk Management Project was initiated in response to the FY96 Energy and Water Development Appropriations Act. The benefits of this project will be recognized in the City of Flagstaff through which the Rio de Flag now runs. The project's intent is to provide protection to the downstream areas adjacent to the Rio de Flag channel as well as to remove from the floodplain major portions of the downtown Flagstaff area and surrounding residential areas.

The project is in Flagstaff, Arizona, with the City of Flagstaff as the Non-Federal Sponsor (NFS). See Rio de Flag Phases Map Exhibit. The project consists of six functional phases, three of which have been completed. The three completed phases include the Clay Avenue Wash Detention Basin (Phase 1), which was completed in 2014, the Butler Tunnel (Phase 2), which was completed in 2010, and the Thorpe Bridge (Phase 3), which was completed in 2012. The remaining phases include the Lower Rio de Flag (Phase 4), the Upper Rio de Flag (Phase 5), and the Clay Wash Reach (Phase 6). As the project has evolved, the enumerated phases of the project have changed over time. Project documents may refer to additional phases not reflected on the phases map. For the purposes of this report, the project consists of the phases identified on the phases map.

Phase 4 – Lower Rio de Flag

Phase 4 will include construction of a large confluence structure. At approximately 170 feet west of South Beaver Street, the Rio de Flag channel will be joined by underground (covered) concrete channel conveying flows from Clay Avenue Wash. Both channels will converge and transition into an arch-shaped underground concrete channel paralleling the railroad tracks through downtown.

Construction of Phase 4 will continue, including the construction of both open and closed channels downstream of the confluence structure. The closed channel will consist of arch-shaped underground concrete channel paralleling the railroad tracks through downtown. Gabion or alternative grade control structures will be constructed approximately 150 feet and 400 feet upstream of Butler Avenue. Fencing will be integrated into existing development as needed for safety. Vehicular and pedestrian barriers, as well as warning signs, will be implemented along the modified channel. The Burlington Northern Santa Fe Railroad (BNSF) has objected to the standard estate easement; accordingly, the BNSF parcels will be acquired utilizing nonstandard easement estates. The NSF will acquire privately owned tracts using standard estates.

Phase 5 – Upper Rio de Flag

Flood control features along the Rio de Flag will consist of flood control structures, channel modifications and road modifications. The upper Rio de Flag reach is upstream (north) of the downtown city confluence. In the upper reach wing-walls will be constructed upstream of the Mead Lane Bridge and the Beal Road Bridge will be relocated by the NFS. Flood control structures and road modifications in Thorpe Park include a series of floodwalls, embankments and wing-walls. The floodwalls will be constructed along the eastern side of Thorpe Park right of way and are designed to prevent flood damage to the homes along Navajo Drive and downstream areas. North Thorpe Road modifications include elevating a 350-foot road section, and construction of retaining walls. Embankment/wing walls will be constructed immediately south (downstream) of the existing weir (dam) at Frances Short Pond to direct flows into the existing downstream channel. The channel modifications to the Rio de Flag are designed to convey the discharge from the Thorpe Park improvements, and flows received from Clay Wash by utilizing the existing channel to the maximum extent, while

also incorporating channel widening and deepening to increase the channel capacity. Beginning at Bonito Street, just downstream of the Thorpe Park embankment/wing walls, a trapezoidal channel with an earth or excavated rock bottom and 2:1 (H:V) rip rap lined slopes is proposed. This segment of rip rap lined channel will extend from Bonito Street to just upstream of Dale Avenue. Upstream of Dale Avenue, the trapezoidal channel will transition into a covered channel arch section. The arch section minimizes project footprint and offers savings in real estate costs; when compared to the expense of constructing an open, trapezoidal section through this constrained portion of the channel. Beginning at Birch Street and continuing to Route 66, a trapezoidal channel with an earth or excavated rock bottom and 2:1 (H:V) rip rap lined slopes will be constructed.

Phase 6 – Clay Wash Reach

Proposed Clay Avenue Wash channel modifications will include a combination of (1) reconstructing the existing channel with concrete in an open box structure, and (2) diverting the channel underground through developed areas. The Clay Avenue Wash channel modifications will start immediately north of the Chateau Royal mobile home park (also referred to as Chateau Royal Apartments) in western Flagstaff.

From the new Clay Wash inlet east to South Blackbird Roost, the existing drainage will be reconstructed to a 12’ wide by 12’ high open box concrete structure. From South Blackbird Roost east to the edge of the parking lot at McCracken Place, Clay Avenue Wash will be diverted into an underground concrete box culvert approximately 16’ wide by 12’ high. This segment of the wash currently follows a cul-de-sac and driveway which extends east from Blackbird Roost Street, along the north side of the parking lot of the adjacent apartment building complex. The underground box structure will continue east to South Milton Road, diagonally across the South Milton Road/Clay Avenue/Butler Avenue Intersection, and northeast along Mike’s Pike, where it terminates approximately 250 feet northeast of Mike’s Pike at a confluence structure with the Rio de Flag channel.

This route requires construction within the intersection of Clay Avenue, Butler Avenue, South Milton/Route 66, and Mike’s Pike.

Furthermore, construction phasing of the project has been grouped into two phases:

Construction Phase I
Includes all of the Lower Rio de Flag (Phase 4), and the Clay Wash Reach (Phase 6) project phase

Construction Phase II
Includes all of the Upper Rio de Flag (Phase 5) project phase

Downtown Mile Projects: In addition to the Rio de Flag Flood Control Project, the City of Flagstaff is embarking on several projects affecting the railroad corridor. Collectively these are known as the Downtown Mile, described and depicted in the Flagstaff Downtown Mile Project Description Exhibit. While this appraisal assignment is exclusive of these other projects, the scope of railroad corridor impacts is provided as background.

Property Description: The subject property represents the railroad corridor owned and operated by BNSF Railway Company. (Exhibit =map illustrating APNs) The proposed permanent and temporary easement acquisitions will involve both Construction Phases I and II of the remaining Rio de Flag Project.

The parcels and permanent and temporary easements for Construction Phase I have been defined (Spreadsheet with APN & Easements).

Construction Phase II will impact the following BNSF owned parcels:

1. APN: 100-44-006A
2. APN: 100-43-001C
3. APN: 100-44-001
4. APN: 100-44-002A (Phase I and II)
5. APN: 100-43-001 (Appears be outside the area)

There is also a small remanant piece with no known owner.
Legal descriptions for the partial acquisitions for Construction Phase II are currently being prepared and will be provided within the timeframe of the assignment. Please see Phase II Illustration for additional context.

As the APNs involved is anticipated to be finalized within the timeframe of the assignment, no impact to the larger parcel valuation is anticipated.

The current assignment is to estimate the just compensation for the Channel Improvement Easements and Temporary Work Area Easements in Construction Phases I and II (Spreadsheet with APN & Easements).

The appraiser is responsible for confirming, correcting any errors, and/or supplementing the property description data. The appraiser is responsible for their independent investigation, research, and analysis to develop a creditable appraisal.

Legal Description: Refer to Attachments. (Legal Descriptions – Individual Parcel Folders)

Larger Parcel Issues: The appraiser must make a larger parcel determination regardless of whether the agency designated an acquisition as a total acquisition or a partial acquisition. Elements to be considered in determining the larger parcel are contiguity (or proximity) as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.[1]

For appraisal assignments in which only a part of the entire property is proposed to be acquired, (a partial acquisition), the entire contiguous property is to be appraised, BEFORE and AFTER, except as permitted below:

If, pursuant to research and analysis in the determination of the larger parcel to be appraised, the appraiser proposes to appraise non-contiguous properties as a single larger parcel, or proposes to designate only a portion of the entire contiguous ownership as the larger parcel, then this shall be immediately communicated in writing, (email is acceptable), to the City of Flagstaff Real Estate Manager and the USACE Review Appraiser prior to proceeding further with the assignment. The City of Flagstaff and the USACE Review Appraiser shall determine if the appraiser's larger parcel opinion is reasonable and acceptable and shall communicate

[1] Uniform Appraisal Standards for Federal Land Acquisitions 2016, Interagency Land Acquisition Conference, p.24

acceptability of the larger parcel determination to the appraiser in writing, (email is acceptable).

The City of Flagstaff is a public agency with the delegation of eminent domain powers from the state of Arizona, therefore just compensation should be analyzed in accordance with Arizona Revised Statutes.

Ownership/Occupant:

Owner: BNSF Railway Company

Notes: **Lessee:** 104-01-098A is leased to Mike Watkins who subleases space to several businesses. Comment: The appraiser must determine if this parcel meets the contiguity of highest and best use test as the parcel is not part of the railroad tract. Additionally, the City of Flagstaff is considering purchasing the parcel from BNSF and relocating the tenants. Contact information follows:

Mike Watkins
7360 Crater View
Flagstaff, AZ 86004
Ph. 928-380-8926

Subleases: Contact Lessee

Comment: The City of Flagstaff is also considering purchasing 104-04-011C. This parcel is also not part of the railroad tract and therefore careful consideration should be given to meeting the larger parcel test.

Personal Property: Only real property is to be appraised. As there can be items situated on a subject property whose status (real or personal property) may vary pursuant to the requirements of state law, or how the item is configured, attached, or otherwise affixed to the subject property, the appraisal report must clearly declare and document what items were valued as "real property", and which items were not valued because they were determined to be classified as "personal property". Normally, this opinion is reached by the appraiser based on the property inspection, specific features of the item, and research of state requirements.

Pursuant to 49 CFR 24.103(a)(2)(i), a declaration of property classification, real or personal property, is required to appear in the appraisal report. This property classification declaration

is not required to include those items which are obviously personal property, i.e. vehicles, inventory, supplies, portable items, etc.

Contact Information: BNSF Railway Company
C/O
Jones Lang LaSalle
Justin M. Moon
817-230-2623
Justin.moon@am.jll.com

Inspection Permission: Arrangements for an onsite inspection should be made with the property owner contact indicated herein. The City of Flagstaff Real Estate Manager, should be informed of the date and time the inspection will occur as he/she may elect to be present. Please see the section of this SOW titled: "*General Appraisal Requirements & Instructions*", item #5, for details regarding property inspection and required documentation.

Questions/Concerns: Should questions or concerns arise during the course of the assignment, the City of Flagstaff Real Estate Manager and the USACE Appraiser must be immediately notified via written communication, (email is acceptable). "Issues" can include, but are not limited to: conflicting lease or ownership claims, reservations not appearing in title information, complaints to public officials, ownership boundaries, owner describing promises or commitments made by government representatives, death of person(s) having ownership interest(s) etc.

Outstanding Rights: Legal descriptions, non-standard estate language, a current title search, as well as other exhibits noted in the "Subject Property Information" on page 5 have been attached to this statement of work.

The non-standard estate is subject to approval by USACE. For this report, the non-standard estate has been utilized in the valuation analysis.

Appraiser is requested to verify this information Verification with the property owner is advised and notification to is required to notify the City of Flagstaff Real Estate Manager and the USACE Appraiser is required if any other encumbrances or easements are discovered.

The subject property is to be appraised "as is", subject only to the requirement of 49 CFR 24.103(b) (a.k.a. "*scope of the project rule*"), and the interest to be appraised is fee simple; encumbered fee simple, fee simple subject to existing road and utility easements; or fee simple less mineral rights; etc., as appropriate.

Subject Property Information:

The following documents, reports, and exhibits will be provided as attachments to this SOW:

1. Assessor's Parcel Map (Individual Folder)
2. Public Record Information (Individual Folder)
3. Title Search (Individual Folder – Phase I only)
4. Legal Description and Exhibits for the Channel Improvement Easements and Temporary Work Area Easements (Individual Folder)
5. Aerial with Easement Overlay (Individual Folder)
6. Engineering Drawings
7. Environmental Phase 1 Final
8. Spreadsheet with BNSF APNs and Easements
9. Map Illustrating APNs BNSF Properties – Phase 1 only
10. Graphic Renderings
11. RDF Phase 1 Segment Map
12. Rio de Flag Phases Map 12-7-17
13. Flagstaff Downtown Mile Project Description
14. Phase II Illustration
15. Form of Easements

Comment: The attachments provided represent illustrative information only. The appraiser is responsible their independent investigation, research and analysis to develop a creditable appraisal.

Links to Pertinent Regulations:

1. 49 CFR 24 - https://www.ecfr.gov/current/title-49/subtitle-A/part-24?toc=1
2. ER 405-1-04 - https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_405-1-4.pdf
3. Arizona Revised Statutes - https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/12/01122.htm

4. Uniform Appraisal Standards of Federal Land Acquisitions - https://www.justice.gov/file/408306/download

Additional Resources:

1. FEMA (Flood Zone) website: https://msc.fema.gov/portal/home
2. City of Flagstaff Open Data Portal : https://gis.flagstaffaz.gov/portal/apps/sites/#/opendata
3. Coconino County website: https://coconinocounty.maps.arcgis.com/apps/webappviewer/index.html?id=868170827e4443d2be37eb60562446ae

Contact Information:

a. City of Flagstaff
Bryce Doty
Real Estate Manager
211 W. Aspen Avenue
Flagstaff, Arizona 86001
Ph. (928) 213-2072
Email: bryce.doty@flagstaffaz.gov

b. Christine Cameron
Project Manager
City of Flagstaff
Capital Improvement Program
211 W. Aspen Avenue
Flagstaff, Arizona 86001
Ph. (928) 213-2682
Email: CCameron@flagstaffaz.gov

c. USACE Review Appraiser
Misa A. Zane, MAI,
Appraiser, Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017
Ph. (213) 452-3872
Email: misa.a.zane@usace.army.mil

SECTION 2 – APPRAISAL REQUIREMENTS & INSTRUCTIONS

Appraisal Standards: The appraisal process and appraisal report must, at a minimum, conform to standards established by the Uniform Standards of Professional Appraisal Practice (USPAP), AND Requirements for acquisition appraisal, established by Federal Regulation at 49 CFR Part 24, AND applicable laws of the State of Arizona.

Arizona Revised Statutes §12-1122. Ascertainment and assessment of value, damages and benefits.

§12-1122. A.1. "The value of the property sought to be condemned and all improvements on the property pertaining to the realty, and of each and every separate estate or interest in the property, and if it consists of different parcels, the value of each parcel and each estate or interest in the parcel separately."

§12-1122. A.2. "If the property sought to be condemned interest constitutes only a part of a larger parcel, the damages that will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff."

§12-1122. A.3. A.3. "How much the portion not sought to be condemned and each estate or interest in the portion will be benefited separately, if at all, by construction of the improvement proposed by the plaintiff. If the benefit is equal to the damages assessed under paragraph 2 of this subsection, the owner of the parcel shall be allowed no compensation except for the value of the portion taken, but if the benefit is less than the damages so assessed, the benefit shall be deducted from the damages, and the remainder shall be the only damages allowed in addition to the value."

Supplemental requirements of the USACE appraisal regulations are documented found in Engineering Regulation (ER) 405-1-04 dated January 29, 2016. Noteworthy are § 4-26 to § 4-38.

The presentation format of the appraisal report may conform with:

- The sequence and content for appraisal reports found in the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) ("Yellow Book"); or
- All content required by 49 CFR Part 24 and applicable state law.

Market Value: Definition of market value:

Arizona Revised Statutes § 12-1122. Ascertainment and assessment of value, damages and benefits.

C. "Value shall be determined by ascertaining the most probable price estimated in terms of cash in United States dollars or comparable market financial arrangements that the property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with the knowledge of all of the uses and purposes to which it was adapted and for which it was capable."

Property Interest: The BEFORE position appraisal in partial acquisition assignments, is fee simple subject to existing easements, existing encumbrances, and existing reservations indicated in the preliminary title report. If the appraiser discovers or develops any information that conflicts with the described real property rights, this information must immediately be brought to the The City of Flagstaff Real Estate Manager and the USACE Review Appraiser's attention in writing, (email is acceptable), as a request for possible amended instructions.

Date of Value: The valuation date for the appraisal report will be the appraiser's date of inspection.

The valuation date for purposes of a condemnation proceeding, if any, will comply with Arizona Revised Statutes § 12-1123 Accrual of right to compensation and damages; limitation. For the purpose of assessing compensation and damages, the right to compensation and damages shall be deemed to accrue at the date of the summons, and its actual value at that date shall be the measure of compensation and damages.

As indicated in the Project Cooperation Agreement (PCA), for the purpose of accrediting, the fair market value of lands, easements, or rights-of-way acquired by the the City of Flagstaff after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.[2]

Extraordinary Assumption(s):

USPAP defines an Extraordinary Assumption (EA) as:

"*an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis, which, if found to be false, could alter the appraiser's opinions or conclusions."*

The report should include the following Extraordinary Assumption:

Just compensation for the partial acquisition should be based on the forthcoming non-standard estates. (The non-standard estates are currently under review by USACE. If the non-standard estates are modified, a new appraisal may be required to determine if it impacts the value conclusion.) The forms of easements include the Standard Estate Language for the rights needed for illustrative purposes until the appraiser is provided the non-standard estates.

The appraiser may not assume or invoke any extraordinary assumption without informing the City of Flagstaff Real Estate Manager and the USACE Review Appraiser in writing (email is acceptable). The City of Flagstaff Real Estate Manager and the USACE Review Appraiser shall inform the appraiser in writing if the described extraordinary assumption is acceptable. Any Extraordinary Assumption utilized in the appraisal process, must be prominently declared in the appraisal report.

Hypothetical Condition(s):

USPAP defines "Hypothetical Condition" as:

"A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the

[2] Project Cooperation Agreement Between The Department of the Army and The City of Flagstaff, Flagstaff Arizona, for Construction of the Rio de Flag Flood Control and Recreation Project, Article IV§B.1, p.9.

effective date of the assignment results, but is used for the purposes of analysis"

For all proposed acquisitions of real property, the requirements of 49 CFR 24.103(b), a requirement also found in the UASFLA at Section 1.2.7.3.3, and known as the "*Scope of the Project Rule"*, must be followed. The requirement of disregarding the value influence of the project, for which the appraisal is requested, is sometimes classified as a "*hypothetical condition*", while others regard it as an "*assignment condition*", and still others classify the "*Scope of the Project Rule*" as a "*jurisdictional exception*" to USPAP 1-4(f). Regardless of how this requirement is characterized, the "*Scope of the Project* Rule" must be followed. For proposed acquisitions of a total property, no other hypothetical conditions are allowed without written approval from the City of Flagstaff Real Estate Manager and the USACE Review Appraiser assigned to the project.

All appraisals involving partial acquisitions require applying the BEFORE and AFTER appraisal process, which requires the use of a hypothetical condition in its application for the AFTER position valuation of the remainder. All partial acquisition appraisals shall utilize the following hypothetical condition, or similar phrasing to this effect: "*The appraisal of the AFTER position remainder property is performed under the hypothetical condition that, as of the appraised date of value, the proposed real property acquisition is completed, any associated construction for the project is complete, and the construction is consistent with plans provided to the appraiser by the client*." Partial acquisition appraisal reports do not require a separate written approval for this standard hypothetical condition used for all AFTER position appraisal valuations.

The valuation of the remainder in the AFTER condition requires a hypothetical condition that the project has been completed as proposed.

Additionally the appraisal report should be based on the following additional hypothetical condition:

The intended use of the appraisal is to provide an estimate of value for the purposes of negotiating the acquisition of Channel Improvement Easements and Temporary Work Area Easements in conjunction with the Rio de Flag – Flood Risk

Management Project. Various city projects including the Lone Tree Overpass may be ongoing simultaneously with the Rio de Flag Flood Risk Management Project. Recognizing the simultaneous projects is consistent with the market analysis discussion, however as this appraisal report involves only the Rio de Flag Flood Risk management project, hypothetical condition ignoring the City projects in the valuation analysis should be utilized.

The appraiser may not use any other hypothetical conditions without informing the City of Flagstaff Real Estate Manager and the USACE Review Appraiser in writing (email is acceptable). The City of Flagstaff Real Estate Manager and the USACE Review Appraiser shall inform the appraiser in writing if the described hypothetical condition is acceptable. ALL hypothetical conditions utilized in the appraisal process, whether for complete or partial acquisitions, must be documented and prominently indicated in the body of the appraisal report.

Except for the standard use of the "*Scope of the Project Rule"* and the standard *AFTER position hypothetical condition; and the hypothetical conditions described here,* written approval for use of any other hypothetical condition must be included in the addenda section of the appraisal report.

Jurisdictional Exceptions:

Certain requirements of the UASFLA (Yellow Book) appraisal standards require invoking the USPAP's Jurisdictional Exception Rule. If the appraiser perceives that USPAP's Jurisdictional Exception Rule should be invoked to meet other standards in UASFLA, or other requirements of law or regulation, the appraiser must communicate in writing, (email is acceptable), with the City of Flagstaff Real Estate Manager and the USACE Review Appraiser to obtain prior written approval. All jurisdictional exceptions to USPAP must be prominently provided in the appraisal report. The specific law, regulation, or standard requiring invocation of the jurisdictional exception rule must be cited, along with the specific portion of the USPAP for which jurisdictional exception is claimed.

Special Appraisal Instructions:

- For Non-Federal Sponsor appraisals, the presentation format of the appraisal report may conform with the sequence and content for appraisal reports found in the UASFLA (Yellow Book) or other appraisal report format that contains all content

required by 49 CFR Part 24, applicable state law, this Statement of Work as well as supplemental requirements as determined by the City of Flagstaff Real Estate Manager and the USACE Review Appraiser to be acceptable.

- Appraise the subject property in its "as is" condition. For partial acquisitions, only the BEFORE position appraisal is to be performed "as is", subject to the "S*cope of the Project Rule"* previously described in this Statement of Work. For partial acquisition appraisals, the AFTER position appraisal valuation is to be performed utilizing the standard hypothetical condition previously described in the "*Hypothetical Conditions"* section of this Statement of Work.

- The appraisal report must provide a clear, appropriate and creditable analysis based on market research to determine compensable and noncompensable partial takings. Quantifiable or qualitative data is required if a percentage adjustment is utilized to estimate the value of a partial acquistion.

- Quantifiable or qualitative research is also required to support the Temporary Work Area (or Temporary Construction) easement analysis. Providing an estimate of the annual market rent is based on a rate of return, the rate utilized must be supported by research data. Further, if the projected term of the temporary construction easement is over three (3) years, a discussion of the time value of money must be included with support for any applied discount rate.

- Each partial taking (compensable or noncompensable) must be discussed individually in the appraisal report.

- There may be value contribution, beyond aesthetic value, for business or agricultural use on the site. If the appraiser is not an expert, on the exist use or its contributing value, an expert to provide assistance should be engaged. The analysis must conform to industry standard valuation methodolgy. The contractor's cost estimate for this assignment must include the services of the expert. The Unit Rule in the UASFLA (Yellow Book) forbids a summation approach and must be kept in mind.

General Appraisal Requirements & Instructions:

1. The Non-Federal Sponsor appraiser performing the appraisal, whether staff employee or contractor, must hold a valid State License as a Certified General Appraiser for the state in which the subject property is located.

2. The Statemen of Work performed by the appraiser, is required to be documented in the appraisal report, and must include actions and procedures required to achieve credible assignment results for the intended use.

3. This Statement of Work and the employment contract must be included within the addenda of the appraisal report.

4. The appraiser may be required to attend a pre-appraisal meeting with the property owner, the USACE Realty Specialist and the City of Flagstaff Real Estate Manager. The date, time and place of the meeting (if required) will be coordinated by the City of Flagstaff Real Estate Manager and communicated to the appraiser and other necessary parties.

5. For all appraisals having an intended use connected with a proposed acquisition or exchange, specific requirements of Federal Regulation, found at 49 CFR 24.102(c)(1), require the appraiser to offer the property owner and/or the owner's representative an opportunity to accompany the appraiser during the property inspection. The appraiser must describe, in the appraisal report, the information regarding the required contact and the offer to accompany inspection, who was contacted (*by name if an individual, or name and title if a trustee of a trust, or officer of the owning legal entity*), when, how, and whether the owner or owner's designated representative agreed or declined to accompany the appraiser's inspection. If the appraiser was accompanied during the property inspection, a description of the pertinent comments received from the owner or owner's representative should be included. If contact was performed through the use of U.S. Mail, or electronic communication, a copy of the document/communication transmitted to the owner or owner's representative must be included in the addenda of the appraisal report. The appraiser must also include a declaration in the signed Certificate of Appraiser for the appraisal report that the regulation-required offer to accompany the appraisal inspection was extended. If contact with the owner or owner's representative is not completed, or there is no response to attempts of contact, the appraisal report must include detailed documentation of the actions performed by the appraiser in attempting to comply with the requirements of 49 CFR 24.102(c)(1). Copies of any attempted communications must be included in the addenda of the appraisal report.

6. The appraiser must make a personal inspection of the subject property and each of the comparable market properties used in the analyses unless specific arrangements to the contrary have been approved in writing by the City of Flagstaff Real Estate Manager and the USACE Review Appraiser prior to the commencement of the assignment. If a property owner is contacted, and does not permit the appraiser to enter the property for an on-site inspection, or does not permit inspection of parts of the subject property, or on-site physical inspection is not practical, the appraiser shall notify the City of Flagstaff Real Estate Manager and the USACE Review Appraiser in writing, (email is acceptable), for instruction regarding acceptable off-site inspection procedures. Any deviation from a full on-site inspection of the subject property shall be documented, in detail, in the appraisal report.

7. USPAP Standard 2-2 requires a declaration as to which of the two options an appraisal report is prepared. The appraisal report must be prepared under the USPAP's "*appraisal report*" option. Appraisal Reports shall be prepared, pursuant to the requirements of 49 CFR Part 24. "Restricted" Appraisal Reports are not

permitted as they are not compliant with the requirements of 49 CFR Part 24 or the UASFLA.

Comments: The standards of the UASFLA (Yellow Book) incorporate all of the appraisal reporting requirements of 49 CFR Part 24. The UASFLA provides a more detailed description regarding required documentation for the appraisal report.

8. The appraisal report will be reviewed for compliance with the terms, requirements, and appraisal standards declared in this Statement-of-Work, as applicable. As determined by the City of Flagstaff Real Estate Manager and the USACE Review Appraiser, findings of omission or inadequacy, if any, will require clarification, editing, amendment, and/or correction to the report.

9. The opinion of market value declared in an appraisal report may not be predicated upon highest and best uses that are speculative or conjectural. A highest and best use opinion requires showing reasonable probability that the land is both physically adaptable for such use and there is an economic need or demand for such use as of the date of value, or in the reasonably near future from the declared date of value. The appraiser's conclusion of highest and best use must be an *economic* use. A non-economic highest and best use, such as *conservation, natural lands, preservation* or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value.

10. Essential in the appraiser's conclusion of highest and best use is the determination of *larger parcel*. It is the "larger parcel" that is the context for the highest and best use. All appraisal reports prepared for proposed acquisitions must include a clear declaration of the "*larger parcel*" Declaration of the "*larger parcel*" is required even if the UASFLA is not included as one of the applicable sets of appraisal standards for the appraisal assignment. Federal regulation at 49 CFR 24.103(a)(2)(i) requires a clear and adequate declaration of the total property being appraised. The appraiser must make a larger parcel determination in every appraisal conducted for any partial acquisition.– [See UASFLA 1.2.7.3.1.; and 1.4.6 for detailed explanation and definition of the term "larger parcel"].

11. The preferred method of adjusting comparable sales is through supported quantitative adjustments (percentage, $/acre, etc.); qualitative adjustments (similar, inferior, or superior) are to be used only when the market variables cannot be quantified. Quantitative adjustments without support are unacceptable**.** When the appraiser must resort to qualitative analyses, support that is more extensive and discussion of the appraiser's reasoning why a comparable sale is similar, inferior, or superior to the subject property is required. *All adjustments must be supported by clear, appropriate, and credible analysis based on documented market research*. Mere references to undisclosed "trends," or reliance on the Appraiser's "opinion" or "judgment" without market support is an unacceptable practice. Market support includes, but is not limited to, discussions with buyers/sellers, potential investors, brokers, and others knowledgeable about the

market. The appraiser must also recognize that variances in sale prices may be caused by multiple factors and should not over adjust a comparable by double-counting overlapping items.

12. No regression analysis may be employed in the appraisal without prior discussion with, and acceptability of the use of such analysis indicated in writing by the City of Flagstaff Real Estate Manager and the USACE Review Appraiser.

13. Documentation of the comparable sales and other market data utilized in the appraisal must comply with the federal regulation requirements for reporting comparable sales and market data which can be found at 49 CFR 24.103.

    Comment: The UASFLA (Yellow Book) incorporates the requirements of 49 CFR 24.103, and, contains in the UASFLA "Section 2 Appraisal Reporting", a more detailed explanation regarding acceptable documentation required for market data.

14. If sales to governmental entities, including sales to non-profit entities with the intention of transferring the sale property to a governmental entity, are included in the appraisal report, they are subject to extraordinary verification and treatment. They must be documented in accordance with the guidelines found in UASFLA Section 1.5.2.4. **Each of the issues identified at Section 1.5.2.4 must be specifically addressed when documenting the confirmation of any government sales or purchases in connection with their possible use as comparable sales.**

15. Color photographs and maps of comparable properties shall be included in the appraisal report, and addenda as appropriate. If access to comparable properties is not feasible, then aerial photographs will be accepted providing prior authorization is obtained from the City of Flagstaff Real Estate Manager and the USACE Review Appraiser. Aerial photographs will not be accepted if they are so dated that they do not accurately represent the property as it physically existed on the date of inspection. Any unusual property features must be photographed from ground level.

16. The appraisal report and all information furnished to the appraiser by the Non-Federal Sponsor client are the client's internal documents, and are to be considered confidential by the appraiser. All requests for information concerning the appraisal must be referred to the Non-Federal Sponsor client and the USACE Review Appraiser. The general public is not an intended user of the appraisal report; however, the appraiser must also be aware that the Freedom of Information Act, or a court's order, may result in the release of all or part of the appraisal report to others.

17. Should the appraiser receive confidential information, and find it necessary to rely on that information for the appraisal process, then the appraiser will contact the

City of Flagstaff Real Estate Manager and the USACE Review Appraiser in writing for instructions (email is acceptable). The City of Flagstaff Real Estate Manager and the USACE Review Appraiser will arrange to view the information and provide further instruction to the appraiser regarding handling and storage of, and reliance on, the confidential information.

18. When the appraiser has performed any services regarding the subject property within the three year (3) period preceding the **date of the agreement to perform** this appraisal assignment, he or she must appropriately disclose this information following the direction of the USPAP Ethics Rule, Conduct Section. This disclosure must be made with the proposal and also in the completed report. A declaration regarding whether any prior services were performed must be included in the Certificate of Appraiser.

19. Partial acquisitions sometimes result in AFTER position remainder tracts in which the property owner is left with an interest that has "*little or no value or utility to the owner*" (Please refer to 49 CFR 24.2(a)(27) and 24.102(k)). Part of the description and analysis of the AFTER position remainder tract shall include, if applicable, a clear identification of such remainders that may meet conditions to be classified as an "*Uneconomic Remainder"*. While the formal classification of a remainder tract, or portion thereof, is a regulation-directed determination of the Acquiring Agency, the initial identification of a potential "*Uneconomic Remainder"* is to be performed as part of the appraisal process, and documented in the appraisal report.

[End of Statement of Work]

Attachment 2 – Standard Estates

EC 405-1-11
1 December 2004

8. CHANNEL IMPROVEMENT EASEMENT.

A perpetual and assignable right and easement to construct, operate, and maintain channel improvement works on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____) for the purposes as authorized by the Act of Congress approved_____, including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate: dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements far public roads and highways, public utilities, railroads and pipelines.

14. TEMPORARY WORK AREA EASEMENT.

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____), for a period not to exceed _____, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a ~~(borrow area)~~ (work area), including the right to ~~(borrow and/or deposit fill, spoil and waste material thereon)~~ (move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the _____ Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

Attachment 3 – Spreadsheet

Assessor Parcel Number (APN)	Segment Map Sheet	Segment Map Tract #	Owner	Site Address	Land Area (Ac)	Zoning	Transect Zone	Flood Zoning	Description of Improvements	Description of Landscaping	Partial Acquisition AREA (SF)	Partial Acquisition AREA (Ac)	Type of Acquisition	Assessor Map in Parcel Folder	Property Info In Parcel Folder	Title Search in Parcel Fo	Legal Description & Exhibit in Parcel Folder	Aerial with Easement Overlay in Parcel Folder				
PHASE I																						
100-44-002A	100-3	301E-1	BNSF Railway Company	No Situs Address	0.32	CS	T5	X, AE, Reg Floodway	None	Lightly Treed	435.60	0.01	Temporary Construction Easement	X	X	X	X	X				
100-44-003E	100-3	301E	BNSF Railway Company	No Situs Address	1.35	CS	T5	AE, X	Train Tracks; Partial Visitor Center Building and Parking Lot	None	4,791.60	0.11	Channel Improvement Easement	X	X	X	X	X				
101-27-001C	100-3	305E(1)	BNSF Railway Company	101 E. Route 66Flagstaff, AZ 86001	4.04	HC	T5	X	Train Tracks and vacant land	Dense trees/shrubs	3,920.40	0.09	Channel Improvement Easement	X	X	X	X	X				
101-27-001C	100-3	305E(2)	BNSF Railway Company	101 E. Route 66Flagstaff, AZ 86001	4.04	HC	T5	X	Train Tracks and vacant land	Dense trees/shrubs	13,503.60	0.31	Channel Improvement Easement				X	X				
101-27-001C	100-3	305E-1	BNSF Railway Company	101 E. Route 66Flagstaff, AZ 86001	4.04	HC	T5	X	Train Tracks and vacant land	Dense trees/shrubs	3,049.20	0.07	Temporary Construction Easement				X	X				
101-27-001C	100-3	305E-2	BNSF Railway Company	101 E. Route 66Flagstaff, AZ 86001	4.04	HC	T5	X	Train Tracks and vacant land	Dense trees/shrubs	5,227.20	0.12	Temporary Construction Easement				X	X				
101-27-001C	100-3	305E-3	BNSF Railway Company	101 E. Route 66Flagstaff, AZ 86001	4.04	HC	T5	X	Train Tracks and vacant land	Dense trees/shrubs	3,049.20	0.07	Temporary Construction Easement				X	X				
101-27-002A	100-3	306E	BNSF Railway Company	128 E. Phoenix Ave. Flagstaff, AZ 86001	1.19	CS	T5	X	Vacant	Parking lot	8,276.40	0.19	Channel Improvement Easement	X	X	X	X	X				
101-27-002A	100-3	306E-1	BNSF Railway Company	128 E. Phoenix Ave. Flagstaff, AZ 86001	1.19	CS	T5	X	Vacant	Parking lot	3,920.40	0.09	Temporary Construction Easement				X	X				
101-27-002C	100-3	307E	BNSF Railway Company	101 E. Route 66Flagstaff, AZ 86001	0.78	Portion CS	T5	X	N/A	N/A	8,712.00	0.2	Channel Improvement Easement	X	X	X	X	X				
101-27-002C	100-3	307E-1	BNSF Railway Company	101 E. Route 66Flagstaff, AZ 86001	0.78	Portion CS	T5	X	N/A	N/A	2,613.60	0.06	Temporary Construction Easement				X	X				
104-07-007A	100-4	411E	BNSF Railway Company	No Situs Address	0.58	LI	N/A	X	Vacant	Trees	7,405.20	0.17	Channel Improvement Easement	X	X	X	X	X				
104-07-007A	100-4	411E-1	BNSF Railway Company	No Situs Address	0.58	LI	N/A	X	Vacant	Trees	3,484.80	0.08	Temporary Construction Easement				X	X				
104-07-007A	100-4	411E-2	BNSF Railway Company	No Situs Address	0.58	LI	N/A	X	Vacant	Trees	435.60	0.01	Temporary Construction Easement				X	X				
104-01-094	100-4	401E-1	BNSF Railway Company	108 E. Elden St. Flagstaff, AZ 86001	0.49	LI	N/A	X	Railroad Operating Property	N/A	9,147.60	0.21	Temporary Construction Easement	X	X	X	X	X				
104-01-094D	100-4	400E	BNSF Railway Company	No Situs Address	2.8	LI	N/A	X	Railroad Operating Property	N/A	9,583.20	0.22	Channel Improvement Easement	X	X	X	X	X				
104-01-094D	100-4	400E-1	BNSF Railway Company	No Situs Address	2.8	LI	N/A	X	Railroad Operating Property	N/A	3,920.40	0.09	Temporary Construction Easement				X	X				
104-01-094D	100-4	400E-2	BNSF Railway Company	No Situs Address	2.8	LI	N/A	X	Railroad Operating Property	N/A	3,049.20	0.07	Temporary Construction Easement				X	X				
104-01-098A	100-4	402E	BNSF Railway Company	520 E. Brannen Ave. Flagstaff, AZ 86001	5.31	LI	N/A	X	Railroad Operating Property	N/A	64,468.80	1.48	Channel Improvement Easement	X	X	X	X	X				
104-01-098A	100-4	402E-1	BNSF Railway Company	520 E. Brannen Ave. Flagstaff, AZ 86001	5.31	LI	N/A	X	Railroad Operating Property	N/A	10,018.80	0.23	Temporary Construction Easement				X	X				
104-01-098A	100-4	402E-2	BNSF Railway Company	520 E. Brannen Ave. Flagstaff, AZ 86001	5.31	LI	N/A	X	Railroad Operating Property	N/A	12,632.40	0.29	Temporary Construction Easement				X	X				
104-04-010	100-4	403E-1	BNSF Railway Company	426 E. Route 66Flagstaff, AZ 86001	4.39	LI	N/A	X	Train Tracks and vacant land	N/A	435.60	0.01	Temporary Construction Easement	X	X	X	X	X				
104-04-010	100-4	403E-2	BNSF Railway Company	426 E. Route 66Flagstaff, AZ 86001	4.39	LI	N/A	X	Train Tracks and vacant land	N/A	2,613.60	0.06	Temporary Construction Easement				X	X				
104-04-010	100-4	403E-3	BNSF Railway Company	426 E. Route 66Flagstaff, AZ 86001	4.39	LI	N/A	X	Train Tracks and vacant land	N/A	87.12	0.002	Temporary Construction Easement				X	X				
104-04-010	100-4	403E-4	BNSF Railway Company	426 E. Route 66Flagstaff, AZ 86001	4.39	LI	N/A	X	Train Tracks and vacant land	N/A	435.60	0.01	Temporary Construction Easement				X	X				
104-04-011C	100-4	404E	BNSF Railway Company	840 E. Butler Ave. Flagstaff, AZ 86001	8.27	LI	N/A	X	Railroad Operating Property	Trees	135,471.60	3.11	Channel Improvement Easement	X	X	X	X	X				
104-04-011C	100-4	404E-1	BNSF Railway Company	840 E. Butler Ave. Flagstaff, AZ 86001	8.27	LI	N/A	X	Railroad Operating Property	Trees	1,306.80	0.03	Temporary Construction Easement	X	X	X	X	X				
104-04-011C	100-4	404E-2	BNSF Railway Company	840 E. Butler Ave. Flagstaff, AZ 86001	8.27	LI	N/A	X	Railroad Operating Property	Trees	11,761.20	0.27	Temporary Construction Easement	X	X	X	X	X				
104-04-011C	100-4	404E-3	BNSF Railway Company	840 E. Butler Ave. Flagstaff, AZ 86001	8.27	LI	N/A	X	Railroad Operating Property		9,147.60	0.21	Temporary Construction Easement	X	X	X	X	X				
PHASE II																						
100-44-006A	TBD	TBD	BNSF Railway Company		1.47	HC	T5	AE, X, Reg Floodway			TBD	TBD	Channel Improvement Easement; and TCE	X		TBD	TBD	TBD				
100-43-001C	TBD	TBD	BNSF Railway Company		0.99	HC	T5	AE, X, Reg Floodway?			TBD	TBD	Channel Improvement Easement; and TCE	X		TBD	TBD	TBD				
100-44-001	TBD	TBD	BNSF Railway Company		1.34	HC	T5	AE, X, Reg Floodway?			TBD	TBD	Channel Improvement Easement; and TCE	X		TBD	TBD	TBD				
100-44-002A	TBD	TBD	BNSF Railway Company		0.32	CS	T5	AE, X, Reg Floodway?			TBD	TBD	Channel Improvement Easement; and TCE	X		TBD	TBD	TBD				
100-43-001 [1]	TBD	TBD	BNSF Railway Company		3.87	LI	N/A	AE,X			TBD	TBD	Channel Improvement Easement; and TCE	X		TBD	TBD	TBD				

[1] To verify. Illustration indicates it is outside the area. Note APN 100-44-002A is also in Phase I.

Attachment 4 – Legal Descriptions (legal descriptions for Phase 2 to follow)

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 100-44-002A
TRACT: 300E-1

A portion of that BNSF Railway parcel lying within the Southeast quarter of Section 16, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 100, Map 44, Parcel 2A described as follows:

Commencing at the southeast corner of that parcel of land as described in Docket 1533, Page 56, Official Records of Coconino County, said point being in common with the westerly Right-of-Way line of South Beaver Street and the northerly Right-of-Way line of West Phoenix Avenue;

Thence along the easterly line of said parcel, and along said westerly Right-of-Way line, North 20°45'48" East, 189.91 feet (Basis of Bearing) to the southeast corner of said Assessor's Parcel Number 100-44-002A and the beginning of a non-tangent curve concave to the south having a radius of 3494.81 feet and a central angle of 0°14'45" and being subtended by a chord which bears North 68°40'53" West, 15.00 feet and the **TRUE POINT OF BEGINNING;**

Thence along the southerly line of said parcel, and westerly along said curve, 15.00 feet;

Thence leaving said southerly line, North 20°35'31" East, 20.44 feet to a point on the northerly line of said parcel and the beginning of a non-tangent curve concave to the south having a radius of 3122.29 feet and a central angle of 0°16'35" and being subtended by a chord which bears South 67°46'03" East, 15.07 feet;

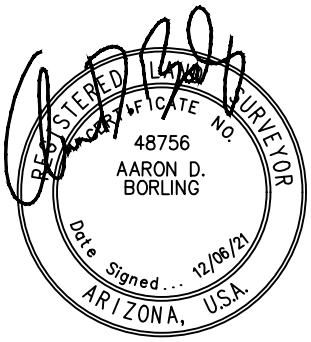
Thence along said northerly line, and easterly along said curve, 15.07 feet to the northeast corner of said parcel;

Thence along the easterly line of said parcel, and along said westerly Right-of-Way line, South 20°45'48" West, 20.20 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.01 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

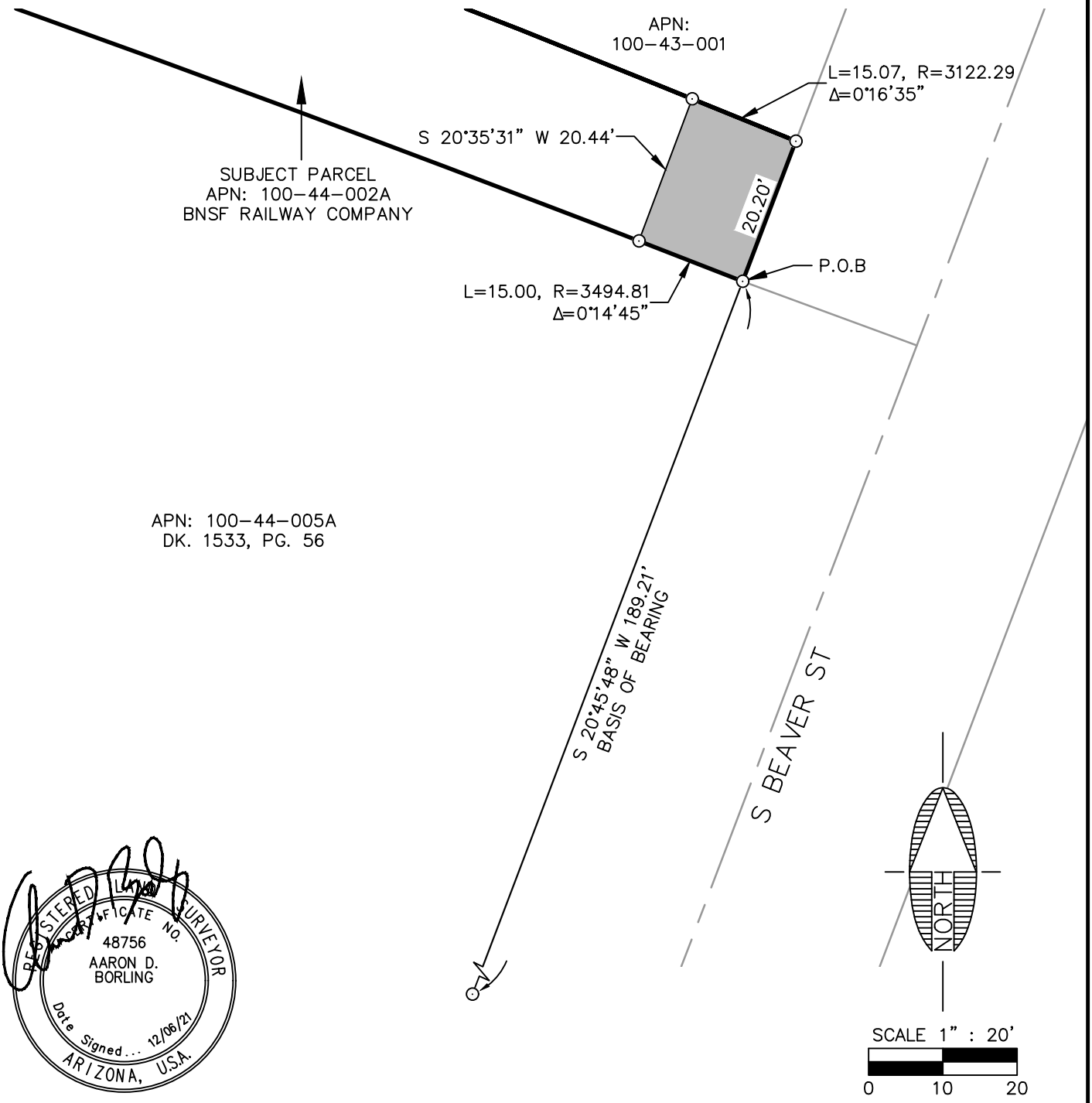


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHEAST QUARTER OF SECTION 16,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 12/06/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	DEC 21
SCALE	1" = 20'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 100-44-002A

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

PLOTTED: Dec 01, 2021-3:53pm
FILE: P:\2004\04473\SURVEY\LEGALS\LEGAL DESCRIPTIONS PHASE 1 2021-11\EXHIBITS\LOWER REACH TCE\EXHIBIT TCE 100-44-002A.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 100-44-003E

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Southeast quarter of Section 16 and the Southwest quarter of Section 15, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 100, Map 44, Parcel 003E described as follows:

Commencing at the southeast corner of that parcel of land as described in Instrument Number 3158373, Official Records of Coconino County, said point being in common with the westerly Right-of-Way line of South San Francisco Street and the northerly Right-of-Way line of East Phoenix Street;

Thence along said westerly Right-of-Way line, and along the easterly line of said parcel, North 20°55'30" East, 129.94 feet (Basis of Bearing) to the southeast corner of said Assessor's Parcel Number 100-44-003E and the **TRUE POINT OF BEGINNING;**

Thence continuing along said Right-of-Way line, and the easterly line of said Parcel, North 20°55'30" East, 20.23 feet;

Thence leaving said Right-of-Way line, and said easterly line, North 70°10'46" West, 20.00 feet;

Thence North 70°14'00" West, 138.04 feet;

Thence North 70°14'03" West, 392.10 feet to a point on the southerly line of said Parcel;

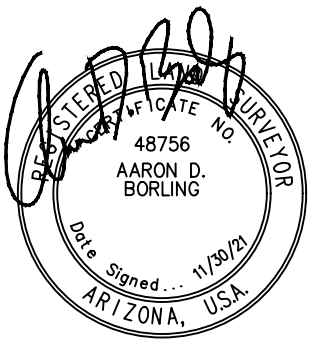
Thence along said southerly line, South 69°14'12" East, 169.93 feet;

Thence continuing along said southerly line, South 67°37'42" East, 380.23 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.11 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

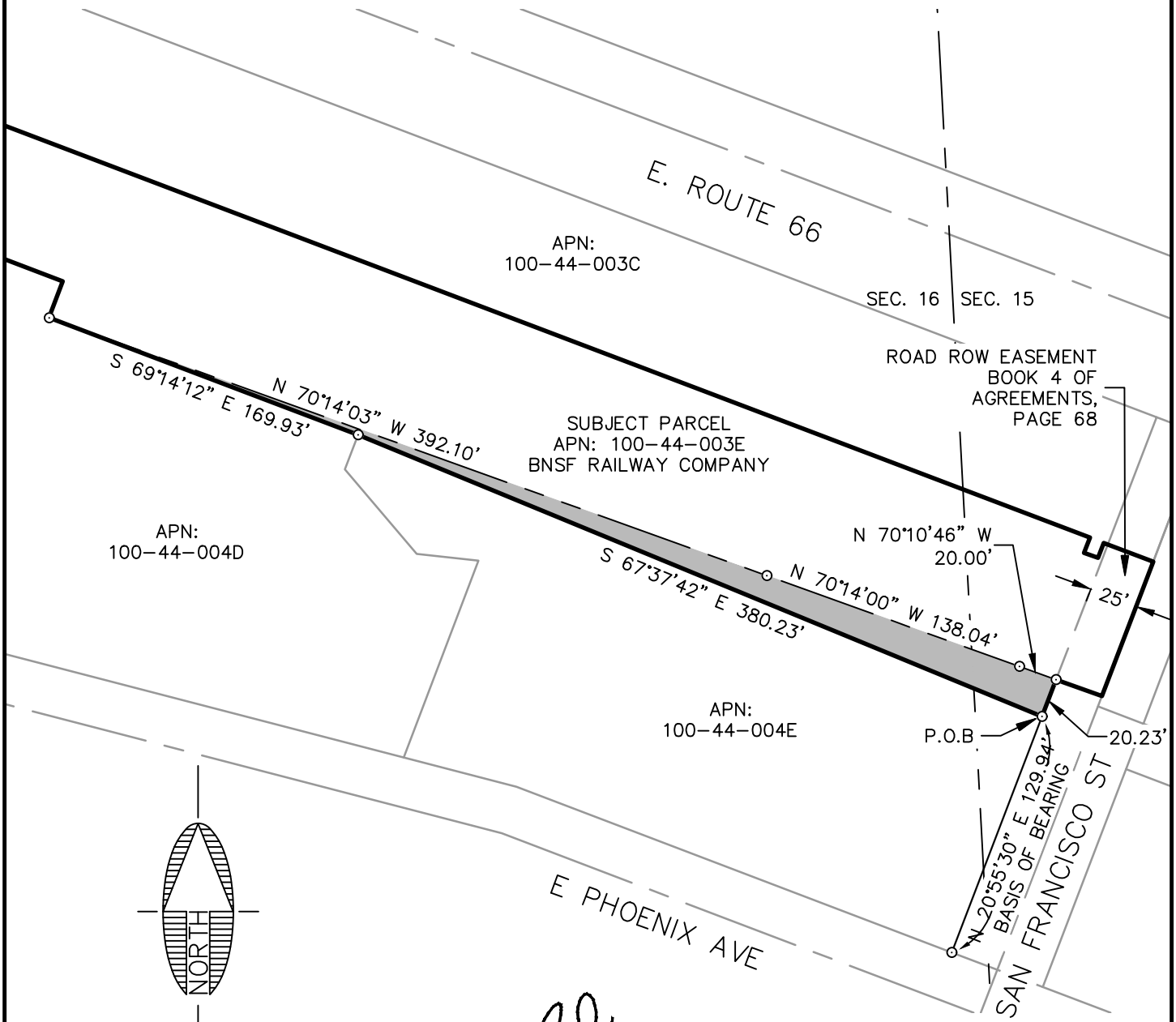


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, AND THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 21 NORTH, RANGE 7 EAST GILA AND SALT RIVER MERIDIAN, COCONINO COUNTY, ARIZONA



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 80'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 100-44-003E

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

PLOTTED: Nov 30, 2021-9:14am
FILE: P:\2004\04473\SURVEY\LEGALS\LEGAL DESCRIPTIONS PHASE 1 2021-11\EXHIBITS\LOWER REACH\EXHIBIT ROW 100-44-003E.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 101-27-001C
305E(1), 305E(2)

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Southwest quarter of Section 15, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 101, Map 27, Parcel 1C described as follows:

Commencing at the centerline intersection of South San Francisco Street and Phoenix Avenue as shown on the Revised Plat of the Brannen Addition to Flagstaff, Book 1 of Maps, Page 42, Official Records of Coconino County, from which the centerline intersection of South San Francisco Street and East Route 66 bears North 20°55'30" East, 369.65 feet (Basis of Bearing);

Thence along said centerline of South San Francisco Street, North 20°55'30" East, 169.94 feet to the southwest corner of said Parcel, and the **TRUE POINT OF BEGINNING;**

Thence along the west line of said parcel, and continuing along said centerline, North 20°55'30" East, 5.67 feet;

Thence leaving said west line and said centerline, South 70°10'46" East, 365.79 feet;

Thence South 67°38'13" East, 32.51 feet;

Thence South 64°18'28" East, 10.17 feet;

Thence South 61°58'50" East, 20.16 feet;

Thence South 59°04'12" East, 17.21 feet;

Thence South 56°48'26" East, 11.90 feet;

Thence South 55°52'45" East, 87.60 feet;

Thence South 59°38'33" East, 44.63 feet;

Thence South 63°24'21" East, 27.30 feet;

Thence North 16°13'15" East, 27.58 feet;

Thence South 67°30'17" East, 34.37 feet to the beginning of a non-tangent curve concave to the east having a radius of 32.04 feet and a central angle of 67°05'17" and being subtended by a chord which bears South 06°43'37" East, 35.41 feet;

Thence southeasterly along said curve, 37.52 feet;

Thence South 63°24'21" East, 247.65 feet to a point on the south line of said parcel, said point being in common with the south line of said Section 15;

Thence along said south line and said section line, South 89°29'02" West, 87.78 feet;

Thence leaving said south line and said section line, North 63°24'21" West, 226.83 feet to a point on the southwest line of said parcel;

Thence along said southwest line, North 31°20'42" West, 51.58 feet;

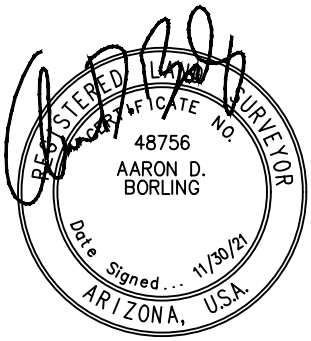
Thence continuing along said southwest line, North 48°29'45" West, 100.00 feet;

Thence continuing along said southwest line, North 69°10'22" West, 466.57 feet to **THE TRUE POINT OF BEGINNING.**

Containing 0.40 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

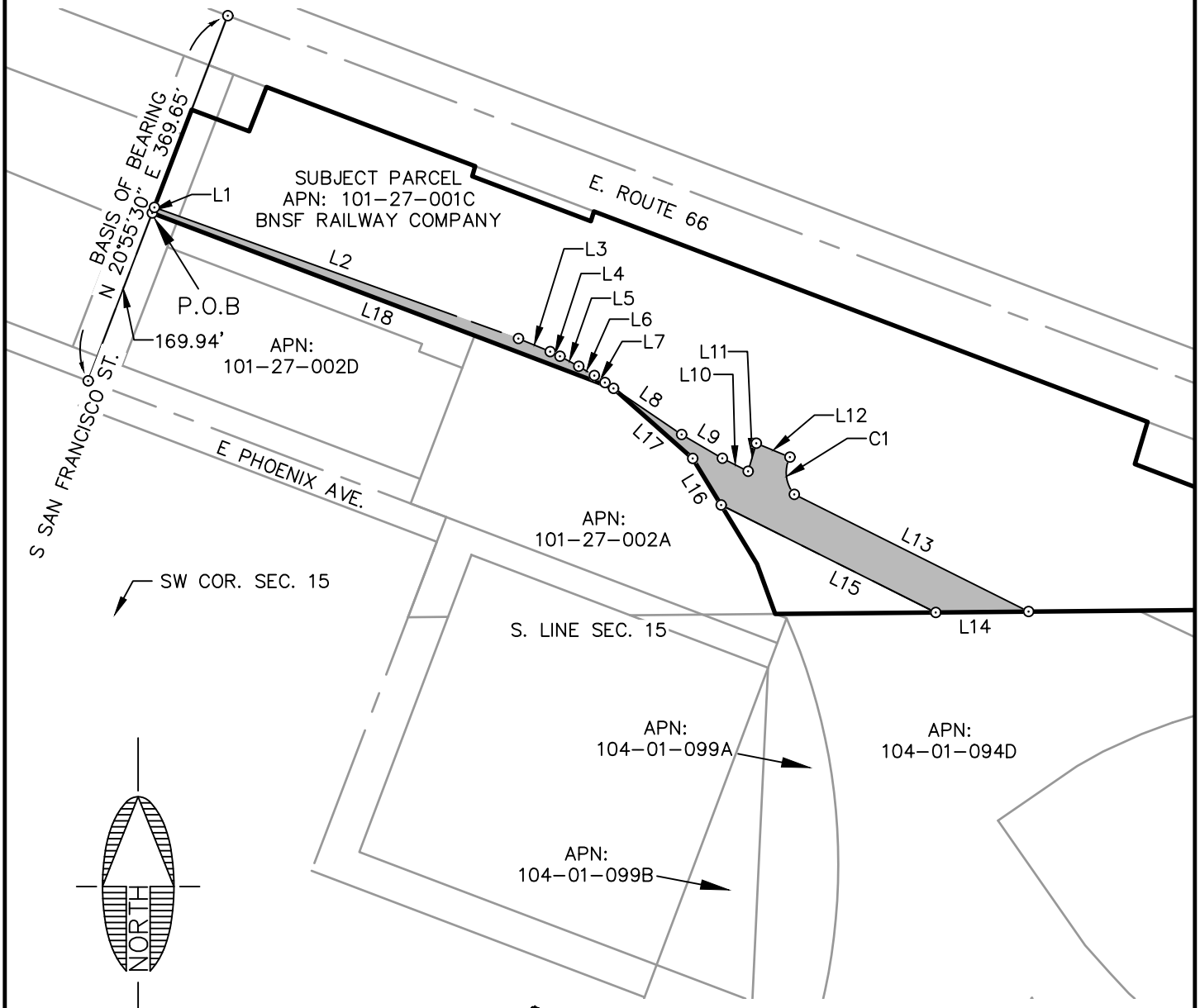


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 150'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 101-27-001C

FLAGSTAFF
ARIZONA

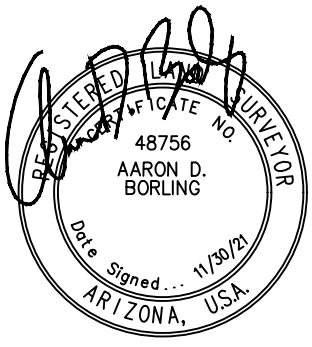
LEGAL EXHIBIT

SHEET 3 OF 4

PLOTTED: Nov 04, 2021-2:26pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH\EXHIBIT ROW 101-27-001C.DWG HSCHNOEBELEN

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	5.67	N 20°55'30" E
L2	365.79	S 70°10'46" E
L3	32.51	S 67°38'13" E
L4	10.17	S 64°18'28" E
L5	20.16	S 61°58'50" E
L6	17.21	S 59°04'12" E
L7	11.90	S 56°48'26" E
L8	87.60	S 55°52'45" E
L9	44.63	S 59°38'33" E
L10	27.30	S 63°24'21" E
L11	27.58	N 16°13'15" E
L12	34.37	S 67°30'17" E
L13	247.65	S 63°24'21" E
L14	87.78	S 89°29'02" W
L15	226.83	N 63°24'21" W
L16	51.58	N 31°20'42" W
L17	100.00	N 48°29'45" W
L18	466.57	N 69°10'22" W

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	37.52	32.04	67°05'17"



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 101-27-001C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 4 OF 4

PLOTTED: Nov 04, 2021-2:26pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH\EXHIBIT ROW 101-27-001C.DWG HSCHNOEBELEN

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 101-27-001C
TRACT: 305E-1, 305E-2, 305E-3

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Southwest quarter of Section 15, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 101, Map 27, Parcel 1C described as follows:

Parcel 1:

Commencing at the centerline intersection of South San Francisco Street and Phoenix Avenue as shown on the Revised Plat of the Brannen Addition to Flagstaff, Book 1 of Maps, Page 42, Official Records of Coconino County, from which the centerline intersection of South San Francisco Street and East Route 66 bears North 20°55'30" East, 369.65 feet (Basis of Bearing);

Thence along said centerline of South San Francisco Street, North 20°55'30" East, 169.94 feet to the southwest corner of said parcel;

Thence along the southerly line of said parcel, South 69°10'22" East, 466.57 feet to the **TRUE POINT OF BEGINNING;**

Thence leaving said southerly line, North 55°50'01" West, 9.89 feet;

Thence North 59°04'12" West, 17.21 feet;

Thence North 28°01'10" East, 10.04 feet;

Thence South 66°04'56" East, 36.29 feet;

Thence South 55°52'45" East, 80.02 feet;

Thence South 59°38'33" East, 44.63 feet;

Thence South 63°24'21" East, 12.75 feet;

Thence North 26°35'39" East, 11.05 feet;

Thence South 67°30'17" East, 9.61 feet to a point hereinafter referred to as 'Point A';

Thence South 16°13'15" West, 27.58 feet;

Thence North 63°24'21" West, 27.30 feet;

Thence North 59°38'33" West, 44.63 feet;

Thence North 55°52'45" West, 77.72 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.07 Acres, more or less.

Parcel 2:

Commencing from the aforementioned 'Point A';

Thence South 67°30'17" East, 34.37 feet to the **TRUE POINT OF BEGINNING;**

Thence South 67°30'17" East, 51.30 feet;

Thence South 36°41'58" East, 39.74 feet;

Thence South 63°24'21" East, 210.51 feet to a point on the south line of said parcel, said point being in common with the south line of said Section 15;

Thence along said south line, South 89°29'02" West, 33.78 feet to a point on said south line, hereafter referred to as 'Point B';

Thence leaving said south line, North 63°24'21" West, 247.65 feet to the beginning of a non-tangent curve concave to the east having a radius of 32.04 feet and a central angle of 67°05'17" and being subtended by a chord which bears North 06°43'38" West, 35.41 feet;

Thence northerly along said curve, 37.52 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.12 Acres, more or less.

Parcel 3:

Commencing from the aforementioned 'Point B';

Thence continuing along said south line, South 89°29'02" West, 87.78 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said south line, South 89°29'02" West, 34.78 feet;

Thence leaving said south line, North 63°24'21" West, 170.57 feet to a point on the southwesterly line of said parcel;

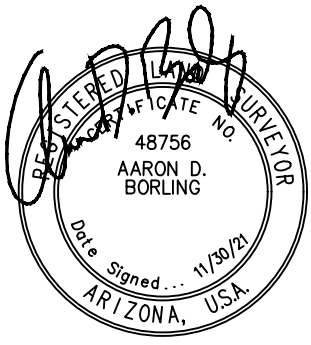
Thence along said southwesterly line, North 31°20'42" West, 29.86 feet;

Thence leaving said southwesterly line, South 63°24'21" East, 226.83 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.07 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.



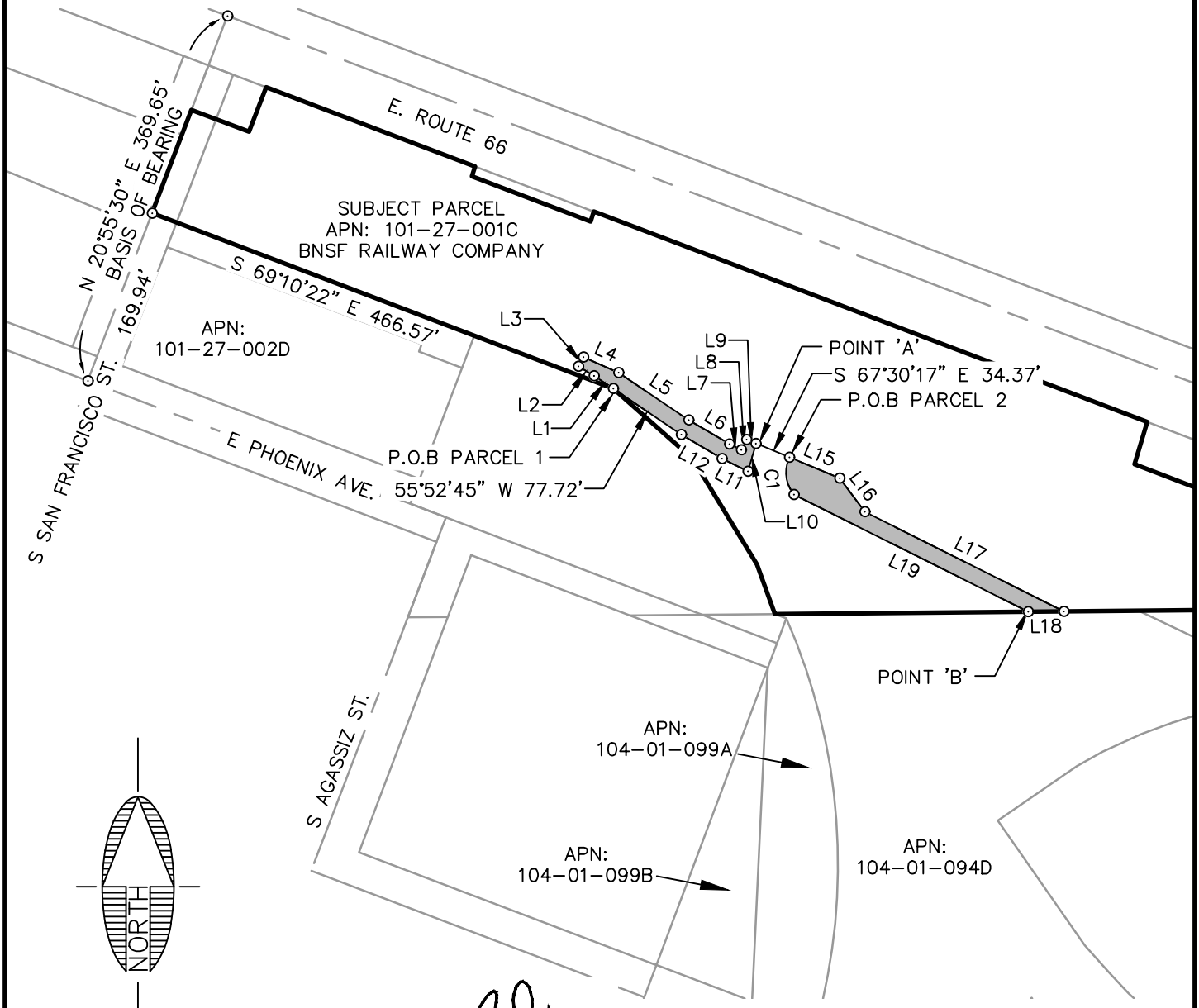
_____
City File No.

_____
Descriptive Title

PLOTTED: Nov 05, 2021-10:45am
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 101-27-001C 1.DWG HSCHNOEBELEN

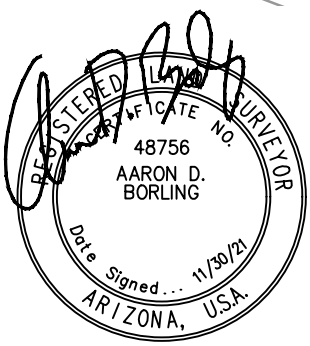
EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



SCALE 1" : 150'

0 75 150



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 150'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 101-27-001C

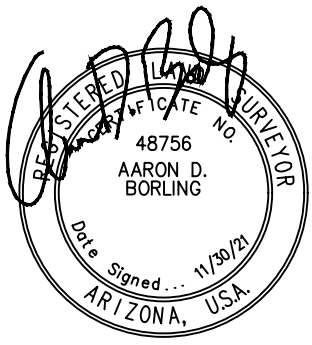
FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET
3
OF 5

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	9.89	N 55°50'01" W
L2	17.21	N 59°04'12" W
L3	10.04	N 28°01'10" E
L4	36.29	S 66°04'56" E
L5	80.02	N 55°52'45" W
L6	44.63	S 59°38'33" E
L7	12.75	S 63°24'21" E
L8	11.05	N 26°35'39" E
L9	9.61	S 67°30'17" E
L10	27.58	S 16°13'15" W
L11	27.30	N 63°24'21" W
L12	44.63	N 59°38'33" W
L15	51.30	S 67°30'17" E
L16	39.74	S 36°41'58" E
L17	210.51	S 63°24'21" E
L18	33.78	S 89°29'02" W
L19	247.65	N 63°24'21" W

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	37.52	32.04	67°05'17"



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	
DRAWN	JEE
DESIGN	
CHECKED	ADB

APN: 101-27-001C

FLAGSTAFF
ARIZONA

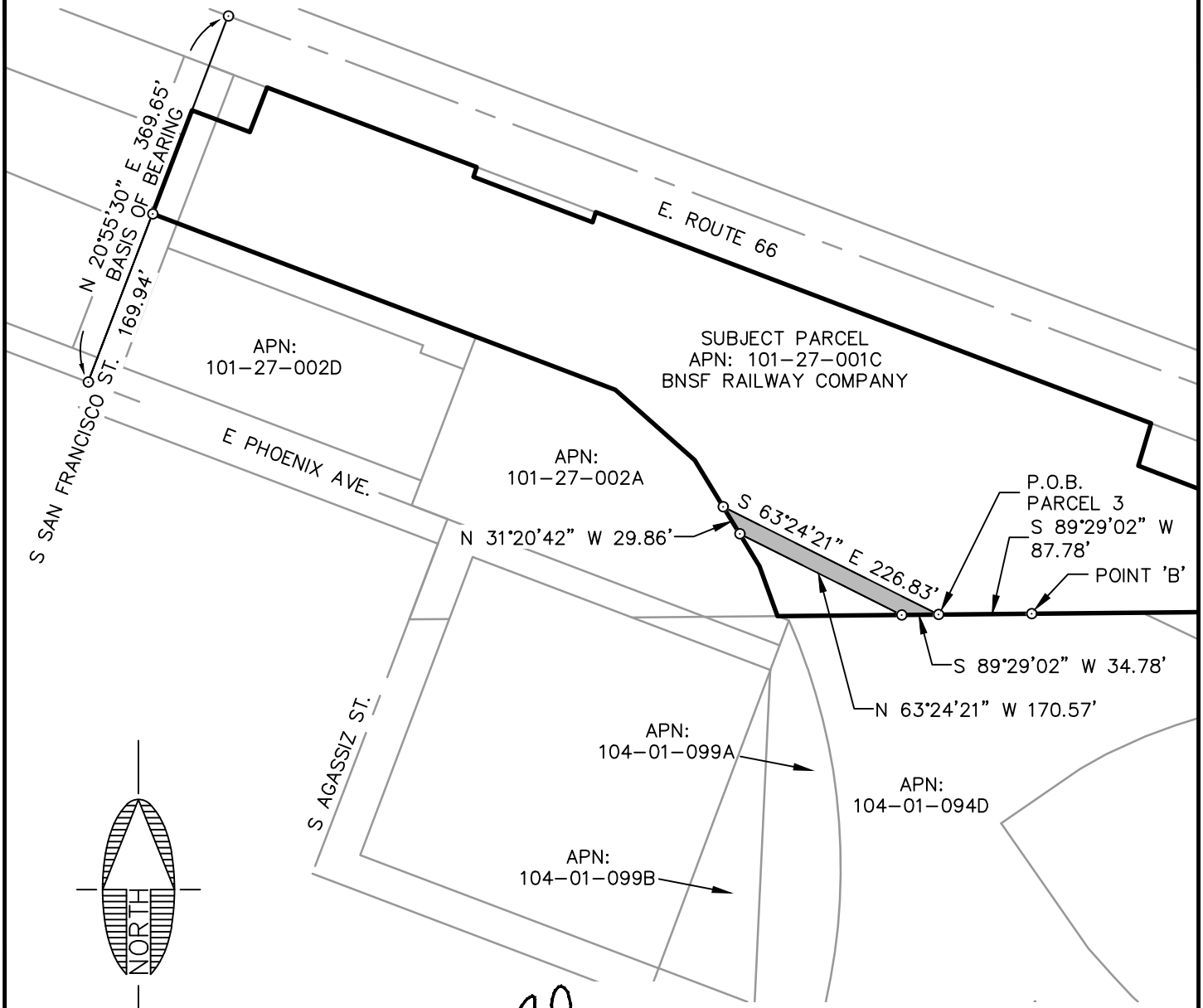
LEGAL EXHIBIT

SHEET 4 OF 5

PLOTTED: Nov 05, 2021-10:51am
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 101-27-001C 1.DWG HSCHNOEBELEN

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 150'
DRAWN	JEE
DESIGN	
CHECKED	ADB

APN: 101-27-001C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 5 OF 5

PLOTTED: Nov 02, 2021-2:48pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 101-27-001C 2.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 101-27-002A

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Southwest quarter of Section 15, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 101, Map 27, Parcel 2A described as follows:

Commencing at the centerline intersection of South Agassiz Street and East Phoenix Avenue as shown on the Revised Plat of the Brannen Addition to Flagstaff, Book 1 of Maps, Page 42, Official Records of Coconino County, from which the centerline intersection of South San Francisco Street and East Phoenix Avenue bears North 69°10'22" West, 362.32 feet (Basis of Bearing);

Thence along said centerline of East Phoenix Street, North 69°10'22" West, 35.98 feet to a point on the westerly line of said Parcel;

Thence along the westerly line of said Parcel, North 20°51'04" East, 141.31 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said westerly line, North 20°51'04" East, 28.63 feet to the northwest corner of said Parcel;

Thence along the northerly line of said Parcel, South 69°10'22" East, 140.46 feet;

Thence continuing along said northerly line, South 48°29'45" East, 100.00 feet;

Thence continuing along said northerly line, South 31°20'42" East, 51.58 feet;

Thence leaving said northerly line, North 63°24'21" West, 20.08 feet;

Thence North 59°38'33" West, 47.26 feet;

Thence North 55°52'45" West, 88.59 feet;

Thence North 56°48'26" West, 10.78 feet;

Thence North 59°04'12" West, 15.40 feet;

Thence North 61°58'50" West, 18.33 feet;

Thence North 64°18'28" West, 8.19 feet;

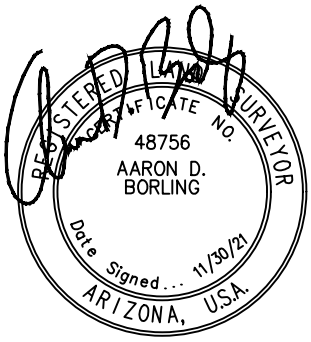
Thence North 67°38'13" West, 30.45 feet;

Thence North 70°12'53" West, 39.48 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.19 Acres, more or less.

See Exhibit ‘B’ attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

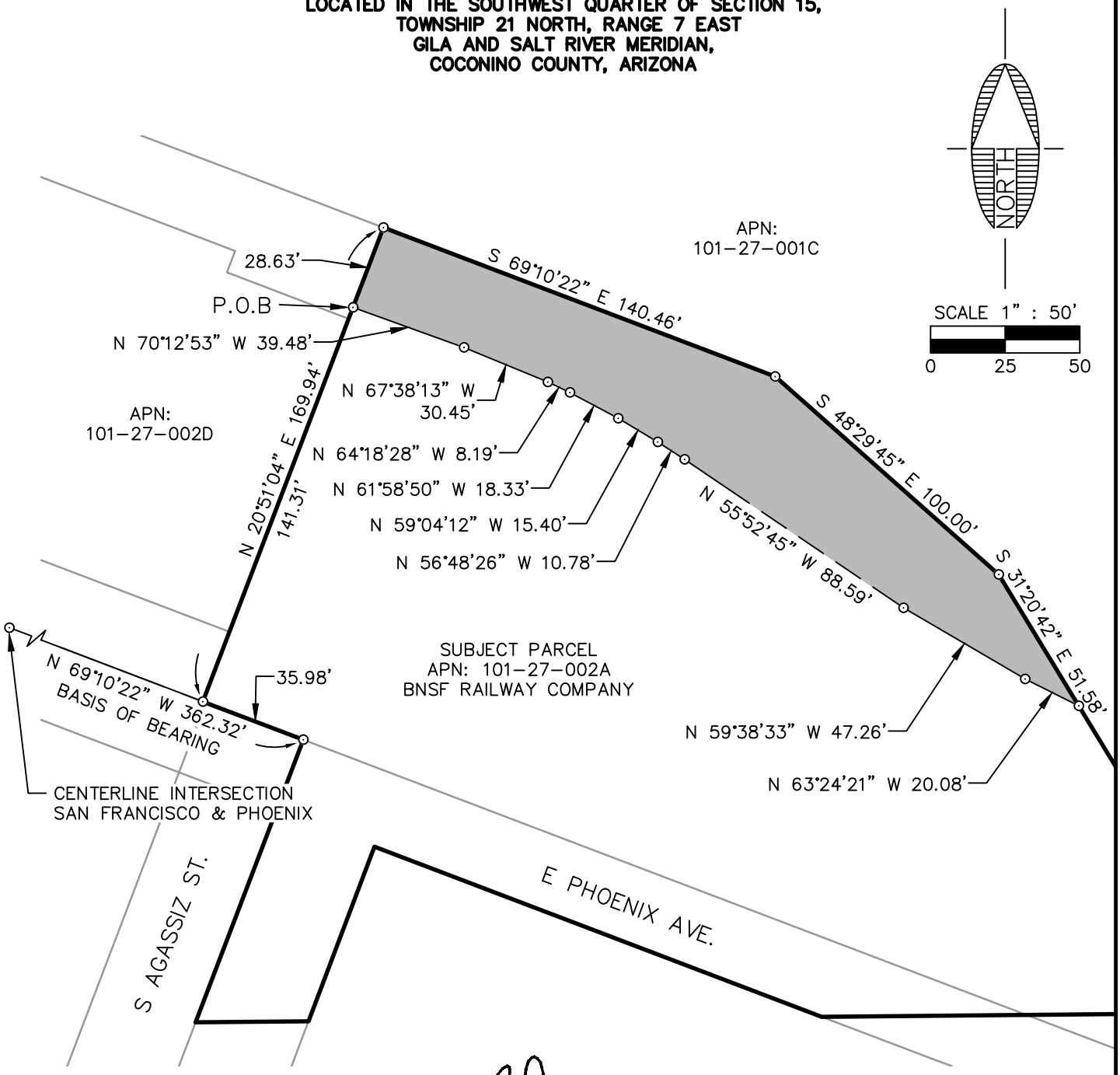


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE No.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 50'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 101-27-002A

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 3 OF 3

PLOTTED: Nov 04, 2021-3:16pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH\EXHIBIT ROW 101-27-002A.DWG HSCHNOEBELEN

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 101-27-002A
TRACT: 306E-1

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Southwest quarter of Section 15, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 101, Map 27, Parcel 2A described as follows:

Commencing at the centerline intersection of South Agassiz Street and East Phoenix Avenue as shown on the Revised Plat of the Brannen Addition to Flagstaff, Book 1 of Maps, Page 42, Official Records of Coconino County, from which the centerline intersection of South San Francisco Street and East Phoenix Avenue bears North 69°10'22" West, 362.32 feet (Basis of Bearing);

Thence along said centerline of East Phoenix Street, North 69°10'22" West, 35.98 feet to a point on the westerly line of said Parcel;

Thence along the westerly line of said Parcel, North 20°51'04" East, 141.31 feet

Thence leaving said westerly line, South 70°12'53" East, 35.07 feet to the **TRUE POINT OF BEGINNING;**

Thence South 70°12'53" East, 4.41 feet to the beginning of a tangent curve concave to the south, having a radius of 950.30 feet and a central angle of 02°19'46";

Thence along said curve, 38.64 feet, to the beginning of a tangent curve concave to the south having a radius of 363.91feet and a central angle of 05°18'42";

Thence along said curve, 33.74 feet;

Thence South 56°00'35" East, 76.58 feet;

Thence South 55°52'45" East, 22.80 feet;

Thence South 59°38'33" East, 47.26 feet;

Thence South 63°24'21" East, 20.08 feet to a point on the northerly line of said parcel;

Thence along said northerly line, South 31°20'42" East, 29.86 feet;

Thence leaving said northerly line, North 63°24'21" West, 45.53 feet;

Thence North 59°38'33" West, 47.46 feet;

Thence North 55°53'42" West, 88.61 feet;

Thence North 60°24'36" West, 52.31 feet;

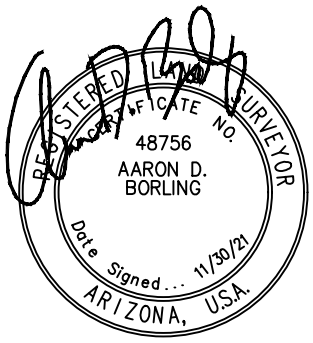
Thence North 67°51'23" West, 32.96 feet;

Thence North 19°47'07" East, 15.76 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.09 Acres, more or less.

See Exhibit ‘B’ attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

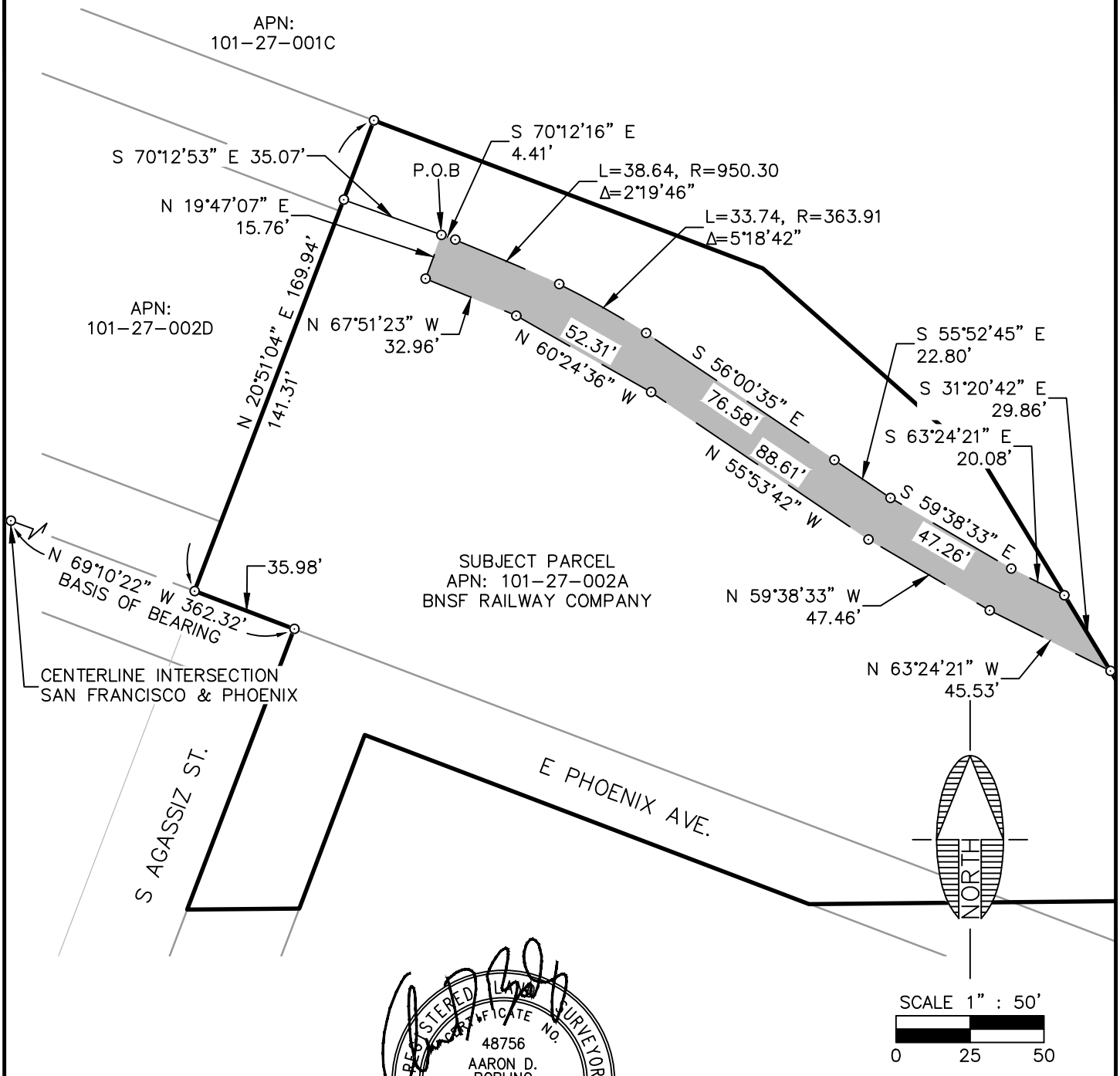


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 50'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 101-27-002A

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 3 OF 3

PLOTTED: Nov 02, 2021-4:26pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 101-27-002A.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 101-27-002C

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Southwest quarter of Section 15, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 101, Map 27, Parcel 2C described as follows:

Commencing at the centerline intersection of South San Francisco Street and Phoenix Avenue as shown on the Revised Plat of the Brannen Addition to Flagstaff, Book 1 of Maps, Page 42, Official Records of Coconino County, from which the centerline intersection of South San Francisco Street and East Route 66 bears North 20°55'30" East, 369.65 feet (Basis of Bearing);

Thence along said centerline of South San Francisco Street, and the westerly line of said parcel, North 20°55'30" East, 135.38 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said centerline, and said westerly line, North 20°55'30" East, 34.56 feet to the northwest corner of said parcel;

Thence along the northerly line of said Parcel, South 69°10'22" East, 326.11 feet to the northeast corner of said parcel;

Thence along the easterly line of said parcel, South 20°51'04" West, 28.63 feet;

Thence leaving said easterly line, North 70°12'53" West, 43.68 feet to a point on the southerly line of said parcel;

Thence along said southerly line, North 20°49'38" East, 4.43 feet;

Thence continuing along said southerly line, North 69°10'22" West, 257.48 feet to a point on the easterly line of said parcel;

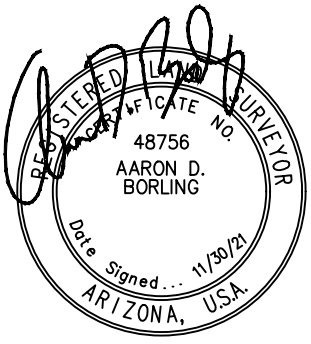
Thence along said easterly line, South 20°55'30" West, 9.11 feet;

Thence leaving said easterly line, North 70°12'53" West, 24.99 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.20 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

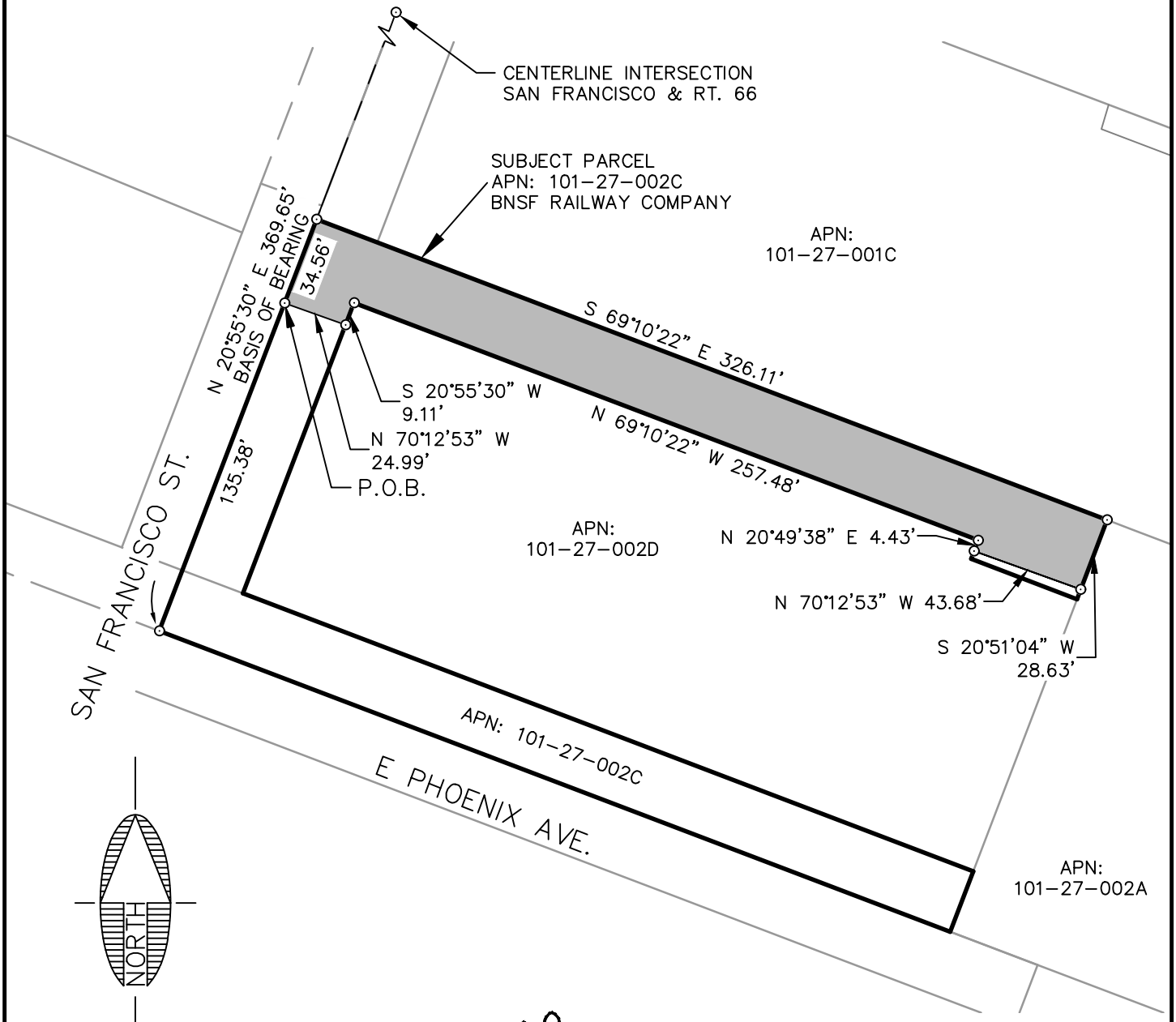


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 60'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 101-27-002C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

PLOTTED: Nov 04, 2021-3:23pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH\EXHIBIT ROW 101-27-002C.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 101-27-002C
TRACT: 307E-1

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Southwest quarter of Section 15, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 101, Map 27, Parcel 2C described as follows:

Commencing at the centerline intersection of South San Francisco Street and Phoenix Avenue as shown on the Revised Plat of the Brannen Addition to Flagstaff, Book 1 of Maps, Page 42, Official Records of Coconino County, from which the centerline intersection of South San Francisco Street and East Route 66 bears North 20°55'30" East, 369.65 feet (Basis of Bearing);

Thence along said centerline of South San Francisco Street, and the westerly line of said parcel, North 20°55'30" East, 24.99 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said centerline, and said westerly line, North 20°55'30" East, 110.38 feet to the northwest corner of said parcel;

Thence South 70°12'53" East, 24.99 feet to a point on the easterly parcel line;

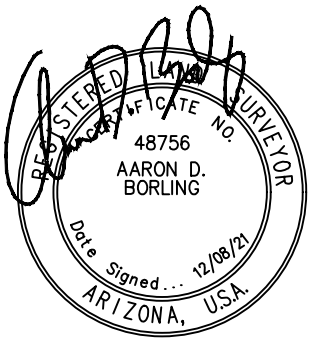
Thence along said easterly parcel line South 20°55'30" West, 110.84 feet;

Thence leaving said easterly line, North 69°09'56" West, 24.99 feet to a point on the westerly line of said parcel and the **TRUE POINT OF BEGINNING.**

Containing 0.06 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

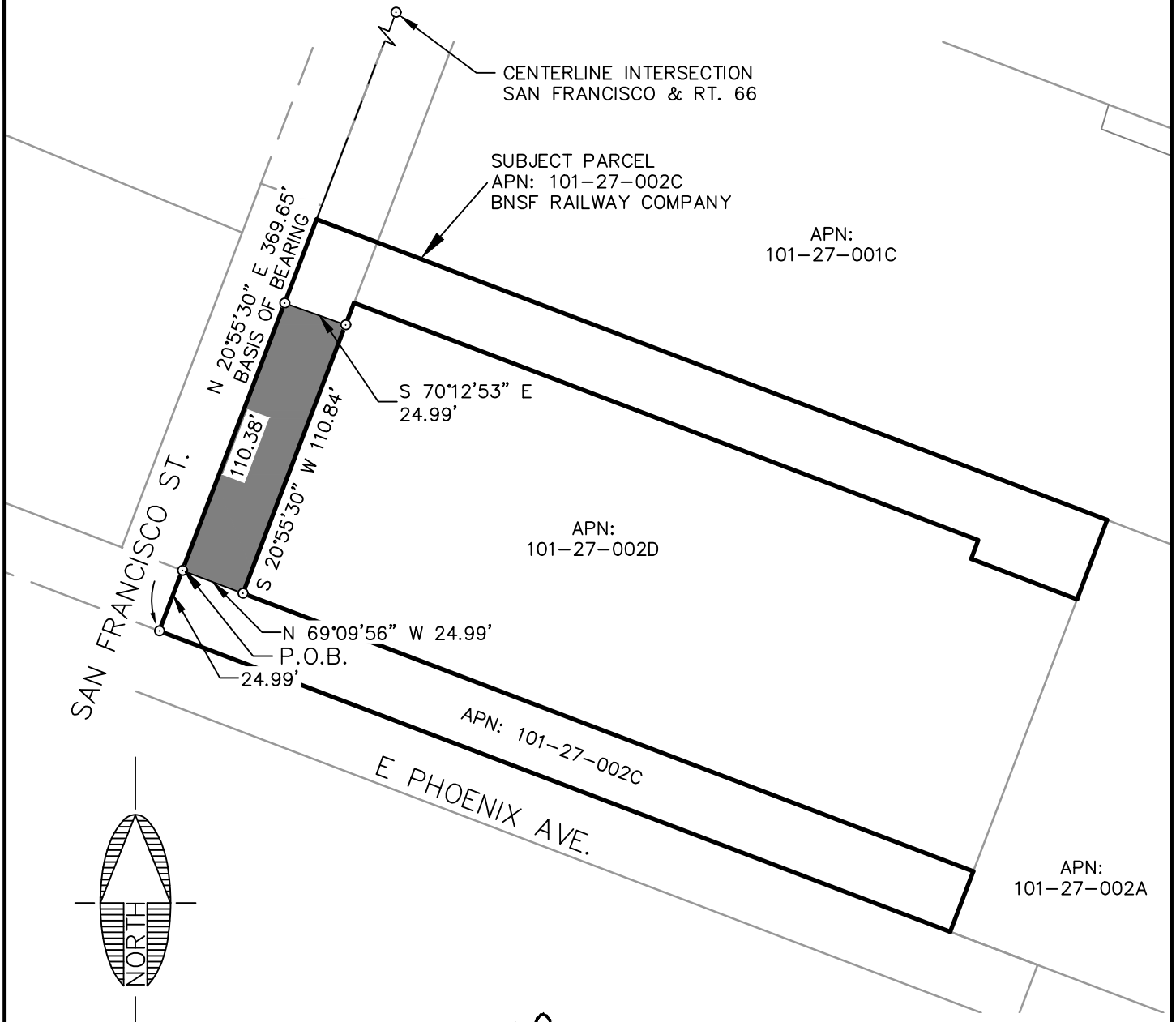


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 12/08/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	DEC 21
SCALE	1" = 60'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 101-27-002C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

PLOTTED: Dec 08, 2021-10:06am
FILE: P:\2004\04473\SURVEY\LEGALS\LEGAL DESCRIPTIONS PHASE 1 2021-11\EXHIBITS\LOWER REACH TCE\EXHIBIT TCE 101-27-002C.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 104-07-007A

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station grounds lying within the Northeast quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 7, Parcel 7A described as follows:

Commencing at the southerly corner of said Parcel, said point being in common with the northerly Right-of-Way line of Butler Avenue as shown on Book 7 of Maps, Page 41, Official Records of Coconino County, and the North-South mid-section line of said Section 22, from which the northwest corner of said Parcel bears North 00°00'01" West, 508.96 feet (Basis of Bearing);

Thence along said mid-section line, and the west line of said Parcel, North 00°00'01" West, 238.48 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said mid-section line, and said west line, North 00°00'01" West, 131.29 feet to the beginning of a non-tangent curve concave to the north having a radius of 349.50 feet and a central angle of 12°06'31" and being subtended by a chord which bears South 68°04'16" East 73.72 feet;

Thence leaving said mid-section line, and said west line, and southeasterly along said curve, 73.86 feet to a point on the easterly line of said Parcel;

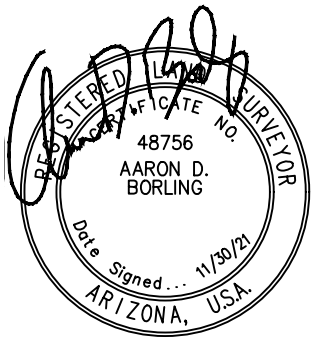
Thence along said easterly line, South 11°14'57" West, 120.29 feet to the beginning of a non-tangent curve concave to the north having a radius of 469.50 feet and a central angle of 5°45'10" and being subtended by a chord which bears North 72°25'58" West 47.12 feet;

Thence northwesterly along said curve, 47.14 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.17 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.



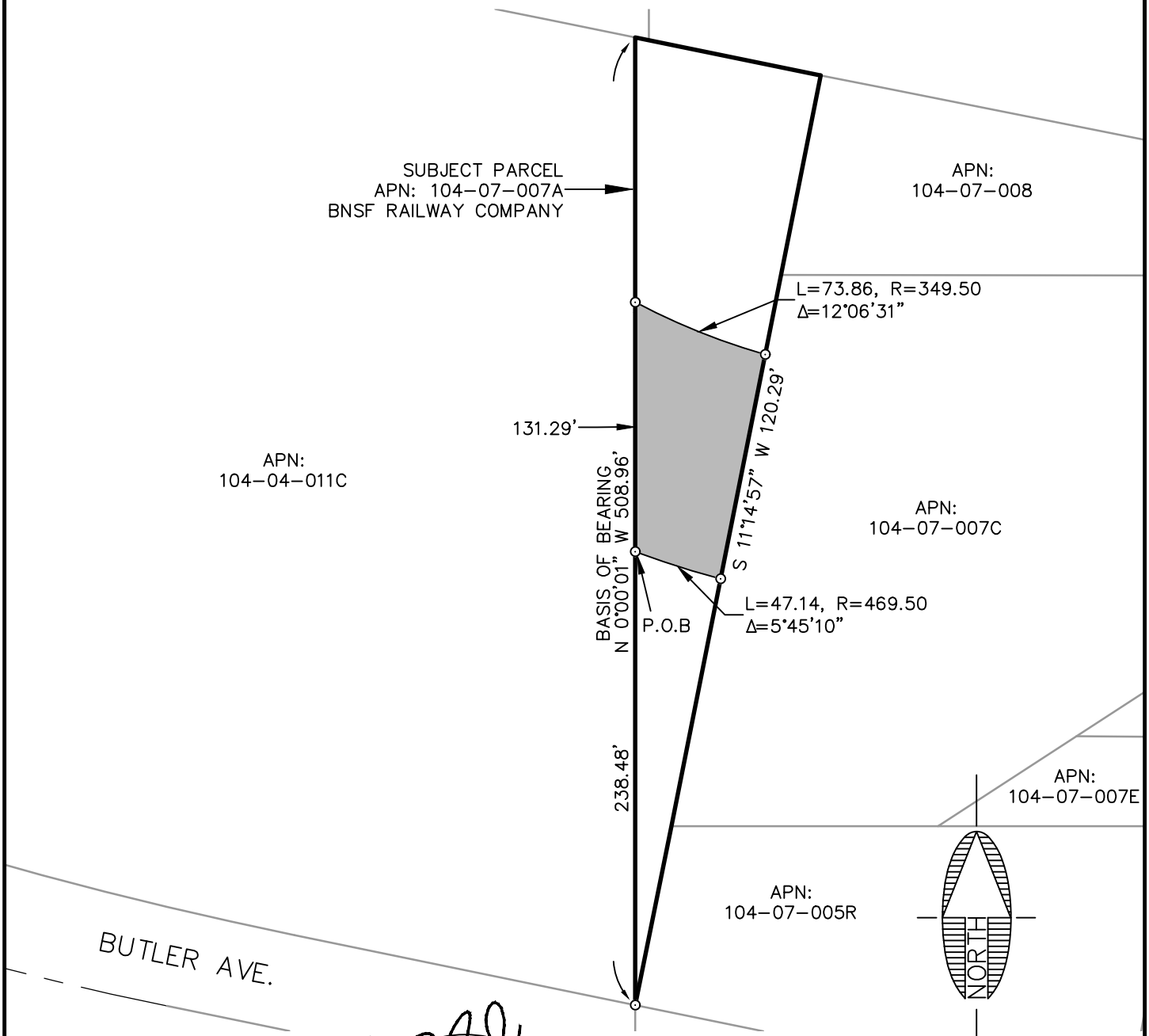
_____
City File No.

_____
Descriptive Title

PLOTTED: Nov 04, 2021–5:07pm

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHEAST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 80'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104–07–007A

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021–11\LOWER REACH\EXHIBIT ROW 104–07–007A.DWG HSCHNOEBELEN

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION
APN: 104-07-007A
TRACT: 411E-1, 411E-2

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station grounds lying within the Northeast quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 7, Parcel 7A described as follows:

Parcel 1:

Commencing at the southerly corner of said Parcel, said point being in common with the northerly Right-of-Way line of Butler Avenue as shown on Book 7 of Maps, Page 41, Official Records of Coconino County, and the North-South mid-section line of said Section 22, from which the northwest corner of said Parcel bears North 00°00'01" West, 508.96 feet (Basis of Bearing);

Thence along said mid-section line, and the west line of said Parcel, North 00°00'01" West, 369.77 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said mid-section line, and said west line, North 00°00'01" West, 55.00 feet;

Thence leaving said mid-section line, and said west line, South 73°06'05" East, 32.83 feet;

Thence South 12°52'34" East, 31.91 feet;

Thence South 89°55'37" East, 38.19 feet to a point on the easterly line of said parcel;

Thence along said easterly line, South 11°14'57" West, 42.65 feet to the beginning of a non-tangent curve concave to the north having a radius of 349.50 feet and a central angle of 12°06'31" and being subtended by a chord which bears North 68°04'16" West 73.72 feet;

Thence northwesterly along said curve, 73.86 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.08 Acres, more or less.

Parcel 2:

Commencing at the southerly corner of said Parcel, said point being in common with the northerly Right-of-Way line of Butler Avenue as shown on Book 7 of Maps, Page 41, Official Records of Coconino County, and the North-South mid-section line of said Section 22, from which the northwest corner of said Parcel bears North 00°00'01" West, 508.96 feet (Basis of Bearing);

Thence along said mid-section line, and the west line of said Parcel, North 00°00'01" West, 233.15 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said mid-section line, and said west line, North 00°00'01" West, 5.33 feet to the beginning of a non-tangent curve concave to the north having a radius of 469.50 feet and a central angle of 05°45'10" and being subtended by a chord which bears South 72°25'58" East 47.12 feet;

Thence leaving said mid-section line, and said west line, and along said curve, 47.14 feet to a point on the easterly line of said parcel;

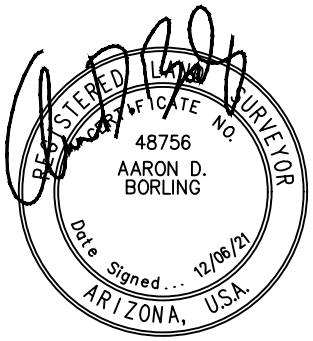
Thence along said easterly line, South 11°14'57" West, 5.01 feet to the beginning of a non-tangent curve concave to the north having a radius of 474.50 feet and a central angle of 05°33'51" and being subtended by a chord which bears North 72°33'48" West 46.06 feet;

Thence westerly along said curve, 46.08 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.01 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

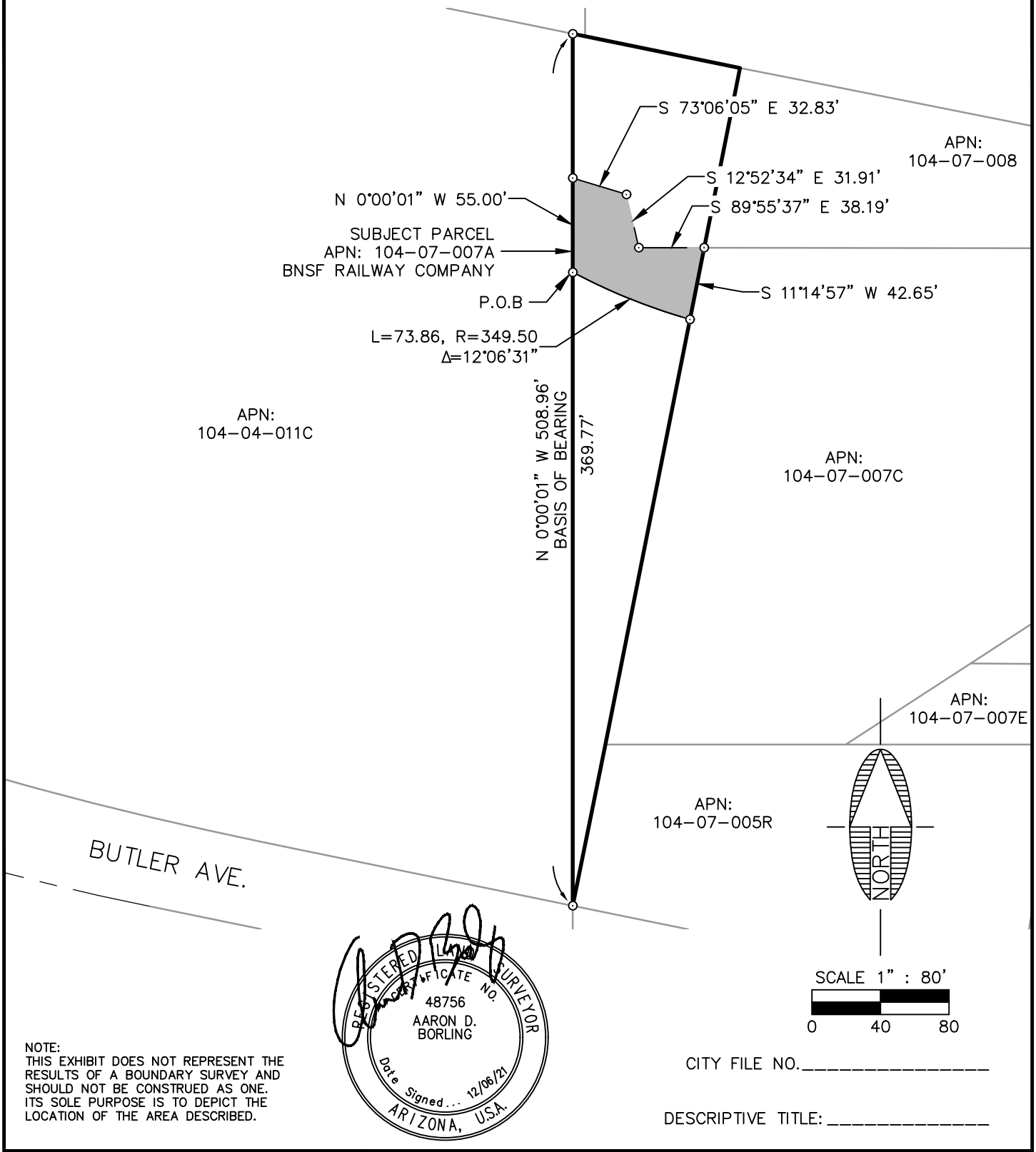


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHEAST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 12/06/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 80'
DRAWN	JEE
DESIGN	
CHECKED	ADB

APN: 104-07-007A

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 3 OF 4

PLOTTED: Nov 08, 2021-2:35pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-07-007A 1.DWG HSCHNOEBELEN

PLOTTED: Nov 08, 2021-2:36pm
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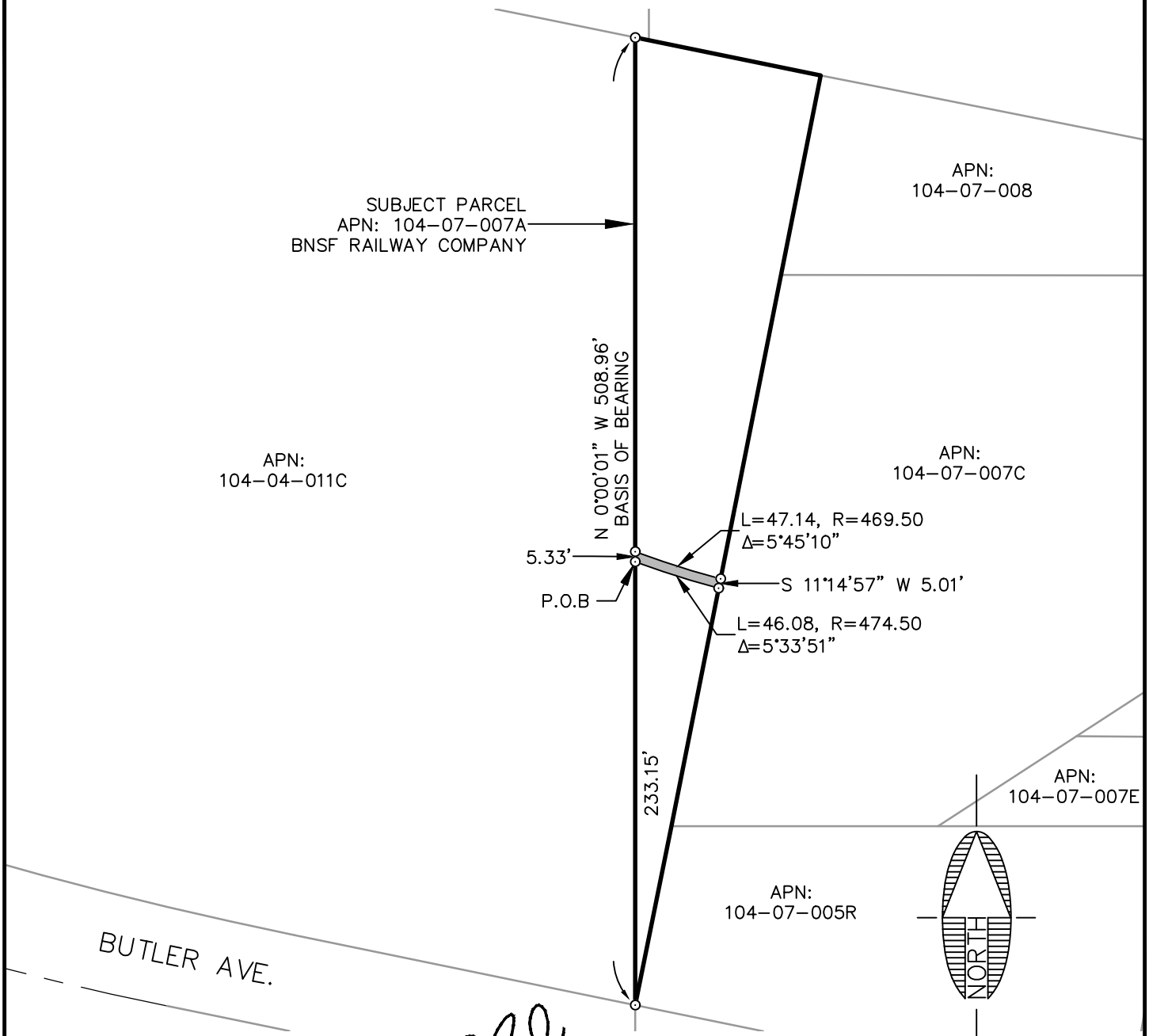
EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHEAST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 12/06/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 80'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104-07-007A

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET
4
OF 4

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 104-01-094
TRACT: 401E-1

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 1, Parcel 94 described as follows:

Commencing at the southeast corner of that parcel of land being a portion of the BNSF Railway Station Grounds as depicted on Coconino County Assessor's Map Book 104, Map 1, Parcel 98A, said point being in common with the southwest corner of that parcel of land as described in Instrument Number 3507503, Official Records of Coconino County;

Thence North 00°19'02" East, 393.71 feet (Basis of Bearing) to the southeast corner of subject parcel, and the **TRUE POINT OF BEGINNING;**

Thence along the northerly line of said parcel, North 64°43'28" West, 352.49 feet;

Thence leaving said northerly line, South 89°44'35" East, 21.60 feet;

Thence South 74°36'01" East, 207.98 feet;

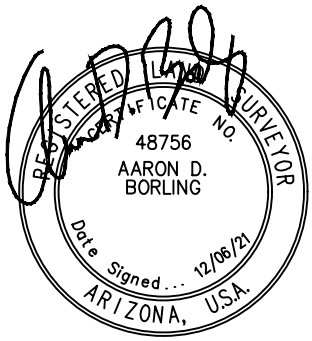
Thence South 49°50'40" East, 126.31 feet

Thence South 00°22'55" East, 13.72 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.21 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

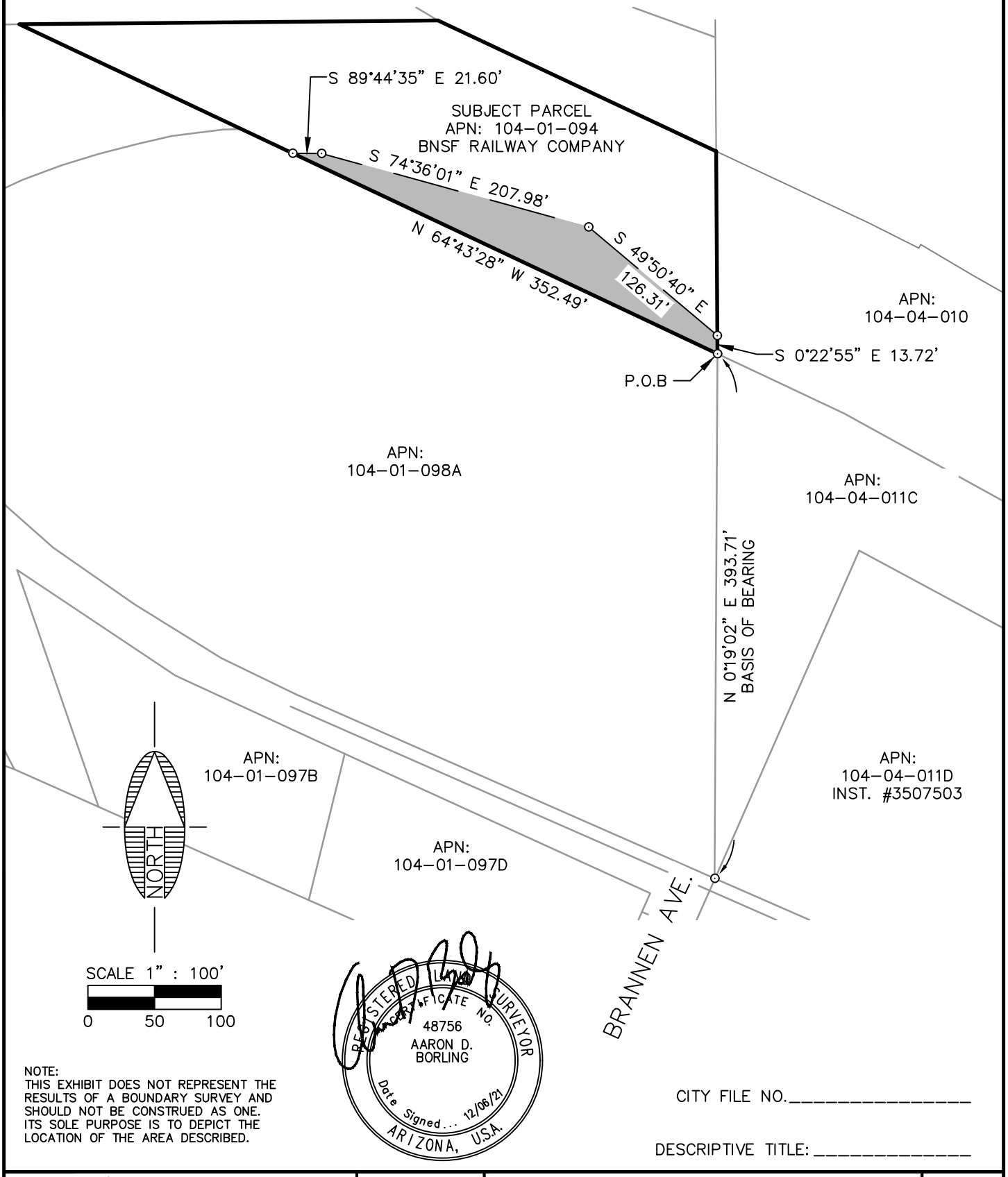


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 12/06/21
ARIZONA, U.S.A.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 100'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104-01-094

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

PLOTTED: Nov 05, 2021-2:36pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-01-094.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 104-01-094D

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 1, Parcel 94D described as follows:

Commencing at the northwest corner of said BNSF Railway Parcel, said point being in common with the north line of said Section 22, from which the northeast corner of said BNSF Railway Parcel bears North 89°29'02" East, 343.63 feet (Basis of Bearing);

Thence along the north line of said Parcel, and the north line of said Section 22, North 89°29'02" East, 151.70 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said north lines, North 89°29'02" East, 87.78 feet;

Thence leaving said north lines, South 63°24'21" East, 202.54 feet;

Thence North 26°35'39" East, 30.50 feet;

Thence South 63°24'21" East, 40.11 feet to a point on the southeasterly line of said Parcel;

Thence along said southeasterly line, South 83°04'48" West, 12.06 feet;

Thence continuing along said southeasterly line, South 76°37'42" West, 27.23 feet;

Thence continuing along said southeasterly line, South 75°40'35" West, 29.50 feet;

Thence continuing along said southeasterly line, South 72°53'13" West, 28.87 feet;

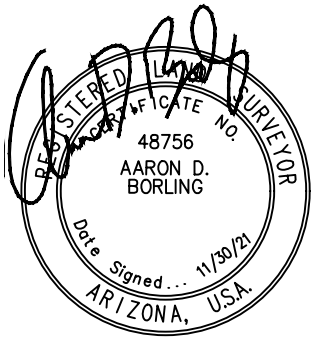
Thence continuing along said southeasterly line, South 69°31'46" West, 9.67 feet

Thence leaving said southeasterly line, North 63°24'21" West, 240.11 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.22 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

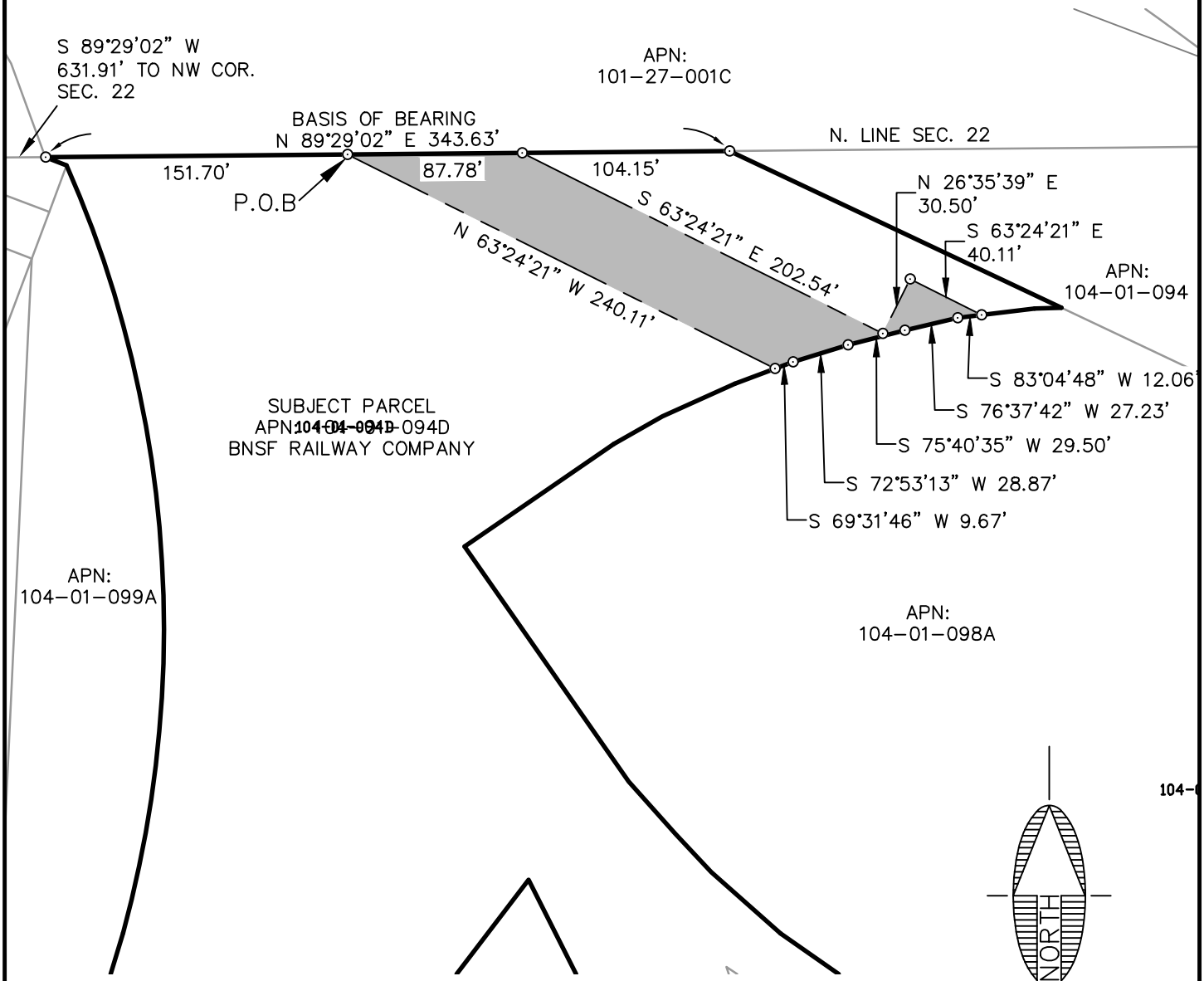


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



SCALE 1" : 80'

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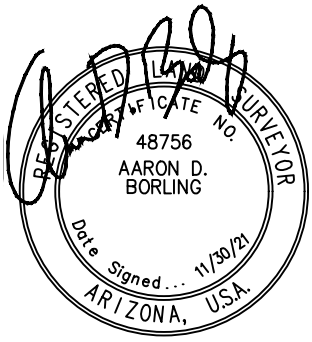


NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 80'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104-01-094D

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

PLOTTED: Nov 04, 2021-3:44pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH\EXHIBIT ROW 104-01-094D.DWG HSCHNOEBELEN

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 104-01-094D
TRACT: 400E-1, 400E-2, 400E-3

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 1, Parcel 94D described as follows:

Parcel 1:
Commencing at the northwest corner of said BNSF Railway Parcel, said point being in common with the north line of said Section 22, from which the northeast corner of said BNSF Railway Parcel bears North 89°29'02" East, 343.63 feet (Basis of Bearing);

Thence along the north line of said Parcel, and the north line of said Section 22, North 89°29'02" East, 116.92 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said north line, North 89°29'02" East, 34.78 feet to a point hereinafter referred to as 'Point A';

Thence leaving said north line, South 63°24'21" East, 240.11 feet to a point on the easterly line of said parcel;

Thence along said easterly line, South 69°31'46" West, 21.48 feet;

Thence continuing along said easterly line, South 65°37'06" West, 9.64 feet;

Thence leaving said easterly line, North 26°35'39" East, 7.37 feet;

Thence North 63°24'21" West, 250.37 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.09 Acres, more or less.

Parcel 2:
Commencing from the aforementioned 'Point A';

Thence continuing along said north line, North 89°29'02" East, 87.78 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said north line, North 89°29'02" East, 33.78 feet;

Thence leaving said north line, South 63°24'21" East, 172.47 feet;

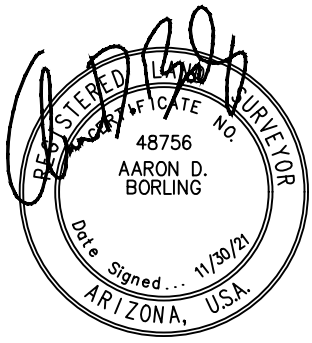
Thence South 26°35'39" West, 15.39 feet;

Thence North 63°24'21" West, 202.54 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.07 Acres, more or less.

See Exhibit ‘B’ attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

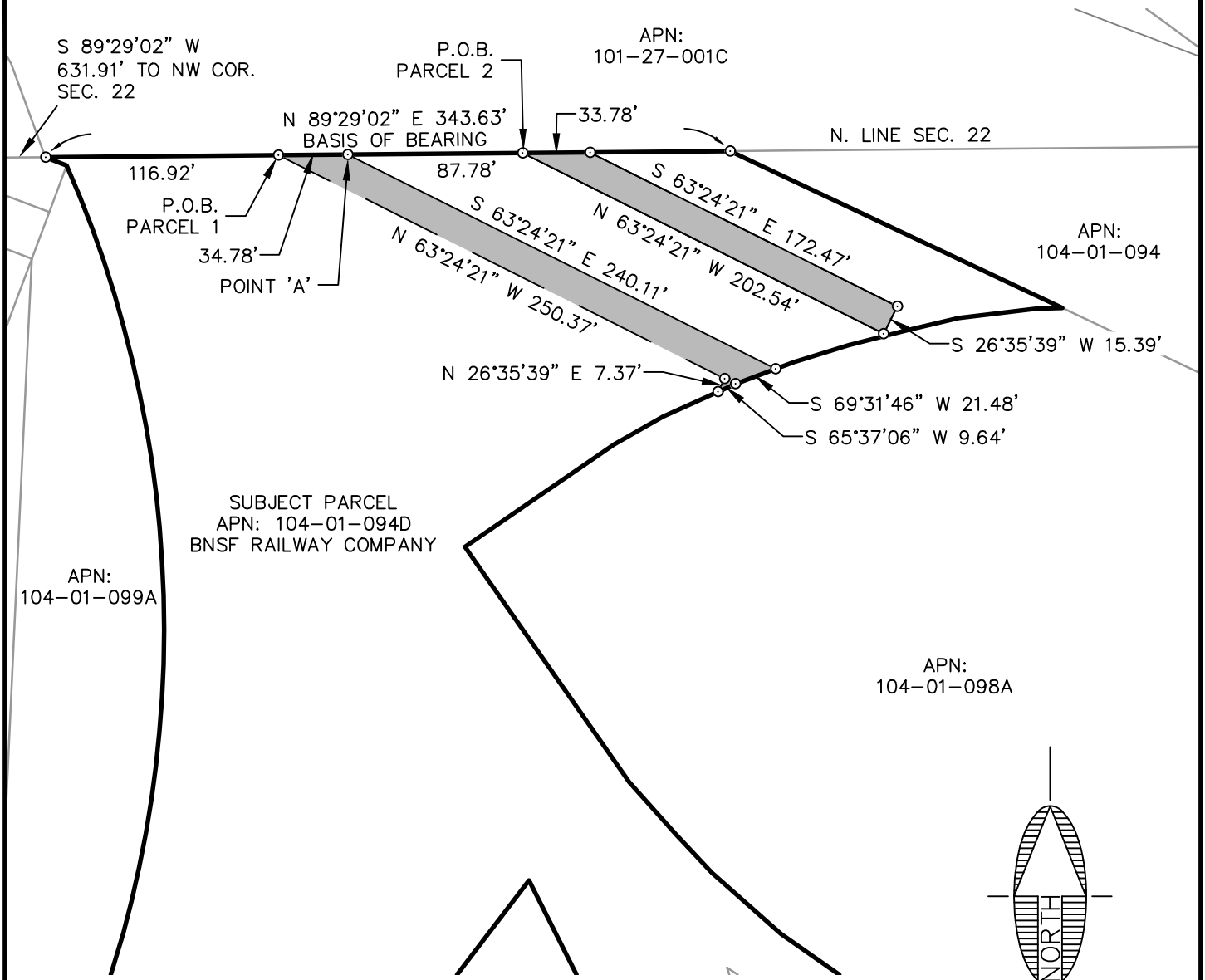


_____
City File No.

_____
Descriptive Title

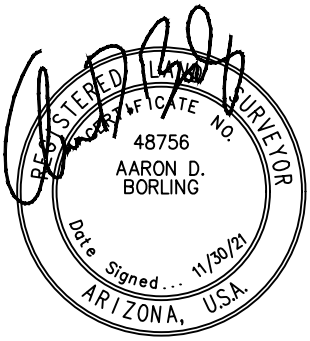
EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



SCALE 1" : 80'

0 40 80



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 80'
DRAWN	JEE
DESIGN	
CHECKED	ADB

APN: 104-01-094D

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 3 OF 3

PLOTTED: Nov 05, 2021-2:14pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-01-094D.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 104-01-098A

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 1, Parcel 98A described as follows:

Commencing at the southeast corner of said BNSF Railway Parcel, said point being in common with the southwest corner of that parcel of land as described in Instrument Number 3507503, Official Records of Coconino County, from which the northeast corner of said BNSF Railway Parcel bears North 00°19'02" East, 393.71 feet (Basis of Bearing);

Thence along the east line of said Parcel, North 00°19'02" East, 221.20 feet to the **TRUE POINT OF BEGINNING;**

Thence leaving said east line, North 63°24'21" West, 545.67 feet;

Thence North 26°35'39" East, 53.90 feet;

Thence North 63°24'21" West, 40.56 feet to a point on the northwesterly line of said Parcel;

Thence along said northwesterly line, North 69°31'46" East, 9.67 feet;

Thence continuing along said northwesterly line, North 72°53'13" East, 28.87 feet;

Thence continuing along said northwesterly line, North 75°40'35" East, 29.50 feet;

Thence continuing along said northwesterly line, North 76°37'42" East, 27.23 feet;

Thence continuing along said northwesterly line, North 83°04'48" East, 12.06 feet;

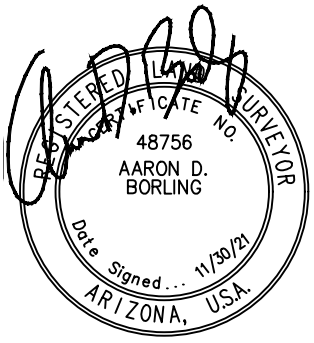
Thence leaving said northwesterly line, South 63°24'21" East, 444.14 feet to a point on the east line of said Parcel;

Thence along said east line, South 00°19'02" West, 138.74 feet to the **TRUE POINT OF BEGINNING.**

Containing 1.48 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

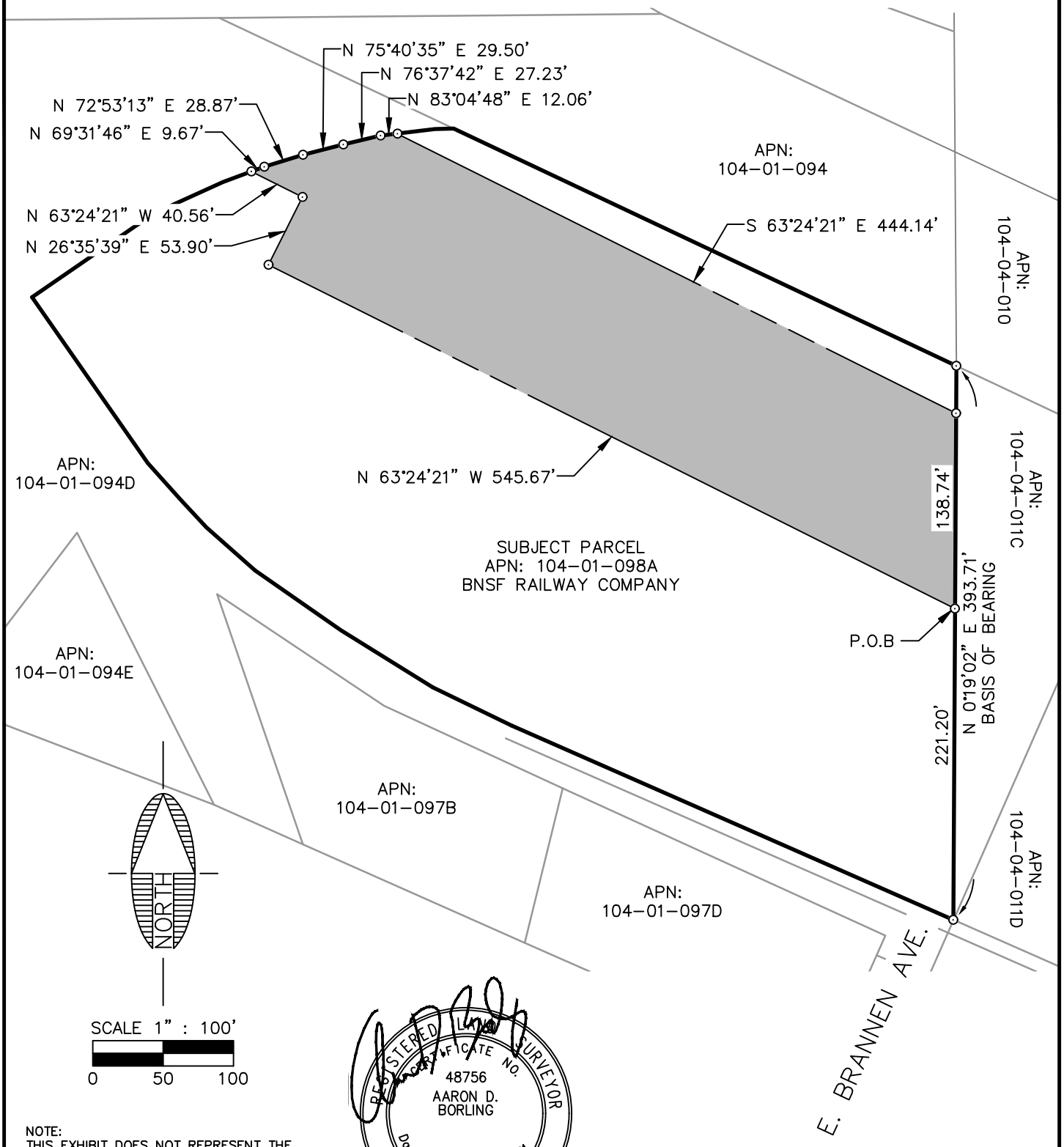


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 100'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104-01-098A

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 2 OF 2

PLOTTED: Nov 04, 2021-3:51pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH\EXHIBIT ROW 104-01-098A.DWG HSCHNOEBELEN

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 104-01-098A
TRACT: 402E-1, 402E-2

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station Grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 1, Parcel 98A described as follows:

Parcel 1:
Commencing at the southeast corner of said BNSF Railway Parcel, said point being in common with the southwest corner of that parcel of land as described in Instrument Number 3507503, Official Records of Coconino County, from which the northeast corner of said BNSF Railway Parcel bears North 00°19'02" East, 393.71 feet (Basis of Bearing);

Thence along the east line of said Parcel, North 00°19'02" East, 359.93 feet to the **TRUE POINT OF BEGINNING;**

Thence leaving said east line, North 63°24'21" West, 412.15 feet to a point hereinafter referred to as 'Point A';

Thence South 89°44'35" East, 49.99 feet to a point on the northerly line of said Parcel;

Thence along said northerly line, South 64°43'28" East, 352.49 feet to the northeast corner of said Parcel;

Thence along said east line, South 00°19'02" West, 33.78 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.23 Acres,

Parcel 2:
Commencing from the aforementioned 'Point A';

Thence South 72°14'12" West, 100.84 feet to the **TRUE POINT OF BEGINNING;**

Thence South 26°35'39" West, 53.90 feet;

Thence South 63°24'21" East, 225.48 feet;

Thence South 78°38'40" West 31.59 feet;

Thence North 70°15'55" West 108.57 feet;

Thence South 27°24'24" West 12.09 feet;

Thence North 62°35'36" West 153.89 feet;

Thence North 26°35’39” East 72.98 feet to a point on the northwesterly parcel line;

Thence along said northwesterly line, North 65°37’06” East, 9.64 feet;

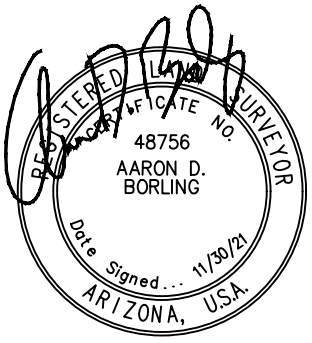
Thence continuing along said northwesterly line, North 69°31'46" East, 21.48 feet;

Thence leaving said northwesterly line, South 63°24'21" East, 40.56 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.29 Acres, more or less.

See Exhibit ‘B’ attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

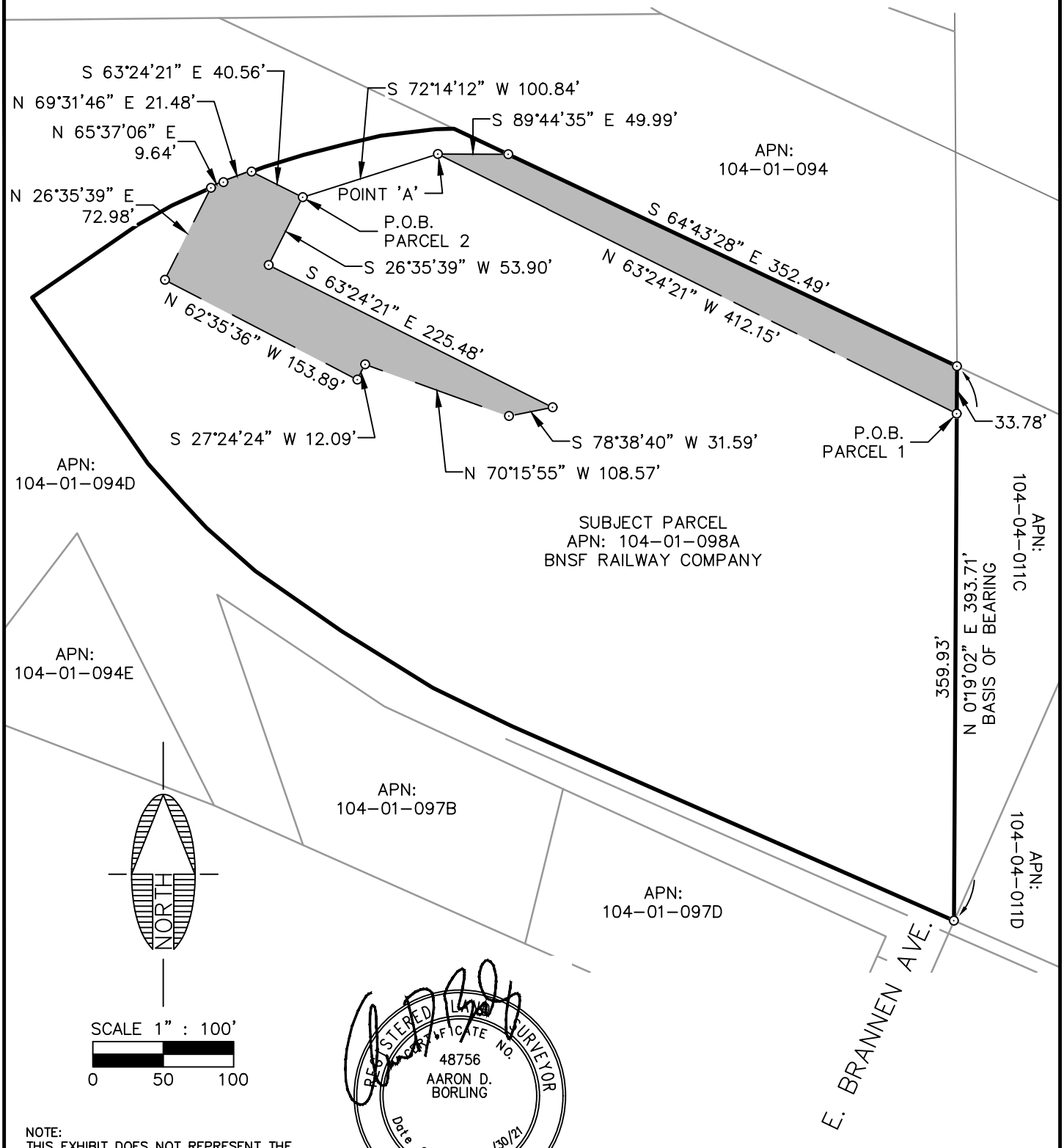


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 100'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104-01-098A

FLAGSTAFF ARIZONA

LEGAL EXHIBIT

SHEET 3 OF 3

PLOTTED: Nov 05, 2021-3:16pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-01-098A.DWG HSCHNOEBELEN

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 104-04-010
TRACT: 403E-1, 403E-2, 403E-3, 403E-4

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 4, Parcel 10 described as follows:

Parcel 1:

Commencing at the southeast corner of that parcel of land being a portion of said BNSF Railway Station grounds as depicted on Coconino County Assessor's Map Book 104, Map 4, Parcel 11C, said point being in common with the northerly Right-of-Way line of Butler Avenue as shown on Book 7 of Maps, Page 41, Official Records of Coconino County, and the North-South mid-section line of said Section 22;

Thence along said mid-section line, and the east line of said parcel, North 00°00'01" West, 508.96 feet (Basis of Bearing), to the northeast corner of said parcel;

Thence along the north line of said parcel, North 78°27'39" West, 46.59 feet to the beginning of a tangent curve concave to the north, having a radius of 2963.67 feet and a central angle of 2°00'00";

Thence continuing along said north line, and westerly along said curve, 103.45 feet to the beginning of a tangent curve concave to the north having a radius of 1532.04 feet and a central angle of 5°18'48";

Thence continuing along said north line, and westerly along said curve, 142.07 feet to the beginning of a tangent curve concave to the north having a radius of 1532.04 feet and a central angle of 2°58'46", and the **TRUE POINT OF BEGINNING;**

Thence continuing along said north line, and westerly along said curve, 79.66 feet to a point hereinafter referred to as 'Point A';

Thence leaving said north line, North 87°17'22" East, 16.58 feet;

Thence South 65°26'41" East, 64.55 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.01 Acres, more or less.

Parcel 2:

Commencing from the aforementioned 'Point A', said point being the beginning of a tangent curve concave to the northeast having a radius of 1532.04 feet and a central angle of 1°04'18";

Thence continuing along said north line, and northwesterly along said curve, 28.65 feet to the beginning of a tangent curve concave to the northeast having a radius of 1532.04 feet and a central angle of 5°10'37" and the **TRUE POINT OF BEGINNING;**

Thence continuing along said north line, and westerly along said curve, 138.43 feet to the beginning of a tangent curve concave to the northeast having a radius of 2963.67 feet and a central angle of 2°00'00";

Thence continuing along said north line, and northwesterly along said curve, 103.45 feet;

Thence continuing along said north line, North 61°10'42" West, 26.11 feet to a point hereinafter referred to as 'Point B';

Thence leaving said north line, South 75°52'15" East, 53.09 feet;

Thence South 63°03'53" East, 125.65 feet;

Thence South 58°11'24" East, 90.66 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.06 Acres, more or less.

Parcel 3:

Commencing from the aforementioned 'Point B';

Thence continuing along said north line, North 61°10'42" West, 187.37 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said north line, North 61°10'42" West, 52.65 feet to a point hereinafter referred to as 'Point C';

Thence leaving said north line, South 67°58'00" East, 25.82 feet;

Thence South 54°44'03" East, 27.19 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.002 Acres, more or less.

Parcel 4:

Commencing from the aforementioned 'Point C';

Thence continuing along said north line, North 61°10'42" West, 324.04 feet;

Thence continuing along said north line, North 64°43'28" West, 55.92 feet to the **TRUE POINT OF BEGINNING;**

Thence continuing along said north line, North 64°43'28" West, 25.20 feet;

Thence continuing along said north line, North 64°43'28" West, 26.73 feet to the northwest corner of said parcel;

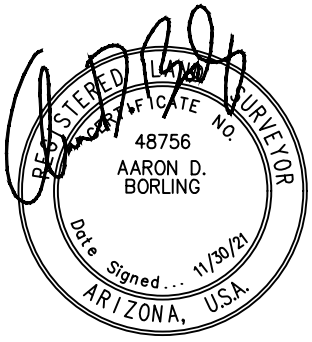
Thence along the west line of said parcel, North 00°22'42" West, 13.72 feet;

Thence leaving said west line, South 49°50'40" East, 9.54 feet;

Thence South 53°11'56" East, 49.65 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.01 Acres, more or less.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.



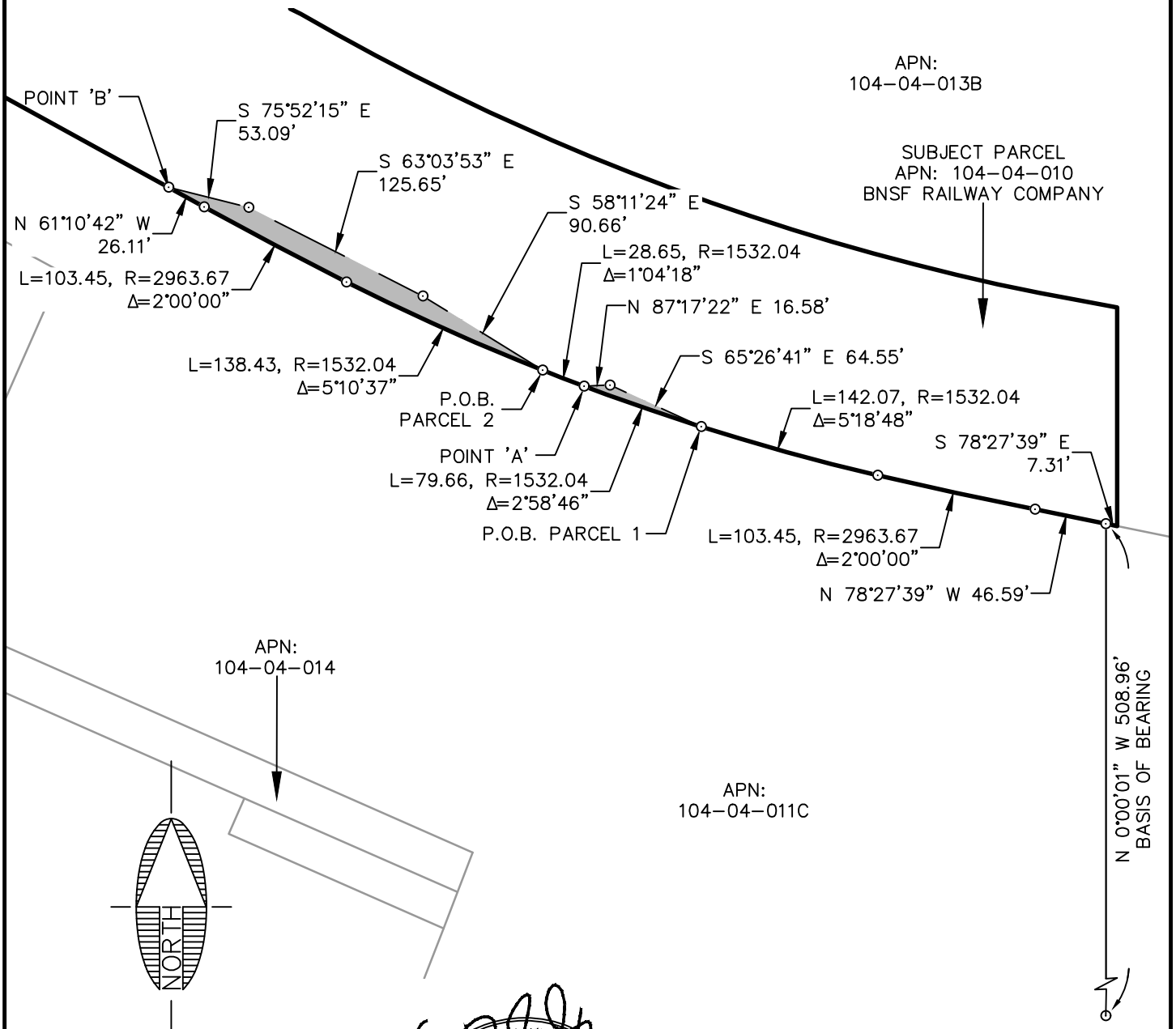
_____
City File No.

_____
Descriptive Title

PLOTTED: Nov 05, 2021–4:02pm

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 11/30/21
ARIZONA, U.S.A.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 100'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104–04–010

FLAGSTAFF
ARIZONA

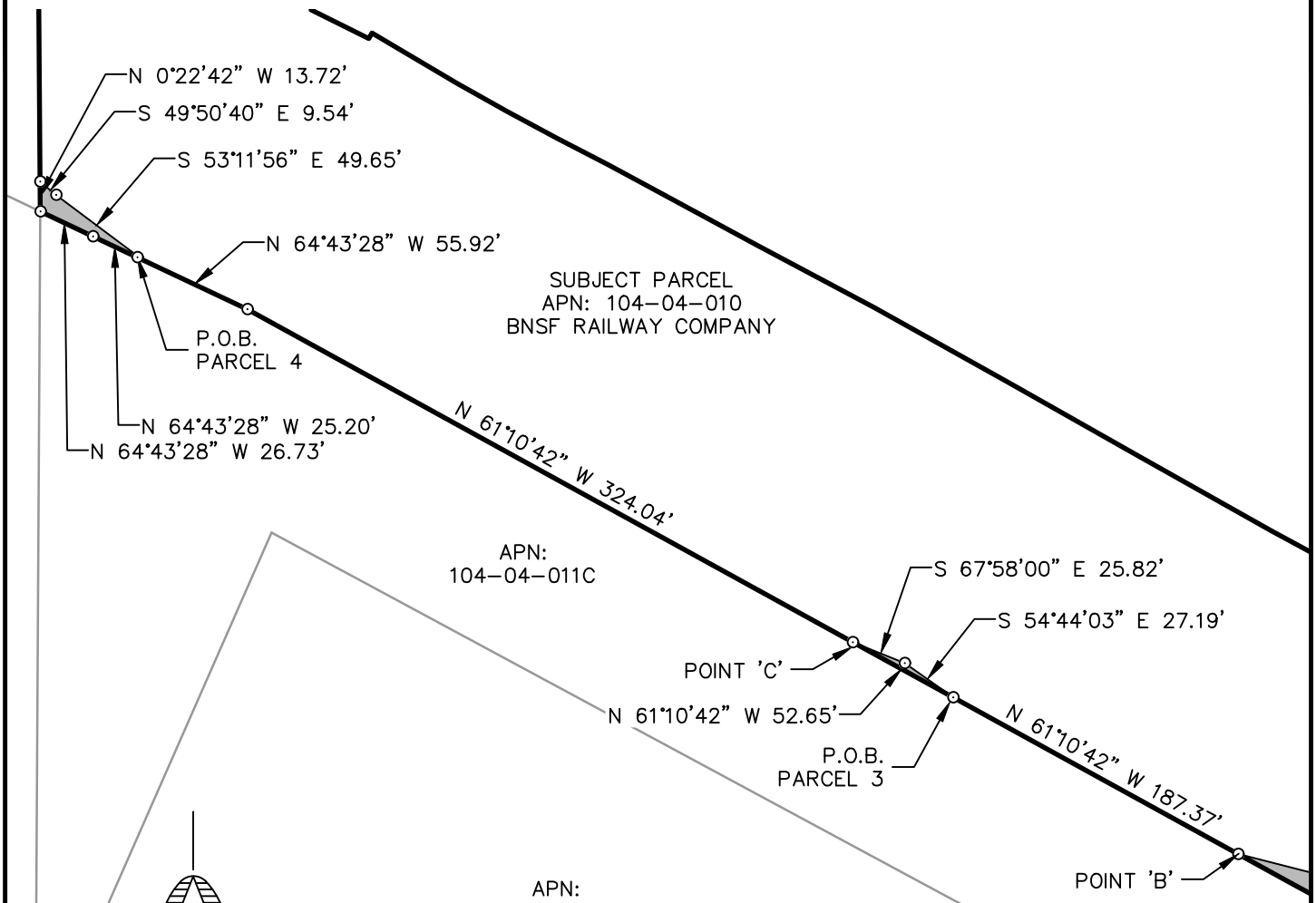
LEGAL EXHIBIT

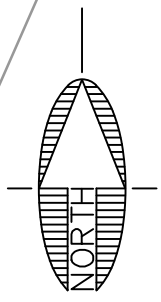
SHEET
4
OF 5

FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021–11\LOWER REACH TCE\EXHIBIT TCE 104–04–010 1.DWG HSCHNOEBELEN

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

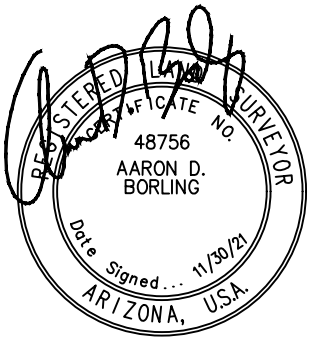
**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**





SCALE 1" : 80'

0 40 80



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CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 80'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104-04-010

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 5 OF 5

PLOTTED: Nov 05, 2021-4:02pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-04-010 2.DWG HSCHNOEBELEN

EXHIBIT 'A'

LEGAL DESCRIPTION

APN: 104-04-011C

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 4, Parcel 11C described as follows:

Commencing at the southeast corner of said Parcel, said point being in common with the northerly Right-of-Way line of Butler Avenue as shown on Book 7 of Maps, Page 41, Official Records of Coconino County, and the North-South mid-section line of said Section 22, from which the northeast corner of said Parcel bears North 00°00'01" West, 508.96 feet (Basis of Bearing);

Thence along said mid-section line, and the east line of said Parcel, North 00°00'01" West, 238.48 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 469.50 feet and a central angle of 19°18'50" and being subtended by a chord which bears North 59°53'58" West 157.52 feet and the **TRUE POINT OF BEGINNING;**

Thence leaving said mid-section line and said east line, and northwesterly along said curve, 158.26 feet;

Thence North 50°14'33" West, 107.53 feet;

Thence North 63°51'51" West, 397.25 feet;

Thence North 64°21'03" West, 132.36 feet to a point on the easterly line of that parcel of land as described in Instrument Number 3507503, Official Records of Coconino County;

Thence along said easterly line, North 23°44'45" East, 57.32 feet to the northeast corner of said parcel;

Thence along the northerly line of said parcel, North 61°40'51" West, 426.18 feet to the northwest corner of said parcel;

Thence along the westerly line of said parcel, South 23°44'45" West, 70.31 feet;

Thence leaving said westerly line, North 63°24'21" West, 88.30 feet to a point on the west line of BNSF Railway Parcel;

Thence along said westerly line, North 00°19'02" East, 138.74 feet;

Thence leaving said westerly line, South 63°24'21" East, 832.50 feet to the beginning of a tangent curve concave to the northeast, having a radius of 249.50 feet and a central angle of 5°11'12";

Thence southeasterly along said curve, 22.59 feet;

Thence South 68°35'34" East, 118.06 feet to the beginning of a tangent curve concave to the southwest, having a radius of 450.50 feet and a central angle of 18°21'01";

Thence southeasterly along said curve, 144.28 feet;

Thence South 50°14'33" East, 123.97 feet to the beginning of a tangent curve concave to the northeast, having a radius of 349.50 feet and a central angle of 11°46'27";

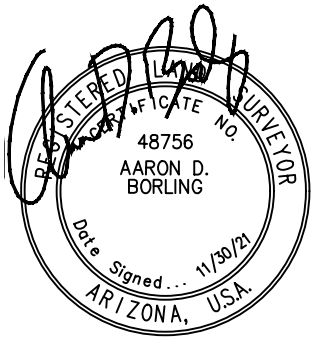
Thence southeasterly along said curve, 71.82 feet to a point on the east line of said Parcel;

Thence along said east line, South 00°00'01" East, 131.29 feet to the **TRUE POINT OF BEGINNING.**

Containing 3.11 Acres, more or less.

See Exhibit 'B' attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.



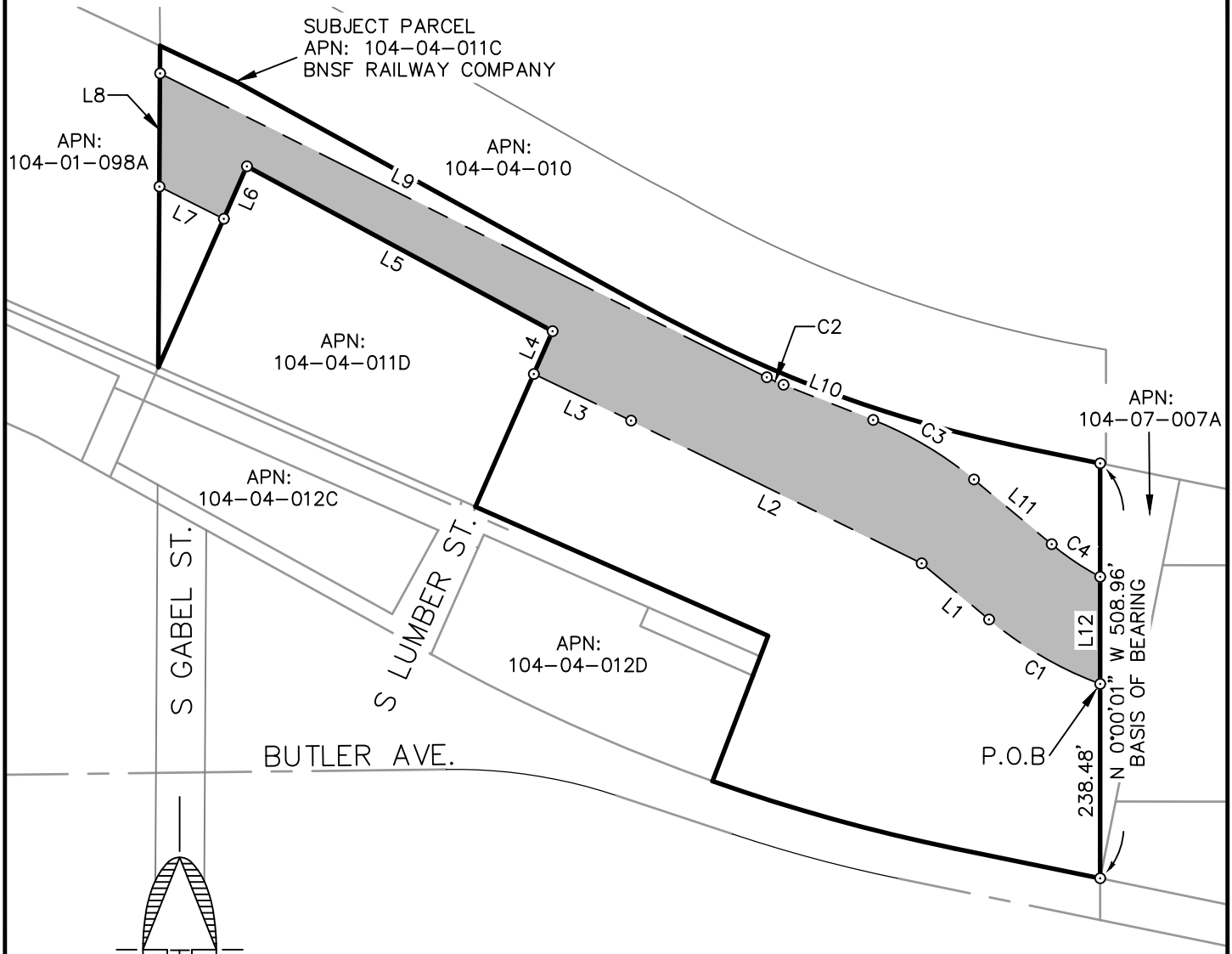
_____
City File No.

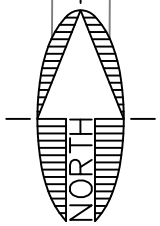
_____
Descriptive Title

PLOTTED: Nov 04, 2021–4:09pm

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**





SCALE 1" : 200'

0 100 200

NOTE:
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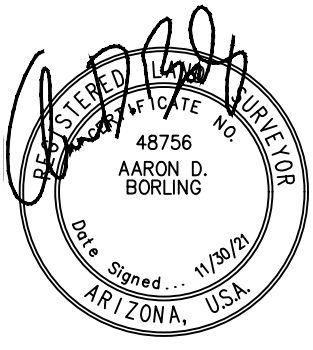


CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 200'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104–04–011C

FLAGSTAFF
ARIZONA

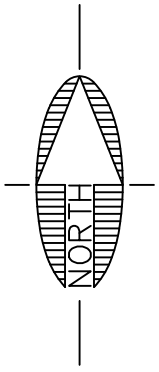
LEGAL EXHIBIT

SHEET 3 OF 4

FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021–11\LOWER REACH\EXHIBIT ROW 104–04–011C.DWG HSCHNOEBELEN

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	107.53	N 50°14'33" W
L2	397.25	N 63°51'51" W
L3	132.36	N 64°21'03" W
L4	57.32	N 23°44'45" E
L5	426.18	N 61°40'51" W
L6	70.31	S 23°44'45" W
L7	88.30	N 63°24'21" W
L8	138.74	N 0°19'02" E
L9	832.50	S 63°24'21" E
L10	118.06	S 68°35'34" E
L11	123.97	S 50°14'33" E
L12	131.29	S 0°00'01" E

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	158.26	469.50	19°18'50"
C2	22.59	249.50	5°11'12"
C3	144.28	450.50	18°21'01"
C4	71.82	349.50	11°46'27"



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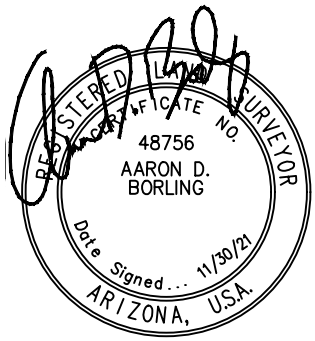

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APN: 104-04-011C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 4 OF 4

PLOTTED: Nov 04, 2021-4:09pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH\EXHIBIT ROW 104-04-011C.DWG HSCHNOEBELEN

EXHIBIT 'A'
TEMPORARY WORK AREA EASEMENT
LEGAL DESCRIPTION

APN: 104-04-011C
TRACT: 404E-1, 404E-2

A portion of the BNSF Railway (formerly Atchison, Topeka, and Santa Fe Railway) Station grounds lying within the Northwest quarter of Section 22, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, as depicted on Coconino County Assessor's Map Book 104, Map 4, Parcel 11C described as follows:

Parcel 1:

Commencing at the southeast corner of said Parcel, said point being in common with the northerly Right-of-Way line of Butler Avenue as shown on Book 7 of Maps, Page 41, Official Records of Coconino County, and the North-South mid-section line of said Section 22, from which the northeast corner of said Parcel bears North 00°00'01" West, 508.96 feet (Basis of Bearing);

Thence along said mid-section line, and the east line of said Parcel, North 00°00'01" West, 233.15 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 474.50 feet and a central angle of 19°32'20" and being subtended by a chord which bears North 60°00'42" West, 161.03 feet and the **TRUE POINT OF BEGINNING;**

Thence leaving said mid-section line and said east line, and northwesterly along said curve, 161.81 feet;

Thence North 50°14'33" West, 128.16 feet;

Thence South 63°51'51" East, 21.23 feet;

Thence South 50°14'33" East, 107.53 feet to the beginning of a tangent curve concave to the northeast, having a radius of 469.50 feet and a central angle of 19°18'50";

Thence southeasterly along said curve, 158.26 feet to a point on said mid-section line, said point being in common with the east line of said parcel;

Thence along said mid-section line and said east line, South 00°00'01" East, 5.33 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.03 Acres, more or less.

Parcel 2:

Commencing at the southeast corner of said Parcel, said point being in common with the northerly Right-of-Way line of Butler Avenue as shown on Book 7 of Maps, Page 41, Official Records of Coconino County, and the North-South mid-section line of said Section 22, from which the northeast corner of said Parcel bears North 00°00'01" West, 508.96 feet (Basis of Bearing);

Thence along said mid-section line, and the east line of said Parcel, North 00°00'01" West, 369.77 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 349.50 feet and a central angle of 11°46'27" and being subtended by a chord which bears North 56°07'46" West 71.70 feet and the **TRUE POINT OF BEGINNING;**

Thence leaving said mid-section line and said east line, and northwesterly along said curve, 71.82 feet;

Thence North 50°14'33" West, 123.97 feet to the beginning of a tangent curve concave to the southwest, having a radius of 450.50 feet and a central angle of 18°21'01";

Thence westerly along said curve, 144.28 feet;

Thence North 68°35'34" West, 118.06 feet;

Thence North 63°24'21" West, 267.91 feet to a point hereinafter referred to as 'Point A';

Thence North 14°07'45" East, 2.53 feet;

Thence South 75°52'15" East, 46.54 feet to the northerly line of said parcel;

Thence along said northerly line, South 61°10'42" East, 26.11 feet to the beginning of a tangent curve concave to the northeast, having a radius of 2963.67 feet and a central angle of 2°00'00";

Thence continuing along said northerly line, and along said curve, southeasterly 103.45 feet to the beginning of a tangent curve concave to the north, having a radius of 1532.04 feet and a central angle of 05°10'37";

Thence continuing along said northerly line, and southeasterly along said curve, 138.43 feet;

Thence leaving said northerly line, South 58°11'24" East, 20.42 feet;

Thence North 87°17'22" East, 9.39 feet to the beginning of a non-tangent curve concave to the north, having a radius of 1532.04 feet and a central angle of 02°58'46" and being subtended by a chord bearing South 70°55'01" East, 79.66 feet;

Thence along said curve, 79.66 feet to a point on the northerly line of said parcel;

Thence leaving said northerly line, South 65°26'41" East, 56.27 feet;

Thence South 60°47'42" East, 88.90 feet;

Thence South 33°07'48" East, 59.42 feet;

Thence South 73°06'05" East, 103.52 feet to a point on the easterly line of said parcel, said point being in common with the mid-section line;

Thence along said easterly line and said mid-section line, South 00°00'01" East, 55.00 feet to the **TRUE POINT OF BEGINNING;**

Containing 0.27 Acres, more or less.

Parcel 3:

Commencing from the aforementioned ‘Point A’, the **TRUE POINT OF BEGINNING;**

Thence North 63°24’21” West, 564.59 feet to a point on westerly parcel line;

Thence along the westerly parcel line, North 00°19’02” East 33.78 feet to the northwesterly corner of said parcel;

Thence along the northerly parcel line, South 64°43’28” East, 51.93 feet;

Thence leaving the northerly parcel line, South 53°11’56” East, 108.20 feet;

Thence South 62°41’05” East, 140.79 feet;

Thence South 67°58’00” East, 123.64 feet to a point on the northerly parcel line;

Thence along said northerly line, South 61°10’42” East, 52.65 feet;

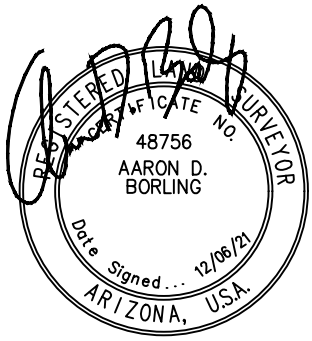
Thence leaving said northerly line, South 54°44’03” East, 105.17 feet;

Thence South 14°07’45” West, 2.53 feet to the **TRUE POINT OF BEGINNING.**

Containing 0.21 Acres, more or less.

See Exhibit ‘B’ attached hereto and made a part hereof.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, Az.

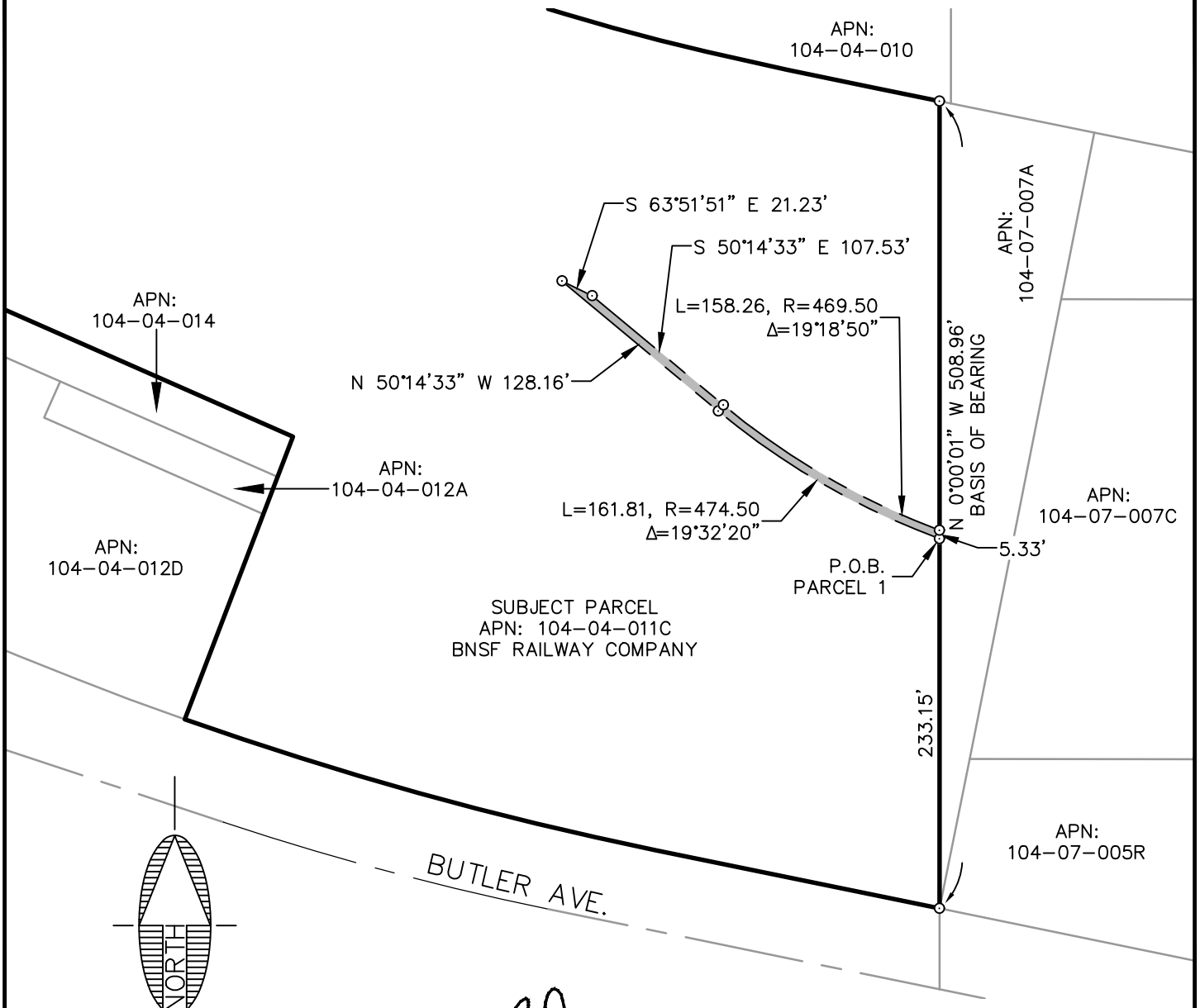


_____
City File No.

_____
Descriptive Title

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



NOTE:
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REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 12/06/21
ARIZONA, U.S.A.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 100'
DRAWN	HAS
DESIGN	
CHECKED	ADB

APN: 104-04-011C

FLAGSTAFF
ARIZONA

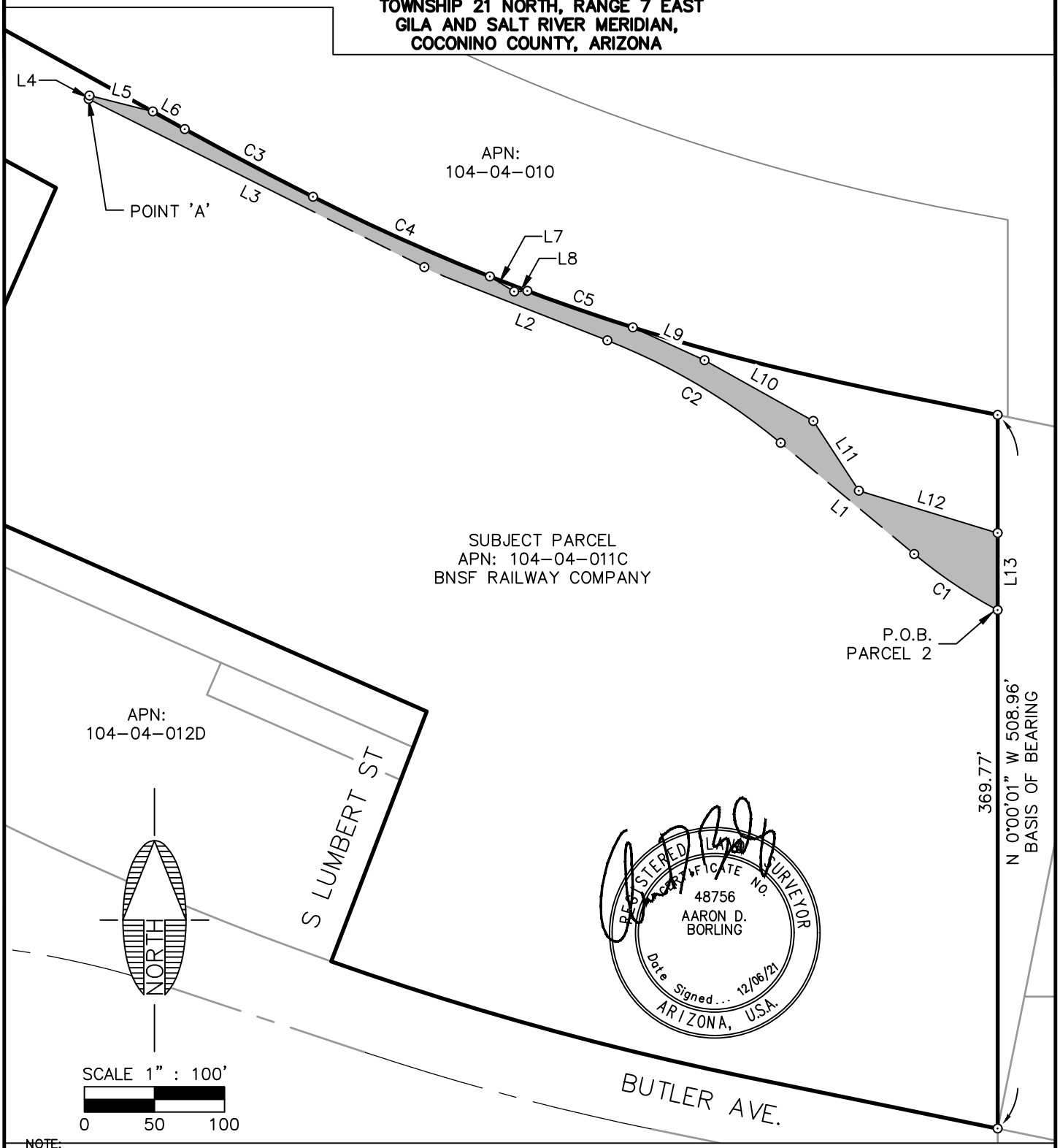
LEGAL EXHIBIT

SHEET 4 OF 7

PLOTTED: Nov 08, 2021-5:04pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-04-011C 1.DWG HSCHNOEBELEN

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



REGISTERED LAND SURVEYOR
CERTIFICATE No.
48756
AARON D.
BORLING
Date Signed... 12/06/21
ARIZONA, U.S.A.

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JOB NO.	04473
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DRAWN	JEE
DESIGN	
CHECKED	ADB

APN: 104-04-011C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 5 OF 7

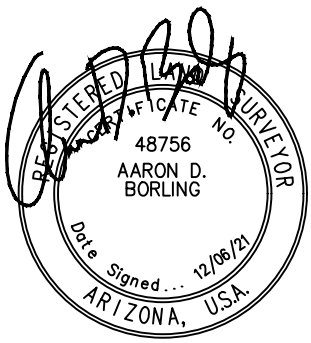
PLOTTED: Nov 08, 2021-5:06pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-04-011C 2.DWG HSCHNOEBELEN

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	123.97	N 50°14'33" W
L2	118.06	N 68°35'34" W
L3	267.91	N 63°24'21" W
L4	2.53	N 14°07'45" E
L5	46.54	S 75°52'15" E
L6	26.11	S 61°10'42" E
L7	20.42	S 58°11'24" E
L8	9.39	N 87°17'22" E
L9	56.27	S 65°26'41" E
L10	88.90	S 60°47'42" E
L11	59.42	S 33°07'48" E
L12	103.52	S 73°06'05" E
L13	55.00	S 0°00'01" E

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	71.82	349.50	11°46'27"
C2	144.28	450.50	18°21'01"
C3	103.45	2963.67	2°00'00"
C4	138.43	1532.04	5°10'37"
C5	79.66	1532.04	2°58'46"



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	NOV 21
SCALE	1" = 100'
DRAWN	JEE
DESIGN	
CHECKED	ADB

APN: 104-04-011C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

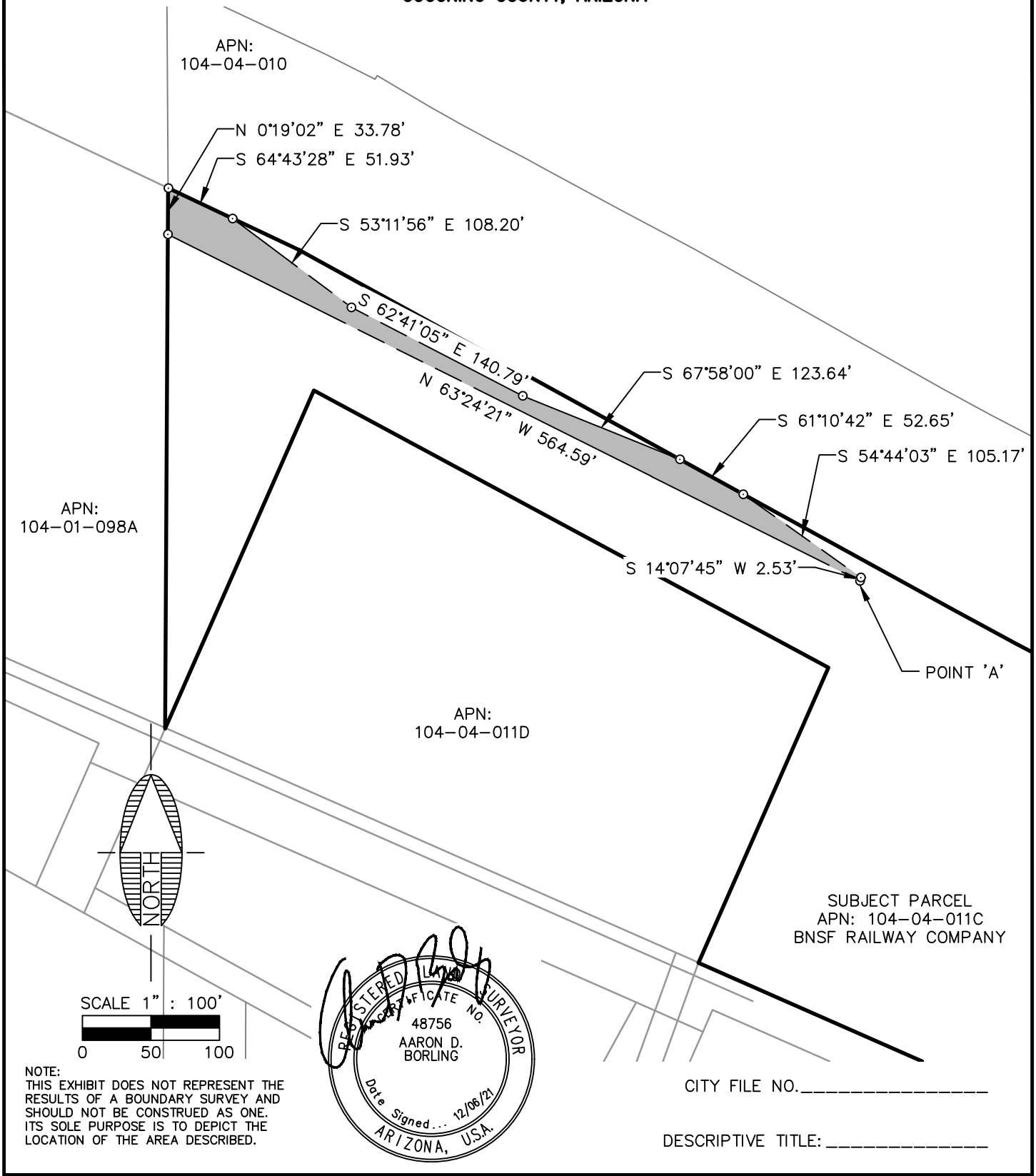
SHEET 6 OF 7

PLOTTED: Nov 08, 2021-5:06pm
FILE: P:\2004\04473\SURVEY\LEGALS\EXHIBITS\LEGAL EXHIBITS PHASE 1 2021-11\LOWER REACH TCE\EXHIBIT TCE 104-04-011C 2.DWG HSCHNOEBELEN

PLOTTED: Dec 02, 2021–11:50am
FILE: P:\2004\04473\SURVEY\LEGALS\LEGAL DESCRIPTIONS PHASE 1 2021–11\EXHIBITS\LOWER REACH TCE\EXHIBIT TCE 104–04–011C 3.DWG HSCHNOEBELEN

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN,
COCONINO COUNTY, ARIZONA**



NOTE:
THIS EXHIBIT DOES NOT REPRESENT THE RESULTS OF A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS ONE. ITS SOLE PURPOSE IS TO DEPICT THE LOCATION OF THE AREA DESCRIBED.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48756
AARON D.
BORLING
Date Signed... 12/06/21
ARIZONA, U.S.A.

CITY FILE NO._____

DESCRIPTIVE TITLE: _____

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO.	04473
DATE	DEC 21
SCALE	1" = 100'
DRAWN	JEE
DESIGN	
CHECKED	ADB

APN: 104–04–011C

FLAGSTAFF
ARIZONA

LEGAL EXHIBIT

SHEET 7 OF 7

Attachment 5 – Quote

Gary R. Anglemyer & Associates, LLC

Project Matrix

Tasks	Cost per Task Unit		Total Units	Total	
Procurement of an AZ Temporary General RE Appraisal License	$ 285.00	Hr.	4.00	$	1,140
An inspection of the corridor and appraisal parcels	$ 285.00	Hr.	8.00	$	2,280
An inspection of the immediate surrounding area	$ 285.00	Hr.	4.00	$	1,140
Adjacent zoning and land use analysis	$ 285.00	Hr.	16.00	$	4,560
Industrial, Highway Commercial and Service Commercial Land Sales Analysis	$ 285.00	Hr.	24.00	$	6,840
Verified and Inspected sales data with detailed sale profiles that include pictures, maps, and Adjustment Grids with Support	$ 285.00	Hr.	24.00	$	6,840
Some local consultant's time/budget	$ 285.00	Hr.	16.00	$	4,560
Across the Fence Value (ATF)	$ 285.00	Hr.	16.00	$	4,560
Larger Parcel Determination/Valuation- Before Value with Application of Corridor Factor Sales Analysis and Support	$ 285.00	Hr.	16.00	$	4,560
Project Description – Effect of the Acquisition	$ 285.00	Hr.	4.00	$	1,140
Description of the Acquisition Area and Improvements	$ 285.00	Hr.	12.00	$	3,420
Value of the Parts Taken with Easement Diminution Factor Support	$ 285.00	Hr.	4.00	$	1,140
Rental Rate Support for the Temporary Construction Easements	$ 285.00	Hr.	4.00	$	1,140
After Value	$ 285.00	Hr.	4.00	$	1,140
Consideration of any Damages, General and Special Benefits and Costs to Cure	$ 285.00	Hr.	12.00	$	3,420
Fair Market Value Conclusion	$ 285.00	Hr.	8.00	$	2,280
Narrative Report – Digital PDF*	$ 285.00	Hr.	24.35	$	6,940
Question/Answer Review Time – Final Revisions	$ 285.00	Hr.	40.00	$	11,400
TOTALS			240.35	**$**	**68,500**

*Note: 0.35 hours specifically added to Narrative Report Task to match appraiser's exact bid amount

QUALIFICATIONS OF THE APPRAISER

GARY R. ANGLEMYER, MAI

Qualifications
Mr. Anglemyer has extensive local, national and international real estate valuation experience in a wide range of complex special purpose and conventional property types with emphasis on railroad right of way related valuation and advisory services. A representative list of railroad right of way appraisals is shown below and on the following pages.

Representative Railroad Right of Way Appraisals

Golden Gate Bridge Highway and Transit District; Marin, Mendocino, Napa and Sonoma Counties: Completed an appraisal of Southern Pacific right of way in the following corridors: Larkspur-Novato, Novato-Napa, Novato-Healdsburg and Willits-Healdsburg – the transactions closed.

Santa Clara Valley Transportation Authority: Appraised more than 100 miles of several Union Pacific corridors in the Silicon Valley area of California. Responsible for valuation under various scenarios and for the valuation of the improvements and going-concern, which were prepared by subcontractors under his supervision.

Peninsula Joint Powers Board: Appraised the following Southern Pacific, now Union Pacific, right of ways: San Francisco-San Jose, San Jose-Gilroy, Dumbarton Line and various other freight lines. Transaction went to closing.

Los Angeles Department of Water and Power: Appraised 100 miles of railroad right of way in northeast Nevada.

San Bernardino Area Governments (SANBAG): Appraised the Shortway line in San Bernardino, California. The right of way was part of a shared use corridor.

Alameda County Transportation Commission: Appraised the Oakland Subdivision to assist with prospective acquisition purposes for public transportation purposes.
Amtrak: Appraised the market value of various prospective pre-project Baltimore B&P Tunnel ventilation sites in Baltimore City for acquisition purposes in 2019 to 2021.

Union Pacific's Hollister Branch in San Benito County: Appraised the ATF and Corridor Value for the acquisition and private funding of the corridor. Transaction closed in 2013.

Napa Valley Wine Train: Beginning in 2002, appraised the 20.1-mile right of way to assist with: acquisition and disposition purposes; condemnation; mortgage financing and am currently on hold to assist them with the donation of a conservation easement on the entire right of way.

City of Whittier – Los Angeles County: Estimated the value of a portion of an abandoned Union Pacific railroad right of way called the La Habra Branch in 2007. Said right of way is encumbered with a gas pipeline and was being studied for the purpose of implementing a pedestrian trail.

Bay Area Rapid Transit (BART) District: Completed appraisal of right of way for BART between San Bruno and San Francisco International Airport for placement of an easement by Pacific Gas & Electric (PG&E)

Regional Transportation Commission of Southern Nevada: Reviewed an appraisal of Union Pacific's Las Vegas, Nevada Henderson Branch.

Union Pacific and Utah Transit Authority: Appraised the fee, easement and other property rights acquisition/dispositions involving more than 166 miles of Union Pacific right of way in the Salt Lake metropolitan area. This $185 Million transaction closed in 2002.

DelDOT: As a licensed DE Certified General Real Estate Appraiser, appraised the Fair Market Value of an inactive portion of the Maryland & Delaware Railroad right-of-way in Lewes, DE for acquisition purposes in 2018. In addition, conducted several condemnation appraisal assignments for DelDOT throughout the state in general and southern DE in particular.

Fulton Financial Corporation, Lancaster, PA: Appraised the market value of a special purpose waterfront rail storage yard in Claymont, DE for loan underwriting purposes in 2018

Virginia Department of Rail and Public Transportation: Appraised several existing corridors for prospective acquisitions in 2018 and 2019 throughout the state.

Virginia Railway Express: Appraised existing Conrail railroad surface and subsurface easements in the redeveloping Union Market, DC area for purpose of acquiring the land and rights of way to develop a midday rail storage yard in 2018.

Canton Railroad, Baltimore City, MD: Appraised the corridor value of two CSX lines in Baltimore City for prospective acquisition purposes in 2018.

RailUSA, Boca Raton, FLA: Appraised the Net Liquidation Value of the CSX 430-mile Florida Panhandle rail line for budgetary, acquisition and internal record keeping purposes in 2018. The property was acquired in June 2019.

Port of Moses, Moses Lake, WA: Appraised the market value a segment of the Northern Columbia Basin Rail Rehabilitation Project in 2019 for economic development/acquisition purposes.

Southern Pacific/Union Pacific and Santa Cruz County Regional Transportation Commission, California: Appraised a 31-mile Southern Pacific, now Union Pacific-owned right of way in Santa Cruz County in 1995, 2002, 2008, and 2009. Mr. Anglemyer also studied the existing rental income and identified prospective lease income of the corridor property. This transaction closed in 2009.

CSX Real Property Inc. and Town of Mount Airy, Maryland – Mr. Anglemyer served as an arbitrator conducting a third appraisal of a railroad right of way – the two prior appraisals ranged widely. The transaction is currently being negotiated.

Norfolk Southern Company Real Estate Department: Appraised the Middle Brook Branch in New Jersey to assist with prospective disposition purposes.

Port Jersey Railroad: Appraised the railroad right of way for the owner in regards to an acquisition by the Port Authority of New York and New Jersey. The transaction closed in 2010.

New England Central Railroad: Appraised the 72.8-mile railroad right of way to assist with trackage rights negotiations.

OmniTRAX Holdings Combined, Inc.: Appraised the 69.03-mile Heart of Texas railroad right of way for right of way for internal record keeping purposes.

Grafton and Upton Railroad Company: Estimated the across-the-fence and corridor value of the land assets of a 15.4-mile rail line between North Grafton and Upton, Massachusetts for lending purposes.

Caton Loudon Railroad: Appraised this short line for the owner who donated it Baltimore City/County in Maryland who used as a recreational trail.

Southern Railroad Company of New Jersey, Atlantic City, Camden County: Conducted a Net Liquidation Value of an existing corridor in Southern New Jersey.

Virginia Railway Express: Appraised the Conrail Easement and Tunnel under New York Avenue needed for access to their proposed Midday Storage Yard located just north of Union Station in DC along with other property of Amtrak, the District and private property owners for condemnation purposes.

Dallas Area Rapid Transit Estimated the Corridor Value for five separate corridors in the Dallas Fort Worth area to assist with interagency transfers in 2006 and 2009.

Oklahoma Department of Transportation: Appraised the NLV of the Blackwell Subdivision to assist with internal record keeping purposes.

U.S. Internal Revenue Service: Reviewed an appraisal of 162 miles of Southern Pacific right of way between Llano, Texas and Giddings, via Austin and several other corridor appraisals in Washington and Oregon, which sold as "Bargain Exchanges" to government agencies or non-profit organizations.

City of Charlotte: Appraised a portion of the North Carolina Railroad Right of way and other properties that were ultimately acquired for the extension of their light rail system. The transaction closed with FTA approval in 2012.

Rocky Mount and Western Railroad Co. Inc. properties in Nash County, North Carolina: to facilitate an Offer of Financial Assistance (OFA) by the State of North Carolina using Surface Transportation Board (STB) valuation regulations (Net Liquidation Value) in 2005.

City of Burlington, Vermont: Estimated the value of a leased short line operating corridor for purposes of continued freight service and future public transportation, land banking and recreational trail purposes.

Federal Reserve Bank, Science Management Corporation and Proudfoot Consulting **1984 to 1988**

Management Consultant/Business Analyst - New York City and Pittsburgh, PA
Conducted business analysis and management consulting services for a wide range of industries and clients throughout the U.S. and Canada

Education

Johnson & Wales University
Providence, Rhode Island

Baccalaureate of Science - Business Management 1984
Completed all educational requirements for:

- MAI Designation
- Certified General Real Estate Appraiser license
- Real Estate Broker license
- Appraisal Institute's Litigation Professional Development Program

Professional Associations

- Designated Member of the Appraisal institute
- Certified General Real Estate Appraiser: VA, DC, MD and DE
- Board of Directors; Maryland Chapter of the Appraisal institute 2011-2022
- Candidate Advisor for the Appraisal Institute

EXHIBIT B

STANDARD TERMS AND CONDITIONS

(Last Updated March 23, 2022)

*The term “Contractor” may substitute for the term “vendors,” “consultants,” or “firms,” depending on the purpose of the underlying Contract.

IN GENERAL

1. **PARTIES:** The City of Flagstaff (“City”) and the contractor identified in the Contract (“Contractor”) may be referred to individually as “Party” or collectively as “Parties”.

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

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

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

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

6. **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

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

8. **QUALITY:** Contractor warrants that all materials supplied under the 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. The 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.

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

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

11. **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.

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

13. **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.

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

15. **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.

16. **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.

17. **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

18. **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 had been shipped or work performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.

19. **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, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

20. 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 the 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.

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

22. 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 the City.

23. 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 the City.

24. 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 the City or fees and charges owed to the City under the Contract.

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

SERVICES

26. 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.

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

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

29. 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.

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

31. **ACCEPTANCE:** If the City rejects Contractor's work 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.

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

INSPECTION, RECORDS, ADMINISTRATION

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

34. **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.

35. **PUBLIC RECORDS:** 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 Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.

36. **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

37. **GENERAL INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, 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 Contractor, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects, and upon tender by the City: (a) defend the same at Contractor'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 shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of the alleged 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 the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor'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 shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

39. **NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from an against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor'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 shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

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

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

42. **AMENDMENTS:** The Contract may be amended by written agreement of the Parties.

43. **SEVERABILITY:** If any term or provision of the 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 the Contract shall remain in full force and effect.

44. **NO WAIVER:** Both Parties have 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.

45. ASSIGNMENT: Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.

46. BINDING EFFECT: The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

47. SUBCONTRACTING: Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the 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.

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

49. **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's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.

50. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract 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

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

52. CITY REMEDIES: In the event of Contractor's default, the 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. The 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.

53. CONTRACTOR REMEDIES: In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.

54. TERMINATION FOR NONAPPROPRIATION OF FUNDS: The City may terminate all or a portion of the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.

55. TERMINATION FOR CONVENIENCE: Unless expressly provided for otherwise in the Contract, the 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 the Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by the City before the effective date of termination.

56. TERMINATION DUE TO INSOLVENCY: If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate the Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.

57. PAYMENT UPON TERMINATION: Upon termination of the Contract, the City will pay Contractor for satisfactory performance up until the effective date of termination. The City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.

58. CANCELLATION FOR GRATUITIES: The City may cancel the 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.

59. CANCELLATION FOR CONFLICT OF INTEREST: Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. COOPERATIVE PURCHASE CONTRACTS: Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.

61. ADVERTISING: Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.

62. NOTICES: All notices given pursuant to the 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 days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.

63. THIRD PARTY BENEFICIARIES: The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

64. GOVERNING LAW: The Contract shall be construed in accordance with the laws of Arizona.

65. FORUM: In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.

66. ATTORNEYS' FEES: If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.

67. FORCE MAJUERE:

a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). 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 the Contract.

b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.

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

68. NO BOYCOTT OF ISRAEL: Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents ($100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.

69. CHANGES TO CONTRACT: The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance

EXHIBIT C

STANDARD INSURANCE REQUIREMENTS

(Last Updated March 23, 2022)

*The term “Contractor” may substitute for the term “vendors,” “consultants,” or “firms,” depending on the purpose of the underlying Contract.

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 the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.

2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor’s obligations under the Contract have been met, including any warranty periods. Contractor’s failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.

3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

   Where applicable, as related to the Scope of Work, 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	$1,000,000
Disease - Each Employee	$1,000,000
Disease - Policy Limit	$1,000,000

e. Professional Liability $2,000,000

f. Network Security and Privacy Liability

Per claim	$2,000,000
Annual Aggregate	$2,000,000

4. **NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall maintain the requisite insurance requirements covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. The insurance policy shall include coverage for third-party claims. The insurance policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.

5. **SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The 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.

6. OTHER INSURANCE REQUIREMENTS: The insurance 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, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.

b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.

c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.

d. Each Insured: Contractor's insurance policies 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 Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.

f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.

7. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or 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 Procurement Agent and shall reference the Contract Number.

8. 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 Contractor from potential insurer insolvency.

9. CERTIFICATES OF INSURANCE: Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the 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 Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.

10. 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 the Contract. 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 the Contract.

11. MODIFICATIONS: Any modification or variation from the insurance requirements in the 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.

9. F.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Kirsten Pearson, Executive Assistant
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Cooperative Contract: Approve a Cooperative Purchase Contract with Baker & Taylor, LLC for the purchase of library materials and services in the amount not to exceed $300,000 through the City of Mesa Cooperative Contract #2017201.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract for the purchase of library materials and services from Baker & Taylor, LLC in the amount not to exceed $300,000 through City of Mesa Cooperative Contract #2017201; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The Baker & Taylor, LLC ("Baker & Taylor") Cooperative Purchase Contract provides for the procurement of library materials and services and allows the City to leverage its purchasing power and obtain a better value in the expenditure of public resources. Reduced fiscal resources have created an environment that supports increased levels of cooperation for the procurement of various materials and services. The materials and services provided by Baker & Taylor are a necessity for the City as the library must continue to supply the Flagstaff community with new resources such as books and DVDs in order to do business properly.

The purchase has been procured through a cooperative contract with City of Mesa #2017201 which will expire February 28, 2023.

Financial Impact:

The City will be able to continue to use Baker & Taylor for its Library needs such as books, DVDs, and other services at a discounted rate that was negotiated from a formal solicitation process between the City of Mesa and Baker & Taylor. The Library budget for circulation materials totals $435,026 across all programs. This amount is approved in the FY23 budget.

Policy Impact:

None.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

High Performing Governance:

- Serve the public by providing high quality internal and external customer service
- Enhance the organization's fiscal stability and increase efficiency and effectiveness
- Implement innovative local government programs, new ideas and best practices; be recognized as a model for others to follow

Inclusive and Engaged Community:

- Facilitate and foster diversity and inclusivity
- Enhance community outreach and engagement opportunities

Livable Community:

- Provide educational opportunities for Flagstaff residents of all ages

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.
Policy ED.2.3. Encourage efforts to provide a full range of high-quality educational opportunities for life-long learning for all residents.
Policy ED.2.4. Promote science, technology, engineering, mathematics, liberal arts, and entrepreneurship education at all levels.

Has There Been Previous Council Decision on This:

Yes. On August 16, 2016, in the FY17 budget, the Flagstaff City Council approved a cooperative purchase contract with Baker & Taylor based on an agreement with the City of Mesa. That agreement was replaced with approval from Flagstaff City Council on September 4, 2018, in the FY19 budget. That agreement has expired and is being replaced with this one.

Options and Alternatives:

1. Approve the Cooperative Purchase Contract with Baker & Taylor in an amount not to exceed $300,000 for library materials and services; or
2. Decline to enter into the Cooperative Purchase Contract and direct staff to conduct a formal competitive solicitation.

Background/History:

The City had been ordering library materials from Baker & Taylor for many years. The City no longer has an agreement in place for these purchases. The City was able to find a cooperative contract between the City of Mesa and Baker & Taylor. The City seeks to enter into the Cooperative Purchase Contract based on the Mesa cooperative contract in order to continue to purchase the necessary materials and services for the Library. The Cooperative Purchase Contract will allow the City to take advantage of discounts and continue to provide the community with needed Library materials and services.

Key Considerations:

The ultimate goal of the Cooperative Purchase Contract is to maximize contract pricing through volume purchases of materials and services that help leverage purchasing power and to obtain maximum services quality provided by the contracted vendor. Other objectives are to continue a working relationship with Baker & Taylor that has been successful in the past and to improve the efficiency and effectiveness of the public procurement process.

Expanded Financial Considerations:

None.

Community Benefits and Considerations:

The local community will continue to use the Libraries for educational, recreational, and other resources that will be provided through the Cooperative Purchase Contract. The City will be able to continue to meet the needs of the community. The materials and services provided by Baker & Taylor are extremely valuable and have been a great asset. The community benefits by a continued working relationship with the vendor and the discounted pricing that keeps the library services an exceptional resource for the community.

Community Involvement:

Inform the community on library services.
Involve the community by providing training, educational, and other materials.

Expanded Options and Alternatives:

None.

Attachments: Cooperative Purchase Contract
Coop Agreement
Extension Letter

COOPERATIVE PURCHASE CONTRACT
Contract No. 2023-18

This Cooperative Purchase Contract is made and entered into this _____ day of _____, 2022, by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and Baker & Taylor, LLC, a North Carolina Limited Liability Company ("Contractor").

RECITALS:

A. Contractor has Government Purchasing Cooperative Contract #2017201 with the City of Mesa, Arizona to supply materials and/or services ("Agency Contract"), which was awarded through a competitive and open procurement process; and

B. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

AGREEMENT:

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

1. Materials and or Services Purchased: Contractor shall provide to City the materials and or services, as specified in the Purchase Order(s) submitted by the City in accordance with the Agency Contract. General description of materials and or services being purchased:

LIBRARY BOOKS AND MATERIALS

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Purchase Order(s) submitted to Contractor as identified in *Exhibit A*.

3. Payment: Payment to Contractor for the materials and/or services provided shall not exceed **three hundred thousand dollars ($300,000) in addition to other fees and taxes**; made in accordance with the price list and terms set forth in the Agency Contract.

4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents are set forth in *Exhibit B* attached hereto and incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract, including, specifically changes in price for the materials.

5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.

7. Renewal: This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

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

To the City:
Kirsten Pearson
Flagstaff City-Coconino County
Public Library
300 W. Aspen Ave.
Flagstaff, AZ 86001

To Contractor:
Baker & Taylor, LLC
2550 W. Tyvola Road, Ste. 300
Charlotte, NC 28216
(704) 998-3212

With a Copy to:
Brian Eilerts
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Brian.eilerts@flagstaffaz.gov

(SIGNATURES ON FOLLOWING PAGE)

Baker & Taylor, LLC

By:_____

Title:_____

CITY OF FLAGSTAFF

By:_____

Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

EXHIBIT A

SPECIFIC REQUIREMENTS OF CITY

Price: DESCRIBE, OR WRITE “Per Purchase Order”

Specifications: DESCRIBE, OR WRITE “Per Purchase Order”

Schedule of performance: DESCRIBE, OR WRITE “Per Purchase Order”

Delivery location: DESCRIBE, OR WRITE “Per Purchase Order”

EXHIBIT B
AGENCY CONTRACT

1. City of Mesa, Arizona Agreement #2017201 (attached to staff summary)
2. Contract Amendment #2017201 (attached to staff summary)

AGREEMENT PURSUANT TO SOLICITATION

CITY OF MESA AGREEMENT NUMBER 2017201
LIBRARY BOOKS, SPOKEN WORD, DVDS & DIGITAL MEDIA

CITY OF MESA, Arizona ("City")

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466
	Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400
	Mesa, AZ 85201
Attention	Jess Romney, CPPB Procurement Officer
E-Mail	Jess.Romney@MesaAZ.gov
Phone	(480) 644-5798
Fax	(480) 644-2655

AND

BAKER & TAYLOR LLC, ("Contractor")

Mailing Address	2550 West Tyvola Rd. Suite 300
	Charlotte, NC 28216
Delivery Address	PO Box 277930
	Atlanta, GA 30384-7930
Attention	Jeffrey W. McDaniel Vice President, Customized Library Services and International Public Libraries
E-Mail	Jeff.McDaniel@Baker-Taylor.com
Phone	(704) 998-3212
Fax	(704) 998-3308

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 10th day of July, 2017, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Baker & Taylor LLC, a(n) Delaware corporation ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

A. The City issued solicitation number **2017201** ("Solicitation") for **Library Books, Spoken Word, DVDs & Digital Media**, to which Contractor provided a response ("Response"); and

B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on **September 1, 2017** and ending on **October 31, 2020**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.

    1.1 **Renewals.** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) one (1) year periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

    1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

3. **Orders**. Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

4. **Document Order of Precedence**. In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.

    a. Agreement

b. Exhibits
   1. Mesa Standard Terms & Conditions
   2. Scope of Work
   3. Other Exhibits not listed above
c. Solicitation including any addenda
d. Contractor Response

5. Payment.

5.1 **General**. Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("Pricing") in consideration of Contractor's performance of the Scope of Work during the Term.

5.2 **Prices**. All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Contractor providing the materials/service including transportation, insurance and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Contractor further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

5.3 **Price Adjustment**. Any requests for reasonable price adjustments must be submitted in accordance with this Section 5.3. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the sixty (60) day period prior to Contract expiration date of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the ***Consumer Price Index for All Urban Consumers*** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (http://www.bls.gov/cpi/home.htm). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

5.4 **Renewal and Extension Pricing**. Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

5.5 **Invoices**. Payment will be made to Contractor following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

a. Contractor name, address, and contact information;
b. City billing information;
c. City contract number as listed on the first page of the Agreement;
d. Invoice number and date;
e. Payment terms;
f. Date of service or delivery;
g. Description of materials or services provided;
h. If materials provided, the quantity delivered and pricing of each unit;
i. Applicable Taxes
j. Total amount due.

5.6 **Payment of Funds**. Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Otherwise; payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

5.7 **Disallowed Costs, Overpayment**. If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

6. **Insurance**.

6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.

6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.

6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

6.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.

6.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.

6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional

insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.

6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.

6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.

6.9 **Types and Amounts of Insurance**. Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:

6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.

6.9.2 Automobile liability, bodily injury and property damage with a limit of $1 million per occurrence including owned, hired and non-owned autos.

7. **Requirements Contract**. Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.

8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.

9. **Representations of Contractor**. To the best of Contractor's knowledge, Contractor agrees that:

a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;

b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;

c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and

d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.

10. **Mesa Standard Terms and Conditions**. **Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will

control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.

11. **Counterparts and Facsimile or Electronic Signatures**. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.

12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

    Exhibits to this Agreement are the following:

    - (A) Scope of Work
    - (B) Pricing
    - (C) Mesa Standard Terms and Conditions
    - (D) Other

13. **Attorneys' Fees**. The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.

14. **Additional Acts**. The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.

15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MESA, ARIZONA

By: _____

_____
Printed Name

_____
Title

_____
Date

Reviewed by:

_____
Signature

Jess Romney, CPPB
Procurement Officer

BAKER & TAYLOR LLC

By: _____

Jeffrey W. McDaniel
Printed Name

Vice President, CLS & International Public Libraries
Title

6/30/2017
Date

EXHIBIT A
SCOPE OF WORK

1. ABILITY TO MEET ESSENTIAL SERVICES

The demonstrated competency, integrity and responsibility of each Offeror will be taken into consideration along with quoted discount and service offered in providing books, audiovisual materials and other services. Speed of delivery and similar time-zone communication are important for library service. Essential Services: All criteria shall be met or the proposal will not be considered.

CUSTOMER SUPPORT

Project Management Approach

The formation of Baker & Taylor's Customized Library Services brought with it the development of a project-oriented approach to Ongoing Collection Development, Opening Day Collections, and Ongoing Online Cataloging and Processing. This approach allows CLS management to schedule all facets of a project or ongoing service, including resources, and provides the foundation and framework for the entire project while creating a mutual understanding of the requirements of both the Library and CLS.

The first step in the implementation of the CLS project management process is the establishment of a project team. All CLS project teams consist of a minimum of a project manager, collection development manager, an automation specialist/cataloging/processing manager, and an account coordinator. Team members are responsible for managing their assigned resources to complete the project. In turn, each team member works closely with the project manager to ensure compliance to all requirements.

The development of the project team begins upon receipt of a proposal request. The project team immediately becomes part of the CLS response team and helps develop an approach that will successfully complete the project and meet the library's requirements. This process ensures that all management resources are in place prior to the submission of our response. Our experience has shown that when the library sets up a project team with similar project responsibilities and scope in advance of the project or ongoing service startup, the documentation and implementation of services is more efficient, accurate, and thorough. Additionally, the library's internal project team, supported by a designated library project manager, can provide a central point of contact for all issues and information. This will help foster communication and insure that all internal library timelines and schedules are met.

Upon successful award to CLS, the project manager immediately contacts the library's project coordinator to begin developing the partnership that will carry throughout CLS service to the library or the projects' completion. At this time, the project manager contacts the library to review the next steps in the process and possible site visit dates and also requests samples of barcodes, genre labels, ownerships labels or other labels as applicable. The project manager will work with the library to schedule a series of conference calls, including the appropriate CLS and library project team members. The goals of these calls will be to establish connectivity to the library's catalog, review the cataloging and processing specifications supplied in the proposal process and further define them if needed, profile any collection development needs, and assist in the coordination of any electronic ordering/account set up. At the end of these conference calls, all CLS project team members will review their notes and provide a comprehensive requirements documentation package to the library. Upon receipt of the library's approval of the requirements package, CLS will create cataloged and processed samples.

Your project manager will deliver these samples to the library, giving the library another opportunity to confirm that CLS understands their requirements. At this time the project manager can walk the library through placing their first orders and discuss a fulfillment schedule with the library.

Ultimately, the key to successful project management is communication. Internally, CLS emphasizes and focuses on team communication for facilitation and completion of all processes and tasks. Externally, this communication is no less important. Team to team communication between the library and CLS builds a confidence and the environment that is needed for the successful completion of any project. In support of this "communications environment", the project manager is responsible for establishing regular conference calls with the library and all the CLS team members. These meetings can serve a number of purposes,

such as the regular review of profiles, requirements, and project status updates. Our experience has also proven that these meetings and calls aid in the development of the relationship between CLS and the library by promoting open lines of communication at all times and by helping to resolve any issues or questions to the mutual satisfaction of the library and CLS.

A final component of project management is consulting support. All CLS project managers have significant project and delivery experience that can provide ongoing support and aide to the library. This additional knowledge base is free of charge and comes from working with seasoned project professionals. This support can be an invaluable and timely tool from collection development strategy all the way to the delivery implementation.

Customer Service

As a current Baker & Taylor CLS customer, the Mesa Public Library has established Project Management service relations with Baker & Taylor. Your assigned CLS Project Team is available Monday – Friday, 5am to 3pm MST. Project team members are available via phone, fax, and e-mail. Your Project Manager, Marie Franklin can be reached via email at marie.franklin@baker-taylor.com, or by phone at 1-800-775-7930 ext. 2701. Your Account Coordinator, Amy Bassett can be reached via email at amy.bassett@baker-taylor.com, or by phone at 1-800-775-7930 ext. 2744.

Online Customer Support (OCS) is Baker & Taylor's web-based account management system. Access to the OCS system via your web browser is available 24 hours a day, 7 days a week to search and view account information, orders, and invoices with Baker & Taylor.

OCS' sophisticated search options include the ability to query orders by Purchase Order, B&T Order Number, Order Date Range, and more. The OCS data is updated to reflect the latest order and invoice status, as well as up to six months of history.

The library can obtain updated status information at any time by accessing OCS. A backorder summary report including information on all backordered and cancelled titles is available. The library can go to the reports/downloads tab to request this report, setting date parameters and selecting all accounts or specific ones. The report is emailed to the library within 24 hours.

The Library can also view detailed information on order and account status, warehouse location, quantities and prices, and shipping details. If a shipping carrier such as UPS, has external tracking capabilities, a link in the OCS system will take the Library directly to the carrier's website where additional information on your shipment's status is available. There is even an option that helps the Library to print invoices and order details for record keeping.

Baker and Taylor's hours of general customer service are Monday – Friday, 5 am to 5 pm MST. General library customer service can be reached at 1-800-775-1200.

We will respond to all account queries within 24 hours, however, it may take longer than 24 hours to provide resolution to a more complex issue or question.

Polaris

Baker & Taylor has a working relationship with Polaris and their development staff. Baker & Taylor's products such as TitleSource 360™ allow for the export of MARC-based data that can be imported into Polaris for ordering. In addition, Baker & Taylor fully supports enriched EDI ordering and invoicing. Our custom cataloging methodology utilizes the Polaris poly segment ID number to ensure an exact match point for cataloging records. We use a standard Z39.50 protocol to access the Polaris system. We use our internal bibliographic tool to access the Polaris database via Z39.50. We copy existing full level records into a workfile and add item level information in the 852 tag. With EDI ordering we can supply the Polaris control number in the 001 tag of the marc record to act as an exact match point and we will provide the poli-seg id in the 852 item tag to provide an exact match point for each item ordered.

The Baker & Taylor Website

Baker & Taylors website can be reached at www.btol.com. Our website offers an abundance of information regarding our products and services; including a section designated specifically for libraries; http://www.btol.com/library.cfm. Customized Library Services even has its own micro-site,

http://cls.bakertaylor.com/, which includes information on the CLS staff and case studies of our work with various libraries.

SUPPLIER INVENTORY

Currently, our national distribution network is comprised of four book and audio visual distribution centers that maintain a combined inventory of over 17.5 million items representing approximately 1 million unique media and book titles. We supply all categories of materials for all levels of library patrons, including general adult readers, researchers, professionals, and Children and Teens. In addition to items that are stocked in our distribution centers, we maintain a product database that contains over 7.5 million items.

	Titles	Volumes
Book	**936,161**	**15,523,076**
DVD / Blu-Ray	**53,359**	**1,123,483**
Music CD	**70,086**	**534,823**
Audio Book	**33,718**	**155,825**
eBook/eAudio	**1,501,314**	**n/a**

Book Audience		Fiction	Nonfiction
Adult/General		***25%***	***62%***
Juvenile		***8%***	***5.30%***
Grade level	Preschool	16.01%	6.76%
	1 to 2	10.82%	7.48%
	2 to 3	5.23%	5.09%
	3 to 4	6.19%	5.75%
	4 to 6	10.55%	8.89%
	7 to 9	6.97%	3.60%
	K through 12	4.25%	2.41%
Grand Total		**32.70%**	**67.30%**

Baker & Taylor's inventory is over 17.5 million items and approximately 900,000 unique media & book titles. Baker & Taylor's leveraging of its inventoried titles from over 75,000 publishers and imprints provides the highest possible fill rates in the industry.

In Addition, Baker & Taylor has partnered with over 100 of the most important publishers in the business to deliver a unique service, providing us with their inventory positions on their shelves in real time. Baker & Taylor's VIP Inventory Program creates a one-stop shopping experience that will offer you and your patrons the broadest range of titles and inventory coverage in the industry. VIP gives access to an additional 800,00 titles with in stock availability and adds to B&T's offering, Totaling over 2 million of in stock titles. This program allows Baker & Taylor to provide an initial fill rate of over 90% - the highest in the industry.

Baker & Taylor's available inventory includes titles in over 50 non-English languages across all products. Currently we have access to over 400,000 unique ISBN's, 18,000 video, 1100 Spoken Word Audio, and 15,000 music non–English titles (this does not include sub-titled items). All of our non-English language titles are available to receive full library services.

Baker & Taylor subsequently carries an impressive stock of Spanish language materials. We currently have over 19,000 titles active, of which 52% is fiction and 48% non-fiction; with 18% of our Spanish language stock is dedicated to Juvenile materials. Additionally Spanish titles 22% of our foreign language media, not including subtitled items. We have included a publisher list for our Spanish language materials in Appendix 9.

Customized Library Services (CLS) operations for Mesa are located in our Reno, Nevada warehouse. This staff is trained on your customized processing requirements. If titles order via CLS are not in stock in Reno publisher purchase orders are immediately created to fill backorder. For product only orders Mesa Public Library can order directly from the Reno warehouse and in addition we will set up a secondary warehouse to meet Mesa's fulfilment needs.

METHODS OF ORDERING

Baker & Taylor can accept orders in many different formats. For firm order book, spoken word, music CD, and DVD materials, the library may place orders via telephone, facsimile, printed selection lists, printed

purchase orders, or electronically. Baker & Taylor will accept orders via excel in these formats. Electronically includes through the library's Polaris acquisition system as well as our TitleSource 360™ database.

Baker & Taylor's TitleSource 360TM is the way to order product from one trusted source. Through the latest innovative technology, TitleSource 360TM provides users with fast, accurate and personalized search results, and makes ordering easier than ever. Find the products you need and order them quickly and easily with a streamlined checkout process.

For more information on TitleSource 360 please see the section ***Access System to Offeror's Title Database***.

For ordering through your ILS, Baker & Taylor has the ability to accept EDI orders from Polaris, provide EDI confirmations of order receipt, and provide electronic invoicing at the time of shipment. Baker & Taylor has a unique workflow that helps the library automate the process of selection to acquisitions. This process starts with our TS360™ product. Here selectors can assign delivery order numbers to quantities of titles for orders. That group of titles can be downloaded from TS360™ and uploaded into Polaris using the 9XX tag that Polaris has designated for order record creation. After the order record has been created, the library can then send the EDI order. Enriched Edifact ordering is also currently supported by Baker & Taylor. In addition, Baker & Taylor supports ASN receiving through Polaris. Title information can be viewed at any time via TS360™ or Online Customer Service; for more information on Online Customer Services please see the section on ***Customer Support.***

Test orders are conducted on all newly set up accounts to make sure the process is working correctly.

INVOICING REQUIREMENTS

Book and SWA Baker & Taylor's book and spoken word invoices include the bill to address, ship to address, unit price, unit discount, quantity, total discount price, ISBN and purchase order number. The library may choose the order in which books appear on the invoice; in the same order as the original purchase order, alphabetically by title, author, or publisher. Cataloging and processing charges can be included in each line's extended price, summarized at the bottom of each invoice. In addition, Baker & Taylor's ATS number (authorization to ship) is included on each invoice and packing slip and will allow the library to match the packing slips to invoices. The shipping label will be marked in the upper right hand corner with an "I", indicating invoice in shipment.

DVD / Blu-ray and Music CD:

Audio Visual invoices will list the account number, purchase order number, quantity, title, producer's list price, discount, extended price, and total price. AV cataloging and processing charges will be listed on the AV invoice. Titles can be listed by purchase order, artist, and title or item number. The invoice number is listed on both the invoice and the packing list. In addition, Baker & Taylor's ATS number (authorization to ship) is included on each invoice and packing slip and will allow the library to match the packing slips to invoices.

Baker & Taylor includes a detailed packing list with all shipments. Baker & Taylor's ATS number (authorization to ship) is included on each invoice and packing slip and will allow the library to match the packing slips to invoices. Please see Appendix 7 for a sample packing list and invoice.

Book and AV invoices may be included with each shipment and/or be sent separately, dependent upon the library's preference. Invoices can also be sent via EDIFACT and pdf copies can be downloaded at any time using Online Customer Service.

SHIPPING REQUIREMENTS

All books will be packaged (packed and marked) in accordance with the best commercial practices. Baker & Taylor's enhanced shipping label includes the pack date, freight carrier, purchase order number, account number, B&T picklist number, carton number and individual carton weight. Each carton in a shipment is numbered, and the final carton also indicates total carton count (e.g. 1,2,3, and 4 of 4). For book materials, each box can contain a packing slip, or boxes containing a master packing slip are indicated with a capital 'M' on the address label. For AV Materials, a packing list is enclosed in each carton of the shipment.

Baker & Taylor utilizes UPS for shipments over 5 pounds. For shipments under 5 pounds we ship via the United State Postal Service. Invoices are mailed to the library at the time invoicing occurs. Please note that should the library decide at any time to have orders sent directly to branches, an additional per unit charge might apply.

Baker & Taylor will accept the authorized return of items that are damaged, defective, or incorrectly shipped. Please see the enclosed returns policy, Appendix 8, for further details on credits and returns.

DELIVERY REQUIREMENTS

Baker & Taylor will send all items Free Shipping, FOB Destination with inside delivery. Ownership transfer and invoicing will occur on the date cataloging and processing is completed and the materials are either shipped or placed in storage at a Baker & Taylor facility. Please note that should the library decide at any time to have orders sent directly to branches, an additional per unit charge might apply.

For shelf ready materials, CLS will employ the appropriate amount of resources to maintain the fastest possible turnaround time. Our average turn around for fully cataloged and processed material (non Rush) is 10 days after receipt of material from the publisher. For Rush orders we make our best effort to turn in stock orders around in 5 days.

RETURNS, REFUNDS AND CREDIT MEMOS

Baker & Taylor will accept the authorized return of items that are damaged, defective, or incorrectly shipped. Please see the enclosed returns policy, Appendix 8, for further details on credits and returns; and a sample Return Authorization Form. To make a return, simply contact your Account Coordinator, Amy Bassett, within the time period specified to obtain an authorization number for your return. Once the authorization has been obtained, the library can either have a no charge replacement shipped to the library, or may have the credit applied to the invoice in question. Amy can be reached via email at amy.bassett@baker-taylor.com, or by phone at 1-800-775-7930 ext. 2744.

ACCESS SYSTEM TO OFFEROR'S TITLE DATABASE

TitleSource 360™

Baker & Taylor's TitleSource 360™ is the latest way to order product from one trusted source. Through the up-to the minute innovative technology, TitleSource 360™ provides users with fast, accurate and personalized search results, and makes ordering easier than ever. Find the products you need and order them quickly and easily with a streamlined checkout process.

Baker & Taylor's TitleSource is the most extensive database of bibliographic acquisitions information for U.S. publications. This database includes book, spoken word audio, DVD / Blu-ray, and music CD titles. Each record gives current print status (i.e. Not-Yet-Published, Out-of-Print), in-stock availability, and latest list price. Title information is updated daily.

TitleSource 360™ Benefits:

Largest database of book titles and media products
Fast, customized search results based on prior searches or user profile
Intuitive interface
Inventory view and title searching within cart
Product release calendar
Special offers and promotions
Live customer support
Customized profiles
Streamlined order management
Simple batch entry upload and ordering process
Accessible from any computer with an internet connection

TitleSource 360™ makes it faster and easier to order books, movies or music products — now you can have millions of products at your fingertips with one easy-to-use ordering system.

Customized Search and Browse Capabilities

TitleSource 360TM enhanced search capabilities include type-ahead and spell-checking to aid in your search.

Wealth of data at your fingertips

Each view provides publisher status, inventory level, estimated discounted price, cart and order duplication indication— without a single click of a button.

Enhanced MARC profiler

This new feature makes integration with your ILS easy and efficient. Output customized, best available, MARC records with your required ILS data including, but not limited to, notes, location codes, fund codes, and collection codes, to create on-order records. On-order records can be used in the acquisitions process and to enable patrons to place holds on pre-pub titles.

Easy Cart Management

The innovative cart drawer is easily accessible on every page, so you can keep your lists and carts organized. Choose from multiple batch entry options: basic data entry, copy and paste and file import—multiple formats are supported.

Innovative Shared Cart Workflow

Share your cart with multiple users and control each step of the process, including selecting who can perform which function and assigning completion deadlines.

TitleSource 360TM makes it faster and easier to order books, movies or music products — now you can have millions of products at your fingertips with one easy-to-use ordering system.

The TitleSource 360TM database contains detailed, comprehensive, up-to-date information on over 8 million book titles, 200,000 DVD / Blu-ray titles, and 750,000 music titles. Data elements also include: 45 key search indices (including LC and Dewey classes), eleven filter criteria (including stock status, publication date, binding, format, and grade level), and duplicate checking between orders and selection carts.

Duplication Check

TitleSource 360™ offers the most extensive duplication check of previous customer carts and customer orders (tracking back 2+ years), and provides a dynamic tracking of the status of previous ISBN/Titles as the title moves through the B&T fulfillment process. TitleSource 360™ is the only selection/acquisitions service able to offer such extensive duplicate checking.

Key Features of TitleSource 360TM are:

Updated daily to insure accurate and current information, including in-stock titles, pre-publication, and new release titles

Real-time inventory data

Rich bibliographic information, including over 4.8 million jacket images in full color, first chapters, annotations, tables of contents, as well as standard bibliographic data such as author, ISBN, price, publisher, and publication Fully searchable Tables of Contents (1,300,000) and Annotations (4.1 Million).
Approximately 900,000 full-text reviews, including Kirkus, Library Journal, Publishers Weekly, School Library Journal, Horn Book, Choice, VOYA, BookPage, Foreword, AudioFile and E-Streams
Automatically access titles by review publication date
Over 45 search indices, including BISAC, LC and Dewey classes
Create, merge, copy, export and transfer selection carts. Carts can even be emailed to other users
Download MARC records into your ILS system with 9XX tags
Duplicate checking between orders and selection carts
Ordering grid capabilities for the library to track multiple branch distribution of title copies as well as three other user defined fields
Order grid information may be downloaded to the library's ILS system for ordering and/or transmitted to CLS in the electronic order file sent from TitleSource 360TM
Access to Lease Pre-publication lists and Quick Call
Access to lookup ISBN's in library OPAC with one click

Administrator determines levels of access for user IDs

Shared Cart Functionality:

Simultaneous Access to or Sharing of a single cart by multiple users within single TS360™ account.

Enhanced Duplicate Checking allows a user to perform a duplicate check for a single title before and/or after placing the title in the cart. Those customers using our Grid Distribution system will now see appropriate Grid information displayed in the printable popup window alongside previously provided duplicate information.

An Inline Grid Distribution Table is incorporated within the Detailed Title Display to give users the ability to enter multiple rows without having to go to a separate grid screen. It is also available as a popup read-only window for shared grid carts.

A Requisition Table for shared non-grid carts displays the requisition information supplied by all users and is viewable within the Detailed Title Display or from a popup window when using the Multiple Title Display. Information collected and displayed for each user includes: quantity, notes, and any Grid entries. Administrators and Cart Owners can find and replace Grid entries that may be obsolete.

Recommended Internet Browsers:
Internet Explorer
Google Chrome
Mozilla Firefox

TitleSource 360TM is designed to support library workflows, and is integrated with Baker & Taylor's collection development service FirstLook™ and your integrated library system (ILS).

Review Sources
B&T can provide access to full-text review citations from the following major review sources.

AudioFile	E-Streams	Voice of Youth Advocates
Booklist	ForeWord	PW
BookPage	Horn Book Guide	LJ
Choice	Horn Book Magazine	SLJ
Doody's	Kirkus	VideoLibrarian

As part of Baker & Taylor's comprehensive proposal, we are pleased to offer a TitleSource 360TM package to the Library Free of Charge. This configuration includes an Administrative ID, 12 user ids, grids, Marc profiler, and full text review journals, including Booklist. As the library already has access to this service no trial logon information is needed.

MARC RECORDS

The file of customized MARC records will be put on the B&T FTP server for the library to retrieve and load. The records are maintained on the Library's work file for historical reference. The Marc records are included in the CLS unit price.

COLLECTION DEVELOPMENT SERVICES

Baker & Taylor emphasizes a project-oriented approach in every aspect of the management of Customized Library Services. Collection Management follows these same rules of engagement, which has made us the leading shelf ready supplier in the industry.

At an appropriate time after the award of the contract, Collection Management staff, in conjunction with the CLS Project Manager will:

Contact designated library collection development staff for purpose of introductions and to acquire additional general information about the project or ongoing service requirements.

Provide the designated library collection development staff copies of Collection Management profiling documentation in order to familiarize the library staff with the means with which B&T Collection Management librarians will document and record collection parameters.

Set meetings up with the library to perform focused conferences with the library's collection development staff, in order to discuss and document detailed collection development requirements.

Document, restate, and as necessary edit, with the library's input, the information acquired in the previous step. This will be presented to the library for sign-off as a confirmation of B&T Collection Management's understanding of the collection parameters.

A tentative list production schedule will also be supplied and any technical/system issues will be addressed and documented.

Upon sign-off, B&T Collection Management will provide sample selection lists/media for review by the library and as necessary, use feedback as a source of fine-tuning the documented requirements.

Upon confirmation of sample conformance, B&T Collection Management librarians will start list/media production. If the library needs to adjust requirements after documentation sign-off, B&T Collection Management librarians will document the change and make necessary adjustments to support processes, output, schedules, and pricing.

Baker & Taylor's Customized Library Services collection management approach is the structured and comprehensive approach required to address your collection development needs.

Additionally, Baker & Taylor offers an extensive array of collection development assistance through our print and online catalogs, FirstLook™ Programs, and Collection Development department. Baker & Taylor's TitleSource 360™ (TS360™) is the most authoritative database of bibliographic acquisitions information for U.S. publications in the industry. TitleSource 360™ is designed to support library workflows, and is integrated with Baker & Taylor's collection development service FirstLook™.

FirstLook™ is Baker & Taylor's family of notification services available to libraries. FirstLook™ is supported by a staff of experienced librarians and merchandising specialists who are experts in the publishing and entertainment industries. These services are supported by the industry's most sophisticated collection development management system, and title lists are provided via TitleSource 360™ where they can easily be conditioned and downloaded into Polaris. For additional information on FirstLook™ Basic please see the section ***Annotated List / Publications Catalog.***

FirstLook™ Custom

FirstLook™ Custom is a subscription based Collection Development program that delivers fully customized selection lists for both print and non-print material based upon your selection criteria. Our custom-profiled lists make your selection as seamless as possible. You determine which lists you want, how you want them, and when you want to receive them by completing a profile document with your unique specifications in conjunction with your Baker & Taylor Sales Consultant and/or Collection Management staff member.

FirstLook™ Custom Features:
Multiple selection criteria including but not limited to:
Subject criteria, such as Dewey and LC classification, BISAC and genre categories
Reviews and citations in review sources and/or bibliographies
Audience level
Series
Publishers
Citation in a Baker & Taylor publication or merchandising plan
Publication date
Format
Flexible scheduling options
One-time special profiles (i.e. replacement lists) available
Weekly, semi-monthly, quarterly, contingent upon profile/material type
Duplication management
Titles are checked against previous carts—view a title one time for selection efficiency and to prevent unwanted duplication

List can be delivered as carts to:
TitleSource 360™

List can be sent via FTP, in the following formats:
Word
Excel
PDF
MARC

Baker & Taylor is pleased to offer the City of Mesa FirstLook™ Custom free of charge.

CUSTOMIZED LIBRARY SERVICES CATALOGING

Customized Library Services' custom cataloging is Baker & Taylor's premier service. CLS has performed online cataloging, editing and maintenance for Libraries since 1989. CLS will use one of two methodologies to perform cataloging services. Our preferred method is to access the Library's ILS using the Z39.50 protocol. Customized Library Services has partnered with The Library Corporation (TLC) to create a state of the art cataloging methodology that leverages Z39.50 protocol for accessing the library's database and a resource pool of records from the Library of Congress and any Baker & Taylor created records. This technology allows our CLS catalogers to have access to the most current version of the library's cataloging records without the overhead of being directly online. Records obtained from the Library's database are saved to a library specific work file located in our secure cataloging utility. The records in the work file are used in the creation of spine labels and as a vehicle for providing item-linking information.

Major Features of the CLS Preferred Cataloging Methodology (Z39.50):

Only authorized CLS catalogers have access to the library's database and work file. The cataloger will process material first by searching for a matching record in the library's database and work file simultaneously.

A successful search occurs when our cataloger matches the data elements found in the appropriate record tags. CLS considers the title, author, imprint/publisher, edition and date of publication when matching a record. During the CLS profiling, the project team will document the appropriate attributes for matching records. When a matching record is found, the appropriate item level information (examples: barcode number, list price, collection code, etc.) is keyed and the record is saved to the library's work file.

If a record is not found in the library's database or work file, the CLS Bibliographic Database is searched, followed by LC MARC and the resource databases of TLC. The CLS Bibliographic Database contains all CIP records upgraded to full MARC standards by CLS catalogers, as well as new records created by CLS original catalogers.

If the record is not found in the above resources, the Library may also choose to have CLS search OCLC on their behalf for records not found in the library's catalog. Once a record is located in OCLC it is saved to the Library's work file and the record is updated to the Library's specifications. The option of utilizing OCLC will also help to minimize the Library's need for original cataloging. Please note that the process of using OCLC is available upon CLS' receipt of a signed third party agreement which grants permission to our catalogers to access OCLC on the library's behalf. There are no additional charges from CLS for this service. However, it should be noted that all corresponding OCLC charges will be the responsibility of the Library. On a weekly basis, an electronic file is sent to OCLC to update the library's holdings for all contributed records.

When a full matching record is found in one of the resource databases, it is upgraded to meet the library's specifications and the appropriate item tag is keyed. The record is then saved to the library's work file.
If the matching record found is not a full level record, the record is upgraded to meet LC standards and is saved to the CLS Bibliographic Database. The record is then further edited to meet the library's specifications and the appropriate item record is keyed. The record is then saved to the library's work file. The exception to a full level record would be that some AV pre-pub records are not upgraded to full MARC standards. However, these records are upgradeable to the Library's local standards. If a matching record cannot be found in the multi-database search string, a request is forwarded to an original cataloger in the CLS department. Our original catalogers will create a record according to RDA rules. LC authority files are used to validate author and subject headings. Once the record is created, it is saved into the CLS Bibliographic Review File. Once the record has been reviewed and approved, it is saved in the CLS Bibliographic Database. The library's assigned cataloger is notified and the record will be edited to meet

the library's specification and appropriate item tag is keyed. The sample records enclosed **(Appendix 4)** represent the minimum level of cataloging for AV materials. Every title sent to the library will have a full MARC record with the appropriate item tags. The records will either be new additions to the library's catalog, edited and modified to the library's standards, or existing records from the library's catalog.

When the cataloger has completed the order, laser printed label sets consisting of spine, barcode, bibliographic, and other labels as required by the library are printed. We have enclosed a sample label set in **Appendix 5**. The barcode is provided in a standard format, with an eye readable number strip available. All other labels are customizable for font, pitch, boldness and italics. Options for label font include Courier, Times New Roman and Arial and pitches 12, 14, 16 and text can be left justified or centered. For thin books, we can provide one line spine labels and for Picture Books we can provide a larger font author letter spine label. The library will supply a unique barcode range, barcode prefix, and symbology information.

Call number and bibliographic information is extracted directly from the MARC record to ensure accuracy. After the labels are printed, a file of MARC records corresponding to the titles in the order is created. Released records are flagged so they cannot be selected again.

Customized cataloging is included in the CLS unit price. For those records where cataloging is not available in the library's database or B&T's cataloging utility, CLS will provide an original cataloging record for $10.00/title.

PROCESSING

The CLS department has over 300 trained professionals staffed to handle the library's customized requirements. These staff members are dedicated to meeting the library's requirements and exceeding your expectations. Our commitment to excellence and doing the job right the first time is unmatched in our industry. After cataloging is complete, the processing department completes the physical processing of each item. The processors review the processing instructions gathered at the site visit. Following these instructions, the processor attaches the spine label, barcode, and any special labels required by the library. After the application of all physical components, the library's materials move to the jacket selection area. Experienced technicians size the books so the appropriate Mylar jacket can be applied to the dust cover of the book. After the material is fully processed, it is ready for the final and most important stage in our CLS process, back audit.

RFID

CLS Shelf Ready Processing can also include the application and linking of RFID tags. Baker & Taylor's Customized Library Services has been providing RFID services for print and audiovisual material since 2001. To date, we have linked, printed and/or applied tags for over 1 million items. CLS is currently providing the RFID tags, application and encoding services for the City of Mesa's material. Our attached pricing includes this service.

Back Audit

The back audit team is the final step in ensuring the material we ship to the library is of the highest quality and is in compliance with the library's profiled specifications. The CLS back auditors inspect each order by cross referencing the completed processing and the processing instructions gathered at the site visit. Once the library's material passes this stage, the order is ready to be staged for delivery to the library.

MULTIPLE ACCOUNTS

B&T has developed an account set-up methodology to aid in the ordering and delivery process. Additional accounts will be set up as required by the library. For example, the library may want to separate out genre, large print or board books. This account set up process ensures that the shipment is delivered according to the needs of the library.

2. ABILITY TO MEET REQUIRED SERVICES

ANNOTATED LIST / PUBLICATIONS CATALOG

Selection Lists

Baker & Taylor's Collection Management has one of the most extensive databases in the industry to support Opening Day Collection projects and ongoing selection. Our core selection application can access over 3.5 million book, audio and video titles. Data can be accessed and output by using an extensive range of access points including but not limited to:

Dewey Classification
Library of Congress Classification
Library of Congress Subject Headings
Fiction Genres
Juvenile Material Type, i.e. Picture Book, Easy Readers
Subject Thesauri such as BISAC Subject Classifications
Non-book Material Genres
Key Word that can be applied to subject access points, full text annotations, and/or tables of contents

In addition to these subject/content descriptions, data can be accessed and output by non-subject descriptive data elements including but not limited to:

Review Citation
Citation in Industry Standard Bibliographies such as Public Library Catalog or Best Books for Children Series
Level of Readership/Intended Audience
Physical Format/Material Type
Availability Status
Stock Status
Price

Staff Collection Management librarians also maintain bibliographies that can be used to support library collection development projects. Examples include and are not limited to interdisciplinary multicultural collections that have African American, Hispanic/Latino, and/or Asian oriented content.

B&T can provide collection development data in a laser printed hard copy, MARC, or PC compatible format including Microsoft Excel. Data availability includes, but is not limited to the following:

ISBN/ISSN
Binding/Format
List Price
Delivered Price
Holdings (see below)
Class Number (s)
Author/Editor
Title
Edition Statement
Publisher
Date of Publication/Copyright
Series
Brief Annotation
Interest Level
Indication of Status
Subject Classification

In addition, B&T can include almost any data element that is included in the structure of a MARC record in our hard copy or electronic formats of selection lists. We can include data that indicates:

Juvenile Material Type, i.e. Picture Book, Easy Readers
Subject Thesauri Elements such as BISAC Subject Classifications
Non-book Material Genres
Review Citation indications
Citation in Industry Standard Bibliographies such as Public Library Catalog or Best Books for Children
Physical Format/Material Type
Availability Status
Stock Status

Regional and National Demand accumulated from all B&T customers

As the world's largest book, movie and music wholesaler, Baker & Taylor produces publications that are crucial information sources for making purchasing decisions. You can find all the hot new release and forthcoming title information available with these periodicals.

You can find Baker & Taylor's publications on the web in pdf format or subscribe to have publications sent to you digitally or via print – dependent upon the publication (print catalog/digital catalog/email newsletter).

In addition, Baker & Taylor has the ability to provide the contents of any individual catalog as a file of Machine Readable Catalog (MARC) records that could be loaded as a selection list in your ILS and/or matched against records in the national Online Computer Library Center (OCLC) bibliographic database, as well as information about providing MARC records for titles ordered.

Alert *Digital Catalog Subscription*

Alert is your complete monthly media reference source for information on DVD and music titles. The publication features annotations, title collections, retrospectives and much more.

Contents of Alert include:
Coming Attractions
New Releases
Foreign Films
Anime
Family & Children's Titles
Instructional & Educational Titles
Video Espanol
Music Audio
Musica Espanol
Bestsellers

At Home *Digital Catalog Subscription*

Distributed every Spring, this publication is timed perfectly with when home improvements are top of mind. Spring is time to spruce up the yard, reorganize the clutter, plan that much-needed renovation, update and repair the plumbing, and redecorate one's living space, and this special annual catalog's contents will show you how.

At Home encompasses a rich variety of new, recently published and forthcoming books, in hardcover and trade paperback. It features an outstanding collection of works for both adults and children, covering such topics as Antiques & Collectibles, Cooking, Crafts & Hobbies, Family & Parenting, Gardening, House & Home, Pets and Self- Help for a Happy Home.

Booking Ahead *E-Mail Subscription*

Booking Ahead is Baker & Taylor's monthly prepublication title list issued two months in advance of publication.

Business Now *Digital Catalog Subscription*

Business Now Showcases the best new books on Business and Economics and focuses on business biographies, entrepreneurship, business history, key industries, personal finance, women in business and so much more.

Cats Booking Ahead *Email Subscription*

Booking Ahead is one of Baker & Taylor's monthly prepublication notification services. CATS provides four separate monthly selection lists ranging from preK through teen levels, up to three months in advance of publication date. These Selection Lists are housed on our database, click on the level below to link directly.

CATS Meow *Email Subscription*

CATS Meow is our monthly email newsletter for Children's and Young Adult Public Librarians. Each issue features news and tips related to collection development, programming, Baker & Taylor services and publisher happenings. Also included are Top Ten lists of best-selling titles and material reviews.

CATS Series - Automatically Yours *Print Subscription*

CATS Series features the newest and most popular continuing series for public libraries, including picture books, easy-to-read, juvenile fiction and nonfiction, graphic novels/ Manga/ comic strip books, teen fiction and nonfiction, and Spanish/bilingual titles. New titles are shipped to you automatically upon publication when you request the series appropriate for your children's and teen collections.

Dispatches *Digital Catalog Subscription*
This specialty publication collects recent titles, including not only books on all of the major military conflicts in American history, but also biographies and memoirs of key military figures and books on weapons and other important concepts.

Fast Facts *Email Subscription*

Fast Facts is a weekly e-mail delivered every Friday, which includes:
New Releases: the best new releases in fiction, nonfiction and paperback
Best-sellers: up-to-date and timely information on The New York Times best-sellers lists, hot-selling titles and publicity information on today's most popular authors and titles
Children's & Teen Titles: the newest children's titles in fiction, nonfiction and picture books

Forecast *Digital Catalog Subscription*

Forecast is our monthly publication promoting forthcoming hardcover and paperback book titles. Forecast provides information on future best-sellers and noteworthy mid-list titles, as well as monthly subject collections, so you can make well-informed buying decisions.

Graphic Novels *Digital Catalog Subscription*

Graphic Novels is the Baker & Taylor catalog exclusively for graphic novels, one of the fastest growing genres in books. Graphic Novels, a full-color publication, offers many pages of title lists, advertisements, merchandising tips and insight into the unique "language" of this specialty category. Graphic Novels is published quarterly.

Sections include:
Graphic Novels Top 25 Best-sellers
Graphic Novels Front List (New Titles)
Graphic Novels Core Lists - Series & Manga Titles, Stand Alone Titles and Drawing Techniques Titles
Exclusive Interviews with Authors and Illustrators
Award-winning Titles (including Eisner Awards and Harvey Awards)

Growing Minds *Digital Catalog Subscription*

This publication is a comprehensive guide to Baker & Taylor's juvenile selections featuring titles appropriate for all interest levels, from toddlers through young adults. Published 10 times a year, each issue of Growing Minds contains special collections that cover a variety of subjects of interest. Please note the June and July issues are combined, as are the November and December issues.

Contents of Growing Minds include:

Audiobooks
Board Books
Preschool
Picture Books
Early Readers
Middle Readers
Young Adult
Selected Series
Exclusive interviews with authors and illustrators
Periodic sweepstakes featuring prizes from renowned authors and illustrators
Special collections highlighting seasonal themes and trends

Humanitas *Digital Catalog Subscription*

Baker & Taylor's digital catalog for general humanities and social sciences disciplines includes books on the visual and performing arts, literature, philosophy, law, politics, history, religion and much more.

International Trade Zone *Digital Catalog Subscription*

As Baker & Taylor continues to increase its reach around the globe, we are committed to providing our customers useful tools for enhancing their collections. This new digital publication, a supplement to Book Watch, provides a current sampling of adult titles of interest to the international market.

Marquee (Blu-ray/DVD) *Digital Catalog Subscription*

Baker & Taylor's bi-monthly, comprehensive and essential selling guide for new release DVD and Blu-ray product, Marquee, is full of useful video information, including advertising from both major studios and independent suppliers. Keep up-to-date on exclusive Baker & Taylor promotions, as well as the latest new release offerings on DVD and Blu-ray for rental and sell- through product.

Contents of Marquee Include:
New Releases
Bestsellers
Special Promotions

The Navigator (Continuations) *Print Subscription*

Mailed to the thousands of subscribers to Baker & Taylor's Continuation Services program, The Navigator features titles that are part of a series, serial, or set-in-progress. The Navigator presents titles in a catalog format, making them first choice among academic or public librarians for standing order title selection. The Navigator is a useful tool for library customers who automatically receive books corresponding to their pre-defined profiles.

Each issue of The Navigator typically has a unique topic or category of titles for your review:
Winter - Various Topics
Spring - Core List
Summer - Education, Occupations & Careers
Fall - Travel

Scope *Digital Catalog Subscription*

Scope is Baker & Taylor's catalog of recently released and best-selling hardcover and paperback titles covering the science, technical, medical and academic genres. It is published three times a year.

Spirit *Digital Catalog Subscription*

Spirit is Baker & Taylor's quarterly preview of notable religious, inspirational, motivational and spiritual titles. In these trying times, these titles will always be popular with your customers and patrons. Featuring more than 200 fiction and nonfiction titles, Spirit promotes both books and spoken-word audio titles. This publication also provides annotated title listings for topics that range from world religion and family relationships to scripture and home lifestyle, from spiritual healing to dealing with grief. These are books and audio books for today's confusing and challenging times.

Contents of Spirit include:
Adult Books
Children's Books
Audio Books

Spotlight *Digital Catalog Subscription*

Don't miss a single beat! Spotlight is Baker & Taylor's weekly music publication, an essential guide to the latest releases coming out on compact disc and DVDs; plus industry news, selling tips, exclusive retail promotions and sales.

Contents of Spotlight include:
Top Sellers by Genre
Future Hits
Preorders by Street Date
New Releases by Genre
DVD New Releases
Pictures and Descriptions of Priority Releases

STEAM Ahead *Digital Catalog Subscription*

STEAM Ahead is a digital publication dedicated to providing valuable information from the publishing community and presenting title offerings that align with and support the STEAM curriculum. STEAM integrates elements of science, technology, engineering, art and mathematics to expand how students learn about the world around them.

Travel *Digital Catalog Subscription*

Travel is the Baker & Taylor catalog exclusively for all of travel needs. Take advantage of the new digital format and order directly from the page. Travel, a full-color publication, offers many pages of title lists, advertisements, merchandising tips, and insight into this selection.

Sections include:
American Vistas - Books and guides for traveling around the U.S.
Beyond the Borders - Titles for exploring internationally
Popular travel series listings like Zagat and Lonely Planet
UP Close *Digital Catalog Subscription*
UP Close focuses on the best regional titles published by university presses. This issue features recent, new and forthcoming titles of local and regional interest. UP Close is published biannually.

Uptake *Digital Catalog Subscription*

UPtake focuses on the best books published by university presses. This issue features recent, new and forthcoming hardcover and paperback books, UPtake is bound into the March and November issues of Forecast. UPtake is published biannually.

FirstLook™ Basic

FirstLook™ Basic is a free collection development program that provides notification of high-visibility new and forthcoming titles. FirstLook™ Basic is available to subscribers of TitleSource 360™. Each month you will automatically receive a new cart that includes an up-to-date title list. Lists are available in the following categories:

New Releases in Adult DVD
New Releases in Children DVD
Adult Fiction
Adult Non-Fiction
Adult Large Print
Adult Reference
Adult Mass Market
Adult Spanish
Children and Teens Mass Market
Children and Teens Spoken Word Audio
Children and Teens Picture Books
Axis 360 eBooks
Acoustik Downloadable Audio

Merchandisers' Variety Program

The Merchandisers' Variety Program allows the Library to create separate profiles by subject category. The key criterion in title identification for these categories is the prepublication purchasing threshold, which represents Baker & Taylor's anticipated demand for these titles.

The Merchandisers' Variety Program addresses all collection areas, including those that are typically not covered in review journals. There are different thresholds for different categories. Category coverage includes adult fiction genres and nonfiction categories, children's and teen areas, spoken word, Spanish language, music CD and video DVD. Examples include, but are not limited to:

Adult & Children's Books
Adult general fiction
Adult mystery

Adult romance
Computer books
Cooking
Crafts and hobbies
Children's chapter books
Children's concept books
Children's easy readers

The Merchandisers' Variety Program can stand by itself or be integrated into a library's FirstLook™ profiles so that titles are delivered only one time, supporting efficient selection and integration with all collection development processes.

E-Lists

Baker & Taylor's E-Lists are selection lists that have been developed by our professional staff to help save you time and effort in searching for the titles you are most interested in. Utilizing any of our online ordering tools, you can browse our comprehensive list of E-Lists developed exclusively for you.

Each list contains pre-selected titles within the category specified. Each title has been selected based on the requirements of the category, as well as inventory availability and appropriate formats. Our E-Lists are organized into useful categories of similar lists, helping you easily browse the topics that interest you and your patrons.

Academia
Book Leasing
Booking Ahead
Children's & Teen (CATS)
Critic's Choice (award winners)
Critic's Picks (book clubs, reviews)
Curriculum Support
Fast Facts
Librarian Selections
Monthly Stars
Spanish & Hispanic Titles
State Book Awards

Other Available Lists:

Academy Awards
AFI Top 100
ALA Award Winners
Bestselling Books
Business & Technology
Caldecott Medal Awards
Children's & Teen Titles
Coretta Scott King Awards
Curriculum Support
E-Books
New Hardcover Books
New Paperback Books
New Children's Books
Forthcoming Adult Books
Grammy Awards
Graphic Novels
Health & Fitness
Music Awards
Multicultural Titles
New York Times Bestsellers
Newbery Medal Awards
Pura Belpre Awards
Rolling Stone Top 500
Popular Books
Spanish & Hispanic Titles
Top 200 A/V Bestsellers
Video Awards

TRAINING

Baker & Taylor will support Mesa staff with on-site training from our local consultants as well as support from our key development staff and development teams. We do not charge for training and are eager to support the library with any instruction necessary.

REPORTS

Customized Library Services (Shelf-Ready) Status Report
Items ordered, but not immediately available (first shipment), will be listed on our status report. This report will accompany your invoice. Status reports will include all backordered items, as well as explanations for cancelled items. Status reports are also available upon request.

A sample standard status report is provided in Appendix 6. A monthly order status report including information by title for items on backorder or in pending status will be provided as listed in our example, Appendix 6. Cancelled items are also listed. A summary of expenditures by account can also be provided.

STANDING ORDERS

Automatically Yours

Baker & Taylor's Automatically Yours, a free author profiling program, delivers the latest publications from popular authors right to your door. Select your favorite authors, and Baker & Taylor will send the latest titles, as soon as they are released. Automatically Yours has several different programs to choose from:

Adult Programs
Popular Adult Fiction Authors– featuring over 1000+ fiction authors
Large Print Popular Adult Fiction Authors -- featuring over 1000+ fiction authors
Fiction Series
Popular Non-Fiction Authors
Spoken Word Audio - featuring over 1000+ fiction authors
Inspirational Authors– Offers over 180 authors to choose

Children's and Teen's Services (CATS)
B&T CATS – featuring over 700+ of the most popular children and young adult authors, both fiction and non-fiction.
CATS AWARD – over 50 different domestic and international awards and honors
CATS Graphic Novels Available for Adult and Teen titles. Choose from 140 Vendor/Characters, 52 Authors, and 32 Illustrators.
CATS Authors & Illustrators

Book Club Plans

Baker & Taylor offers 3 different Book Club Plans to help meet your patrons' demands:
Today" Show Book Club
Reading with Ripa Book Club
"Good Morning America" Book Club
"Oprah's Classic Book Club (Although Oprah has discontinued her book club, she will occasionally recommend titles. We will continue to automatically ship these titles.)

Paperback Parade

Continuous orders for Adult Paperback Books are available through Baker & Taylor's Paperback Parade program. Baker & Taylor has established a broad range of plans which vary according to age group, type of library, and popular subject categories. Each plan offers a predetermined number of titles at one set price. All plans are invoiced annually.

Continuation Services

Since 1958, Baker & Taylor has been servicing over 6,000 public, academic and school libraries worldwide with our Continuation Services program. Baker & Taylor has extensive knowledge and experience in this area and offers the most comprehensive program available in the industry. This economical and efficient service enables librarians to select the titles they need on a standing order basis, order from a single source, and manage costs and collections with precise reports. Our commitment to customers is to regularly monitor 40,000+ Series offerings from 14,000+ Publishers to identify, order and ship titles in a timely and efficient manner. The Continuation Services department employs a group of experienced Research Analysts whose primary function is to review publisher catalogs, web sites and trade journals to identify current and forthcoming issues contained in our Series offerings. With over 80 years of collective experience in the industry, their mission is to keep our comprehensive series/title database current, accurate and complete. Our seasoned buying department promptly places orders with Publishers 3-6 months prior to publication date to ensure that our Continuation's customers automatically receive their standing order titles in a timely manner.

Discounts for continuations are provided in Appendix 3.

Only Baker & Taylor can provide ALL of the following standing order services to the library:
Access to a 40,000+ Series/title database
14,000+ publishers monitored
Free Price Quotation Service
Alternate-year cycling
Pre-Payment Incentive Plan
Free Comprehensive Management Reports
Customized Subject Selection Lists
Processing components (Value-added services)
Series & Title Status reports delivered electronically
Navigator (quarterly publication of Continuations titles)
Customer access to database via the World Wide Web: http://compass.btol.com
Free Account Transfer Service
Publisher flyer mailings announcing "new & noteworthy" Series
And much more .....

Baker & Taylor Continuation Services Support Center

Over the years, Baker & Taylor Continuation Services has added many new tools and services to meet the everchanging needs of the libraries we serve. In October 2003, we formed a new team dedicated to providing libraries with tools and services designed to help in the analysis of their standing order reference collections.

Librarians are busier than ever and are constantly inundated with information. They're faced with tighter budgets, fewer staff, and ever-increasing demands for time and information. We fully recognize that our customers need to be aware of essential series offerings that can help better serve their patrons. The Support Center representatives will supplement the relationships our customers already have with their Field Sales Consultants and Continuation Services Customer Account Representatives, by keeping customers informed of important Continuations products and services.

The Support Center team utilizes a variety of resources, including series analysis reports, customized series selection lists, electronic and phone communication, to build and maintain a bond with our Continuations customers. Personalized, direct communications give our library customers the specific information they need.

Not only can our Support staff analyze your currently profiled series, but they can also provide specialized selection lists for your review. The following is just a sampling of series selection lists, which are currently available upon request: Top 100, Essential Reference, Medical Reference, Travel, Test Preparation, State-specific series, Antiques & Collectibles, Publisher-specific series, and many more.

The staff of the Continuations Support Center is at your service. To learn more about the Support Center Team, please contact us at btcontinuations@btol.com. Your assigned Support representative is Arnetha Johnson (arnetha.johnson@baker-taylor.com). 800-775-3600 x 7295.

Title Transfer Service

Baker & Taylor will handle time-consuming account transfer tasks and will work closely with the library to ensure that specific needs are met. Baker & Taylor will forward:

Cancellation notices to applicable Publishers/Vendors
The library will receive both the original notice sent on the libraries behalf by Baker & Taylor, as well as the returned original cancellation confirmation from the applicable Publishers/Vendors

Additional follow-up requests are sent to Publishers/Vendors if cancellations are not confirmed
Upon receipt of confirmations Baker & Taylor will confirm series start dates with the library to avoid possible duplication

The library will supply the following:
Sufficient letterhead and envelopes
Contact name and title of individual who will be responsible to work with Baker & Taylor in the account transfer process

A list of titles to be cancelled
Publishers/Vendors information including: Name, address, contact name, account number and, if possible, the last issue received from Publishers/Vendors

Once the account transfer service is in process, the library must refuse standing order shipments from Publishers/Vendors based on a Baker & Taylor designated date. Once Publishers/Vendors confirm cancellation, only then, will the titles be added to the libraries' profile starting with the next edition to be published. Baker & Taylor has procedures in place to make your transition as easy as possible and to avoid any duplication. In the unlikely event duplicates are received, Baker & Taylor will be flexible with its cancellation/returns policy within the first few months of the transition.
Note: All titles that are cancelled will be added to the libraries' profile

Series

Our Continuation Services database includes 40,000+ Series representing in excess of 250,000 individual titles. These include numbered and unnumbered monographic series, proceedings, non-subscription serials, sets in progress, selected U.S. government documents, and publications of the United Nations, and other international agencies as distributed in the U.S. Some of our best-selling series include: World Almanac and Book of facts, J K Lesser's income tax guide, Guinness world records, writer's marker, rand McNally Road Atlas, Kevel's antiques and collectibles price guide, physicians' desk reference, chase's calendar of events, time Almanac, Peterson's guides, Fodor's travel guides, and Scott standard postage stamp catalogues.

Unlike other vendors in the industry, B&T does not limit your selection of series and titles to a closed listing. B&T offers series from a wide variety of publishers and has an extensive offering in text, technical and reference series collections. If you are interested in receiving a series, which is not in our database, we will contact the appropriate Publisher to determine its availability and establish it for you.

Compass *http://compass.btol.com*

Compass enables the library to access our Continuations database and program online. Using Compass, librarians can now reduce time consuming phone calls and paperwork by modifying profiles, creating bibliographic searches, submitting claims, and developing management reports on-line, 24-hours a day. The benefits of this system include:

View/modify your CS profile on-line. Subscribers can make title changes, add series, or review pending shipments at their convenience.

Access to Enriched Series/title database containing over 250,000+ titles. Search options include: ISBN, title, publisher, author, editor, subject categories, and more.

On-line claims and new series request service - Now, claiming a specific issue or requesting new series is only a mouse-click away. Our program specialists will constantly monitor submitted claims and provide daily updates, so subscribers can make informed decisions.

Alphabetical search function which enables a user to easily navigate through their profiled series based on the first letter of a Series title.

A print profile feature allows a user to print or view a complete list of their profiled series from their own personal computer.

Pop-up messages to keep users informed every step of the way, as they make modifications to their profile.

A detailed Compass user's manual which can be accessed directly from the website.

A direct hyperlink to a dedicated Customer Account Representative who will be able to answer questions, process requests, and research claims.

On demand collection analysis which offers analysis of current library collection and recommends series of interest in subject matter where the library may need to enhance their collection.

Compass displays all available issues within a specific series – now the Library can complete incomplete sets, find missing back issues, or order extra copies of an issue in a popular series with just a few keystrokes.

Compass has been designed to be quick and easy-to-use. Baker & Taylor has not employed any complex graphics, which can delay download time. The "point and click" interface means that information is never more than a text box away, with no complex commands to remember or difficult menus to navigate. The entire library staff will be able to use Compass without the need for time-consuming training sessions or complicated user manuals.

COLLECTION MANAGEMENT TOOL(S)

collectionHQ

collectionHQ, used by many of the top library systems in the U.S., U.K. and Australasia, is based on the proven Evidence-Based Stock Management (EBSM) methodology. By analyzing detailed circulation patterns, the methodology provides action plans to help librarians develop and manage collections, saving time and money, improving circulation and aligning the collection with local demand.

collectionHQ's powerful toolset provides valuable insight and clear direction so that librarians can perform tasks that used to take weeks or months in a matter of minutes. From collection maintenance to collection development, collectionHQ eases workloads and frees up staff's time to work on other important areas within the library.

collectionHQ harnesses evidence of a collection's usage. This allows public libraries to analyze their demand and use that to influence subsequent purchases based on the proven EBSM methodology. This allows for detailed spending plans to be quickly created at the branch level.

Additionally, collectionHQ's unique and powerful 'Discovery tool' gives clients access to circulation data collected from over 250 North American Public Libraries. Using 'Discovery', they are able to carry out searches on this data and compare this against their own holdings. They may also identify specific items that are circulating well in other Public Libraries which they do not have in their own collection at present.

Having access to this very powerful library circulation data allows selectors to make more informed selection decisions, both quickly and efficiently, with the added peace of mind that decisions have been backed up by hard evidence.

ESP – Evidence-Based Selection Planning

Baker and Taylor, in conjunction with collectionHQ, has developed a new service, Evidence-Based Selection Planning (ESP), that brings the art of Baker & Taylor's collection development expertise together with the science of collectionHQ's data analytics, to create a decision support system integrated with Title Source 360 to equip libraries with the information to select the right titles and quantities, for the right locations.

ESP is a provided service that supports the purchasing of new materials using evidence from collectionHQ and the title identification from Baker & Taylor. ESP identifies the top forthcoming titles based upon past circulation by author, subject and series, determines the locations where copies need to be placed to satisfy patron demand and monitors budgets through the use of collectionHQ spending plans. Pricing of ESP is determined by the library's varying levels of integration with Baker & Taylor and collectionHQ services. Although designed to work together, utilization of collectionHQ is not a requirement for ESP.

3. FULFILLMENT RATE AND RELATED FACTORS

EFFICIENCY

Your Baker & Taylor project team is up to date on the latest trends and tools available to public libraries. These tools include collection HQ, ESP, EDI electronic invoicing and ASN delivery. No matter what tools the library ultimately decides to use, the Baker and Taylor project management approach will be followed. Appropriate team members and product experts will be brought in to assist in crafting the most efficient material supply chain.

EXCLUSIVES

From time to time Baker & Taylor receives exclusive content from most of the larger publication houses. In addition, we permanently carry exclusive stock from the following publishers; Findaway World Llc (L), Motor

Information Systems (Chilton), Perfection Learning Prebound, and Risk Management Assoc. In addition PawPrints and FollettBound titles can only be ordered through Baker & Taylor.

FULFILLMENT RATE

Baker & Taylor and CLS understand the need to bring to the library high demand material as soon as it becomes available. To that end, Baker & Taylor has streamlined its receiving and operational process to ensure the fastest possible turn time. In addition, CLS has developed processes for our public library customers that identify the top demand titles in order to expedite all facets of fulfillment; from receipt from the publisher through shipping. This helps guarantee street date delivery of shelf ready popular material for these high visibility/high demand titles.

Customized Library Services has operations in four Baker & Taylor locations; Commerce, GA, Momence, IL, Bridgewater, NJ, and Reno, NV and leverages Baker & Taylor's extensive fulfillment and distribution network to provide the best possible fill rates. Baker & Taylor's current average fil rate is 85% first fill and 98% total fill on books, 95% total fill for AV materials.

If in-stock items are ordered product only (no cataloging and processing), the majority of your orders will be filled within 1-3 business days of receipt of order (mylar jacket only orders will be shipped within one business day of receipt of order), or within 5 (priority or rush) to 10 days, if processing is required. Rush materials should not exceed 20% of the library's purchases.

Our commitment for those titles that have established street dates will be to ship the material 5-10 days after receipt from the publisher. Materials are typically received from the publisher several days or weeks prior to street date thereby giving CLS ample time to provide the materials by street date. It will be our target to get that material cataloged and processed within the time frame above but based on operational and fulfillment condition this goal might not be obtainable 100 percent of the time.

Typical shipment delivery time frame from our Reno warehouse to the Mesa Public Library is 1 – 2 business days.

EXHIBIT B
PRICING

PRICING AND COMPENSATION					
*Pursuant to all the contract specifications enumerated and described in this Solicitation, Respondent agrees to furnish **Library Books, Spoken Word, DVDs & Digital Media** to the City of Mesa at the price(s) stated below.*					
	Category Description	***Percent Discount***			
	Standing Order Plans	*0-46.5%**			
	Non-Standing Order Titles (different types of materials like hard back and paperback discounts)	*0-46.5%**			
	Replacement Costs	*Baker & Taylor will accept the authorized return of items that are damaged, defective, or incorrectly shipped. These items may be credited or replaced at no charge*			
	Shipping Costs	*N/A*			
Item	***Cataloging Pricing***	***Media***	***Cost Per Title***	***Cost Per Item***	***Notes/Exceptions***
Please clarify in the Notes/Exceptions column if cataloging charges are per title or per item.					
1	***Basic Copy Cataloging***				
1.1	*Full MARC Record*	*Book*		*$3.95**	** Please see note after Processing Pricing*
1.2	*No custom editing*	*Audiobook*		*$6.30**	
1.3	*Attach holdings in OCLC*	*CD*		*$5.75**	
1.4	*Downloadable into current & subsequent Innovative Polaris releases.*	*DVD*		*$5.75**	
2	***Custom Cataloging:***				
2.1	*Full MARC Record*	*Book*		*$3.95**	
2.2	*No custom editing*	*Audiobook*		*$6.30**	
2.3	*Attach holdings in OCLC*	*CD*		*$5.75**	
2.4	*Downloadable into current & subsequent Innovative Polaris releases.*	*DVD*		*$5.75**	
3	***Original Cataloging:***				
3.1	*Full MARC Record*	*Book*	*$10.00*	*N/A*	*Custom cataloging fee is only charged once per title.*

3.2	No custom editing	Audiobook	$10.00	N/A	This is not a per unit charge.
3.3	Attach holdings in OCLC	CD	$10.00	N/A	
3.4	Downloadable into current & subsequent Innovative Polaris releases.	DVD	$10.00	N/A	
4	**Other Cataloging:**				
4.1	MARC record item tag field for added copies				
4.2	Other (please specify):				

Item	Processing Pricing	Cost Per Item	Notes / Exceptions
5	Mylar jackets on hardcover books	*	Included in Print Services Price of $3.95*
6	Laminated covering of paperbacks	10 MIL CLEAR POLY $1.99/UNIT 8 MIL MATTE POLY $1.59/UNIT 8 MIL CLEAR POLY $1.15/UNIT	
7	3M/Bibliotecha security overlays on single sided DVD/CD	*	Included in AV Services Price of $5.75*
8	RFID tag	*	Included in Print/AV Services Price*
9	Applied barcode including hub sticker(s) for media	*	Included in Print/AV Services Price*
10	Property stamp/sticker on the top of the book	*	Included in Print Services Price of $3.95*
11	Applied spine labels	*	Included in Print/AV Services Price*
12	Cover spine label with label protector	*	Included in Print/AV Services Price*
13	Replacement of original media case	*	Included in AV Services Price of $5.75*
14	Digitized media processing for music CD, audiobook, DVD and Blu-ray	$7.05 SWA $5.75 AV	AV includes CD/DVD/Blu-ray*
15	Non-digital media processing for music CD, audiobook, DVD and Blu-ray	$6.30 SWA $5.75 AV	AV includes CD/DVD/Blu-ray*

The pricing outlined on this page and on Baker & Taylor's Appendix 2 is for CLS shelf-ready services and is a blended unit price based on the volume of material to be ordered, processing components requested, and the complexities of the library's cataloging requirements. Our unit price is all inclusive of the services requested by the library including, but not limited to cataloging, processing, and project management. This price does not include Laminate Covers or Original Cataloging. CLS processing means the library receives and shelves the material right out of the cartons. CLS truly means system and shelf-ready. Please refer to Appendix 2 for additional information.

Offeror should indicate below, the discount percentage offered off of publisher's list price for the listed categories. If there are additional material types not listed below, the material type and corresponding discount should be noted on a separate attachment to the Offeror's submittal document.

Additional products and services related to physical print and non-print materials not listed below along with pricing should be noted on a separate attachment to the Offeror's submittal document.

Item	Material Type	Percent Discount	Notes
16	General hardcover books	46.5%*	Catagories I and II
17	Trade paperbacks	41.0%*	Catagories III and IV
18	Mass market paperbacks	41.0%*	Category V
19	Large Print	0 - 46.5%*	Catagories I through XV
20	Continuations or Standing Order Titles	0 - 46.5%*	Catagories I through XV
21	Spoken Word, Unabridged	45%**	**Category XII in Baker & Taylor's Category Definitions. Approximately 92% of Spoken Word Audio Materials purchased fall into Category XII. The remainder of Spoken Word Materials may be classified as Category I, VII, VIII, IX, or XI. Discounts are based on the categories as described in our proposal.
22	Teen, hardcover	46.5%*	Catagory II
23	Teen, Publishers Library Binding	23.5%*	Category VII
24	Teen, paperback	41.0%*	Category IV
25	Children's books, hardcover	46.5%*	Catagory II
26	Children's books (Publishers Library Binding)	23.5%*	Category VII
27	Children's books, paperback	41.0%*	Category IV
28	Graphic Novels	0 - 46.5%*	Catagories I through XV
29	Small Press	0 -13.1%*	Category IX
30	Academic or University Press	0 -13.1%*	Catagories VII and IX
31	Technical and Reference	0 -13.1%*	Category IX
32	Music CDs	26.0%*	
33	DVDs	30.5%*	
34	Blu-rays	30.5%*	
35	Spanish Language	0-46.5%*	Catagories I through XV
36	Other non-English language	0-46.5%*	Catagories I through XV
37	Other:		

38	Other:		***Please see Appendix 3 for our full list of discount terms**
39	Other:		
40	Other:		
41	Other:		
List publishers for which you are unable to provide a discount:		Please see Appendix 11 for a complete listing	
List publishers for which you are the sole source:		FollettBound and Pawprints are exclusively available through baker & Taylor.	
The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have a 1.75% removed from the taxable item(s) for the purpose of award evaluation (i.25).			
DELIVERY: See Mesa Standard Terms and Conditions.			
Vendor Name Baker & Taylor LLC		Date: 5/16/17	
4/27/2017			RFP # 2017201

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.

2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.

3. **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.

4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

5. **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.

6. **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.

7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.

8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAWS.**

   a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.

   b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace 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 will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution,

dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel, and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.

   i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").

   ii. A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.

   iii. The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

   iv. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

   v. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty 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).

d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.

e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods of services to the City.

10. **SALES/USE TAX, OTHER TAXES.**

a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.

11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

12.1. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.

12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.

13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

14. **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.

16. **DEFAULT.**

a. A party will be in default if that party:

i. Is or 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 capability to perform under the Agreement;

ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;

iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or

iv. Fails to carry out any term, promise, or condition of the Agreement.

b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.

c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.

d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.

17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:

a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.

b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.

c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.

d. Neither party will be liable for incidental, special, or consequential damages.

18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.

20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.

21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate

the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.

22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.

23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.

24. **INDEMNIFICATION/LIABILITY.**

a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.

b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.

c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.

25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.

Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.

26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.

28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.

29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.

30. **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.

31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.

32. **RISK OF LOSS**. Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.

33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.

34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.

35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.

36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).

37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose

performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

The City currently holds or may enter into Intergovernmental Governmental Agreements (IGA) with numerous governmental entities. These agreements allow the entities, with the approval of Contractor, to purchase their requirements under the terms and conditions of this Agreement.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.

40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via email or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, email or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.

41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Maricopa County, Arizona.

42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.

43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.

44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.

46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.

mesa·az

CONTRACT AMENDMENT

Contract Title: Library Books-Spoken Word, DVDs & Digital Media
Contract Number: 2017201 **MA Number:** 18000042Y*
Amendment Number: 3
Description of Change: Extend Contract Six (6) Months from September 1, 2022 through February 28, 2023.

Current contract amount: $375,000.00
Change Amount: ☐ Increase ☐ Decrease ☒ No Change
New contract amount: $375,000.00
Effective Date of Change: September 1, 2022

Acceptance: On behalf of the undersigned Contractor, I have given careful consideration to this Contract Amendment and hereby agree to the change(s) and except that as amended herein, all provisions of the Contract remain in full force and effect.

Baker & Taylor, LLC:

Stefanie Kremer
Signature

Stefanie Kremer, Director, Pricing Services
Printed Name

July 6, 2022
Date

City of Mesa:

Signature

City Manager Designee

Date

Recommended by:

Evan Karl 7/7/2022
Evan Karl, NIGP-CPP, CPPB
Procurement Officer I

9. G.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Allison Hughes, Support Services Manager
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Contract: Approve the First Amendment to the Master Services and Purchasing Agreement with AXON Enterprise, Inc. (f/k/a Taser International, Inc.) in the amount of $136,143 for the AXON Virtual Reality (VR) Training Platform.

STAFF RECOMMENDED ACTION:

1. Approve the First Amendment to the Master Services and Purchasing Agreement with AXON Enterprise, Inc. (f/k/a Taser International, Inc.) in the amount of $136,143.00 for the AXON VR Training Platform; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The Flagstaff Police Department (FPD) is committed to provide its officers with adequate training as well as exemplary service to the community. The AXON VR Training Platform will use current tools available to FPD, such as the Taser 7, Glock duty weapon, pepper spray and baton. The AXON VR Training Platform is a wireless head mounted device that does not need a dedicated work space and is operated using a tablet. FPD will develop scenarios and content for the AXON VR Training Program in conjunction with subject-matter experts like career clinicians, crisis intervention and mental health counselors, educators, and community leaders on all content. If FPD chooses to add the AXON VR Training Platform to its training cadre, FPD will receive 120 user licenses (Sworn personnel), five (5) VR Headsets and two (2) VR Handsets (firearm, cartridges, tablet). With this AXON VR Training Platform, there are no additional accessories to purchase, making this tool immediately implementable in FPD training modules.

The AXON VR Training Platform is completely wireless. All training scenarios and content can be reviewed and downloaded into the AXON Evidence Cloud that FPD currently uses to maintain compliance with training records retention purposes. FPD already has a contract with AXON for body cameras, Taser 7 devices, AXON Signal devices, and Evidence.Com storage, and other services included with the Officer Safety Plan (OSP+).

Financial Impact:

The AXON VR Training Platform will cost $27,228.60 per year for five (5) years or a one-time payment of $136,143.00. This cost also includes any and all modules that AXON creates and releases over that five (5)-year period. AXON is on the cutting edge of creating public safety services. They are constantly working with experts in law enforcement and behavioral health professions to create the scenario and judgmental based training. This new information will be provided free of charge. Additionally, FPD will receive unlimited Taser 7 cartridges as part of the underlying contract and this First Amendment, which

saves on cartridge replacement costs each year for training or after deployments.

Policy Impact:

N/A

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

Safe and Healthy Community: Providing public safety services with resources, staff & training responsive to the community's needs.

Carbon Neutrality Plan

DD-2: Assist in providing public safety services with adequate resources and staff time in ensuring that our neighborhoods are safe for community members.

Regional Plan

Goal NH.1. Foster and maintain healthy and diverse urban, suburban, and rural neighborhoods in the Flagstaff Region.

Has There Been Previous Council Decision on This:

Yes. In June 2021, the City Council approved the current AXON Master Services and Purchasing Agreement that supports the Body Worn Camera Program utilized by FPD.

Options and Alternatives:

1. Approve the First Amendment for the AXON VR Training Platform; or
2. Reject the purchase.

Background/History:

FPD successfully implemented the use of body worn cameras in July of 2014. All sworn officers assigned to patrol and working in the field have been equipped with AXON FLEX 2 body worn cameras. The City is currently in year two (2) of a five (5)-year contract with AXON that supports FPD body worn camera program and our tasers.

The customer service provided by AXON has been exceptional and support is available when FPD requires it, especially, during major investigations. The AXON VR Training Platform includes a tablet that is not tethered to the headset and allows for the trainer to control the scenario when engaged in judgmental or community engagement type training. The AXON VR Training Platform is completely wireless and all training scenarios can be reviewed and downloaded into the AXON Evidence Cloud in compliance with training records retention purposes.

The AXON VR Training Platform is not only scenario based law enforcement training capable, but also a community engagement tool FPD would use during Citizen Police Academies, National Night Out events, and any other law enforcement / community engagements where personally experiencing police training would be beneficial for community members and representative leaders. This tool can be demonstrated to those outside of the law enforcement profession so they may run through scenarios like law enforcement professionals and make decisions while receiving feedback from the scenario and instructors.

The Axon VR Training Platform will enhance the training capabilities of FPD officers. The training that AXON has developed will greatly improve FPD service to those community members that may not often be encountered by FPD, but who more often than not need FPD intervention the most. Course work and

classroom settings can only provide theories of responses or potential outcomes; whereas this AXON VR Training Platform is capable of putting officers through scenarios (created by behavioral professionals) and providing real time evaluations of the officer's responses. This immediate evaluation will then help to identify areas of improvement and deficiencies in the response, while in a controlled setting.

Also, the AXON VR Training Platform marries with FPD current devices which will afford FPD great support and the opportunity to be fiscally responsible to the community as opposed to purchasing an entirely new platform with a minimum monthly cost of $32,000 which would be in addition to the Taser 7 non-lethal device. For the $25,200 per year, FPD will receive 120 user licenses for the AXON VR Training Platform, five (5) VR headsets and two (2) VR Handsets, training cartridges, and tablet.

The procurement team has determined that the AXON VR Training Platform is a sole source purchase based on its compatibility with current software and equipment. For example, the AXON Evidence Cloud based storage allows for fluidity for all to access back information for all officers.

Key Considerations:

1. The AXON VR Training Platform is capable of putting officers through scenarios (created by behavioral professionals) and providing real time evaluations of the officer's responses.
2. The AXON VR Training Platform devices marry with current devices and contracts of the FPD.
3. The AXON VR Training Platform devices are not only scenario based law enforcement training capable, but also positive community engagement tools.
4. The cost for the AXON Training Platform also includes any and all modules AXON creates and releases over the next five (5) years.

Expanded Financial Considerations:

The current Master Services and Purchasing Agreement with AXON is spread out into payments over five (5) years. The City is currently in year two (2) of that Agreement. To implement the AXON VR Training Platform into the current Agreement would cost $17.50 per user, per month, for a total of $126,000 total payable over 5 years. The cost breakdown is as follows: $17.50x120 users = $2,100 per month, times 12 months = $25,200 per year, times 5 years = $126,000 total. This would add $25,200 per year to the current Agreement. This cost also includes any and all modules AXON creates and releases over that five (5) year period.

Community Benefits and Considerations:

FPD values customer service and citizen trust. The AXON VR Training Platform can be demonstrated to those outside of the law enforcement profession so they may run through scenarios like law enforcement professionals and make decisions while receiving feedback from the scenario and instructors. When training in real world scenarios created by professionals in these fields, a greater understanding of what a person in crisis is experiencing will vastly increase the outcome of a successful resolution; and better equip the officers with a greater understanding to help in decision-making.

Attachments: AXON First Amendment
AXON VR Training Platform Quote

First Amendment to Master Services and Purchasing Agreement

This First Amendment ("**Amendment**") is between Axon Enterprise, Inc. (f/k/a Taser International, Inc.), a Delaware corporation ("**Axon**"), and the City of Flagstaff ("**Agency**"). This Amendment is effective as of the last signature date on this Amendment ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**".

Axon and Agency are parties to a Master Services and Purchasing Agreement TER-2015-076-AG4 dated June 18, 2021 ("**Agreement**").

The Parties wish to incorporate further changes into the Agreement in order to expand the scope of offered products.

The Parties therefore agree as follows:

1. The attached documents are hereby incorporated into the Agreement:
    a. Axon Virtual Reality Content Terms of Use Appendix
    b. Quote Q-366762

2. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

Each representative identified below declares that the representative is authorized to execute this Amendment as of the date of signature.

Axon Enterprise, Inc.	**Agency**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term**. The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Agency related to virtual reality (collectively, "Virtual Reality Media").

2. **Headsets**. Agency may purchase additional virtual reality headsets from Axon. In the event Agency decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Agency must purchase those headsets from Axon.

3. **License Restrictions**. All licenses will immediately terminate if Agency does not comply with any term of this Agreement. If Agency utilizes more users than stated in this Agreement, Agency must purchase additional Virtual Reality Media licenses from Axon. Agency may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Agency may not:

   3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;

   3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;

   3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;

   3.4. use trade secret information contained in Virtual Reality Media;

   3.5. resell, rent, loan or sublicense Virtual Reality Media;

   3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or

   3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.

4. **Privacy**. Agency's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at https://www.axon.com/legal/axon-virtual-reality-privacy-policy.

5. **Termination**. Axon may terminate Agency's license immediately for Agency's failure to comply with any of the terms in this Agreement.

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-366762-44790.984TC

Issued: 08/17/2022

Quote Expiration: 06/30/2022

Estimated Contract Start Date: 08/01/2022

Account Number: 107126
Payment Terms: N30
Delivery Method: Fedex - Ground

SHIP TO	BILL TO
911 E Sawmill Rd 911 E Sawmill Rd Flagstaff, AZ 86001-5827 USA	Flagstaff Police Dept. - AZ 911 E Sawmill Rd Flagstaff, AZ 86001-5827 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Taylie Clark Phone: +1 3177410144 Email: tclark@axon.com Fax:	Charles Hernandez Phone: (928) 213-3362 Email: chernandez@flagstaffaz.gov Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	$126,000.00
ESTIMATED TOTAL W/ TAX	$136,143.00

Discount Summary

Average Savings Per Year	$4,060.32
TOTAL SAVINGS	$20,301.60

Payment Summary

Date	Subtotal	Tax	Total
Jul 2022	$25,200.00	$2,028.60	$27,228.60
Jul 2023	$25,200.00	$2,028.60	$27,228.60
Jul 2024	$25,200.00	$2,028.60	$27,228.60
Jul 2025	$25,200.00	$2,028.60	$27,228.60
Jul 2026	$25,200.00	$2,028.60	$27,228.60
Total	**$126,000.00**	**$10,143.00**	**$136,143.00**

Quote List Price:	**$146,301.60**
Quote Subtotal:	**$126,000.00**

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Term	Qty	List Price	Net Price	Subtotal	Tax	Total
VR Controller Kit								
20188	VR CONTROLLER KIT PELICAN CASE		2	$200.00	$0.00	$0.00	$0.00	$0.00
20298	VR-ENABLED GLOCK 19 CONTROLLER		2	$750.00	$0.00	$0.00	$0.00	$0.00
20296	SAMSUNG S7+ TABLET FOR VR SIMULATOR		2	$1,000.00	$0.00	$0.00	$0.00	$0.00
20297	SAMSUNG S7+ TABLET CASE FOR VR SIMULATOR		2	$60.00	$0.00	$0.00	$0.00	$0.00
22196	TASER 7 VR CARTRIDGE, STANDOFF (3.5-DEGREE)		4	$90.00	$0.00	$0.00	$0.00	$0.00
22197	TASER 7 VR CARTRIDGE, CLOSE-QUARTERS (12-DEGREE)		4	$90.00	$0.00	$0.00	$0.00	$0.00
100198	AXON VR CONTROLLER KIT - WARRANTY	60m	2	$373.80	$0.00	$0.00	$0.00	$0.00
Individual Items								
20370	FULL VR TASER 7 ADD-ON USER ACCESS	60m	120	$1,050.00	$1,050.00	$126,000.00	$10,143.00	$136,143.00
100197	HTC FOCUS 3 VR HEADSET - WARRANTY	60m	5	$337.80	$0.00	$0.00	$0.00	$0.00
20378	HTC FOCUS 3 VR HEADSET		5	$1,800.00	$0.00	$0.00	$0.00	$0.00
20379	VR 1-DAY SERVICE		1	$4,125.00	$0.00	$0.00	$0.00	$0.00
Total						**$126,000.00**	**$10,143.00**	**$136,143.00**

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
VR Controller Kit	20188	VR CONTROLLER KIT PELICAN CASE	2	07/01/2022
VR Controller Kit	20296	SAMSUNG S7+ TABLET FOR VR SIMULATOR	2	07/01/2022
VR Controller Kit	20297	SAMSUNG S7+ TABLET CASE FOR VR SIMULATOR	2	07/01/2022
VR Controller Kit	20298	VR-ENABLED GLOCK 19 CONTROLLER	2	07/01/2022
VR Controller Kit	22196	TASER 7 VR CARTRIDGE, STANDOFF (3.5-DEGREE)	4	07/01/2022
VR Controller Kit	22197	TASER 7 VR CARTRIDGE, CLOSE-QUARTERS (12-DEGREE)	4	07/01/2022
A la Carte	20378	HTC FOCUS 3 VR HEADSET	5	07/01/2022

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
A la Carte	20370	FULL VR TASER 7 ADD-ON USER ACCESS	120	08/01/2022	07/31/2027

Services

Bundle	Item	Description	QTY
A la Carte	20379	VR 1-DAY SERVICE	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
VR Controller Kit	100198	AXON VR CONTROLLER KIT - WARRANTY	2	08/01/2022	07/31/2027
A la Carte	100197	HTC FOCUS 3 VR HEADSET - WARRANTY	5	08/01/2022	07/31/2027

Payment Details

Jul 2022

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	20370	FULL VR TASER 7 ADD-ON USER ACCESS	120	$25,200.00	$2,028.60	$27,228.60
Invoice Upon Fulfillment	100197	HTC FOCUS 3 VR HEADSET - WARRANTY	5	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	100198	AXON VR CONTROLLER KIT - WARRANTY	2	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	20188	VR CONTROLLER KIT PELICAN CASE	2	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	20296	SAMSUNG S7+ TABLET FOR VR SIMULATOR	2	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	20297	SAMSUNG S7+ TABLET CASE FOR VR SIMULATOR	2	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	20298	VR-ENABLED GLOCK 19 CONTROLLER	2	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	20378	HTC FOCUS 3 VR HEADSET	5	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	22196	TASER 7 VR CARTRIDGE, STANDOFF (3.5-DEGREE)	4	$0.00	$0.00	$0.00
Invoice Upon Fulfillment	22197	TASER 7 VR CARTRIDGE, CLOSE-QUARTERS (12-DEGREE)	4	$0.00	$0.00	$0.00
Total				**$25,200.00**	**$2,028.60**	**$27,228.60**

Aug 2022

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	20379	VR 1-DAY SERVICE	1	$0.00	$0.00	$0.00
Total				**$0.00**	**$0.00**	**$0.00**

Jul 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	20370	FULL VR TASER 7 ADD-ON USER ACCESS	120	$25,200.00	$2,028.60	$27,228.60
Total				**$25,200.00**	**$2,028.60**	**$27,228.60**

Jul 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	20370	FULL VR TASER 7 ADD-ON USER ACCESS	120	$25,200.00	$2,028.60	$27,228.60
Total				**$25,200.00**	**$2,028.60**	**$27,228.60**

Jul 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	20370	FULL VR TASER 7 ADD-ON USER ACCESS	120	$25,200.00	$2,028.60	$27,228.60
Total				**$25,200.00**	**$2,028.60**	**$27,228.60**

Jul 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	20370	FULL VR TASER 7 ADD-ON USER ACCESS	120	$25,200.00	$2,028.60	$27,228.60
Total				**$25,200.00**	**$2,028.60**	**$27,228.60**

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

8/17/2022

10. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacey Brechler-Knaggs, Grants, Contracts & Emergency Management Director
Co-Submitter:	Edward Schenk, Water Services Manager - Stormwater
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Ratifying the Grant Agreement: Ratifying the Grant Agreement between the City of Flagstaff and the U.S. Department of Agriculture, Natural Resources Conservation Service, Emergency Watershed Protection Program for the Schultz Creek Sediment and Flood Detention Basins Project.

STAFF RECOMMENDED ACTION:

Ratify the Grant Agreement with the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) in the amount of $2,408,180.75.

Executive Summary:

This ratifies the City Manager's acceptance of the NRCS Notice of Grant and Agreement Award which provided funding for the Schultz Creek Sediment and Flood Detention Basins Project.

Financial Impact:

The Grant Agreement is for a total project cost of $3,176,222 ($2,408,180.75 Federal share / $768,041.25 City share). The award includes Construction and Technical Assistance costs.

The project is budgeted in account number 206-08-331-1258-0-4364 for FY 2022. Funds will be expended against the grant project account number 206-08-385-3517-0-4442, project number WS3517B.

Policy Impact:

This ratifies the City Manager's acceptance of the NRSC Notice of Grant and Agreement Award which will provide Emergency Watershed Protection funds to provide protection from flooding, restore the hydraulic capacity to the natural environment to the maximum extent practical, and reduce threats to life and property.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

- High Performing Governance - Enhance the organization's fiscal stability & increase efficiency & effectiveness
- Environmental Stewardship - Promote, protect & enhance a healthy sustainable environment & its natural resources

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

- Ratify and accept the Grant Agreement which will provide funding to complete the project.
- Not ratify and accept the Grant Agreement and the funds will be returned and the project will be canceled.

Background/History:

Beginning on June 12, 2022, the Pipeline Fire severely burned approximately 26,532 acres of ponderosa pine, grass and brush in an area north of Flagstaff, which negatively impacted soil structure and water retention within the designated Flagstaff area watershed footprint. The resulting burn scar created a severe post-fire flooding environment and risk potential to the community.

The Pipeline Fire burned over 1,000 acres of the Schultz Creek watershed in June 2022, mostly in severe burn conditions. The expected post-fire flood potential has increased by three orders of magnitude with preliminary modeling indicating near 900 cubic feet per second of devastating flood flows that are roughly a 25-year storm through portions of north Flagstaff with eventual impacts to downtown Flagstaff. This proposal addresses over half of the anticipated flood volume through a series of detention basins on a 20-acre City-owned parcel at the upstream boundary of City limits. This project would be the highest priority for the City as it will greatly reduce the flood potential through several thousand homes, critical infrastructure such as Highway 180, and the historically disadvantaged Southside community.

This project will reduce debris load that has historically negatively impacted existing stormwater infrastructure during storm events, a serious concern for this watershed based on previous scientific studies. Initial sediment modeling, pre-Pipeline Fire, indicates over 100,000 tons of sediment available for transport over the next several years due to large sediment storage areas within the Schultz Creek streambed (Stempniewicz, 2014). This project will mitigate the sediment and debris flows that enter neighborhoods and will be a tremendous benefit to the community.

A federal assistance request was submitted on June 24, 2022 to NRCS. Based on a site visit with NRCS and City staff, NRCS requested submission of a Damage Survey Report (DSR) that was submitted on July 8, 2022. Upon their review of the DSR, the City was requested to submit a standard grant application which was completed and sent on July 27, 2022. In addition, on July 27, 2022, NRCS notified the City that they would be providing $2,304,123.75 in Financial Assistance and $104,057.00 in Technical Assistance for a total of $2,408,180.75 in federal funding.

Key Considerations:

The Schultz Creek Sediment and Flood Mitigation Detention Basins project will mitigate post-wildfire flooding from the Pipeline Fire, by ways of attenuating the peak flows and providing an area for larger debris to deposit outside the existing stormwater infrastructure. The Pipeline Fire burned over 1,000 acres of the Schultz Creek watershed in June 2022, and resulted in an increased risk of post-wildfire flooding for neighborhoods downstream, including Coyote Springs, Coconino Estates, Downtown and the Southside. The project will detain over 40 acre-feet of water and sediment, thereby reducing life and

safety threats as well as the risk of post-wildfire flooding.

The project will be located on a 20-acre parcel of City-owned land at the northeast corner of the intersection of E. Mt. Elden Lookout Rd and Schultz Pass Rd. The location of this parcel allows for significant peak flood attenuation, detention of flood waters and retention of large debris before they flow into existing stormwater infrastructure or downstream into neighborhoods. Flood modeling shows considerable post-wildfire flooding impacts to the 20-acre parcel, regardless of the installation of the detention basins, with a recent rain event resulting in significant scouring and other erosion impacts at this location. This project will help ensure the flooding impacts through the parcel will be mitigated through engineering solutions which in turn will protect the parcel from further scour.

Community Benefits and Considerations:

This Grant Agreement will fund the project which will help reduce / relieve imminent threats to life and property cause by post wildfire flooding.

Attachments: NRCS Grant Agreement
Presentation

NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number	2. Amendment No.	3. Award/Project Period	4. Type of Award Instrument
N0422EWP0010118		NRCS signature - 10/26/2022	Cooperative

5. Agency: Natural Resources Conservation Service (NRCS) (Name and Address)

USDA/NRCS-Arizona
230 N First Ave STE 509
Phoenix, AZ 85003

6. Recipient Organization: (Name and Address)

City of Flagstaff
211 W Aspen Ave
Flagstaff, AZ 86001-5359

DUNS:	EIN:
XMMUMPKTLVQ3	86600244

7. NRCS Program Contact:	8. NRCS Administrative Contact:	9. Recipient Program Contact:	10. Recipient Administrative Contact:
Monty Lane (520) 526-7392 monty.lane@usda.gov	Lori Baker (859) 224-7360 lori.baker@usda.gov	Ed Schenk (928) 213-2470 edward.schenk@flagstaffaz.gov	Stacey Brechler-Knaggs (928) 213-2227 sknaggs@flagstaffaz.gov

11. CFDA Number	12. Authority	13. Type of Action	14. Project Director
10.923	Emergency Watershed Protection 7 CFR Part 624	New Agreement	Stacey Brechler-Knaggs (928) 213-2227 sknaggs@flagstaffaz.gov

15. Project Title/Description:

EWPP - Coconino County, AZ. Project #5090 Pipeline Fire. DSR 5090-002. Complete agreement includes this NRCS-ADS-093 and attachments.

16. Entity Type: _____**Profit** ____**Nonprofit** ____**Higher Education** ____**Federal** x ___**State/Local** ____**Indian/Native American**

____**Other**

17. Select Funding Type:	✓ Federal	✓ Non-Federal
Original Funds Total:	$2,408,180.75	$768,041.25
Additional Funds Total:		
Grand Total:	$2,408,180.75	$768,041.25

18. Accounting and Appropriation Data

Financial Code	Amount	Fiscal Year	Treasury Symbol
NR.AI.IEG08.04.5090.22 XXF (BOC 4115)	$2,304,123.75	2022	12X1072
NR.AI.EG08.04.5090.22 XXT (BOC 2550)	$104,057.00	2022	12X1072

19. APPROVED BUDGET

Personnel	$	Fringe Benefits	$
Travel	$	Equipment	$
Supplies	$	Contractual	$
Construction	$ 3,072,165.00	Other	$ 104,057.00
Total Direct Cost\	$	Total Indirect Cost	$
		Total Non-Federal Funds	$ 768,041.25
		Total Federal Funds Awarded	$ 2,408,180.75
		Total Approved Budget	$ 3,176,222.00

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

NOTICE OF GRANT AND AGREEMENT AWARD			
Award Identifying Number	**Amendment No.**	**Award/Project Period**	**Type of Award Instrument**
N0422EWP0010118		NRCS signature - 10/26/2022	Cooperative

Name and Title of Authorized Government Representative KEISHA L. TATEM, State Conservationist	**Signature** Digitally signed by KEISHA TATEM Date: 2022.08.11 10:49:02 -07'00'	**Date**
Name and Title of Authorized Recipient Representative GREG CLIFTON, City Manager	**Signature** Greg Clifton 2022.08.10 05:48:40 -07'00'	**Date** 8/10/2022

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).

City of Flagstaff
Emergency Watershed Protection Program
USDA Natural Resources Conservation Service

ATTEST:

Stacy Saltzburg

Digitally signed by Stacy Saltzburg
Date: 2022.08.10 10:19:15 -07'00'

CITY CLERK

APPROVED AS TO FORM:

ChristinaA. Parry for

Digitally signed by ChristinaA. Parry for
Date: 2022.08.05 13:30:35 -07'00'

CITY ATTORNEY

INSTRUCTIONS FOR NOTICE OF GRANT/AGREEMENT AWARD

1. Award Identifying Number:
   Agreement number
2. Amendment No.:
   Amendment number (if applicable)
3. Award/Project Period:
   Start and end date of project
4. Type of Award Instrument:
   Cooperative, Grant, or Contribution
5. Agency:
   Name, Address, City, State, ZIP Code
6. Recipient Organization:
   Name, Address, City, State, ZIP Code, DUNS (Data Universal Numbering System), and EIN (employee identification number)
7. NRCS Program Contact:
   Name and contact information of person to be contact on matters involving the programmatic aspects of the agreement
8. NRCS Administrative Contact:
   Name and contact information of person to be contact on matters involving the administrative aspects of the agreement
9. Recipient Contact:
   Name and contact information of person to be contact on matters involving the technical aspects of the agreement
10. Recipient Administrative Contact:
    Name and contact information of person to be contact on matters involving the administrative aspects of the agreement
11. CFDA Number:
    The Catalog of Federal Domestic Assistance number under which assistance is requested
12. Authority:
    Authority under which the agreement is entered into
13. Type of Action:
    Select one type of action:
    i. New Agreement.—Agreement awarded for the first time
    ii. Amendment/Revision.—Any change in financial obligation or deliverables
    iii. Extension.—Extend performance period
14. Project Director:
    Name and contact information of project director or principal investigator (if applicable)
15. Project Title/Description:
    Brief description of the purpose of the agreement
16. Entity type:
    Type of recipient
17. Funding:
    Federal amount of the award and the non-Federal to be contributed to the project
18. Accounting/Appropriation Date:
    Provide the following:
    i. Financial Code.—Accounting classification code
    ii. Amount.—Self explanatory
    iii. Fiscal Year.—Self explanatory
    iv. Treasury symbol.—Self explanatory
19. Approved Budget:
    Totals for each budget category

EMERGENCY WATERSHED PROTECTION PROGRAM
STATEMENT OF WORK

PURPOSE

The purpose of this agreement is for the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the "NRCS", to provide technical and financial assistance to the City of Flagstaff, hereinafter referred to as the "Sponsor", for EWP Project # 5039-002 in Coconino County, Arizona for implementation of recovery measures, that, if left undone, pose a risk to life and/or property.

OBJECTIVES

The design and installation of EWP measures as detailed in the individual Damage Survey Reports (DSR) and described here:

- DSR 5090-002 – sediment basins

BUDGET NARRATIVE

The official budget described in this Budget Narrative will be considered the total budget as last approved by the Federal awarding agency for this award.

Amounts included in this budget narrative are estimates. Reimbursement will be based on actual expenditures, not to exceed the amount obligated.

Total Estimated Project Budget: $3,176,222.00
Total Federal Funds: $2,408,180.75

The budget includes:

Financial Assistance (FA) Costs:
Construction Costs (75% NRCS $2,304,123.75 + 25% Sponsor $768,041.25): $3,072,165.00

Technical Assistance (TA) Costs:
100% NRCS: $104,057.00

1. NRCS pays up to 75 percent of eligible construction costs and Sponsor pays 25 percent of construction costs. NRCS will contribute up to $104,057.00 for contract administration and construction management costs. It is possible that technical and administrative costs will exceed this amount, requiring the Sponsor to contribute resources to complete technical and administrative work

2. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for financial assistance (FA) and one for technical assistance (TA). FA costs are associated with construction activities; TA costs are associated with services. These expenditures shall be accounted for separately in order for expenses to be eligible for reimbursement.

3. NRCS will provide FA for actual costs as reimbursement to the Sponsor for approved on-the-ground construction costs, subject to above limits. If costs are reduced, reimbursement will be reduced accordingly. Construction costs are associated with the installation of the project measures including labor, equipment and materials.

4. NRCS will provide TA reimbursement to the Sponsor for technical and administrative costs directly charged to the project, subject to the above limits. If costs are reduced, reimbursement will be reduced accordingly. These costs include

    a. engineering costs include, but not limited to, developing a project design that includes construction drawings and specifications, an operation and maintenance plan, a quality assurance/inspection plan and an engineer's estimate of the project installation costs in addition to providing necessary quality assurance during construction.

    b. contract administration costs include, but not limited to, soliciting, evaluating, awarding and administering contracts for construction and engineering services, including project management, verifying invoices and record keeping.

5. The Sponsor will contribute funds toward the total construction costs in either direct cash expenditures, the value of non-cash materials or services, or in-kind contributions. The value of any in-kind contribution shall be agreed to in writing prior to implementation.

RESPONSIBILITIES OF THE PARTIES

SPONSOR RESPONSIBILITIES

If inconsistencies arise between the language in the Statement of Work (SOW) in the agreement and the general terms and conditions, the language in the SOW takes precedence.

1. Perform the work and produce the deliverables as outlined in this Statement of Work.

2. Comply with the applicable version of the General Terms and Conditions.

3. Accomplish construction of the EWP project measures by contracting, in-kind construction services, or a combination of both.

4. Ensure and certify by signing this agreement that its cost share obligation is from a non-Federal source.

5. Acquire adequate real property rights (land and water), permits and licenses in accordance with local, state, and Federal laws necessary for the installation of EWP project measures at no cost to NRCS prior to construction. This includes any rights associated with required environmental mitigation. Costs related to land rights and permits are the Sponsor's responsibility and ineligible for reimbursement.

6. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits and licenses needed for the Project.

7. Provide the agreed-to portion of the actual, eligible and approved construction cost. These costs may be in the form of cash, in-kind construction services, or a combination of both. Final construction items that are eligible construction costs will be agreed upon during the pre-design conference. These costs consist of costs from contracts awarded to contractors and eligible Sponsor in-kind construction costs for materials, labor, and equipment. The Sponsor shall provide NRCS documentation to support all eligible construction costs. Construction costs incurred prior to the Sponsor and NRCS signing this agreement are ineligible and will not be reimbursed.

8. Be responsible for 100 percent of all ineligible construction costs and 100 percent of any unapproved upgrade to increase the level of protection over and above that described in the DSR.

9. Account for and report FA and TA expenditures separately in order for expenses to be eligible for reimbursement. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for TA and one for FA, requiring this separation.

10. The contracts for design services and construction described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.

11. For in-kind construction services (materials, labor, and/or equipment supplied by the Sponsor), develop a Plan of Operations describing the construction services to be performed including estimated quantities and values. The Plan of Operations shall be concurred in by NRCS at the pre-design conference. In-kind construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by NRCS.

12. The following documentation is required to support the Sponsor's request for reimbursement of in-kind construction services:

    a. Invoices covering actual costs of materials used in constructing the eligible EWP project measures.
    b. Records documenting the type, quality, and quantities of materials actually used in constructing the eligible EWP project measures.
    c. Daily time records for each employee showing name, classification, wage rate, hours, and dates actually employed for constructing the eligible EWP project measures.
    d. Equipment operating records showing the type and size of equipment, hourly rate, actual hours of operation and dates used to install the eligible EWP project measures. Equipment idle time is not eligible in-kind construction services, even if on the job site, and should not be included in the equipment operating records.

13. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.

14. The Sponsor must secure at its own expense all Federal, State, and local permits and licenses necessary for completion of the work described in this agreement as well as any necessary natural resource rights and provide copies of all permits and licenses obtained to NRCS.

15. Will arrange and pay for any necessary location, removal, or relocation of utilities. EWP program regulations prohibit NRCS from reimbursing the Sponsor or otherwise paying for any such costs; nor do the costs qualify as a Sponsor cost-share contribution.

16. Ensure that technical and engineering standards and specifications of NRCS are adhered to during construction of the Project, as interpreted by NRCS Program/Technical Contact. Provide NRCS Program/Technical Contact progress reports as necessary and agreed to. Progress reports should include technical on-site inspections of work accomplished for the period, work planned, results of material tests, deficient work products and/or tests with corrective actions taken, modifications anticipated, technical problems encountered, contractual issues and other relevant information.

17. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance with safety requirements.

18. Provide PE-certified as-built drawings and quantities for the project. A copy of the as-built drawings will be submitted to the NRCS Program/Technical Contact.

19. Pay the contractor(s) for all work performed in accordance with the agreement and submit a SF 270, "Request for Advance and Reimbursement," with all documentation to support the request. Payments will be withheld until all required documentation is submitted and complete.

20. Ensure that information in the System for Award Management (SAM) is current and accurate until the final financial report (SF-425) under this award or final payment is received, whichever is later.

21. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this Agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the Project. Such actions will be at the expense of the Sponsor, including any legal expenses. The Sponsor will advise, consult with, and obtain prior written concurrence of NRCS on any litigation matters in which NRCS could have a financial interest.

22. Sponsor must indemnify and hold NRCS harmless to the extent permitted by State law for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Sponsor in connection with its acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement. Further, the Sponsor agrees that NRCS will have no responsibility for acts and omissions of the Sponsor, its agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement that result in violation of any laws and regulations that are now or that may in the future become applicable.

23. Retain all records dealing with the award and administration of the contract(s) for 3 years from the date of the Sponsor's submission of the final request for reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcriptions.

24. Be liable to the NRCS for damages sustained by the NRCS as a result of the contractor failing to complete the work within the specified time. The damages will be based upon the additional costs incurred by the NRCS resulting from the contractor not completing the work within the allowable performance period. These costs include but are not limited to personnel costs, travel, etc. The NRCS will have the right to withhold such amount out of any monies that may be then due or that may become due and payable to the Sponsor. This liability is not applicable to the extent that the contract performance time is extended by court judgment unless such judgment results from actions of the Sponsor not concurred in by NRCS.

25. Take necessary legal action, including bringing suit, to collect from the contractor any monies due in connection with the contract, or upon request of NRCS, assign and transfer to NRCS any or all claims, demands, and causes of action of every kind whatsoever that the Sponsor has against the contractor or his or her sureties.

26. Submit reports and payment requests to the ezFedGrants system or the Farm Production and Conservation (FPAC) Grants and Agreements Division via email to FPAC.BC.GAD@usda.gov as outlined in the applicable version of the General Terms and Conditions. For payments ezFedGrants does not have a process for construction line items. Reporting frequency is as follows:

    Performance reports: annual

    SF425 Financial Reports: annual

NRCS RESPONSIBILITIES

1. Assist Sponsor in establishing design parameters; determine eligible construction costs during the pre-design conference.

2. If applicable designate a Government representative (GR) to serve as liaison with the Sponsor and identify that person's contact information with this executed agreement.

3. Review, comment and concur in preliminary and final plans, specifications, O&M Plan, Plan of Operations (if required) and QAP.

4. Make periodic site visits during the installation of the EWP project measures to review construction progress, document conformance to engineering plans and specifications, and provide any necessary clarification on the Sponsor's responsibilities.

5. Upon notification of the completion of the EWP project measures, NRCS shall promptly review the performance of the Sponsor to determine if the requirements of this agreement and fund expenditures as agreed have been met.

6. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270 and supporting documentation, withholding the amount of damages sustained by NRCS as provided for in this agreement. In the event there are questions regarding the SF 270 and supporting documentation, NRCS will contact the Sponsor in a timely manner to resolve concerns.

SPECIAL PROVISIONS

1. The furnishing of financial, administrative, and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and uncommitted funding in the Emergency Watershed Protection Program that is available for obligation in the year in which the assistance will be provided. NRCS may not make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS's ability to provide such assistance.

2. In the event of default of a construction contract awarded pursuant to this agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.

3. Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the CO or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this agreement. NRCS will not be obligated to contribute funds under any agreement or commitment made by the Sponsor without prior concurrence of NRCS.

4. The State Conservationist may make adjustments in the estimated cost to NRCS set forth in this agreement for constructing the EWP measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment will be made to change the cost sharing assistance provided by NRCS as set forth in this agreement, nor reduce funds below the amount required to carry out NRCS' share of the contract.

5. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without obtaining concurrence as set out in this agreement.

6. Once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement will be de-obligated from the agreement.

EXPECTED ACCOMPLISHMENTS AND DELIVERABLES

1. Prepare design, construction specifications, and drawings in accordance with standard engineering principles that comply with NRCS programmatic requirements; and/or contract/install the designed construction. Any design services will be by a professional registered engineer. Sponsor will obtain NRCS review and concurrence on the design, construction plans, and specifications. The Sponsor must ensure description of work is reviewed, concurred, and approved by NRCS. A copy of the final signed and sealed plans and specifications shall be provided to NRCS.

2. Contract for services and construction in accordance with the Code of Federal Regulations (CFR), 2 CFR § 200.317 through 200.326, applicable State regulations, and the Sponsor's procurement regulations, as appropriate. (See general terms and conditions attached to this agreement for a link to the CFR.) In

accordance with 2 CFR § 200.326, contracts must contain the applicable provisions described in Appendix II to Part 200. Davis-Bacon Act would not apply under this Federal program legislation.

3. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns as well as copies of all permits, licenses, and other documents required by Federal, state, and local statutes and ordinances prior to solicitation for installation of the EWP project measures. All modifications to the plans and specifications shall be reviewed and concurred on by NRCS.

4. Prepare and submit for NRCS concurrence an Operation and Maintenance (O&M) Plan, if applicable, prior to commence of work. The O&M Plan shall describe the activities the Sponsor will do to ensure the project performs as designed. Upon completion of the project measures, the Sponsor shall assume responsibility for O&M.

5. Prior to commencement of work and/or solicitation of bids, submit for NRCS review and concurrence a Quality Assurance Plan (QAP). The QAP shall outline technical and administrative expertise required to ensure the EWP project measures are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided to NRCS prior to commencement of construction.

6. Provide construction inspection in accordance with the QAP.

7. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements. Provide a PE certification that the Project was installed in accordance with approved plans and specifications.

RESOURCES REQUIRED:

See the Responsibilities of the Parties section for required resources, if applicable.

MILESTONES

Milestones shall include, but not limited to, the following items:

1. Obtaining permits: estimated month 1
2. Completing quality assurance plan: estimated month 1
3. Solicit bids: estimated month 1
4. Award contract: estimated month 1
5. Date of estimated completion of construction: 10/26/2022
6. Complete close-out activities

GENERAL TERMS AND CONDITIONS

Please reference the below link(s) for the General Terms and Conditions pertaining to this award:
https://www.fpacbc.usda.gov/about/grants-and-agreements/award-terms-and-conditions/index.html

Rev. August 2021

U.S. DEPARTMENT OF AGRICULTURE
FARM PRODUCTION AND
CONSERVATION

GENERAL TERMS AND CONDITIONS FOR GRANTS AND COOPERATIVE AGREEMENTS

The Farm Production and Conservation (FPAC) mission area encompasses the following USDA agencies: Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), the Commodity Credit Corporation (CCC), and the FPAC Business Center.

I. APPLICABLE REGULATIONS

a. As a condition of this award, the recipient assures and certifies that it has and/or will comply and require subrecipients to comply with the requirements contained in the following statutes and regulations, as applicable. The full text of Code of Federal Regulations references may be found at https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR and http://www.ecfr.gov/.

1. 2 CFR Part 25, "Universal Identifier and System of Award Management"
2. 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information"
3. 2 CFR Part 175, "Award Term for Trafficking in Persons"
4. 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)"
5. 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)"
6. 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
7. 2 CFR Part 400, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards"
8. 2 CFR Part 417, "Nonprocurement Debarment and Suspension"
9. 2 CFR Part 418, "New Restrictions on Lobbying"
10. 2 CFR Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)"
11. 2 CFR Part 422, "Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct"

b. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and, to the extent applicable, to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at

https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR and http://www.ecfr.gov/.

2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards"

c. For corporate recipients, by accepting this award the recipient acknowledges: (1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, **and** (2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the USDA has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.

II. UNALLOWABLE COSTS

The following costs are not allowed:

a. Profit and management fees. Recipients may not earn and keep income resulting from an award
b. Costs above the amount authorized for the project.
c. Costs incurred after the award period of performance end date.
d. Costs not identified in the approved budget or approved budget revisions.
e. Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
f. Compensation for injuries to persons or damage to property arising from project activities.
g. Meals: Meals may be charged to an award only if they are necessary for the performance of the project. For instance, meals (normally only lunch) that are a necessary part of the costs of meetings and conferences (i.e., required attendance and continuity of a meeting), the primary purpose of which is the dissemination of information, are allowable, as are costs of transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. Note: Meals consumed while in official travel status do not fall in this category. They are considered to be per diem expenses and should be reimbursed in accordance with the organization's established travel policies subject to statutory limitations or in accordance with Federal travel policies.
h. Costs normally charged as indirect costs may not be charged as direct costs without proper justification and agency approval. Proper justification includes documentation that the costs meet the criteria for allowability (see 2 CFR 200.403). Examples of such costs include rent, utilities, depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.
i. Salaries that are not commensurate with level of work: All costs must be reasonable

to be allowable (2 CFR 200.403), and 2 CFR 200.404 defines a reasonable cost as one if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Salaries determined not to be reasonable compared to the level of work will be unallowable.

j. Honoraria. Speaker fees are allowable.
k. Costs which lie outside the scope of the approved project and amendments thereto.
l. Entertainment costs, regardless of their apparent relationship to project objectives.
m. Consulting services performed by a Federal employee during official duty hours when such consulting services result in the payment of additional compensation to the employee; and
n. Renovation or refurbishment of facilities, the purchase or installation of fixed equipment in facilities, and the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, “Subpart E - Cost Principles”, or direct specific inquiries to the administrative contact identified in the award. The allowability of some items of costs may be difficult to determine. To avoid disallowance or dispute of such costs, the recipient may seek prior approval before incurring them. See 2 CFR 200.407.

III. PRIOR APPROVAL REQUIREMENTS

Certain items of cost and award revisions require the prior written approval of the awarding agency. The following are the most common situations requiring prior approval. However, this list is not exhaustive, and the recipient is also bound by any other prior approval requirements identified in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Submit all requests for the approvals described below via e-mail to FPAC.BC.GAD@usda.gov. In any instance where a request for approval modifies the award budget, the recipient must submit a revised SF 424A and budget narrative. All requests for prior approval must reference the applicable agreement number.

a. Pre-award costs.—To receive reimbursement for costs incurred prior to the award date, recipients must request written approval. This restriction also applies to costs intended to meet cost-share requirements. Even with approval, recipients incur pre-award costs at their own risk. The Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover the costs.

b. Revisions to scope, objective, or deliverables.—When it is necessary to modify the scope, objective, or deliverables of an award, the recipient must submit a written request and justification for the change along with the revised scope, objective, or deliverables of the award.

c. Additions or changes to subawards and contracts.—The subawarding, transferring, or contracting out of any work (i.e., services) under a Federal award not identified in the original award budget or any changes to subaward or contracts requires prior written approval. The recipient must submit a justification for the proposed

subaward/contract, a statement of work to be performed, and a detailed budget for the subaward/contract. This provision does not apply to the acquisition of supplies, material, equipment, or general support services.

d. Change in a key person specified in the application or award.—When there is a change in key personnel, the recipient must request prior written approval for the substitution or change. The request must identify the replacement personnel and provide his or her qualifications.

e. Absence or change in project leadership.—If the approved project director or principal investigator disengages from the project for more than three months or reduces time devoted to the project by 25 percent or more, the recipient must request prior approval in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications of the replacement.

f. Budget revisions.—Recipients must request prior written approval for deviations from the approved budget in the instances described below. For all budget revisions, the recipient must submit a new SF 424A or 424C and budget narrative, even those that do not require prior approval..

    1. The inclusion of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, "Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.
    2. Where the cumulative amount of transfers of funds among direct cost categories or programs, functions, and activities exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency, and where the Federal share of the project exceeds the simplified acquisition threshold. Recipients must notify the Government of budget changes that do not meet the threshold described above and provide a revised SF 424A and budget narrative.
    3. The transfer of funds budgeted for participant support costs to other categories of expense requires prior written approval. Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects.
    4. Changes in the approved cost-sharing or matching provided by the recipient, including to amount, source, or type.
    5. Additional Federal funds needed to complete the project. This change also requires a formal agreement amendment.
    6. Changes to negotiated indirect cost rates during the award period of performance. If the change is due to receipt of a new negotiated indirect costs rate agreement (NICRA) must include a copy of the new agreement.

g. No-Cost Extensions of Time.—When a no-cost extension of time is necessary, the recipient authorized signatory must submit a written request via e-mail to FPAC.BC.GAD@usda.gov. Except in limited circumstances, a no-cost extension of time cannot exceed 12 months. FPAC cannot approve requests for no-cost

extensions received after the expiration of the award. In addition, time may not allow extension requests submitted less than 30 calendar days before the period of performance end date to be processed, so recipients are encouraged to submit requests as soon as possible. FPAC agencies cannot approve no-cost extensions requested merely to expend remaining funds. The request must contain the following:

1. Amount of additional time requested
2. Explanation for the need for the extension
3. A summary of progress to date and revised milestones

IV. PAYMENTS

a. Recipients must request reimbursement or advances using a properly completed and executed SF-270, submitted with a Budget Expense Table or Deliverable Expense Table (or similar summary document), as applicable to either the ezFedGrants system or to FPAC.BC.GAD@usda.gov. Templates for Budget Expense Tables and Deliverable Expense Tables are available at this link: https://www.fpacbc.usda.gov/about/doing-business/index.html. FPAC agencies will make payment to the recipient on a reimbursable or advance basis in accordance with the frequency specified in the statement of work.

b. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and 31 CFR Part 205. Requests must be submitted no less than 15 days prior to the start of the requested advance period. The recipient must provide a justification showing the amount of advanced funds spent using the Budget Expense Table within 30 days of the end of the advance period. If applicable, the recipient must also submit the cost-share Budget Expense Table.

c. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the recipient makes advance payments to contractors, the recipient must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Recipients must not submit requests from their contractors for review or approval.

d. The recipient must maintain records of supporting documentation all costs incurred under this award. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subaward documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the period of performance of this award, including any approved no-cost extension of time. The Government may disallow costs that cannot be supported by supporting documentation or that are incurred outside of the agreement period of performance and budget and may require the return of any funds paid out for those costs. The level of detail and documentation required to be provided to support any individual payment request is at the discretion of the Government. Do not provide supporting

documentation unless it is specifically requested.

e. Recipients must pay all costs incurred (i.e., liquidate obligations) under the award and request all final requests for payment not later than 120 calendar days after the period of performance end date. The Government must timely close-out expired agreements, which includes de-obligation of unspent funds. Therefore, funds may not be available for payment requests received more than 120 days after the period of performance end date, and the Government is not obligated to make such payments.

f. Payments under fixed-amount awards are made based on deliverables completed, milestones achieved, or as a single payment upon award completion rather than costs incurred. The Government and recipient must utilize 2 CFR 200, Subpart E, Cost principles to support unit prices included in fixed amount awards prior to agreement execution.

V. FINANCIAL REPORTING

a. Recipients must submit a Federal Financial Report (FFR), SF 425 in accordance with the schedule included in the award statement of work. Recipients must submit reports to either the ezFedGrants system or via e-mail to FPAC.BC.GAD@usda.gov. Failure to submit reports as required may result in suspension or termination of award.

b. The recipient must submit a final financial report no later than 120 days after the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).

c. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

VI. PERFORMANCE MONITORING AND REPORTING

a. The recipient is responsible for monitoring day-to-day performance and for reporting to the FPAC awarding agency. If the project involves subaward/contractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.

b. The recipient must submit a written progress report at the frequency specified in the statement of work to either the ezFedGrants system or via e-mail to FPAC.BC.GAD.usda.gov. Each report must cover—

1. A comparison of actual accomplishments with the milestones and deliverables established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
2. The reasons why milestones and deliverables targets were not met, if appropriate.
3. Additional pertinent information including, where appropriate, analysis

and explanation of cost overruns or high unit costs.

c. The recipient must submit a final performance report within 120 calendar days of the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).

d. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

VII. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $30,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to *http://www.fsrs.gov*.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

1. What to report. You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov*.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is $30,000 or more;

ii. in the preceding fiscal year, you received—

A. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

B. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15

U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at *https://www.sam.gov.*

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

B. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.,* between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non- Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical

reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

VIII. AUDIT REQUIREMENTS

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A recipient entity that expends $750,000 or more during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year.

IX. SPECIAL PROVISIONS

a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.

b. Employees of FPAC agencies will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, FPAC employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in projects or agreements with such recipients.

c. Except for agreements entered under the Agriculture Conservation Experienced Services (ACES) program authorized by the Food, Conservation, and Energy Act of 2008, employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement. An individual providing services under the ACES program is deemed to be an employee of the United States Government solely for purposes of chapter 171 of title 28, United States Code, provided the individual is acting within the scope of the agreement.

d. Except in very limited circumstances (e.g., construction agreements), no agreement period of performance can exceed a total of five years, including extensions.

e. Recipients who engage or assist in scientific related activities on behalf of USDA must uphold the principles of scientific integrity established by Departmental Regulations 1074-001, Scientific Integrity. Covered activities

include engaging in, supervising, managing, and reporting scientific work; analyzing and publicly communicating information resulting from scientific work; and utilizing information derived from scientific work in policy and decision making.

f. Recipients of awards under covered programs (as defined in Executive Order 13858, January 31, 2019) are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under the award. "Covered program" means a program that provides financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, construction, rehabilitation, or repair of an infrastructure project in the United States. However, it does not include programs for which a domestic preference is inconsistent with law or programs providing financial assistance that are subject to comparable domestic preferences.

g. The recipient and its employees are prohibited from promoting, recommending, or discussing the availability of specific commercial products or services with FPAC agency clients in the course of carrying out activities under this agreement, including any products or services offered by the recipient, except as may be specifically allowed in the agreement.

X. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

a. The following acknowledgment of USDA support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (web sites, computer programs, etc.) that is substantially based upon or developed under this award:

> "This material is based upon work supported by the U.S. Department of Agriculture, under agreement number [recipient should enter the applicable award number here]."

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

> "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services."

b. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too small to include the full nondiscrimination statement, the material must, at a

minimum, include the following statement:

"USDA is an equal opportunity provider, employer, and lender."

The recipient is responsible for ensuring that an acknowledgment of USDA is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss work funded by this award in a substantial way.

c. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.

d. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to recipient personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to FPAC.BC.GAD@usda.gov.

e. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

XI. COST SHARING REQUIREMENTS

a. If the award has specific cost-sharing requirements, cost-sharing participation in other projects must not be counted toward meeting the specific cost-share requirement of this award. Cost sharing must come from non-Federal sources unless otherwise stated in the applicable program authorizing statute.

b. Cost sharing must be documented on each SF 425 and payment requests as it is provided by the recipient or third party. The required cost-share or matching ratio must be met by the end of the agreement period of performance; however, it does not have to be maintained for every payment request.

c. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must—

   1. Immediately notify the FPAC Business Center Grants and Agreements Division via e-mail to FPAC.BC.GAD@usda.gov, and
   2. Either specify the steps it plans to take to secure replacement cost sharing or specify the plans to phase out the project in the absence of cost sharing.

Failure by the recipient to notify FPAC in accordance with this section or failure to submit an acceptable remediation plan may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by FPAC of some of the FPAC funds provided under the award, and/or termination of the award. It may constitute a violation of the terms and conditions of the award so serious as to

provide grounds for subsequent suspension or debarment. FPAC reviews and approves or disapproves cost-sharing remediation plans on a case-by-case basis.

d. The recipient must maintain records of all project costs that are claimed s cost sharing as well as records of costs to be paid by FPAC. If the recipient's cost sharing includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.

e. Recipients must also request prior approval before changing the source or type of cost sharing. See Section III(e)(4).

XII. PROGRAM INCOME

a. Program income does not include Federal funds received under an award. Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in §200.307(f). Examples include fees charged for conferences or workshops, fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.

b. FPAC recommends treating program income with the additive method, however recipients may request to use the deductive method.

c. If program income is earned and not already identified and addressed in the award, the recipient must provide notification to the FPAC BC GAD via e-mail to FPAC.BC.GAD@usda.gov and indicate the preferred treatment method (additive or deductive).

d. Program income may be used to meet recipient cost-sharing requirements with the approval of the Government.

e. Recipients must report all program income on the applicable SF 270 and SF 425 as it is earned.

XIII. NONEXPENDABLE EQUIPMENT

a. Recipients purchasing equipment or products with funds provided under this award are encouraged to purchase only American-made equipment and products. A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. All other recipients must follow these procedures.

b. Title to equipment acquired under a Federal award will vest conditionally in the

recipient upon acquisition. The recipient must not encumber the property without approval of the Government.

c. The recipient must use the equipment for the authorized purposes of the project for as long as needed whether or not the project or program continues to be supported by the Federal award. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

    1. Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
    2. Activities under Federal awards from other Federal awarding agencies.

d. The recipient must maintain property records that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

e. The recipient must take a physical inventory of the property and reconcile the results with the property records at least once every two years until final disposition.

f. When equipment is no longer needed for any of the purposes set out in this provision and the per-unit fair market value is less than $5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to FPAC. However, if the per-unit fair market value is $5,000 or more, the recipient must submit a written request for disposition instructions to FPAC.BC.GAD@usda.gov.

XIV. LIMIT OF FEDERAL LIABILITY

a. The maximum financial obligation of FPAC to the recipient is the amount of funds indicated in the award as obligated by FPAC. However, if an erroneous amount is stated on the approved budget, or any supporting document relating to the award, FPAC will have the unilateral right to make the correction and to make an appropriate adjustment in the FPAC share of the award to align with the Federal amount authorized.

b. For awards where it is anticipated that the period of performance will include multiple budget periods, all subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

XV. AMENDMENTS

The parties may modify this agreement via formal amendment executed by the authorized signatories of each. The FPAC Business Center's Grants and Agreements Division has developed streamlined procedures for certain agreement changes, including no-cost extensions and some changes to agency and recipients contacts that do not require formal amendments. Contact the administrative contact for this award for instructions.

XVI. PRIVACY ACT AND PROHIBITION AGAINST CERTAININTERNAL CONFIDENTIALITY AGREEMENTS

a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of FPAC.

b. The recipient’s personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient’s personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).

c. The recipient agrees to comply with the **“Prohibition Against Certain Internal Confidentiality Agreements:”**

    1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

    2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.

    3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.

    4. If FPAC determines that you are not in compliance with this award provision, FPAC:

        i. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;

        ii. May pursue other remedies available for your material failure to comply with award terms and conditions.

XVII. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

The recipient agrees to comply with FPAC guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and

Energy Act of 2008 (PL 110- 246), 7 U.S.C. 8791 as described below. Responsibilities.

a. Acceptance of this award indicates acknowledgment and understanding that the recipient is legally bound by Federal statute to comply with the provisions of Section 1619 and that the recipient will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this award. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The recipient will be held responsible should disclosure of the protected information occur.

b. Acceptance of this award legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the recipient to comply with the provisions in Section 1619. The recipient must consult with FPAC prior to providing protected information to an entity or individual outside of the recipient and as necessary to implement the program to ensure that such release is permissible.

c. The recipient will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited.

d. The recipient must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.

e. The provisions in Section 1619 are continuing obligations. Even when the recipient is no longer a recipient, or when individuals currently affiliated with the recipient become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.

f. The recipient must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.

g. When the recipient is unsure whether particular information is covered or protected by Section 1619, the recipient must consult with FPAC to determine whether the information must be withheld.

h. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award. Upon the award end date, any protected information provided under this award must be immediately destroyed or returned to FPAC. The recipient must provide to FPAC written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.

i. Any State’s “sunshine law,” “open records act” or other version of the Freedom of Information Act is superseded by section 1619 under the

Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

j. Protected Information.

Examples of the types of information prohibited by disclosure under Section 1619 include, but are **not limited to**, the following:

i. State identification and county number (where reported and where located).
ii. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
iii. Farm, tract, field, and contract numbers.
iv. Production shares and share of acres for each Farm Serial Number (FSN) field.
v. Acreage information, including crop codes.
vi. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
vii. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
viii. Location of conservation practices.

k. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law"* (emphasis added). The names and payment information of producers generally may be provided to the public; however, the recipient shall consult with FPAC if there is any uncertainty as to the provision of such information.

l. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite." The recipient must consult with FPAC as to whether specific information falls within this exception prior to relying on this exception.

m. Violations. The recipient will be held responsible for violations of this provision and Section 1619. A violation of this provision by the recipient may result in action by FPAC, including termination of the underlying Federal award.

n. Effective Period. The requirements of this provision is effective on the date of the final signature and will continue until FPAC notifies the recipient that it is no longer required based on changes in applicable Federal law.

XVIII. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The recipient (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information. In accordance with 2 CFR 200.216, the recipient (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:

o. procure or obtain, extend or renew a contract to procure or obtain;

p. enter into a contract (or extend or renew a contract) to procure; or

q. obtain the equipment, services or systems.

XIX. NATIONAL POLICY REQUIREMENTS

The recipient must comply with all relevant public policy requirements, including those in general appropriations provisions, which can be accessed at this link: https://www.ocfo.usda.gov/docs/Regulatory_Statutory_and_National_Policy_Requirements_v2_2018_04_17.pdf

XX. TERMINATION

In accordance with 2 CFR 200.340, the recipient understands this agreement may be terminated in whole or in part as follows:

a. By the Federal awarding agency or pass-through entity, if a recipient fails to comply with the terms and conditions of a Federal award;

b. By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

c. By the Federal awarding agency or pass-through entity with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

d. By the recipient upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

e. If the Federal award is terminated for the recipient's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS) in accordance with 2 CFR200.341.

XXI. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

If the total value of the recipient’s 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 recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

a. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five-year period; and
3. Is one of the following:
    i. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
    ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
    iii. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or
    iv. Any other criminal, civil, or administrative proceeding if:
        A. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
        B. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
        C. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

b. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

c. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report.

Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

d. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.,* Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
    i. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
    ii. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

XXII. AWARD CLOSEOUT

a. Award closeout is the process by which FPAC determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.

b. The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the agreement, including documentation showing that match or cost-share requirements have been met. The awarding agency may approve extensions when requested by the recipient.

c. Unless the awarding agency authorizes an extension, the recipient must liquidate all obligations incurred under the agreement not later than 120 calendar days after the end date of the period of performance.

d. Recipients must submit all requests for reimbursements no later than 120 calendar days after the end date of the period of performance.

e. The recipient must promptly refund any balances of unobligated cash that the awarding agency paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.

f. Recipients must retain all records pertaining to the agreement in accordance with 2 CFR 200.333-337 and any additional requirements included in the agreement statement of work.

g. Recipients must follow disposition requirements for property acquired with award funds in accordance with 2 CFR 200.310-316 and the terms of this agreement.

h. If the recipient does not submit all reports in accordance with this section and the terms and conditions of the Federal award within one year of the period of performance end date, the Federal awarding agency must proceed to close out with the information available, including de-obligation of remaining funds. In addition, in accordance with 2 CFR 200.344, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS).

XXIII. NON-DISCRIMINATION IN USDA PROGRAMS

The recipient agrees that, in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Schultz Creek Sediment & Detention Basins

August 23, 2022

TEAM FLAGSTAFF

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Grant Award Agreement

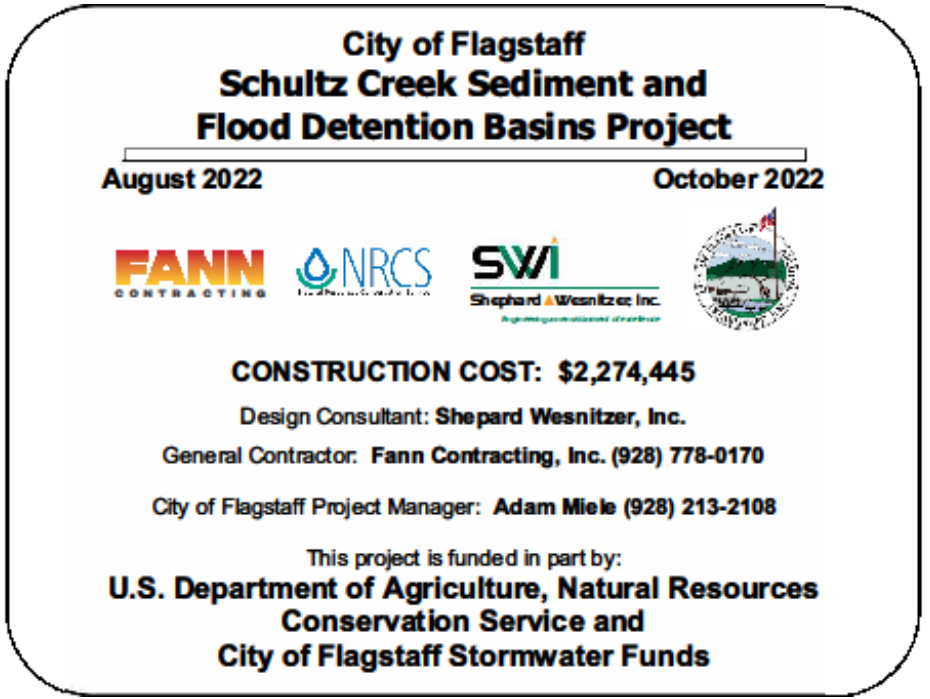
- The Pipeline Fire burned over 1000 acres of the Schultz Creek watershed (26,532 Acres in total area)
- The project will detain over 50 acre-feet of water and sediment, thereby reducing life and safety threats as well as the risk of post-wildfire flooding
- Project is located on a 20-acre parcel of City-owned land at the northeast corner of E. Mt. Elden Lookout Rd and Schultz Pass Rd.
- Staff presented to the Historic Preservation, Open Space and Water Commission

Grant Award Agreement

- Natural Resource Conservation Service (NRCS) responded quickly to do an initial site visit with city staff on June 29, 2022, for an exigency grant
- Emergency Watershed Protection, Damage Survey Report was submitted on July 8, 2022, and subsequently a grant application
- On July 27, 2022, NRCS notified staff that the City of Flagstaff would receive an Emergency Watershed Protection grant in the amount of $2,408,180.75
- Outstanding Partnerships – Internal and External

Construction Contract Award

- Five construction firms were contacted for cost estimates
  - Three construction firms participated and provided a cost estimate
- Fann Contracting was selected on price and qualifications
- A Notice To Proceed (NTP) was given to Fann on 8/19/2022
  - Complete by October 26, 2022



Long-Term Mitigations

Schultz Creek Sediment and Flood Mitigation Detention Basins

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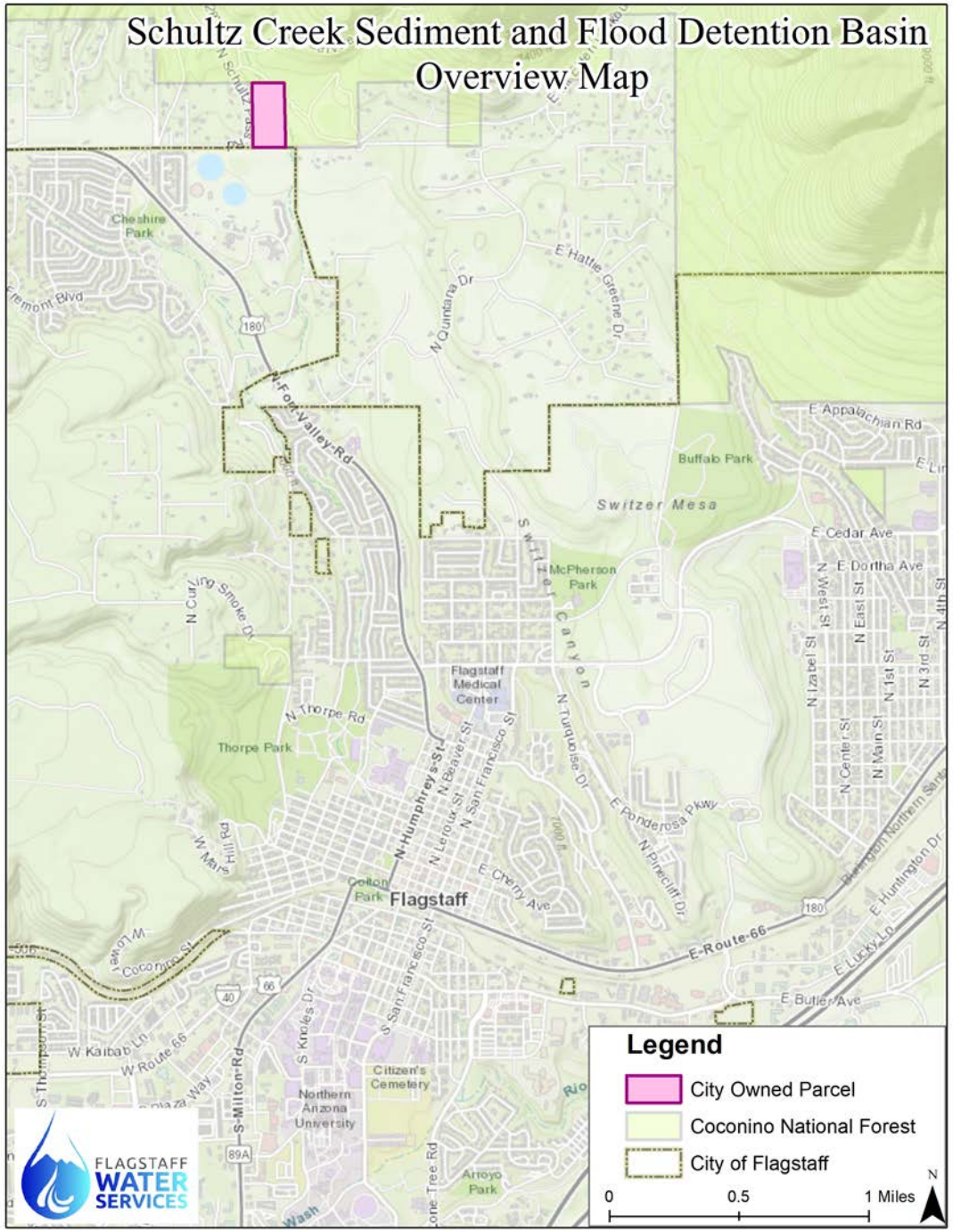
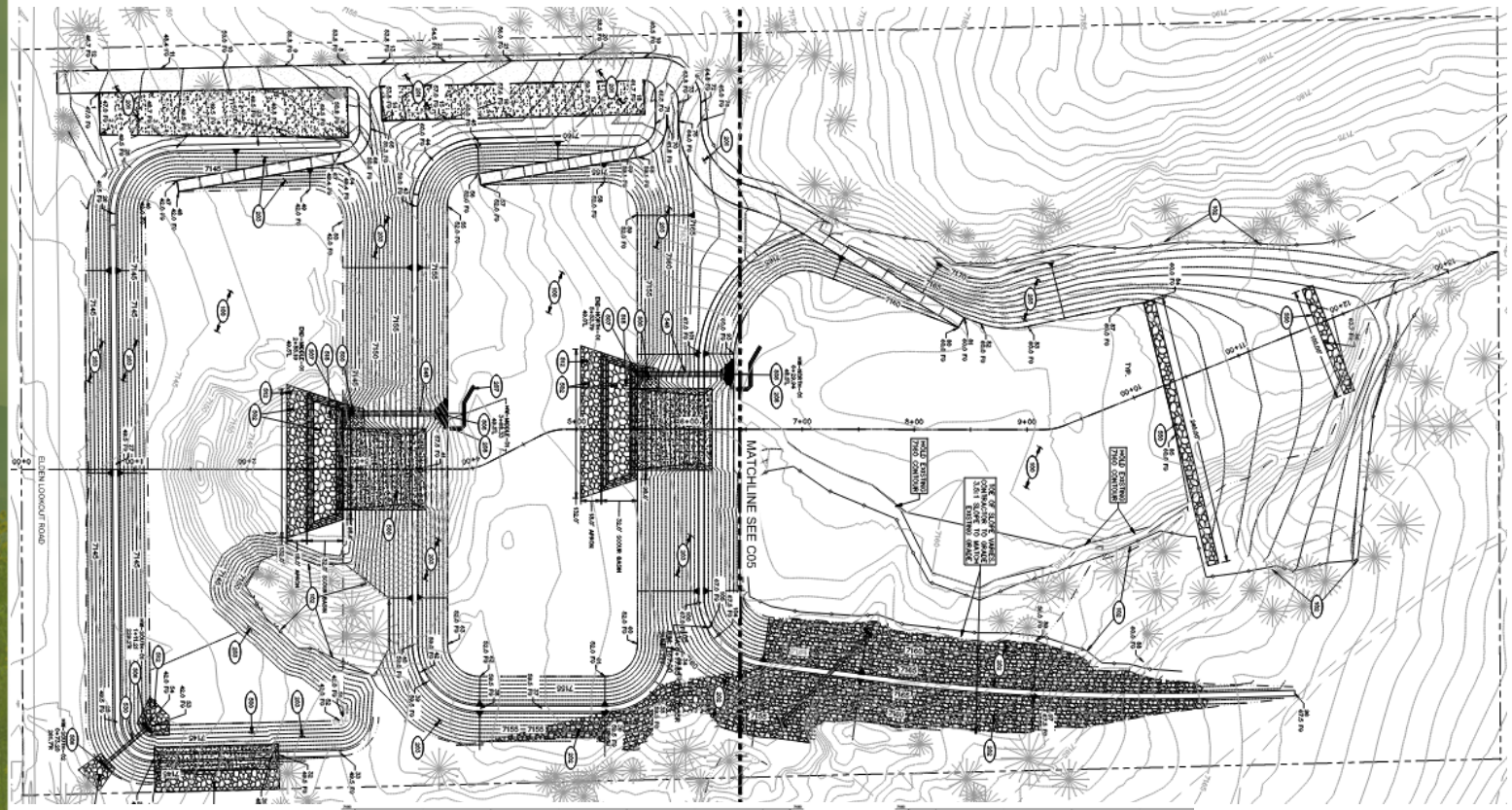
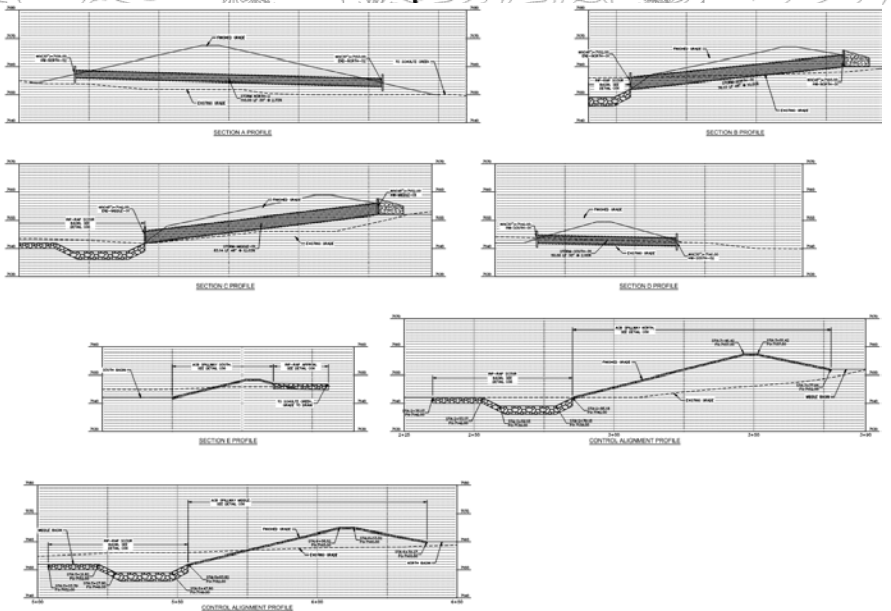


Detention Basins

- 20-acre City owned Parcel
- Does not include trail access, trailhead parking, historic interpretation, etc. These features will be added as design progresses.





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Project Highlights

Shephard Westnizer (SWI) provided designs and engineering support

The Stormwater Fund will provide the 25% match

Project Management: Public Works

Technical construction support: SWI, Stormwater, Public Works, Water Services Engineering

Grant support: Grants and Contract Management

General Questions?

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10. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Stacey Brechler-Knaggs, Grants, Contracts & Emergency Management Director

Co-Submitter: Adam Miele

Date: 08/19/2022

Meeting Date: 08/23/2022

TITLE:

Consideration and Approval of Ratifying the Contract: Ratify the Emergency Construction Contract between the City of Flagstaff and Fann Contracting, Inc. in the amount of $2,274,445 for the Schultz Creek Sediment and Flood Detention Basins Project.

STAFF RECOMMENDED ACTION:

1. Ratify the Emergency Construction Contract with Fann Contracting, Inc. in the amount of $2,024,445, and an Owner's Contingency of $250,000, for a total amount of $2,274.445 which amount includes all federal, state, and local taxes, as applicable.
2. Approve the Administrative Change Order Authority to the City Manager in the amount of $177,444.50 (10% of the Contract Amount, less the Contract Allowance); and
3. Authorize the City Manager to execute the necessary documents.

Executive Summary:

Approval will ratify the City Manager's acceptance of the Emergency Construction Contract with Fann Contracting, Inc. ("Fann") which will provide protection from flooding, restore the hydraulic capacity to the natural environment to the maximum extent practical, and reduce threats to life and property.

Financial Impact:

Fann was selected to perform the work for completing the Schultz Creek Sediment and Flood Detention Basins ("Project"). Five construction companies were contacted and were invited to bid on the Project. These contractors were invited to bid due to the size and construction constraints needed (complete start to finish was 10 days) for the Project. All five contractors received a pre-final plan. The City subsequently received an extension for completing the Project and contacted all five contractors to allow them to consider the time extension in submitting their bids. Of the five contractors, three contractors submitted bids. Fann was the lowest bidder and is within the Project budget. The bid information is below.

Fann Contracting	$2,274,445
Eagle Mountain	$3,886,900
Combs Construction	$4,980,968
J. Banicki Construction	No bid
Tiffany Construction	No bid

This Project is funded in part by the U.S. Department of Agriculture, Natural Resource Conservation Service, Emergency Watershed Protection Program which provided federal funds in the amount $2,408,180.75 for the Project. Staff has identified budget appropriation in account number 206-08-331-1258-0-4364 in FY 2022-23 for this project. Funds will be expended against the grant project account number 206-08-385-3517-0-4442, project number WS3517B.

Policy Impact:

This ratifies the City Manager's acceptance of the Emergency Construction Contract award to Fann which will allow the construction of the Schulz Creek Sediment and Flood Detention Basins. This Project will provide protection from flooding, restore the hydraulic capacity to the natural environment to the maximum extent practical, and reduce threats to life and property.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

- High Performing Governance - Enhance the organization's fiscal stability & increase efficiency & effectiveness.
- Environmental Stewardship - Promote, protect & enhance a healthy sustainable environment & its natural resources.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

1. Ratify and accept the Emergency Construction Contract with Fann which will fund the Project construction.
2. Not ratify or accept the Emergency Construction Contract with Fann and the Project will not be constructed and the grant award funding will de-obligated back to the funding agency.

Background/History:

On Sunday, June 12, 2022 the Pipeline fire (within the Coconino National Forest) began and burned approximately 26,500 acres. The burn area as a result of this fire stretches multiple watersheds that were irritably impacted. One of the major watersheds affected contributes to Schultz Creek (westerly side of the pipeline burn area). JE Fuller, one of the City's engineering consultants, generated a potential flood map (2-inch in 45-minute storm) of the Schultz Creek, post fire, utilizing approved engineering standards (FLO-2D mapping). The map that was generated illustrate a large impact to multiple subdivisions within the City of Flagstaff with potential flooding depths from less than an inch to 5 feet or more.

Key Considerations:

The Project consists of constructing three large detention basins located on a City owned parcel to aid in stormwater management (Schultz Creek) peak flow attenuation and provide a means for sediment deposition within these basins. The inclusion of these basins on this property is expected greatly reduce the intensity of the peak flow from rainfall and discharge from the burn scar area.

Community Benefits and Considerations:

The Project that Fann will be constructing will help reduce / relieve imminent threats to life and property caused by post wildfire flooding.

Attachments: Emergency Construction Contract

CONSTRUCTION CONTRACT CG2023-10

City of Flagstaff, Arizona
and
Fann Contracting, Inc.

This Construction Contract ("Contract") is made and entered into this 1st day of August 2022, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona (Owner), and Fann Contracting, Inc., an Arizona Corporation (Contractor), with offices at 6725 Generation Lane, Prescott, AZ 86301. Contractor and the Owner may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. On Sunday, June 12, 2022, the Pipeline Fire (within the Coconino National Forest) began and eventually burned approximately 26,500 acres. The burn area impacted multiple watersheds, including the Schultz Creek watershed (located on the westerly side of the Pipeline Fire burn area). If an emergency flood event were to occur in this area, it may cause damage to multiple residential and commercial properties within Flagstaff;

B. To protect against this, the Owner seeks to engage Contractor to construct three large sediment and flood detention basins within the Schultz Creek watershed which will aid in stormwater peak flow attenuation and provide a means for sediment deposition. The project will be identified as the **Schultz Creek Sediment and Flood Detention Basins (Project)**;

C. Engaging a Contractor would require a formal procurement; however, an emergency flood event would create "*Conditions for Emergency Purpose,*" as defined in Article 19 of the City of Flagstaff Procurement Code Manual (Procurement Code) that precludes the procurement requirements. An emergency flood event may cause a "great public calamity" and the work to be conducted under this Contract is "[a]n essential departmental operation affecting the public health, welfare or safety" of citizens of the city of Flagstaff. Further, to complete the formal purchasing procedures "would cause an undue delay in procurement of the item or service." Procurement Code, Article 19.1(A) & (D);

D. The Owner anticipates receiving federal government funds from the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) to respond to the exigency situation of an emergency flood event or events. Federal procurement must be followed. The Code of Federal Regulations allows for noncompetitive procurement where the public exigency or emergency will not permit a delay from publicizing a competitive solicitation. 2 C.F.R. § 200.320. "Exigency" is defined as "situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages, or the potential loss of life if action to remedy the situation is not taken immediately." 7 C.F.R. § 624.4(b);

E. The possibility of one or more potential emergency flood events on the Schultz Creek watershed creates a public exigency. To complete the formal purchasing procedures of the

City and federal government "would cause an undue delay in procurement of the item or service" necessary to prevent damage; and

F. 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.

1.1. Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services, and facilities for the Project. The Project scope is specific to the Project Construction Plans attached as **Exhibit A.** Before Contractor purchases materials or engages in undefined or preliminary work, Contractor must receive written approval from the Owner. Parties agree to continue value engineering through the duration of the project to expedite work and provide best cost for the Owner.

1.2 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.

2. Time of Completion.

2.1 Contractor agrees to complete all work as described in this Contract ~~within **eighty-six (86) calendar days** from the date of the Owner's Notice to Proceed, which is estimated to be **August 2, 2022**.~~ by **October 26, 2022** or within **seventy (70) calendar days** (whichever is earlier) from the date of the Owner's Notice to Proceed, which is estimated to be **August 22, 2022.**

2.2 The Parties will meet for a pre-construction conference at the location of the Project within **twenty-four (24) hours** from receipt of the Owner's Notice to Proceed. The Owner will identify work that may require special attention on the part of Contractor. Contractor may also present any variations in procedures to improve the workability of the Project.

3. Contract; Ownership of Work.

3.1 Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with the following documents, which are hereby incorporated by reference:

3.1.1 Contract
3.1.2 Project Construction Plans (**Exhibit A**)
3.1.3 City of Flagstaff Engineering Design and Construction Standards and Specifications

3.1.4 Maricopa Association of Governments (MAG) Specifications for Public Works Construction (MAG Specifications).

3.1.5 City of Flagstaff revisions to the MAG Specifications for Public Works Construction (Flagstaff Addendum to MAG Specifications) (**Exhibit B**)

3.1.6 NRCS EWP Grant Provisions (**Exhibit C**)

3.1.7 Bid Proposal dated July 25, 2022 (**Exhibit D**)

3.1.8 All provisions, including the Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders, and Field Orders

3.2 All materials, work, specifications, and plans shall be the property of the Owner. All work shall be 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 the Contract.

4. Compensation.

4.1 In consideration of the faithful performance of the work described in this Contract, the Owner shall pay Contractor an estimated amount of **$2,274,445**, which is the sum of Contractor's bid amount of **$2,024,445,** and an Owner's Contingency of **$250,000**, which amount includes all federal, state, and local taxes, as applicable.

4.2 If deemed necessary, the Owner may also compensate Contractor additional charges that Contractor may incur during the course of work on this potential emergency flood event and/or for services or materials provided in accordance with the Bid Proposal attached as **Exhibit D.**

4.3 The compensation amount shall be payable through monthly progress payments, subject to the following conditions:

4.3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials;

4.3.2 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 the Contract is fifty percent (50%) complete. When and after such work is fifty percent (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 the Contract;

4.3.3 The City Engineer shall have the right to finally determine the amount due to Contractor;

4.3.4 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;

4.3.5 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;

4.3.6 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 Twenty Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

4.4 As required by the *"Emergency Purchase Procedure"* provisions of the Procurement Code, because the emergency purchase exceeds the formal bid limit, upon final completion of the work identified in the Contract, the Owner must "seek approval of the purchase from the City Council as a confirming payment," Procurement Code, Article 19.2(D)(2).

5. Performance of Work.

All work covered by the Contract shall be done in accordance with the latest and best accepted practices of the trades involved. 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 the 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 the section regarding *Contract Violations*.

8. Failure to Complete Project in Timely Manner. If Contractor fails or refuses to execute the Contract within the time specified in the section governing *Time of Completion*, or such additional time as may be allowed:

8.1 The Owner shall receive liquidated damages for each and every calendar day that work shall remain incomplete after the time specified for the completion of the Contract, or as adjusted by the Engineer, unless otherwise specified, may be deducted from monies due to or to become due to the Contractor, not as a forfeit or penalty but as liquidated damages. MAG Specifications, Section 108.9.

8.2 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 the 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 the Contract.

9. Labor Demonstration.

It is understood that the work covered by the 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 Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate the Contract immediately, unless 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, 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 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, Contractor shall arrange for office facilities and/or the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at its own expense. 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, Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials, and

supplies belonging to 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. (Flagstaff Addendum to MAG Specifications, Section 107.2.1).

11. Use of Explosives.

To the extent applicable, Contractor shall comply with the requirements of the MAG Specifications defining that the use of explosives or blasting agents, to include compliance with the Uniform Fire Code and receipt of the necessary special permit from the City of Flagstaff Fire Department for the use of explosives. Explosives shall be transported, stored, handled and used in accordance with the provisions and requirements of all applicable laws, ordinances and regulations. (MAG Specifications, Section 107.8).

12. Maintenance During Winter Suspension of Work.

12.1 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. The Owner retains the right to declare a Winter Shutdown. If work has been suspended due to winter weather, 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, 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 Contractor.

12.2 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 costs 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.

13. Assignment.

Contractor shall not assign or delegate any duty of the Contract, in whole or in part, without the prior written consent 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 all obligations, terms, and conditions of the Contract, and that Contractor shall also remain liable under all obligations, terms, and conditions of the Contract.

14. Notices.

Any notices or demands required to be given, pursuant to the terms of the Contract, may be given to the other Party in writing, delivered in person, sent by email, 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 Section. 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:
Patrick Brown, C.P.M., CPPB
Purchasing Director
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
pbrown@flagstaffaz.gov

If to Contractor:
Jason Fann
Fann Contracting, Inc.
Co-Owner/Project Manager
6725 Generation Lane
Prescott, AZ 86301
Phone: (928) 778-0170
jfann@fanncontracting.com

With a Copy to:
Adam Miele, PE
Senior Project Manager – Public Works
City of Flagstaff
3200 W. Route 66
Flagstaff, AZ 86001
Phone: (928) 213-2108
amiele@flagstaffaz.gov

15. Contract Violations.

In the event any of the provisions of the Contract are violated by 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 (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 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 and necessary for completion of the work.

16. Termination for Convenience.

The Owner may terminate the Contract at any time for any reason by giving at least **ten (10) days** written notice to Contractor. If termination occurs under this Section, 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 Contractor's original bid price, less any work not yet completed by Contractor as of the date the written notice of termination is given to Contractor.

17. Contractor's Liability and Indemnification.

To the fullest extent permitted by law, Contractor shall indemnify, save, and hold harmless the City of Flagstaff and its officers, officials, agents, and employees (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 Contractor, subcontractor, or design professional, or other persons employed or used by Contractor, subcontractor, or design professional in the performance of this Contract. The amount and type of insurance coverage requirements set forth in the Contract (Flagstaff Addendum to MAG Specifications, Section 103.6) will in no way be construed as limiting the scope of the indemnity in this Section.

18. 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 the 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.

19. Amendment of Contract.

The Contract may not be modified or altered except in writing and signed by duly authorized representatives of the parties.

20. 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.

21. Cancellation for Conflict of Interest.

The Contract is subject to the cancellation provisions of A.R.S. § 38-511.

22. Compliance with All Laws.

Contractor shall comply with all applicable laws, statutes, ordinances, regulations, and governmental requirements in the performance of the Contract.

23. 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.

24. 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 the 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. 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 the 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.

26. Jurisdiction and Venue.

The Contract shall be administered and interpreted under the laws of the State of Arizona. Contractor hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

27. Attorneys' Fees.

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

28. No Third-Party Beneficiaries.

The Parties acknowledge and agree that the terms, provisions, conditions, and obligations of the Contract are for the sole benefit of, and may be enforceable solely by, the Parties to the Contract, and none of the terms, provisions, conditions, and obligations of the Contract are for the benefit of, or may be enforced by, any person or entity not a party to the 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 the Contract.

30. Severability.

If any part of the 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 the Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

31. Force Majeure.

31.1 The Parties acknowledge that there may be events that occur during the term of the Contract that are beyond the control of both the Owner and 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 the Contract. 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.

31.2 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.

31.3 The Parties agree to act in good faith to extend the Contract completion date without any penalty to 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.

32. No Boycott of Israel.

Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents ($100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

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

Digitally signed by Greg Clifton
DN: cn=Greg Clifton, o=City of Flagstaff, ou, email=greg.clifton@flagstaffaz.gov, c=US
Date: 2022.08.12 12:01:50 -07'00'

Greg Clifton, City Manager

Attest:

Digitally signed by Stacy Saltzburg
Date: 2022.08.12 13:25:18 -07'00'

City Clerk

Contractor
Fann Contracting, Inc.

Signature

JASON FANN
Printed Name

PRESIDENT / C.O.O.
Title

Approved as to form:

City Attorney

Notice to Proceed:_____

PLOTTED: Aug 09, 2022 - 2:35pm

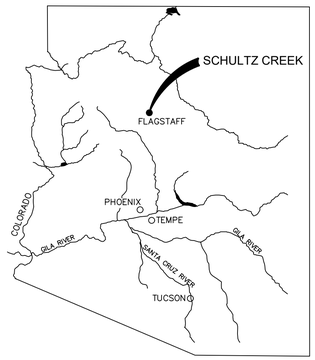
PIPELINE FIRE EMERGENCY WATERSHED PROTECTION PLANS

FOR

SCHULTZ CREEK SEDIMENT AND FLOOD MITIGATION DETENTION BASINS

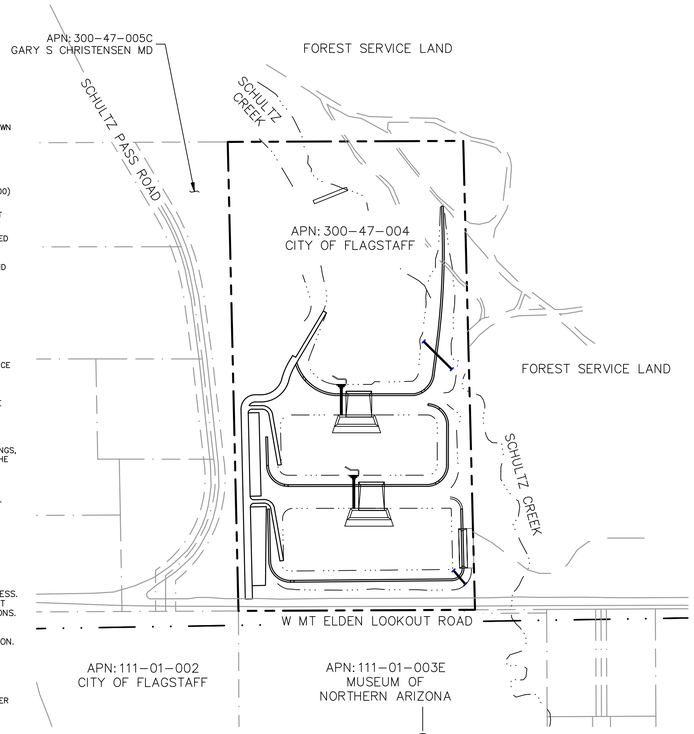
FLAGSTAFF, ARIZONA

LOCATED IN SE CORNER OF THE SW QUARTER, SECTION 33, TOWNSHIP 22 NORTH, RANGE 7 EAST GILA AND SALT RIVER MERIDIAN, COCONINO COUNTY, FLAGSTAFF, ARIZONA



VICINITY MAP

N.T.S.



SITE MAP

N.T.S.

C.O.F. GENERAL NOTES

1. APPROVAL OF THESE PLANS BY THE CITY ENGINEER IS FOR A ONE (1) YEAR PERIOD, SUBSEQUENT TO THE DATE OF APPROVAL. IF CONSTRUCTION WORK IS NOT STARTED WITHIN THE ONE (1) YEAR PERIOD, OR HAS BEEN DISCONTINUED FOR ANY REASON FOR LONGER THAN ONE (1) YEAR, THE PLANS SHALL BE RESUBMITTED FOR REVIEW AND RE-APPROVAL.
2. PLAN REVIEW BY THE CITY DOES NOT EXTEND TO MATERIAL QUANTITIES SHOWN ON THE PLANS.
3. A PUBLIC WORKS PERMIT, ISSUED BY THE CITY, IS REQUIRED FOR ALL WORK IN CITY RIGHTS-OF-WAY OR EASEMENTS AND FOR CONSTRUCTION OF ANY IMPROVEMENTS INTENDED TO BECOME PUBLIC PROPERTY.
4. THE CITY SHALL BE NOTIFIED TWENTY-FOUR (24) HOURS PRIOR TO BEGINNING DIFFERENT PHASES OF CONSTRUCTION SO THAT CITY INSPECTORS MAY BE SCHEDULED.
5. ALL MATERIALS AND WORKMANSHIP SHALL COMPLY WITH TITLE 13, ENGINEERING DESIGN AND STANDARDS AND SPECIFICATIONS FOR NEW INFRASTRUCTURE, CURRENT "MAG UNIFORM STANDARD SPECIFICATIONS AND DETAILS FOR PUBLIC WORKS CONSTRUCTION", THE CITY OF FLAGSTAFF STORMWATER DESIGN MANUAL, AND WITH GENERALLY ACCEPTED ENGINEERING DESIGN AND CONSTRUCTION PRACTICE. ALL WORK AND MATERIALS, WHICH DO NOT CONFORM TO THE STANDARDS AND SPECIFICATIONS, ARE SUBJECT TO REMOVAL AND REPLACEMENT AT THE CONTRACTOR'S EXPENSE. THE CONTRACTOR IS RESPONSIBLE FOR REVIEWING CHAPTER 13-21 OF THESE STANDARDS WHICH MAKES MINOR MODIFICATIONS TO CERTAIN MAG SPECIFICATIONS AND DETAILS.
6. ANY WORK PERFORMED WITHOUT THE KNOWLEDGE AND APPROVAL OF THE CITY ENGINEER OR HIS AUTHORIZED REPRESENTATIVE IS SUBJECT TO REMOVAL AND REPLACEMENT AT THE CONTRACTOR'S EXPENSE.
7. THE CITY ENGINEER OR HIS AUTHORIZED REPRESENTATIVE MAY SUSPEND THE WORK BY WRITTEN NOTICE WHEN, IN HIS JUDGMENT, PROGRESS IS UNSATISFACTORY, WORK BEING DONE IS UNAUTHORIZED OR DEFECTIVE, WEATHER CONDITIONS ARE UNSUITABLE, OR THERE IS DANGER TO THE PUBLIC HEALTH OR SAFETY.
8. THE CITY ENGINEER MAY ORDER ANY OR ALL MATERIALS USED IN THE WORK TO BE TESTED ACCORDING TO THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO) AND THE AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) STANDARDS. THE CONTRACTOR SHALL, AT HIS EXPENSE, SUPPLY ALL SAMPLES REQUIRED FOR TESTING.
9. ACCESS WHICH MEETS SECTION 13-13-004-0001, FIRE ACCESS SHALL BE IN PLACE AND APPROVED BEFORE AND AT ALL TIMES DURING ON-SITE COMBUSTIBLE CONSTRUCTION AND/OR PRIOR TO ISSUANCE OF BUILDING PERMITS IN NEW SUBDIVISIONS. FIRE DEPARTMENT AND ENGINEERING SECTION APPROVAL IS REQUIRED FOR OBSTRUCTION OF ACCESS OR WATER SYSTEM SHUTDOWN.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE STREETS AND OF PARTIALLY COMPLETED PORTIONS OF THE WORK UNTIL FINAL ACCEPTANCE OF THE WORK. THE CONTRACTOR SHALL SUBMIT TO THE CITY ENGINEER FOR APPROVAL A CONSTRUCTION SCHEDULE FOR ANY STREETS REQUIRED TO BE CLOSED OR PARTIALLY CLOSED FOR THE CONSTRUCTION ACTIVITY. THE CONTRACTOR SHALL REOPEN THE STREETS NO LATER THAN THE OPENING DATE SHOWN ON THE CONSTRUCTION SCHEDULE OR UPON ORDER OF THE CITY ENGINEER. THE REGULATION AND CONTROL OF CONSTRUCTION TRAFFIC SHALL BE AS DIRECTED BY THE CITY ENGINEER OR HIS AUTHORIZED REPRESENTATIVE.
11. APPROVAL OF A PORTION OF THE WORK IN PROGRESS DOES NOT GUARANTEE ITS FINAL ACCEPTANCE. TESTING AND EVALUATION MAY CONTINUE UNTIL WRITTEN FINAL ACCEPTANCE OF A COMPLETE WORKABLE UNIT. ANY DEFECTS WHICH APPEAR IN THE WORK WITHIN ONE (1) YEAR FROM THE DATE OF ACCEPTANCE AND WHICH ARE DUE TO IMPROPER WORKMANSHIP OR INFERIOR MATERIALS SUPPLIED SHALL BE CORRECTED BY OR AT THE EXPENSE OF THE OWNER/DEVELOPER OR THE CONTRACTOR.
12. ACCEPTANCE OF COMPLETED PUBLIC IMPROVEMENTS WILL NOT BE GIVEN UNTIL DEFECTIVE OR UNAUTHORIZED WORK IS REMOVED, AND FINAL CLEAN-UP IS COMPLETE.
13. LOCATION OF UNDERGROUND UTILITIES BEFORE WORK IS BEGUN IS TO BE ACCOMPLISHED IN ACCORDANCE WITH ARS 40-360.22.
14. IF WORK IS DONE ON PRIVATE PROPERTY IN RELATION TO A PROJECT CONSTRUCTED UNDER THESE STANDARDS, THE CONTRACTOR WILL PROVIDE THE CITY WITH WRITTEN AUTHORIZATION FROM THE PROPERTY OWNER TO DO SO.
15. THE ESTABLISHMENT AND USE OF TEMPORARY CONSTRUCTION YARDS SHALL CONFORM TO THE CURRENT CITY ZONING CODE STANDARDS FOR "TEMPORARY USES".
16. ALL EXCAVATED MATERIAL SHALL BE DISPOSED OF IN ACCORDANCE WITH APPLICABLE CITY CODES AND REGULATIONS. THE CONTRACTOR SHALL OBTAIN ALL REQUIRED CITY APPROVALS AND PERMITS, AS DEEMED NECESSARY BY THE CITY, TO DISPOSE OF EXCAVATED MATERIAL.
17. ALL CONSTRUCTION STAKING SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR/DEVELOPER AND PERFORMED UNDER THE DIRECT SUPERVISION OF A REGISTERED LAND SURVEYOR OR CIVIL ENGINEER.
18. ALL TRAFFIC SIGN SHEETING SHALL BE TYPE VIII AS DESIGNED BY ASTM D4956-07E1 STANDARD SPECIFICATIONS FOR RETRO REFLECTIVE SHEETING FOR TRAFFIC CONTROL, UNLESS SPECIFIED OTHERWISE ON THE CONSTRUCTION PLANS.
19. WHEN THE CONSTRUCTION PLANS SPECIFY GRAFFITI CONTROL ON BRIDGES OR OTHER STRUCTURES, THE CONTRACTOR SHALL SEAL THE STRUCTURE FIRST USING MONOCHEM AQUASEAL ME 12 AND THEN APPLY MONOCHEM PERMASHIELD, SACRIFICIAL GRAFFITI CONTROL SYSTEM (OR APPROVED EQUAL).
20. ALL AREAS DISTURBED DURING CONSTRUCTION SHALL BE STABILIZED AND RESEEDED IN ACCORDANCE WITH CHAPTER 13-17 OF THIS TITLE. IN THE EVENT THAT THE CONSTRUCTION ACTIVITY DISTURBS MORE THAN ONE (1) ACRE, A STORM WATER POLLUTION PREVENTION PLAN (SWPPP) SHALL BE PREPARED IN ORDER TO OBTAIN A CONSTRUCTION GENERAL PERMIT FROM ADEQ. (ORD. 2201?-22, REP&REEN, 07/05/2017)

C.O.F. PAVING NOTES

A. EXACT POINT OF MATCHING TERMINATION AND OVERLAY, IF NECESSARY, SHALL BE DETERMINED IN THE FIELD BY THE CITY ENGINEER OR HIS AUTHORIZED REPRESENTATIVE. WHEN A LONGITUDINAL JOINT ASSOCIATED WITH A TRENCH PATH, PAVEMENT MATCHUP OR OTHER OCCURS ON A STREET THAT INCLUDES A BIKE LANE, THE JOINT SHALL BE LOCATED OUTSIDE THE BIKE LANE.

B. NO JOB WILL BE CONSIDERED COMPLETE UNTIL:
   1. ALL CURBS, PAVEMENTS, SIDEWALKS, CATCH BASINS, STORM DRAINS, AND MANHOLES HAVE BEEN CLEANED OF ALL DIRT AND DEBRIS;
   2. SURVEY MONUMENTS ARE INSTALLED AND STAMPED; AND
   3. ALL FRAMES, COVERS, AND VALVE BOXES ARE ADJUSTED TO GRADE.

C. NO PAVING CONSTRUCTION SHALL BE STARTED UNTIL ALL UTILITY LINES ARE COMPLETED AND APPROVED UNDER PROPOSED PAVED AREAS.

D. BASE COURSE WILL NOT BE PLACED UNTIL SUBGRADE HAS BEEN APPROVED BY THE CITY ENGINEER OR HIS AUTHORIZED REPRESENTATIVE.

E. THE LOCATION OF ALL WATER VALVES, FIRE HYDRANTS, AND MANHOLES MUST AT ALL TIMES DURING CONSTRUCTION BE REFERENCED AND MADE ACCESSIBLE TO THE CITY.

F. UTILITY FACILITIES IN CONFLICT WITH THIS WORK WILL BE RELOCATED BY THE PERMITTEE OR THE UTILITY OWNER. THIS ACTIVITY SHALL BE COORDINATED WITH THE OWNER OF THE UTILITY TO PREVENT ANY UNNECESSARY INTERRUPTION OF SERVICE TO EXISTING CUSTOMERS.

G. EXISTING STREET NAME SIGNS, TRAFFIC SIGNS AND DEVICES ASSOCIATED WITH THE PROJECT SHALL BE MAINTAINED DURING CONSTRUCTION AND RELOCATED BY THE CONTRACTOR AS SHOWN ON THE APPROVED PLANS.

H. ANY CHANGES OR ADDITIONS TO PAVEMENT MARKINGS CAUSED BY PAVEMENT OVERLAY, CHIP SEAL, OR INSTALLATION OF UNDERGROUND FACILITIES SHALL BE SHOWN ON THE APPROVED PLANS.

I. ON PROJECTS WHERE THE CONTRACTOR CAUSES EXCESSIVE DAMAGE TO AN EXISTING PAVED STREET OR THERE ARE MULTIPLE STREET CUTS (MAXIMUM OF FOUR (4) IN FIVE HUNDRED (500) FEET) AN ASPHALT OVERLAY SHALL BE REQUIRED.

J. A PRIME COAT IS NOT REQUIRED UNLESS SO SPECIFIED IN THE SOILS AND PAVEMENT REPORT AND/OR SHOWN ON THE PLANS.

K. ALL CURB AND GUTTER, SIDEWALK, DRIVEWAYS, AND SIDEWALK RAMPS SHALL BE CONSTRUCTED ON A MINIMUM THREE (3) INCHES OF AGGREGATE BASE COURSE (ABC). THE ABC SHALL BE CONSTRUCTED PER MAG SECTION 310, AND SHALL BE COMPACTED TO NINETY-FIVE (95%) RELATIVE DENSITY. ALL PRECAST STRUCTURES SUCH AS MANHOLE BASES, CATCH BASINS, AND BOX CULVERTS SHALL BE CONSTRUCTED ON A MINIMUM OF THREE (3) INCHES OF ABC.

L. PERMANENT PAVEMENT MARKINGS.
   1. LONGITUDINAL PAVEMENT MARKINGS SHALL BE INSTALLED IN ACCORDANCE WITH SECTION 13-16-006-0001.
   2. TRANSVERSE PAVEMENT MARKINGS SUCH AS STOP BARS, CROSSWALKS, ARROWS, AND LEGENDS SHALL BE INSTALLED IN ACCORDANCE WITH SECTION 13-16-006-0002.

M. TEMPORARY PAVEMENT MARKINGS.
   1. TEMPORARY PAVEMENT MARKINGS, WHEN APPROVED, SHALL BE INSTALLED IN ACCORDANCE WITH SECTIONS 13-16-006-0001 AND 13-16-006-0002.

   NOTES:
   1. THE USE OF TEMPORARY MARKINGS IS STRONGLY DISCOURAGED AND MAY ONLY BE USED WITH PRIOR APPROVAL.
   WHEN IT IS USED, THE CONTRACTOR MUST BE AVAILABLE TO RESTRIPE AS NEEDED UNTIL THE PERMANENT MARKINGS CAN BE INSTALLED.
   2. WHEN IT IS IMPRACTICABLE FOR THE CONTRACTOR TO PROVIDE PERMANENT MARKINGS, THE CITY PUBLIC WORKS DEPARTMENT MAY INSTALL THE MARKINGS ON BEHALF OF THE CONTRACT PROVIDED THE FEE FOR THE WORK IS AGREED UPON AND PAID FOR IN ADVANCE.

N. THE MAXIMUM THICKNESS OF A SINGLE LIFT OF PAVEMENT SHALL BE FOUR (4) INCHES. (ORD. 2017-22, REP&REEN, 07/05/2017)

PERMITS

CITY OF FLAGSTAFF PERMITS

A PUBLIC IMPROVEMENTS PERMIT AND A GRADING PERMIT ARE REQUIRED FOR THIS PROJECT, CONTACT COMMUNITY DEVELOPMENT AT 928-213-2606 TO INITIATE THE PROCESS. CONTACT THE ENGINEERING INSPECTION DEPARTMENT AND STORM WATER DEPARTMENT AT LEAST 72 HOURS PRIOR TO COMMENCEMENT OF THE PROJECT TO COORDINATE INSPECTIONS. GRADING CERTIFICATION IS REQUIRED, WHICH SHALL BE SEALED BY THE SURVEYOR AND GEOTECHNICAL ENGINEER; SPECIAL INSPECTION CERTIFICATION FOR ANY BUILT IN PLACE STRUCTURES WILL ALSO BE REQUIRED. AS-BUILTS ARE REQUIRED WITH THE CERTIFICATION.

NRCS GENERAL NOTES

THE PARTICIPANT ASSURES THE USDA-NRCS THAT THE PROGRAM OR ACTIVITIES PROVIDED UNDER THIS AGGREEMENT SHALL BE CONDUCTED IN COMPLIANCE WITH ALL LAWS, REGULATIONS AND POLICIES FOR FEDERAL, STATE, LOCAL AND TRIBAL AGENCIES.

IT SHALL BE THE RESPONSIBILITY OF THE PARTICIPANT AND CONTRACTOR TO OBTAIN ALL NECESSARY CLEARANCES, PERMITS, TIGHT OF WAY, AND EASEMENTS.

IT SHALL BE THE RESPONSIBILITY OF THE PARTICIPANT AND CONTRACTOR TO ENSURE THAT THE PROJECT IS CONSTRUCTED ACCORDING TO THE ATTACHED DRAWINGS, SPECIFICATIONS AND SPECIAL REQUIREMENTS. ANY SIGNIFICANT CHANGES THAT AFFECT THE SCOPE OR COMPLEXITY OF THE PROJECT SHALL BE SUBMITTED, IN WRITING, TO THE NRCS THREE (3) WORKING DAYS PRIOR TO IMPLEMENTATION FOR APPROVAL.

ALL EXISTING CONDITIONS ARE TO BE VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION. ANY ADJUSTMENTS FROM THE DRAWINGS ARE TO BE MADE AS DIRECTED BY THE AGENCY APPROVING OFFICIAL.

ALL STATIONING REFERS TO BASELINE OF CONSTRUCTION AND IS MEASURED HORIZONTAL DISTANCE. SURVEY POINTS ARE TIED TO LOCAL BENCHMARKS AND ARE NOT RELATED TO ANY KNOWN ESTABLISHED BENCHMARKS OR SURVEYED GRID SYSTEM.

NRCS WILL BE NOTIFIED THREE (3) WORKING DAYS PRIOR TO CONSTRUCTION.

STANDARDS AND SPECIFICATIONS

PROJECT WILL MEET THE MORE STRICT SPECIFICATIONS BETWEEN CITY OF FLAGSTAFF OR NRCS.

QAP QUALITY ASSURANCE PLAN

PROJECT HAS BEEN DESIGNED BY A REGISTERED CIVIL ENGINEER. SITE INSPECTIONS AND CONSTRUCTION WILL FOLLOW CITY OF FLAGSTAFF AND M.A.G. SPECIFICATIONS.

Job Class VI

Sediment Basin - CPS 350

Basin I (North):	Effective Height = 7.5 ft	II
	Drainage Area = 5.92 sq mi	III
	Storage x Height = 24.82 ac-ft	I
Basin II (Middle):	Effective Height = 7.5 ft	II
	Drainage Area = 5.92 sq mi	III
	Storage x Height = 14.21 ac-ft	I
Basin III (South):	Effective Height = 7.5 ft	II
	Drainage Area = 5.92 sq mi	III
	Storage x Height = 17.22 ac-ft	I

Access Road - CPS 560

Length = 0.15 mi	I

Structure for Water Control - CPS 587

Pipe Culverts, Diameter = 48"	VI
Pipe Culverts, Length = 83 ft	V
Pipe Culverts, Length = 76 ft	V
Pipe Culverts, Diameter = 30"	VI
Pipe Culverts, Length = 110 ft	V
Pipe Culverts, Length = 50 ft	III

UTILITY COMPANY APPROVAL

ARIZONA PUBLIC SERVICE
CHAD BROOKS
BY: DATE:

UNISOURCE ENERGY SERVICES
MARTIN CONBOY
BY: DATE:

LUMEN
MANUEL HERNANDEZ
BY: DATE:

ALTICE USA
SANFORD YAZZIE
BY: DATE:

UTILITY CONTACTS

APS
CONTACT: CHAD BROOKS
2200 E. HUNTINGTON
FLAGSTAFF, AZ 86004
CHAD.BROOKS@APS.COM
PHONE: (928) 773-6440

UNISOURCE ENERGY SERVICES
CONTACT: MARTIN CONBOY
2901 W SHAMRELL BLVD #110
FLAGSTAFF, AZ 86001
MCONBOY@UESAZ.COM
PHONE: (928) 226-2269

LUMEN
CONTACT: MANUEL HERNANDEZ
112 NORTH BEAVER STREET
FLAGSTAFF, AZ 86001
MANUEL.HERNANDEZ4@LUMEN.COM
PHONE: (928) 779-4935

ALTICE USA
CONTACT: SANFORD YAZZIE
1601 SOUTH PLAZA WAY
FLAGSTAFF, AZ 86001
SANFORD.YAZZIE@ALTICEUSA.COM
PHONE: (928) 266-0672

CIVIL ENGINEER:

SHEPHARD-WESNITZER INC.
110 WEST DALE AVE
FLAGSTAFF, AZ 86001
(928) 773-0354
CONTACT: STEPHEN IRWIN, PE

OWNER:

OWNER:
CITY OF FLAGSTAFF
211 W. ASPEN AVE.
FLAGSTAFF AZ, 86001
CONTACT: EDWARD SCHENK
PHONE (928) 213-2000

PROJECT INFORMATION

SITE ADDRESS: 1-203 W MT ELDEN LOOKOUT ROAD
FLAGSTAFF, AZ 86001

(NW CORNER OF SCHULTZ PASS RD AND ELDEN LOOKOUT RD)

DISTURBED AREA: 14 ACRES

FEMA DESIGNATION:

THIS PROJECT IS LOCATED WITHIN ZONE AE OF FEMA FIRM MAP #04005C6809G, EFFECTIVE SEPTEMBER 3, 2010. ZONE AE IS DESCRIBED AS AREAS SUBJECT TO INUNDATION BY THE 1.0% ANNUAL CHANCE FLOOD EVENT.

SHEET LIST		
NAME	NUMBER	TITLE
C01	1	COVER
C02	2	CONTROL POINT TABLE
C03	3	GRADING & DRAINAGE PLAN (1)
C04	4	GRADING & DRAINAGE PLAN (2)
C05	5	SECTIONS & DETAILS (1)
C06	6	SECTIONS & DETAILS (2)
C07	7	EROSION CONTROL PLANS - COVER
C08	8	EROSION CONTROL PLANS
C09	9	EROSION CONTROL PLANS
C10	10	CUT-FILL MAP (1) FOR REFERENCE ONLY
C11	11	CUT-FILL MAP (2) FOR REFERENCE ONLY

CITY APPROVAL

THE CITY APPROVES THESE PLANS. ALL LIABILITY FOR ERRORS AND OMISSIONS IS THE RESPONSIBILITY OF THE DESIGN ENGINEER.

CITY ENGINEER:

BY: DATE:

CITY PUBLIC WORKS DIRECTOR

BY: DATE:

CITY WATER SERVICES DIRECTOR

BY: DATE:

NRCS APPROVAL

NRCS APPROVES THESE PLANS. ALL LIABILITY FOR ERRORS AND OMISSIONS IS THE RESPONSIBILITY OF THE DESIGN ENGINEER.

BY: DATE:

FLAGSTAFF ARIZONA

CITY OF FLAGSTAFF FLOOD MITIGATION

COVER

JOB NO: TBD
DATE: AUG 22
SCALE: AS SHOWN
DRAWN: HAS/SJV
DESIGN: HAS/SJV
CHECKED: SCI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.6934 fax
www.swinz.com

Shephard Wesnitzer, Inc.

REVISIONS

NO.	DESCRIPTION	DATE	BY

Call at least two full working days before you dig in Arizona!
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

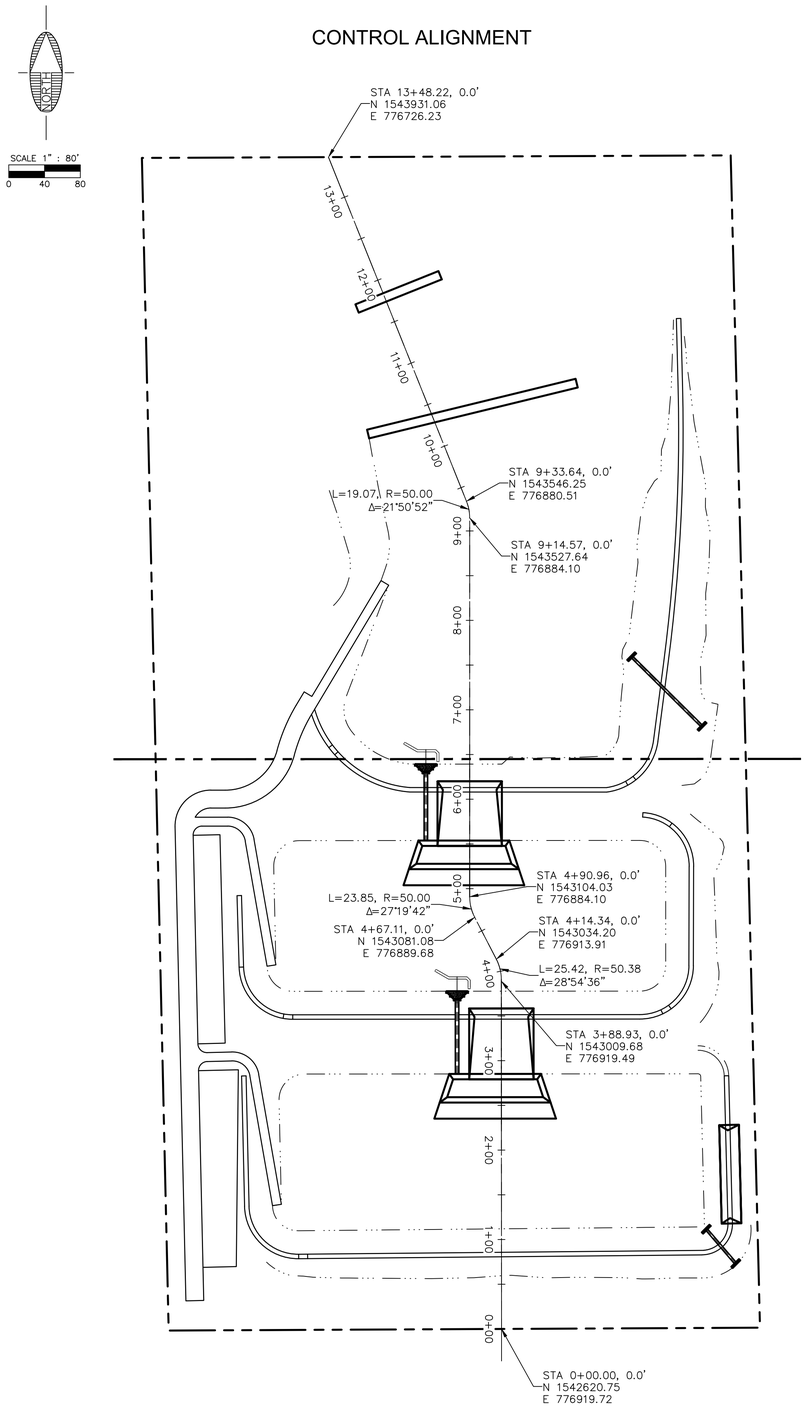
DRAWING NO.
C01

SHT NO. 1 OF 11

FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\COVER.DWG SVOSSLER

PLOTTED: Aug 09, 2022 - 2:35pm

CONTROL ALIGNMENT



POINT TABLE			
POINT #	STA/OFFSET	ELEVATION	DESCRIPTION
1	STA: 0+69.06, 333.71' L	7147.00	FG
2	STA: 0+69.88, 296.51' L	7147.00	FG
3	STA: 1+24.92, 295.41' L	7148.65	FG
4	STA: 1+79.94, 294.97' L	7149.50	FG
5	STA: 2+34.96, 294.54' L	7149.82	FG
6	STA: 2+89.98, 294.10' L	7150.85	FG
7	STA: 2+83.10, 287.95' L	7149.50	FG
8	STA: 2+88.55, 358.59' L	7153.50	FG
9	STA: 2+33.57, 357.37' L	7151.79	FG
10	STA: 1+78.58, 356.15' L	7149.99	FG
11	STA: 1+23.59, 354.92' L	7148.43	FG
12	STA: 0+68.61, 353.70' L	7146.72	FG
13	STA: 4+70.18, 358.60' L	7153.80	FG
14	STA: 3+19.75, 308.79' L	7153.80	FG
15	STA: 4+75.26, 291.60' L	7157.00	FG
16	STA: 4+83.78, 279.73' L	7157.58	FG
17	STA: 5+02.05, 277.76' L	7159.72	FG
18	STA: 5+60.35, 279.16' L	7161.74	FG
19	STA: 5+59.21, 329.15' L	7160.52	FG
20	STA: 5+00.91, 327.82' L	7158.50	FG
21	STA: 4+84.57, 329.58' L	7156.00	FG
22	STA: 4+77.11, 340.02' L	7154.52	FG
23	STA: 2+10.24, 286.33' L	7149.50	FG
24	STA: 1+37.38, 284.71' L	7149.50	FG
25	STA: 0+97.37, 267.25' L	7149.50	FG
26	STA: 0+81.16, 226.71' L	7149.50	FG
27	STA: 0+83.17, 4.35' L	7149.50	FG
28	STA: 0+85.19, 224.16' R	7149.50	FG
29	STA: 1+17.75, 255.69' R	7149.50	FG
30	STA: 1+23.77, 255.54' R	7148.50	FG
31	STA: 2+21.94, 253.15' R	7148.50	FG
32	STA: 2+27.94, 253.00' R	7149.50	FG
33	STA: 2+82.94, 251.66' R	7149.50	FG
34	STA: 5+82.50, 193.56' R	7159.50	FG
35	STA: 5+64.55, 232.19' R	7159.50	FG
36	STA: 4+12.99, 241.49' R	7159.50	FG
37	STA: 4+03.77, 221.86' R	7159.50	FG
38	STA: 3+93.52, 212.67' R	7159.50	FG
39	STA: 3+59.85, 188.43' R	7159.50	FG
40	STA: 3+48.92, 154.70' R	7159.00	FG
41	STA: 3+48.92, 0.19' R	7157.50	FG
42	STA: 3+54.51, 179.44' R	7159.00	FG
43	STA: 4+61.36, 231.86' L	7159.00	FG
44	STA: 4+71.47, 261.20' L	7160.00	FG
45	STA: 4+78.35, 265.25' L	7160.00	FG
46	STA: 1+09.91, 226.97' L	7142.00	FG
47	STA: 1+38.02, 255.97' L	7142.00	FG
48	STA: 1+39.49, 246.08' L	7142.00	FG
49	STA: 2+56.00, 248.59' L	7142.00	FG
50	STA: 2+85.17, 219.84' L	7142.00	FG
51	STA: 2+85.17, 219.84' R	7142.00	FG
52	STA: 2+82.24, 222.84' R	7142.00	FG
53	STA: 1+17.05, 226.87' R	7142.00	FG
54	STA: 1+13.98, 223.90' R	7142.00	FG
55	STA: 4+70.79, 219.41' L	7152.00	FG
56	STA: 4+77.27, 237.24' L	7152.00	FG
57	STA: 4+77.04, 227.32' L	7152.00	FG
58	STA: 5+24.52, 219.08' L	7152.00	FG
59	STA: 5+53.71, 190.35' L	7152.00	FG
60	STA: 5+53.93, 190.35' R	7152.00	FG
61	STA: 4+19.89, 215.96' R	7152.00	FG
62	STA: 3+93.92, 184.34' R	7152.00	FG
63	STA: 3+77.67, 155.06' R	7152.00	FG

POINT TABLE			
POINT #	STA/OFFSET	ELEVATION	DESCRIPTION
64	STA: 2+84.97, 271.36' L	7149.38	FG
65	STA: 3+09.82, 301.59' L	7151.29	FG
66	STA: 2+99.82, 301.36' L	7150.79	FG
67	STA: 2+83.25, 281.21' L	7149.37	FG
68	STA: 5+55.07, 241.12' L	7159.12	FG
69	STA: 5+53.35, 250.96' L	7159.11	FG
70	STA: 5+79.91, 270.69' L	7161.75	FG
71	STA: 5+69.91, 270.68' L	7161.35	FG
72	STA: 6+10.12, 289.38' L	7164.76	FG
73	STA: 5+90.12, 289.38' L	7163.76	FG
74	STA: 6+10.12, 273.34' L	7165.00	FG
75	STA: 5+90.12, 273.34' L	7164.00	FG
76	STA: 6+54.53, 215.40' L	7167.43	FG
77	STA: 6+49.33, 196.09' L	7166.90	FG
78	STA: 7+00.67, 173.34' L	7168.06	FG
79	STA: 7+05.12, 193.98' L	7168.87	FG
80	STA: 8+39.35, 90.51' L	7160.00	FG
81	STA: 8+44.47, 99.09' L	7160.00	FG
82	STA: 8+59.04, 93.98' L	7160.00	FG
83	STA: 9+00.77, 91.47' L	7160.00	FG
84	STA: 10+39.43, 74.79' L	7160.00	FG
85	STA: 10+22.43, 44.00' R	7160.00	FG
86	STA: 11+74.21, 16.70' R	7163.66	FG
87	STA: 10+20.00, 78.86' L	7160.00	FG
88	STA: 9+31.29, 221.19' R	7160.00	FG
89	STA: 9+07.51, 187.44' R	7155.98	FG
90	STA: 7+66.28, 168.31' R	7154.27	FG
91	STA: 6+70.95, 166.63' R	7156.29	FG
92	STA: 6+49.35, 142.85' R	7157.05	FG
93	STA: 6+39.28, 66.55' L	7160.00	FG
94	STA: 6+76.55, 132.57' L	7160.00	FG
95	STA: 7+14.88, 138.00' L	7160.00	FG
96	STA: 10+35.10, 296.22' R	7167.50	FG
97	STA: 9+06.21, 233.39' R	7167.50	FG
98	STA: 7+51.91, 219.29' R	7167.50	FG
99	STA: 6+64.91, 207.94' R	7167.50	FG
100	STA: 6+10.51, 153.54' R	7167.00	FG
101	STA: 6+10.53, 67.18' L	7167.00	FG
102	STA: 6+51.36, 149.07' L	7167.00	FG
103	STA: 6+59.25, 155.54' L	7168.00	FG
104	STA: 6+23.61, 184.22' R	7167.50	FG
105	STA: 6+17.85, 175.55' R	7167.00	FG

FLAGSTAFF ARIZONA

CITY OF FLAGSTAFF FLOOD MITIGATION

CONTROL POINT TABLE

JOB NO: TBD
DATE: AUG 22
SCALE: AS SHOWN
DRAWN: HAS, SJV
DESIGN: HAS, SJV
CHECKED: SCI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0334
928.774.6934 fax
www.swoz.com

Shephard Wesnitzer, Inc.

REVISIONS

NO.	DESCRIPTION	DATE	BY

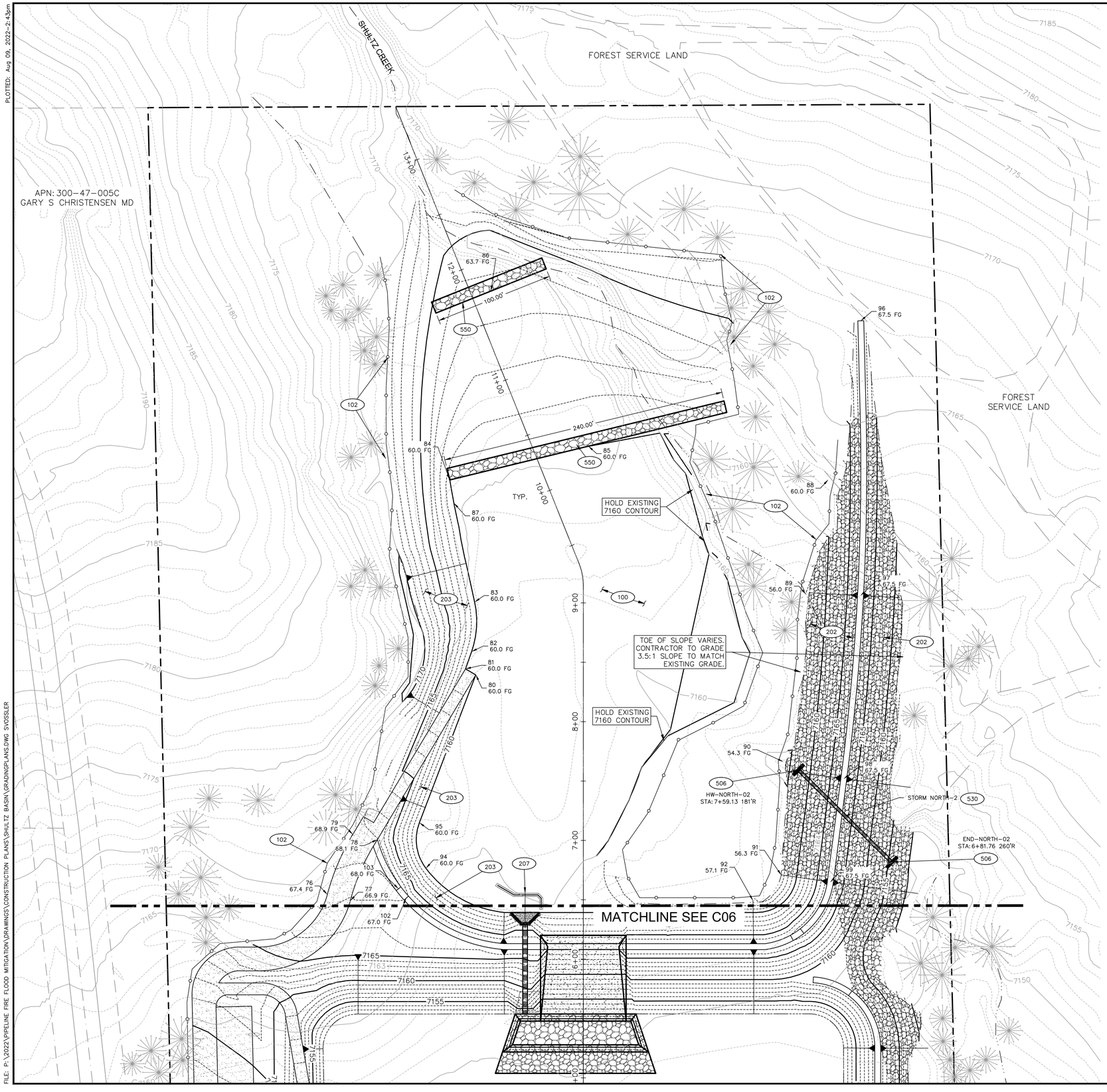
Call at least two full working days before you begin excavation.
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
C02

SHT NO. 2 OF 11

FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\GRADINGPLANS.DWG SVOSSLER

PLOTTED: Aug 09, 2022 - 2:43pm



FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\GRADINGPLANS.DWG SVOSSLER

CITY IMPROVEMENT KEYNOTES

NOTE: QUANTITIES SHOWN ARE FOR BOTH SHEETS

100	66,500 SY	CLEAR AND GRUB AS REQUIRED PER M.A.G. SPEC. 201. AVOID DESIGNATED PROTECTION AREAS AND MINIMIZE DISTURBANCE AREAS WHERE POSSIBLE.
101	250 EA EST.	REMOVE 6" DIAMETER TREES OR LARGER IN CONFLICT WITH GRADING LIMITS. PARTIAL ROOT BALL MAY REMAIN WHERE GRADING ALLOWS IN ORDER TO STABILIZE SOIL. ANY REMAINING STUMPS SHALL BE CUT TO 4" MAX OF FINISHED GRADE. QUANTITY ESTIMATED.
102	— NPI	PROTECT NATIVE GROUND AND TREES WHERE POSSIBLE. DESIGN BASIN BOTTOM ELEVATION MAY VARY UP TO +/-1'. FENCING IS NOT REQUIRED AS SHOWN PER PLANS BUT DISTURBANCE AND COMPACTION OF NATIVE GRASSES IS DISCOURAGED.
103	64,000 SY	MULCH AND RESEED ALL DISTURBED AREAS, SLOPES AND BASIN BOTTOMS. MULCH AND SEED MIX TO BE DETERMINED BY CITY OF FLAGSTAFF.
201	4,130 SY	INSTALL COMPACTED ACCESS ROAD. SEE DETAIL 3 DWG C06.
202	3,650 SY	INSTALL ROCK RIP-RAP BERM PER PLANS. MAX SLOPE =3.5:1 WITH 5' MINIMUM TOP. ROCK RIP-RAP SHALL HAVE A MINIMUM D50 MIN=12" AND PLACED TO A DEPTH OF 2'. INCLUDE ENGINEER APPROVED NON-WOVEN GEOTEXTILE FILTER FABRIC ANCHORED TO SLOPE PER MANUFACTURES RECOMMENDATIONS.. SEE DETAIL 2 DWG C06.
203	16,300 SY	INSTALL ENGINEER APPROVED EROSION CONTROL MAT ON ALL NEW SLOPES AND BERM NOT RECEIVING ALTERNATE STABILIZATION. MAX SLOPE =3.5:1 WITH 5' MINIMUM TOP. ANCHORED TO SLOPE PER MANUFACTURES RECOMMENDATIONS. SEE DETAIL 2 DWG C06.
207	96 LF	INSTALL FUTS RAILING DEBRIS DEFLECTOR. SEE DETAIL 6 AND DETAIL 7 DWG C06.
208	64 LF	INSTALL MODIFIED FUTS GUARD RAILING. SEE DETAIL 6 AND DETAIL 8 DWG C06.
500	14345 SF	INSTALL GROUTED ROCK RIP-RAP D50=12" DEPTH =2'. SEE DETAIL 1 SHEET C06 AND REFERENCE SECTIONS AND DETAILS PER PLANS.
502	2 EA	INSTALL ROCK RIP-RAP SCOUR BASIN. SEE DETAIL 4 SHEET C06. NOTE ROCK QUANTITIES HAVE BEEN INCLUDED IN KEYNOTE 512 AND 518 QUANTITY BELOW.
505	2 EA	INSTALL 48" INLET HEADWALL SEE DETAIL 5 SHEET C06.
506	4 EA	INSTALL 30" STRAIGHT TYPE INLET HEADWALL PER M.A.G. STD. DTL. 501-2
507	2 EA	45 DEG MITER CUT AT END OF PIPE.
512	800 SY	INSTALL ROCK RIP-RAP WITH ENGINEER APPROVED NON-WOVEN GEOTEXTILE FILTER FABRIC. D50=12" TO A DEPTH OF 2'.
518	870 SY	INSTALL ROCK RIP-RAP WITH ENGINEER APPROVED NON-WOVEN GEOTEXTILE FILTER FABRIC. SEE D50=18" TO A DEPTH OF 3'.
530	160 LF	INSTALL 30" CMP 14 GAUGE.
548	160 LF	INSTALL 48" CMP 12 GAUGE.
550	340 LF	INSTALL AT GRADE ROCK TRENCH SCOUR PROTECTION. DIRECTIONAL WIDTH=10', BURRY DEPTH=6'. D50=24" MIN. USE OF LARGER ANGULAR NATIVE ROCK PREFERRED.

NOTE: QUANTITIES SHOWN ARE FOR BOTH SHEETS

EARTHWORK NOTES TO CONTRACTOR:

1. THE ENGINEER HAS USED HIS BEST JUDGMENT IN THE ESTIMATION OF THE EARTHWORK FOR THIS PROJECT. THE ENGINEER HAS NO CONTROL OVER VARYING FIELD CONDITIONS AND CONSTRUCTION METHODS INVOLVED IN THE SITE GRADING. CONSEQUENTLY, ACTUAL QUANTITIES, COST AND TIME REQUIRED FOR THIS PROJECT MAY BE AFFECTED BY MANY FACTORS BEYOND THE ENGINEER'S CONTROL, AND ENGINEER SHALL NOT BE HELD LIABLE FOR ANY DEVIATION FROM ITS ESTIMATED QUANTITIES. THE FOLLOWING IS THE ENGINEER'S ESTIMATE OF RAW EARTHWORK QUANTITIES FOR THIS PROJECT. (NO SHRINKAGE VALUES ARE TAKEN INTO CONSIDERATION IN THESE QUANTITIES). ADDITIONALLY, NO GROUND OR SITE SPECIFIC TOPOGRAPHIC SURVEY WAS CONDUCTED FOR THIS PROJECT. EXISTING GRADES ARE BASED ON COCONINO COUNTY GIS DATA.

CUT = 33,430 C.Y. FILL = 27,250 C.Y.

SCALE 1" : 40'
0 20 40

FLAGSTAFF ARIZONA

CITY OF FLAGSTAFF FLOOD MITIGATION

GRADING & DRAINAGE PLAN (1)

JOB NO:	TBD
DATE:	AUG 22
SCALE:	AS SHOWN
DRAWN:	HAS, SJV
DESIGN:	HAS, SJV
CHECKED:	SCI

REVISIONS

NO.	DESCRIPTION	DATE	BY

110 W. Dale Avenue
Flagstaff, AZ. 86001
928.773.0334
928.774.8934 fax
www.swoz.com

Shephard Wesnitzer, Inc.

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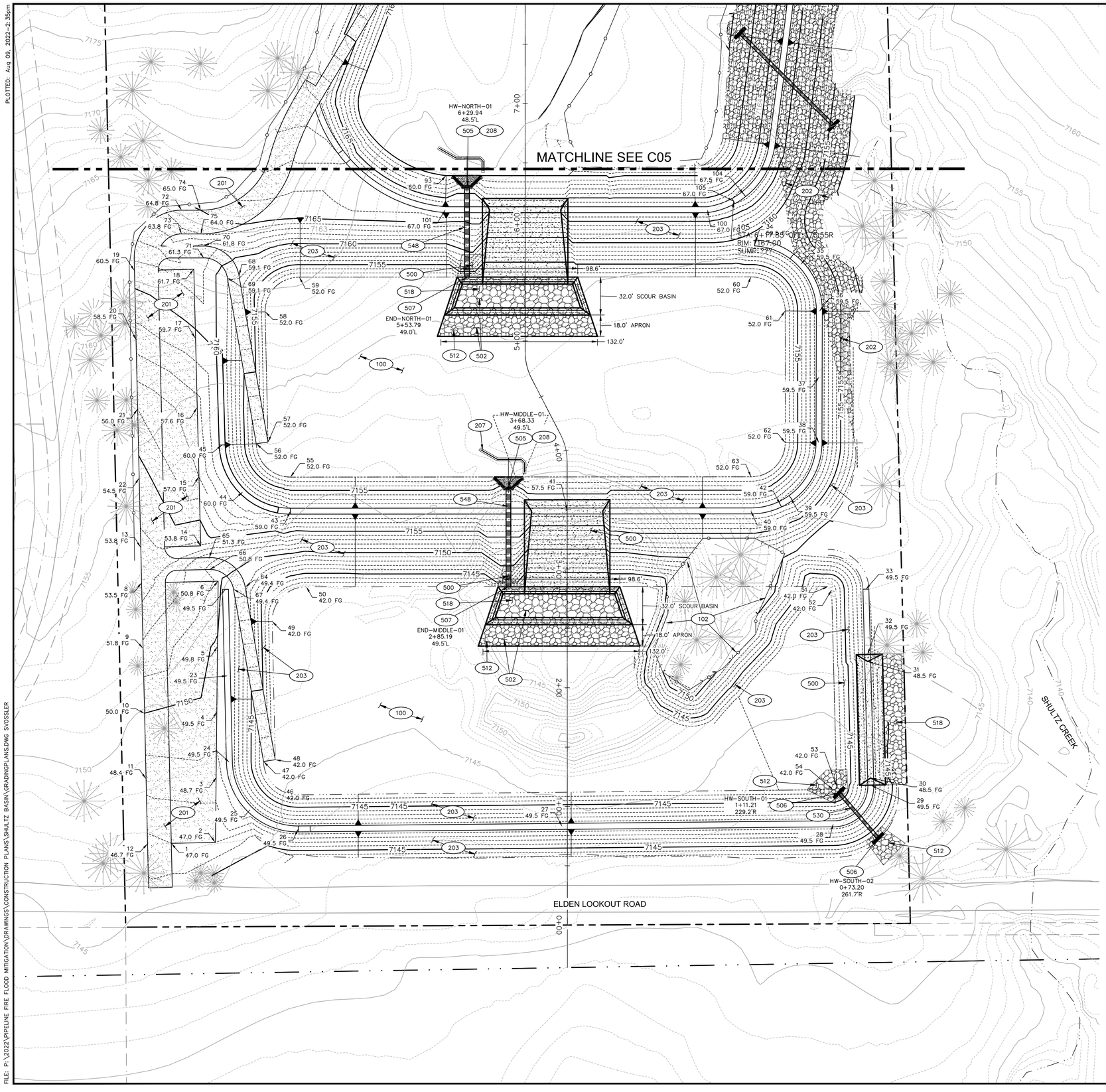
DRAWING NO.
C03

SHT NO. 3 OF 11

PLOTTED: Aug 09, 2022 - 2:35pm



CITY IMPROVEMENT KEYNOTES

NOTE: QUANTITIES SHOWN ARE FOR BOTH SHEETS

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101	250 EA EST.	REMOVE 6" DIAMETER TREES OR LARGER IN CONFLICT WITH GRADING LIMITS. PARTIAL ROOT BALL MAY REMAIN WHERE GRADING ALLOWS IN ORDER TO STABILIZE SOIL. ANY REMAINING STUMPS SHALL BE CUT TO 4" MAX OF FINISHED GRADE. QUANTITY ESTIMATED.
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207	96 LF	INSTALL FUTS RAILING DEBRIS DEFLECTOR. SEE DETAIL 6 AND DETAIL 7 DWG C06.
208	64 LF	INSTALL MODIFIED FUTS GUARD RAILING. SEE DETAIL 6 AND DETAIL 8 DWG C06.
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NOTE: QUANTITIES SHOWN ARE FOR BOTH SHEETS

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CUT = 33,430 C.Y. FILL = 27,250 C.Y.

SCALE 1" : 40'
0 20 40

CITY OF FLAGSTAFF FLOOD MITIGATION
FLAGSTAFF ARIZONA

GRADING & DRAINAGE PLAN (2)

JOB NO: TBD
DATE: AUG 22
SCALE: AS SHOWN
DRAWN: HAS/SJV
DESIGN: HAS/SJV
CHECKED: SCI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swoz.com

Shephard Wesnitzer, Inc.

REVISIONS

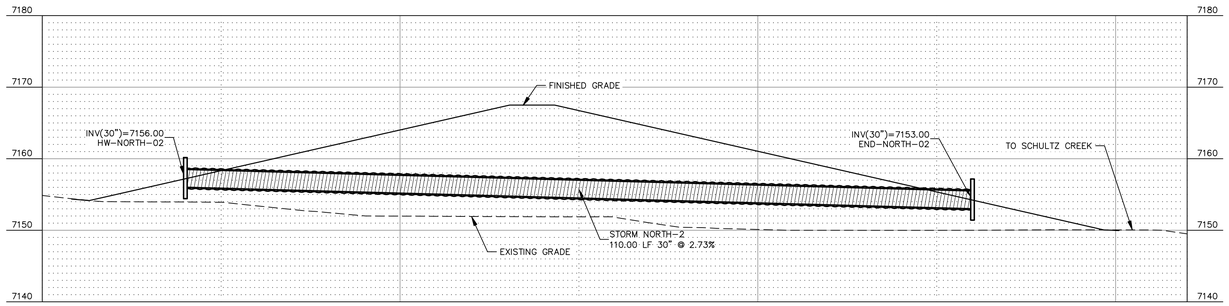
NO.	DESCRIPTION	DATE	BY

Call at least two full working days before you begin excavation.
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
C04

SHT NO. 4 OF 11

FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\GRADINGPLANS.DWG SVOSSLER



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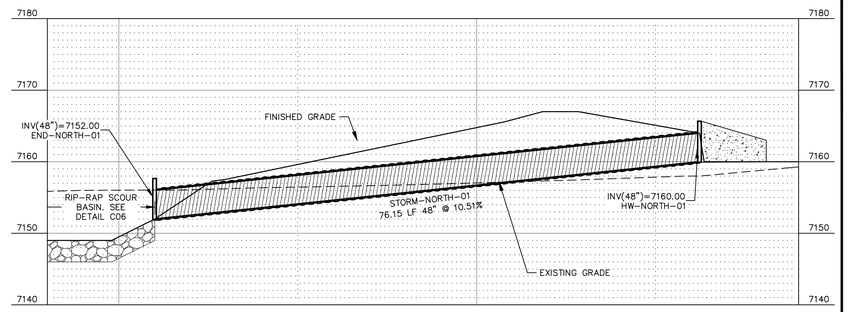

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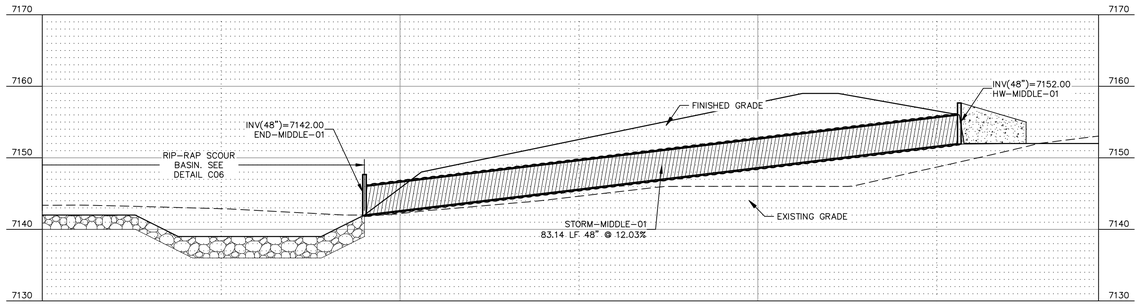

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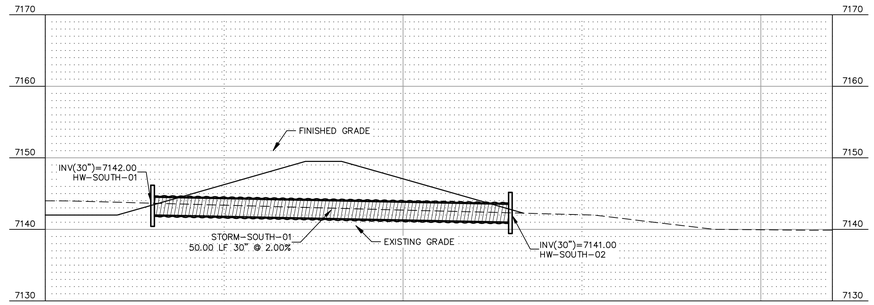

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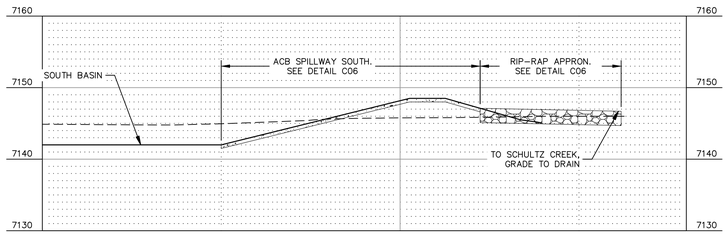
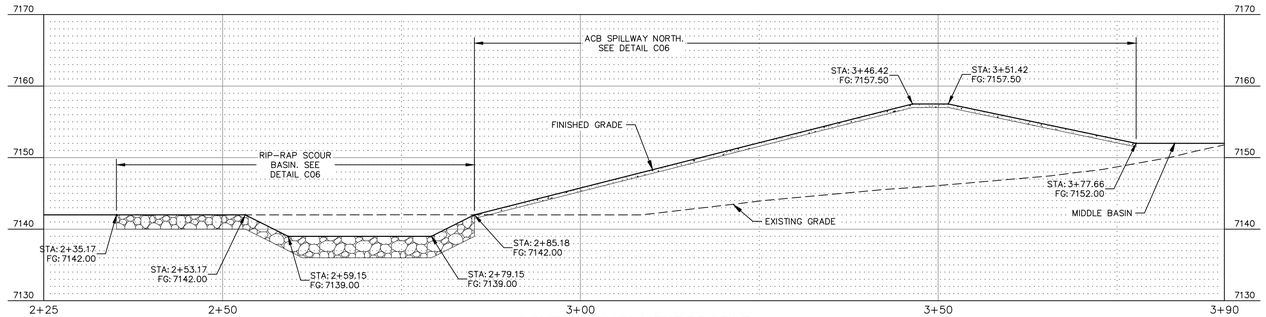
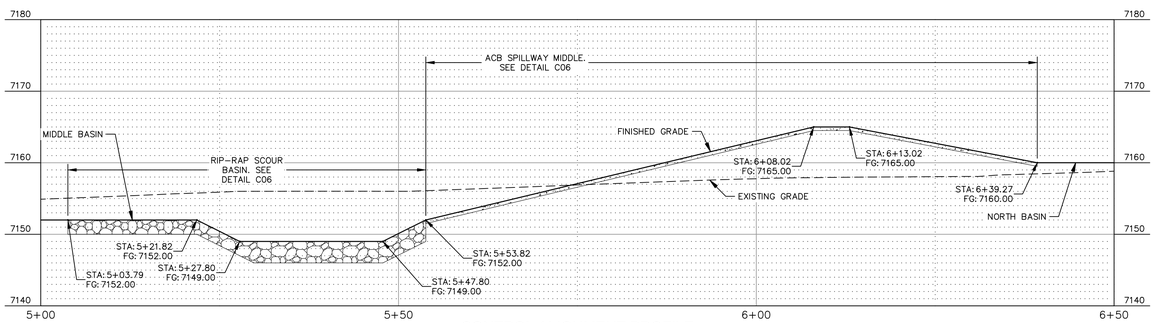


SECTION E PROFILE



CONTROL ALIGNMENT PROFILE



CONTROL ALIGNMENT PROFILE

FLAGSTAFF
ARIZONA

CITY OF FLAGSTAFF FLOOD MITIGATION

SECTIONS & DETAILS (1)

JOB NO:	TBD
DATE:	AUG 22
SCALE:	AS SHOWN
DRAWN:	SJV
DESIGN:	SJV
CHECKED:	SCI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swoz.com

Shephard Wesnitzer, Inc.

REVISIONS			
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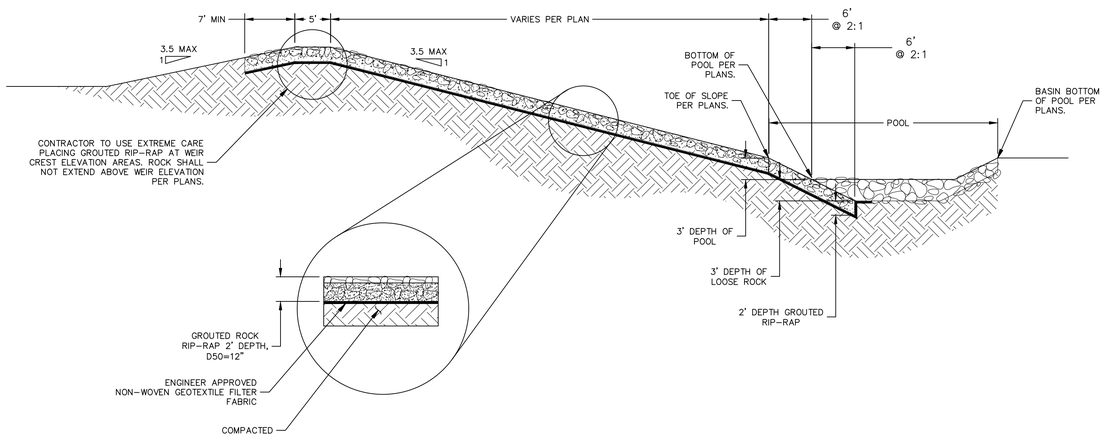
DRAWING NO.
C05

SHT NO.	OF
5	11

PLOTTED: Aug 09, 2022-2:35pm

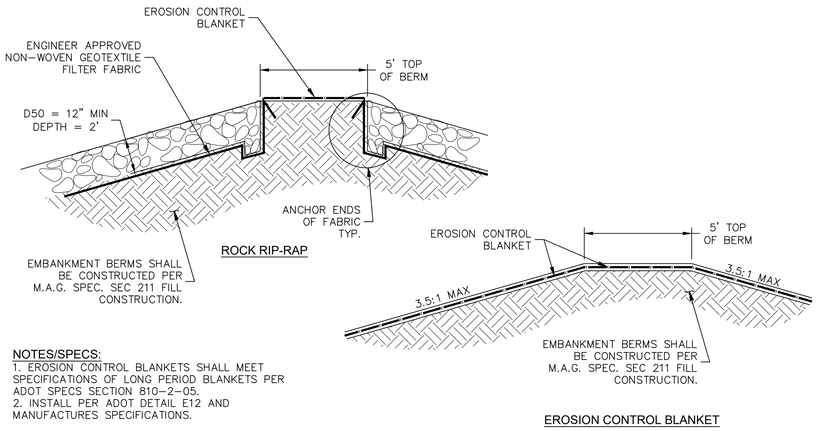
FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN SECTION&DETAILPLANS.DWG SVOSSLER

PLOTTED: Aug 09, 2022 - 2:36pm



GROUTED RIP-RAP SPILLWAYS

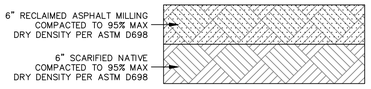
NO SCALE — 1 / C06



NOTES/SPECS:
1. EROSION CONTROL BLANKETS SHALL MEET SPECIFICATIONS OF LONG PERIOD BLANKETS PER ADOT SPECS SECTION 810-2-05.
2. INSTALL PER ADOT DETAIL E12 AND MANUFACTURES SPECIFICATIONS.

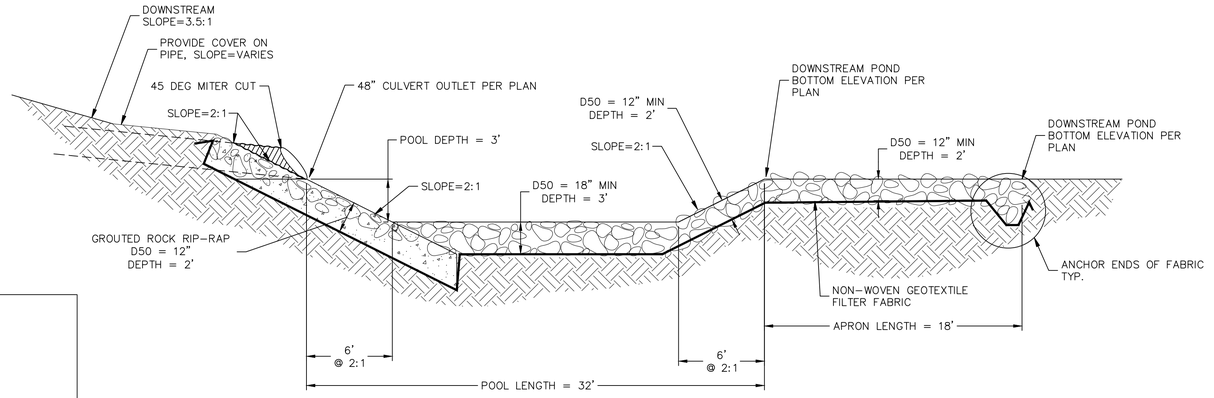
BERM CONSTRUCTION AND SLOPE PROTECTION

NO SCALE — 2 / C06



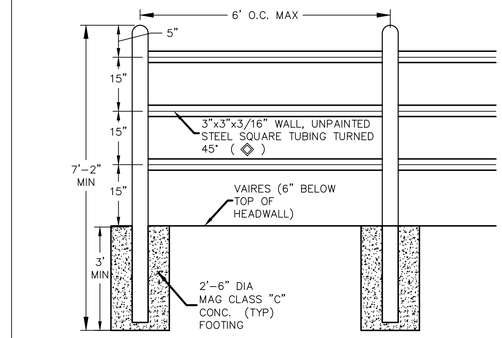
ACCESS ROADS

NO SCALE — 3 / C06



RIP-RAP SCOUR BASIN NORTH AND MIDDLE OUTLETS

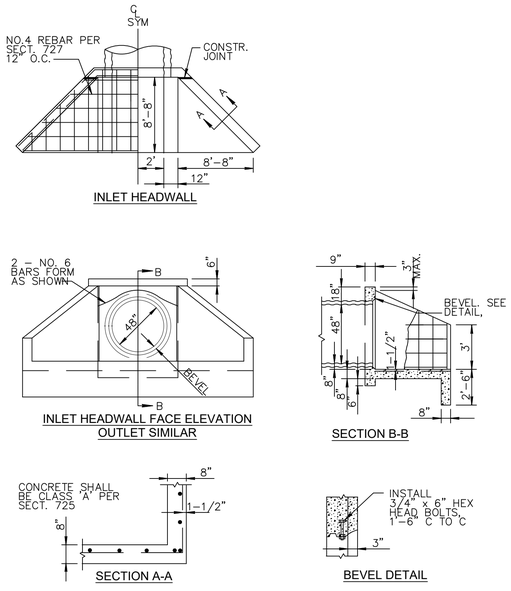
NO SCALE — 4 / C06



NOTES:
1. USE 5"x5" POSTS AND 3"x3" RAILS OR ENGINEER APPROVED EQUAL
2. INSTALL CAPPED PEAKS ON POSTS TO DRAIN

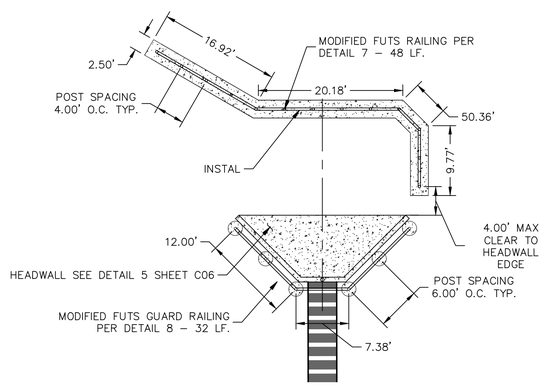
MODIFIED FUTS GUARD RAILING

NO SCALE — 8 / C06



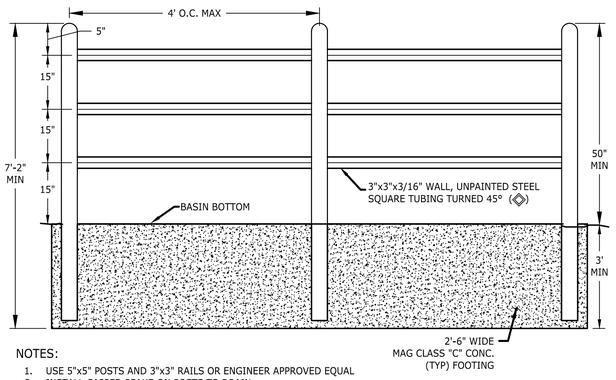
48" CULVERT INLET WITH FUTS RAILING

NO SCALE — 5 / C06



FUTS RAILING DEBRIS DEFLECTOR

NO SCALE — 6 / C06



NOTES:
1. USE 5"x5" POSTS AND 3"x3" RAILS OR ENGINEER APPROVED EQUAL
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MODIFIED FUTS RAILING

NO SCALE — 7 / C06

FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\SECTION&DETAILPLANS.DWG SVOSSLER

CITY OF FLAGSTAFF FLOOD MITIGATION
FLAGSTAFF ARIZONA

SECTIONS & DETAILS (2)

JOB NO: TBD
DATE: AUG 22
SCALE: AS SHOWN
DRAWN: SJV
DESIGN: SJV
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Shephard Wesnitzer, Inc.

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ARIZONA811 Arizona Blue Stake, Inc.
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REVISIONS			
NO.	DESCRIPTION	DATE	BY

DRAWING NO.
C06

SHT NO. 6 | OF 11

PLOTTED: Aug 09, 2022 - 2:36pm

MANAGEMENT STRATEGIES

1. CONSTRUCTION WILL BE SEQUENCED SO THAT GRADING OPERATIONS CAN BEGIN AND END AS QUICKLY AS POSSIBLE.

2. INSTALL TEMPORARY CONSTRUCTION ENTRANCE. MUD AND DEBRIS SHALL BE WASHED FROM ALL CONSTRUCTION VEHICLES AND EQUIPMENT BEFORE LEAVING THE SITE. A WATER TANK TRUCK WILL BE USED IF PUBLIC WATER IS UNAVAILABLE.

3. INSTALL PERIMETER CONTROLS AS SHOWN TO INCLUDE DIVERSION DIKES AND SILT FENCE. SEDIMENT TRAPPING MEASURES SHALL BE INSTALLED AS A FIRST STEP IN GRADING

4. GRADING OPERATIONS MAY COMMENCE ONCE PERIMETER CONTROLS, DIVERSIONS AND TRAPPING MEASURES ARE INSTALLED.

5. FILL SLOPE SURFACES SHALL BE LEFT IN ROUGHENED CONDITION TO REDUCE SHEET AND RILL EROSION OF THE SLOPES. THE CONTRACTOR SHALL REDIRECT CONCENTRATED FLOW AWAY FROM THE FILL SLOPES BY INSTALLING EARTH BERMS AND DIRECT THE RUN-OFF TO STABILIZED OUTLET OR SEDIMENT BASIN AND TRAPPING DEVICES.

6. TEMPORARY SEEDING, SODDING OR OTHER STABILIZATION METHODS WILL FOLLOW IMMEDIATELY AFTER GRADING.

7. ONCE THE UTILITIES, CURB AND GUTTER, AND THE ROADS ARE BROUGHT NEAR FINAL GRADE IN A MANNER SUCH THAT STORM SEWER SYSTEMS ARE FUNCTIONAL, INSTALL THE STANDARD INLET PROTECTION AROUND THE STRUCTURES AND SILT FENCE ALONG THE SITE PERIMETER.

8. FOR VEGETATIVE STABILIZATION OF ALL DENUDED AREAS SEE EROSION CONTROL MEASURES AND VEGETATIVE PRACTICES.

9. THE JOB SUPERINTENDENT SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL PRACTICES.

10. AFTER ACHIEVING FINAL STABILIZATION, THE TEMPORARY EROSION & SILTATION CONTROLS WILL BE CLEANED UP AND REMOVED FROM THE SITE.

GENERAL LAND CONSERVATION NOTES

1. VEGETATED STABILIZATION MEASURES MUST BE INITIATED AS SOON AS PRECIPITATION OR IRRIGATION IS AVAILABLE.

2. ALL EROSION AND SILTATION CONTROL MEASURES ARE TO BE PLACED PRIOR TO OR AS THE FIRST STEP IN GRADING. FIRST AREAS TO BE CLEARED ARE TO BE THOSE REQUIRED FOR THE PERIMETER CONTROLS.

3. DURING CONSTRUCTION, ALL STORM SEWER INLETS WILL BE PROTECTED BY INLET PROTECTION DEVICES, MAINTAINED AND MODIFIED AS REQUIRED BY CONSTRUCTION PROGRESS.

4. ANY DISTURBED AREA NOT COVERED BY NOTE #1 ABOVE AND NOT PAVED, SODDED OR BUILT UPON IS TO BE MULCHED WITH HAY OR STRAW MULCH AT THE RATE OF TWO TONS PER ACRE AND OVER-SEEDED AS SOON AS PRECIPITATION OR IRRIGATION IS AVAILABLE.

5. AT THE COMPLETION OF CONSTRUCTION PROJECTS, AND PRIOR TO THE RELEASE OF THE BOND, ALL TEMPORARY SILTATION AND EROSION CONTROLS SHALL BE REMOVED AND DISTURBED AREAS SHALL BE STABILIZED.

6. TEMPORARY DIVERSIONS, SEEDED AND MULCHED OR SILT FENCE AND OTHER CONTROL MEASURES AS NECESSARY ARE TO BE PLACED AS INDICATED ON THE DRAWINGS PRIOR TO OR THE FIRST STEP IN EXCAVATION.

7. WHERE CONSISTENT WITH JOB SAFETY REQUIREMENTS, ALL EXCAVATED MATERIAL IS TO BE PLACED ON THE UPHILL SIDE OF TRENCHES. NO MATERIAL IS TO BE PLACED IN STREAMBEDS. NO STOCKPILE IS PERMITTED. WHERE SOIL IS PLACED ON DOWNHILL SIDE OF TRENCHES, IT IS TO BE BACK-SLOPE TO DRAIN TOWARD THE TRENCH. WHEN NECESSARY TO DEWATER THE TRENCHES, THE PUMP DISCHARGE HOSE MUST OUTLET IN A STABILIZED AREA TO AN EXISTING STORM INLET OR DITCH IF NO INLET AVAILABLE.

EROSION & SEDIMENT CONTROL STANDARD NOTES

1. THE CONTRACTOR MUST NOTIFY BLUE STAKE AT 1-800-STAKE-IT AT LEAST 24 HOURS PRIOR TO THE START OF CONSTRUCTION IN ACCORDANCE WITH APPLICABLE COUNTY ORDINANCES AND POLICIES.

2. ALL EROSION CONTROL MEASURES SHOWN ON THE APPROVED PLAN MUST BE IN PLACE AND INSPECTED AND APPROVED BY THE PRIOR TO CLEARING, STRIPPING OF TOPSOIL OR GRADING.

3. THE CONTRACTOR SHALL POST A SIGN AT THE MAIN ENTRANCE TO THE CONSTRUCTION SITE CONTAINING THE AZPDES AUTHORIZATION NUMBER AND/OR COPY OF NOTICE OF INTENT AUTHORIZATION, CONSTRUCTION SITE OPERATOR CONTACT NAME AND TELEPHONE NUMBER, A BRIEF PROJECT DESCRIPTION, AND THE LOCATION OF THE APPROVED STORM WATER POLLUTION PREVENTION PLAN. THE SIGN SHALL ALSO DISPLAY THE NAME, CONTACT INFORMATION, AND QUALIFICATIONS OF THE PERSONNEL PERFORMING ROUTINE INSPECTIONS.

4. THE CONTRACTOR'S REPRESENTATIVE IS RESPONSIBLE FOR THE INSTALLATION OF ANY ADDITIONAL EROSION CONTROL MEASURES NECESSARY TO PREVENT EROSION AND SEDIMENTATION.

5. ALL DISTURBED AREAS ARE TO DRAIN TO APPROVED SEDIMENT CONTROL MEASURES AT ALL TIMES DURING LAND DISTURBING ACTIVITIES AND DURING SITE DEVELOPMENT UNTIL COMPLETE AND ADEQUATE STABILIZATION IS ACHIEVED.

6. WATER MUST BE PUMPED INTO AN APPROVED FILTERING DEVICE DURING DEWATERING OPERATIONS.

7. THE CONTRACTOR'S REPRESENTATIVE SHALL INSPECT AND DOCUMENT ALL EROSION AND SEDIMENT CONTROL MEASURES DAILY AND AFTER EACH SIGNIFICANT RAINFALL. THE FOLLOWING ITEMS WILL BE CHECKED IN PARTICULAR:

A. GRAVEL OUTLETS WILL BE CHECKED REGULARLY FOR SEDIMENT BUILDUP WHICH WILL PREVENT DRAINAGE. IF THE GRAVEL IS CLOGGED BY SEDIMENT, IT SHALL BE REMOVED AND CLEANED OR REPLACED.

B. SILT FENCE AND SEDIMENT BARRIERS WILL BE CHECKED REGULARLY FOR UNDERMINING OR DETERIORATION OF THE FABRIC. SEDIMENT SHALL BE REMOVED WHEN THE LEVEL OF SEDIMENT DEPOSITION REACHES HALF WAY TO THE TOP OF THE BARRIER.

C. SEEDED AND SODDED AREAS WILL BE CHECKED REGULARLY TO ENSURE THAT A GOOD STAND IS MAINTAINED. AREAS SHOULD BE FERTILIZED AND RESEEDED OR SODDED AS NEEDED.

8. INSPECTION FORMS SHALL BE COMPLETED BY THE CONTRACTOR'S INSPECTOR WITH THE MINIMUM FOLLOWING INFORMATION: INSPECTION DATE, TITLE AND QUALIFICATIONS OF EACH INSPECTOR, WEATHER INFORMATION FOR PERIOD SINCE LAST INSPECTION, LOCATION OF DISCHARGE OF SEDIMENT OR OTHER POLLUTANTS, LIST OF BMPS THAT NEED TO BE MAINTAINED OR INADEQUATE, LIST ADDITIONAL NEEDED BMPS, CORRECTIVE ACTION REQUIRED, SOURCES OF ALL NON-STORMWATER AND CONTROL MEASURES, DATES WHEN MAJOR GRADING ACTIONS OCCURRED, POLLUTANT DISCHARGE STATUS OF STORAGE AREAS, AND DATES WHEN CONSTRUCTION ACTIVITIES CEASED.

9. CONTRACTOR IS RESPONSIBLE FOR MAINTAINING INSPECTION RECORDS FOR AT LEAST THREE (3) YEARS FOLLOWING THE COMPLETION OF PROJECT.

10. THE SWPPP SHALL BE MODIFIED BY THE CONTRACTOR WITHIN 7 CALENDAR DAYS FOLLOWING THE INSPECTION OF AN INADEQUATE BMP WHEN NEEDED. BMPS SHALL BE MODIFIED OR ADDED AS SOON AS PRACTICABLE AFTER THE BMP HAS BEEN DETERMINED INADEQUATE.

11. PERMANENT SOIL STABILIZATION SHALL BE APPLIED TO DENUDED AREAS WITHIN SEVEN (7) DAYS AFTER FINAL GRADE IS REACHED AND ALL WORK COMPLETED ON ANY PORTION OF THE SITE. TEMPORARY SOIL STABILIZATION SHALL BE APPLIED WITHIN SEVEN (7) DAYS TO DENUDED AREAS THAT MAY NOT BE AT FINAL GRADE BUT WILL REMAIN UNDISTURBED FOR LONGER THAN FOURTEEN (14) DAYS. ROADS AND PARKING AREAS SHALL BE STABILIZED AS SOON AS PRECIPITATION OR IRRIGATION IS AVAILABLE.

12. ALL TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES WILL BE REMOVED WITHIN 30 DAYS AFTER FINAL SITE STABILIZATION AND AFTER THE TEMPORARY MEASURES ARE NO LONGER NEEDED, AS AUTHORIZED BY THE INSPECTORS. TRAPPED SEDIMENT AND THE DISTURBED SOIL AREAS RESULTING FROM THE DISPOSITION OF TEMPORARY MEASURES WILL BE PERMANENTLY STABILIZED TO PREVENT FURTHER EROSION AND SEDIMENTATION.

13. WHEN SEDIMENT IS TRANSPORTED ONTO A PAVED ROAD SURFACE, THE ROAD WILL BE CLEANED THOROUGHLY AT THE END OF EACH DAY. SEDIMENT WILL BE REMOVED FROM THE ROADS BY SHOVELING OR SWEEPING AND TRANSPORTED TO A SEDIMENT CONTROL DISPOSAL AREA. STREET WASHING WILL BE ALLOWED ONLY AFTER SEDIMENT IS REMOVED IN THIS MANNER.

14. AREAS WHICH ARE NOT TO BE DISTURBED WILL BE CLEARLY MARKED BY FLAGS, SIGNS, ETC.

15. FLOOD PLAIN LIMITS SHALL BE CLEARLY MARKED IN THE FIELD BY FLAGS, SIGNS, ETC.

16. TREE SAVE AREAS SHALL BE CLEARLY MARKED IN THE FIELD BY ORANGE SAFETY FENCE.

17. ORANGE SAFETY FENCE MUST BE INSTALLED AROUND ALL SILT TRAPS AND SEDIMENT BASINS.

18. SEEDING AND MULCHING SHALL BE IN ACCORDANCE WITH THE STANDARDS.

19. THE SWPPP SHALL BE MODIFIED BY THE CONTRACTOR WITHIN 15 BUSINESS DAYS FOLLOWING ANY CHANGE IN DESIGN, CONSTRUCTION OPERATION, OR MAINTENANCE THAT HAS A SIGNIFICANT EFFECT ON DISCHARGE OR NOT PREVIOUSLY ASSESSED IN THE SWPPP.

20. THE SWPPP SHALL BE MODIFIED BY THE CONTRACTOR WITHIN 15 BUSINESS DAYS IF IT IS DETERMINED THAT DISCHARGE IS CAUSING OR CONTRIBUTING TO WATER QUALITY EXCEEDENCES OR THE SWPPP IS INEFFECTIVE.

EROSION CONTROL MEASURES

ALL VEGETATIVE AND STRUCTURAL EROSION AND SEDIMENT CONTROL PRACTICES SHALL BE CONSTRUCTED AND MAINTAINED ACCORDING TO MINIMUM STANDARDS AND SPECIFICATIONS ESTABLISHED HEREIN.

STRUCTURAL PRACTICES

1. SILT FENCE BARRIER: SILT FENCE SEDIMENT BARRIERS WILL BE INSTALLED DOWNSLOPE OF AREAS WITH MINIMAL GRADES TO FILTER SEDIMENT LADEN RUNOFF FROM SHEET FLOW AS INDICATED ON THE PLANS.

2. A TEMPORARY CONSTRUCTION ENTRANCE SHALL BE INSTALLED WHERE THE ACCESS AREA INTERSECTS WITH EXISTING ROADS DURING MUDDY CONDITIONS. DRIVERS OF CONSTRUCTION VEHICLES WILL BE REQUIRED TO WASH THEIR WHEELS BEFORE ENTERING THE HIGHWAY.

3. STORM DRAIN INLET & SPILLWAY PROTECTION: ALL STORM SEWER INLETS AND SPILLWAYS SHALL BE PROTECTED DURING CONSTRUCTION. SEDIMENT-LADEN WATER SHALL BE FILTERED BEFORE ENTERING THE STORM SEWER INLETS AND CULVERTS.

VEGETATIVE PRACTICES

1. TOP SOILING (STOCKPILE) TOPSOIL WILL BE STRIPPED FROM AREAS TO BE GRADED AND STOCKPILED FOR LATER USE. STOCKPILE LOCATIONS ARE TO BE STABILIZED WITH TEMPORARY VEGETATION. PRIOR TO LAND DISTURBING ACTIVITIES, THE CONTRACTOR SHALL SUBMIT A SUPPLEMENTARY EROSION & SEDIMENT PLAN TO THE CITY OF FLAGSTAFF COVERING THE STOCKPILE AREA WHICH MAY HAVE TO BE APPROVED BY THE PLAN APPROVING AUTHORITY BEFORE ANY ACTIVITY COMMENCES.

2. TEMPORARY SEEDING ALL DENUDED AREAS WHICH WILL BE LEFT DORMANT FOR EXTENDED PERIODS OF TIME SHALL BE SEEDED WITH FAST GERMINATING TEMPORARY VEGETATION IMMEDIATELY FOLLOWING GRADING. SELECTION OF THE SEED MIXTURE WILL DEPEND ON THE TIME OF YEAR IT IS APPLIED.

3. GRASS AREAS THAT ARE DISTURBED DURING CONSTRUCTION SHALL BE REPLACED WITH SOD BY THE CONTRACTOR. THE SOD GRASS TYPE SHALL MATCH THE EXISTING AND SHALL BE MAINTAINED BY THE CONTRACTOR UNTIL THE SOD IS STABILIZED.

GENERAL NOTES FOR EROSION CONTROL

1. A STANDBY CREW FOR EMERGENCY WORK SHALL BE AVAILABLE AT ALL TIMES DURING THE RAINY SEASON. NECESSARY MATERIALS SHALL BE AVAILABLE ON SITE AND STOCKPILED AT CONVENIENT LOCATIONS TO FACILITATE RAPID CONSTRUCTION OF TEMPORARY DEVICES OR TO REPAIR ANY DAMAGED EROSION CONTROL MEASURES, ESPECIALLY WHEN RAIN IS IMMINENT.

2. DEVICES SHALL NOT BE MOVED OR MODIFIED WITHOUT APPROVAL OF THE INSPECTOR.

3. ALL PROTECTIVE DEVICES SHOWN SHALL BE IN PLACE AT THE END OF EACH DAY.

4. AFTER A RAIN STORM, ALL SILT AND DEBRIS SHALL BE REMOVED FROM CHECK BERMS AND DESILTING BASINS. ANY GRADED SLOPE SURFACE PROTECTION MEASURE DAMAGED DURING A RAIN STORM SHALL BE IMMEDIATELY REPAIRED.

5. FILL SLOPES AT THE CONSTRUCTION SITE PERIMETER MUST DRAIN AWAY FROM THE TOPS OF THE SLOPES AT THE END OF EACH DAY.

6. A COPY OF THE PROJECTS STORM WATER POLLUTION PROTECTION PLAN (SWPPP) SHALL BE MAINTAINED AT THE CONSTRUCTION SITE AND ALWAYS AVAILABLE FOR REVIEW.

7. PROTECT ALL STORM DRAINAGE STRUCTURES FROM SEDIMENT CLOGGING BY PROVIDING INLET PROTECTION AT ALL OPENINGS.

8. AVOID PAVING DURING WET WEATHER.

9. STORE MATERIALS AWAY FROM DRAINAGE COURSES TO PREVENT CONTACT WITH STORM WATER.

10. PLACE DRIP PANS OR ABSORBENT MATERIALS UNDER CONSTRUCTION EQUIPMENT WHEN NOT IN USE.

11. CLEAN UP SPILLS WITH ABSORBENT MATERIALS.

12. OLD ASPHALT MUST BE DISPOSED OF PROPERLY.

13. KEEP WORK SITE CLEAN AND ORDERLY DAILY.

14. PROPERLY STORE PAINTS AND SOLVENTS.

15. PERMANENTLY MARK STORM DRAIN STRUCTURES IN A MANNER APPROVED BY THE CONSTRUCTION INSPECTOR TO MINIMIZE INADVERTENT DISPOSAL OF RESIDUAL PAINTS, SOLVENTS, OR ANY OTHER POLLUTANT.

16. ALLOW MATERIAL DELIVERY AND STORAGE ONLY IN DESIGNATED AREAS AND AVOID TRANSPORT NEAR DRAINAGE PATHS AND WATERWAYS.

17. MINIMIZE THE USE OF HAZARDOUS MATERIALS ON SITE.

18. CLEAN UP LEAKS AND SPILLS IMMEDIATELY.

19. USE WATERTIGHT DUMPSTERS FOR TRASH AND CONSTRUCTION WASTE.

20. COLLECT SITE TRASH AS NEEDED, ESPECIALLY DURING RAINY OR WINDY CONDITIONS.

21. ARRANGE FOR REGULAR WASTE COLLECTION BEFORE CONTAINERS OVERFLOW.

22. DO NOT ALLOW BRUSHES OR PAINT CONTAINERS TO BE CLEANED OUT IN THE DIRT, STREET, GUTTER, OR STORM DRAINS.

23. STORE AND COVER DRY AND WET MATERIALS FROM CONCRETE PLACEMENT AWAY FROM DRAINAGE AREAS.

24. PERFORM WASHOUT OF CONCRETE TRUCKS IN DESIGNATED AREAS ONLY. WASHOUT AREAS SHALL BE AWAY FROM STORM DRAINS, OPEN DITCHES, OR STREETS.

25. TEMPORARY SANITARY FACILITIES SHALL BE MAINTAINED IN GOOD WORKING ORDER BY A LICENSED SERVICE.

26. CONTRACTOR SHALL BE RESPONSIBLE FOR UPDATING HIS PLAN THROUGHOUT CONSTRUCTION AND INDICATE ANY AND ALL REVISIONS / UPDATES ON THIS PLAN.

27. CONTRACTOR SHALL CONDUCT HIS OPERATIONS IN SUCH A MANNER THAT STORM WATER WILL BE CONTAINED WITHIN THE PROJECT OR CHANNELED INTO THE STORM DRAIN SYSTEM PROVIDED THAT IT IS FREE FROM POLLUTANTS AND DEBRIS.

28. CITY APPROVAL OF PLANS DOES NOT RELIEVE THE DEVELOPER FROM CORRECTIONS OR OMISSIONS DISCOVERED DURING CONSTRUCTION. CONFORMANCE WITH THE REQUIREMENTS OF THIS PLAN SHALL IN NO WAY RELIEVE THE DEVELOPER FROM HIS RESPONSIBILITIES TO THE SITE AND ADJACENT PROPERTIES. TEMPORARY EROSION CONTROL SHALL CONSIST OF, BUT NOT BE LIMITED TO, CONSTRUCTING SUCH FACILITIES AND TAKING SUCH MEASURES AS ARE NECESSARY TO PREVENT, CONTROL AND ABATE WATER, MUD AND EROSION DAMAGE TO PUBLIC AND PRIVATE PROPERTY AS A RESULT OF THE CONSTRUCTION OF THIS PROPERTY.

29. CLEARING AND GRUBBING SHOULD BE LIMITED TO AREAS THAT WILL RECEIVE IMMEDIATE GRADING. EROSION CONTROL MEASURES WILL BE REQUIRED TO PROTECT AREAS WHICH HAVE BEEN CLEARED AND GRUBBED. THESE MEASURES MAY INCLUDE BUT NOT BE LIMITED TO: GRADED DITCHES, SAND OR GRAVEL BAGS, BARRIERS AND SILT FENCING. CARE SHALL BE EXERCISED TO PRESERVE VEGETATION BEYOND LIMITS OF GRADING AND PREVENT SEDIMENT DISCHARGE WHILE CONSTRUCTION IN THIS AREA IS ACTIVE.

30. SEDIMENT CONTROL SHALL BE USED AT THE TOE OF ANY ERODIBLE SLOPE.

31. CONTRACTOR SHALL IMMEDIATELY RESTORE ANY DAMAGED EROSION CONTROL MEASURE WITHIN THE PROJECT BOUNDARY.

32. FACES OF FINISHED CUT AND FILL SLOPES SHALL BE PREPARED AND MAINTAINED TO CONTROL AGAINST EROSION. THESE PERMANENT CONTROL MEASURES MAY CONSIST OF ADEQUATE SEEDING, PLANTING AND JUTE MATTING. THE PROTECTION FOR THE SLOPES SHALL BE INSTALLED AS SOON AS PRACTICABLE AND PRIOR TO CALLING FOR FINAL APPROVAL.

33. AFTER A RAIN STORM, ALL SILT AND DEBRIS SHALL BE REMOVED FROM STREETS, CHECK BERMS AND BASINS.

34. CONTRACTOR / SUBCONTRACTOR TRAINING IN SEDIMENT AND EROSION CONTROL IN ACCORDANCE WITH AZPDES.

35. THE PERMITTEE AND CONTRACTOR SHALL BE RESPONSIBLE, AND TAKE NECESSARY PRECAUTIONS, TO PREVENT PUBLIC TRESPASS ONTO AREAS WHERE IMPOUNDED WATER CREATES A HAZARDOUS CONDITION.

36. ALL DISTRUBED AREAS SHALL BE HYDROSEEDED IN ACCORDANCE WITH CITY OF FLAGSTAFF ENGINEERING STANDARDS SECTION 13-17. A REVEGETATION PLAN WILL BE REQUIRED TO BE IMPLEMENTED AND PROVED SUCCESSFUL PRIOR TO PROJECT CLOSEOUT. CONTRACTOR SHALL PROVIDE 70% SUCCESSFUL REGROWTH PER ADEQ PERMANENT STABILIZATION REQUIREMENTS FOR ALL AREAS DISTURBED DURING CONSTRUCTION. SOIL CONDITIONERS AND WATERING ARE REQUIRED IN ACCORDANCE WITH 13-17-002-004 AND 13-17-002-0005.6.

GENERAL NOTES

1. ALL CONSTRUCTION SHALL CONFORM TO MAG STANDARDS, AZPDES STANDARDS AND SPECIFICATIONS AND GENERALLY ACCEPTED CONSTRUCTION PRACTICE.

2. THESE PLANS REPRESENT A REASONABLE EFFORT TO IMPLEMENT THE MOST CURRENT BEST MANAGEMENT PRACTICES (BMPS) IN MITIGATING STORM WATER POLLUTION DURING CONSTRUCTION. THE EFFECTIVENESS OF THE MITIGATION MEASURES DEPICTED IN THESE PLANS DEPEND IN PART ON PROPER INSTALLATION, IMPLEMENTATION, MAINTENANCE, AND REPAIR OF THE DEVICES SELECTED.

MAINTENANCE:

IN GENERAL, ALL EROSION & SEDIMENT CONTROL MEASURES WILL BE CHECKED DAILY AND AFTER EACH SIGNIFICANT RAINFALL. REFER TO THE ATTACHED EROSION & SEDIMENT CONTROL STANDARD NOTES FOR DETAILED MAINTENANCE AND REVEGATATION / STABILIZATION REQUIREMENTS.

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TEMPORARY CONCRETE WASHOUT FACILITY NOTES

1. CONTRACTOR TO DESIGNATE EQUIP./MATERIAL STORAGE SITE AND CONCRETE WASHOUT AS PART OF SWPPP PRIOR TO START OF CONSTRUCTION.

2. TEMPORARY CONCRETE WASHOUT FACILITIES SHALL BE LOCATED A MINIMUM OF 50 FEET FROM STORM DRAIN INLETS, OPEN DRAINAGE FACILITIES AND WATERCOURSES, UNLESS DETERMINED UNFEASIBLE BY ENGINEER. EACH FACILITY SHALL BE LOCATED AWAY FROM CONSTRUCTION TRAFFIC OR ACCESS AREAS TO PREVENT DISTURBANCE OR TRACKING.

3. TEMPORARY CONCRETE WASHOUT FACILITIES SHALL HAVE A TEMPORARY PIT (BELOW GRADE) OR BERMED AREA (ABOVE GRADE) OF SUFFICIENT VOLUME TO COMPLETELY CONTAIN ALL LIQUID AND WASTE CONCRETE MATERIALS GENERATED DURING WASHOUT PROCEDURES. IF LOCATED ABOVE GRADE, THE WASHOUT AREA SHALL BE LINED WITH AN IMPERMEABLE MATERIAL.

4. ONCE CONCRETE WASTES ARE WASHED INTO THE DESIGNATED AREA AND ALLOWED TO HARDEN, THE CONCRETE SHALL BE BROKEN UP, REMOVED AND DISPOSED OF PER 'BMP "SOLID WASTE MANAGEMENT."

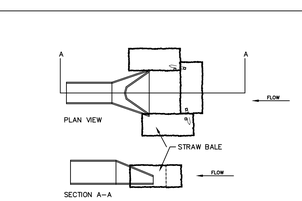
5. WHEN TEMPORARY CONCRETE WASHOUT FACILITIES ARE NO LONGER REQUIRED FOR THE WORK, AS DETERMINED BY THE ENGINEER, THE HARDENED CONCRETE SHALL BE REMOVED AND PROPERLY DISPOSED OF. MATERIALS USED TO CONSTRUCT TEMPORARY CONCRETE WASHOUT FACILITIES SHALL BE COME THE PROPERTY OF THE CONTACTOR, SHALL BE REMOVED FROM THE SITE OF THE WORK AND SHALL BE DISPOSED OF OUTSIDE THE HIGHWAY RIGHT-OF-WAY.

6. HOLE, DEPRESSIONS OR OTHER GROUND DISTURBANCE CAUSED BY THE REMOVAL OF THE FACILITIES SHALL BE BACKFILLED AND REPAIRED.

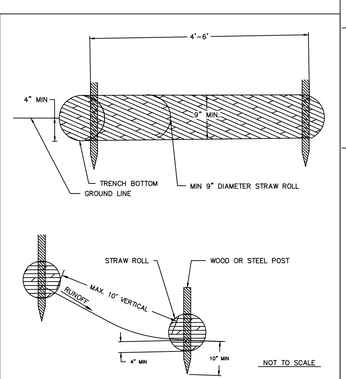
7. THE CONCRETE WASHOUT SIGN SHALL BE INSTALLED WITHIN 30 FT OF THE TEMPORARY CONCRETE WASHOUT FACILITY.

CONSTRUCTION SEQUENCE

1. INSTALL CONSTRUCTION ENTRANCE & TEMP CONCRETE WASHOUT
2. INSTALL ACCESS ROADS
3. INSTALL STRAW ROLLS
4. GRADE SITE & ADD STRAW ROLLS AS NEEDED
5. INSTALL DRAINAGE STRUCTURES
6. INSTALL INLET PROTECTION
7. PERMANENT REVEGETATION AND SLOPE STABILIZATION
8. SCHEDULED MONITORING AND MAINTENANCE

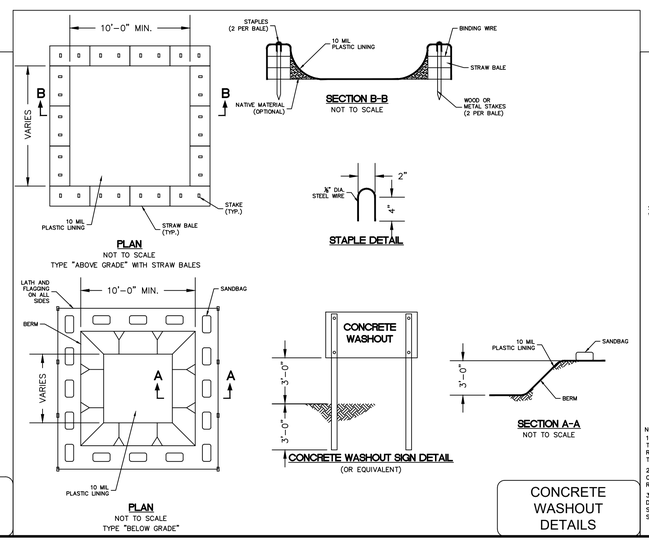


CULVERT INLET/ OUTLET PROTECTION

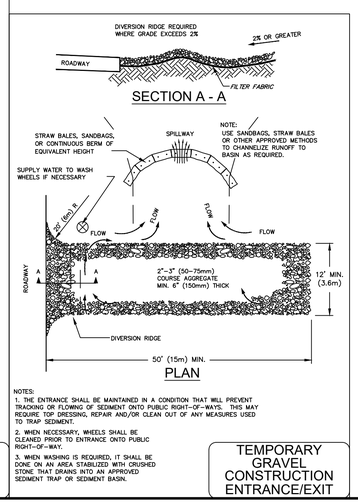


NOTES:
1. STRAW ROLL INSTALLATION REQUIRES THE PLACEMENT AND SECURE STAKING OF THE ROLL IN A TRENCH 3"-5" DEEP, DUG ON CONTOUR. RUNOFF MUST NOT BE ALLOWS TO RUN UNDER OR AROUND ROLL.

STRAW ROLL STAKED IN TRENCH



CONCRETE WASHOUT DETAILS



NOTES:
1. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHT-OF-WAYS. THIS MAY REQUIRE TOP DRESSING, REPAIR AND/OR CLEAN OUT OF ANY MEASURES USED TO TRAP SEDIMENT.
2. WHEN NECESSARY, WHEELS SHALL BE CLEANED PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY.
3. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE THAT DRAINS INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN.

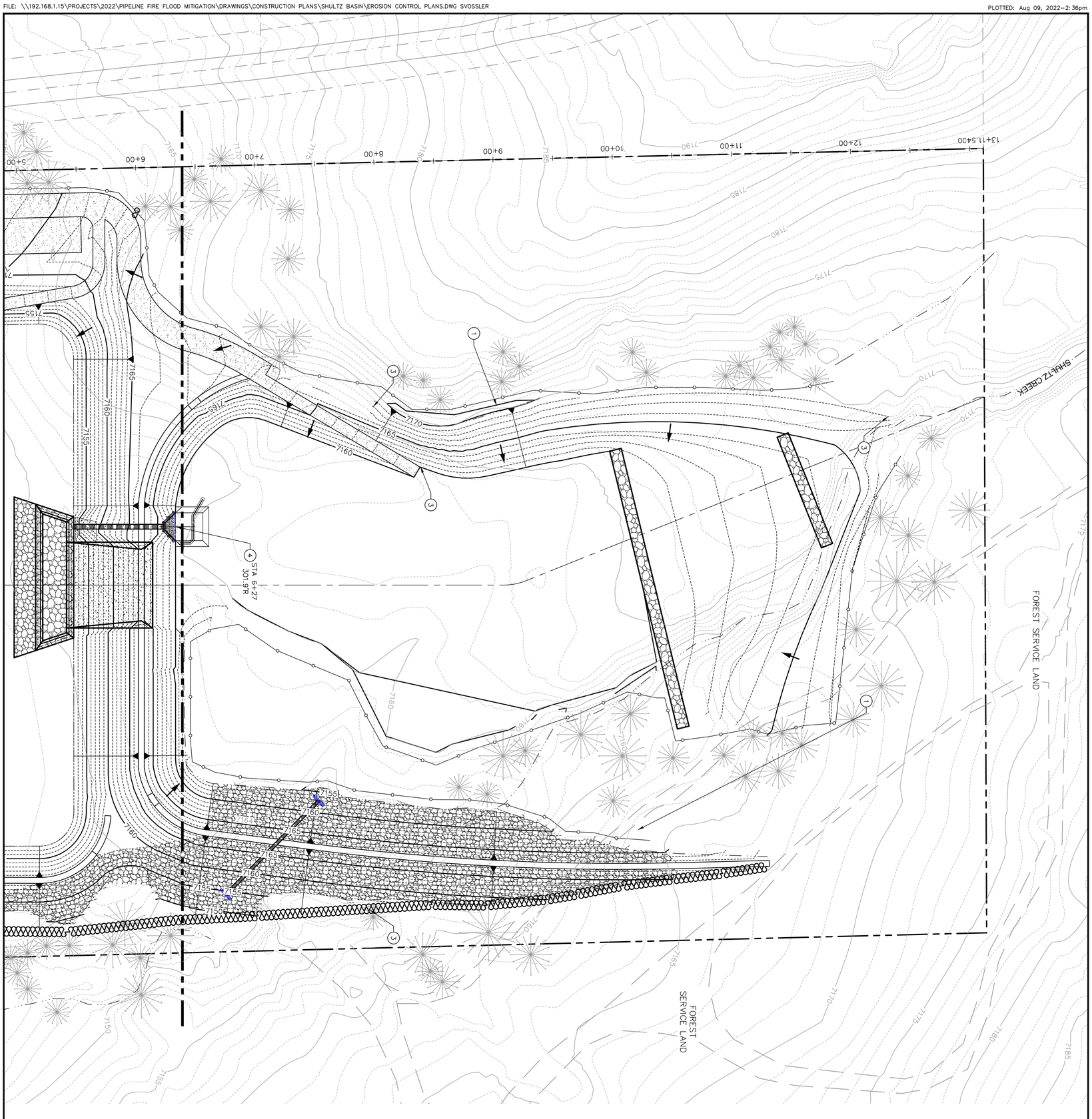
TEMPORARY GRAVEL CONSTRUCTION ENTRANCE/EXIT

FLAGSTAFF ARIZONA
SCHULTZ CREEK DETENTION BASINS
EROSION CONTROL PLANS - COVER
JOB NO: TBD
DATE: AUG 22
SCALE: AS SHOWN
DRAWN: ELK
DESIGN: ELK
CHECKED: SJV
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.6934 fax
www.swoz.com
Shephard Wesnitzer, Inc.
REVISIONS
NO. DESCRIPTION DATE BY

Call at least two full working days before you dig, it's the law!
ARIZONA 811
Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO. C07
SHT NO. 7 OF 11

FILE: \\192.168.1.15\PROJECTS\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\EROSION CONTROL PLANS.DWG SVOSSLER



LEGEND

- DISTURBED AREA
- (1) DRAINAGE FLOW DIRECTION
- (2) "STRAW ROLLS" PER DETAIL ON SHEET EC02.
- (3) "CULVERT INLET PROTECTION" PER DETAIL ON SHEET EC01.
- (4) "TEMPORARY CONSTRUCTION ENTRANCE" PER DETAIL ON SHEET EC01.

SHT NO. 8 OF 11	DRAWING NO. C08	Call at least two full working days before you begin excavation. ARIZONA 811 Arizona Blue Stake, Inc. Dial 8-1-1 or 1-800-STAKE-IT (782-5348)	REVISIONS: NO. / DESCRIPTION / DATE / BY

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

JOB NO:	TBD
DATE:	AUG 22
SCALE:	AS SHOWN
DRAWN:	ELK
DESIGN:	ELK
CHECKED:	SJV

CITY OF FLAGSTAFF FLOOD MITIGATION

FLAGSTAFF ARIZONA

EROSION CONTROL PLANS

PLOTTED: Aug 09, 2022 - 2:36pm

FILE: \\192.168.1.15\PROJECTS\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\EROSION CONTROL PLANS.DWG SVOSSLER

STA 6+27
301.9'R

STA 0+83
30.0'R

STA 0+82
64.8'R

STA 0+33
30.0'R

ELDEN LOOKOUT ROAD

SHULTZ CREEK

LEGEND

- DISTURBED AREA (1)
- DRAINAGE FLOW DIRECTION (2)
- "STRAW ROLLS" PER DETAIL ON SHEET EC02. (3)
- "CULVERT INLET PROTECTION" PER DETAIL ON SHEET EC01. (4)
- "TEMPORARY CONSTRUCTION ENTRANCE" PER DETAIL ON SHEET EC01. (5)
- "TEMPORARY CONCRETE WASHOUT" PER DETAIL ON SHEET EC01. (6)

SCALE 1" : 40'
0 20 40

FLAGSTAFF
ARIZONA

CITY OF FLAGSTAFF FLOOD MITIGATION

EROSION CONTROL PLANS

JOB NO: TBD
DATE: AUG 22
SCALE: AS SHOWN
DRAWN: ELK
DESIGN: ELK
CHECKED: SJV

REVISIONS

NO.	DESCRIPTION	DATE	BY

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

Call at least two full working days before you dig - it's the law!
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
C09

SHT NO. 9
OF 11

PLOTTED: Aug 09, 2022 - 2:36pm

SHULTZ CREEK

ALL GRADES ARE TO FINISHED GRADE, ADDITIONAL ELEVATION MUST BE SUBTRACTED FOR ROCK OR PAVEMENT MATERIAL

SCALE 1" : 40'
0 20 40

FOR REFERENCE ONLY, NOT FOR CONSTRUCTION

FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\CUT-FILL EXHIBIT.DWG SVOSSLER

CITY OF FLAGSTAFF FLOOD MITIGATION
FLAGSTAFF ARIZONA

CUT-FILL MAP (1) FOR REFERENCE ONLY

JOB NO: TBD
DATE: AUG 22
SCALE: AS SHOWN
DRAWN: HAS, SJV
DESIGN: HAS, SJV
CHECKED: SCI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swoz.com

Shephard Wesnitzer, Inc.

NO.	DESCRIPTION	DATE	BY

REVISIONS

Call at least two full working days before you dig in Arizona
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
C10

SHT NO. 10 OF 11

PLOTTED: Aug 09, 2022 - 2:36pm

ALL GRADES ARE TO FINISHED GRADE, ADDITIONAL ELEVATION MUST BE SUBTRACTED FOR ROCK OR PAVEMENT MATERIAL

SCALE 1" : 40'
0 20 40

FOR REFERENCE ONLY, NOT FOR CONSTRUCTION

FILE: P:\2022\PIPELINE FIRE FLOOD MITIGATION\DRAWINGS\CONSTRUCTION PLANS\SHULTZ BASIN\CUT-FILL EXHIBIT.DWG SVOSSLER

CITY OF FLAGSTAFF FLOOD MITIGATION
FLAGSTAFF ARIZONA

CUT-FILL MAP (2) FOR REFERENCE ONLY

JOB NO:	TBD
DATE:	AUG 22
SCALE:	AS SHOWN
DRAWN:	HAS, SJV
DESIGN:	HAS, SJV
CHECKED:	SCI

NO.	DESCRIPTION	DATE	BY
	REVISIONS		

Shephard Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swoz.com

Call at least two full working days before you dig in Arizona
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
C11

SHT NO. 11 OF 11

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 statues 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/environ/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

MONTH	*JANUARY*	*FEBRUARY*	*MARCH*	*APRIL*	*MAY*	*JUNE*
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”
MONTH	*JULY*	*AUGUST*	*SEPTEMBER*	*OCTOBER*	*NOVEMEBER*	*DECEMBER*
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 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	*(Lolium multiflorum)*	30 lbs/acre
Oats	(*Avena sativa)*	60 lbs/acre
Regreen©	(*Triticum aestivum x Elytrigia elongata)*	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

GRANT PROVISIONS

Grant Project Title: Schultz Creek Emergency Mitigation

Funding Agency: U.S. Department of Agriculture (USDA), Natural Resource Conservation Service, Emergency Watershed Protection Program-Recovery

FEDERAL - GRANT PROVISIONS

The Contractor and its Subcontractor shall comply with the following grant provisions;

Applicable Laws
Compliance with all applicable Federal, State, and Local laws and regulations.

Awards to debarred and suspended parties
The City will not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, ``Debarment and Suspension."

Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
(1) The Contractor will take all necessary affirmative steps to assure that minority firms,women's business enterprises, and labor surplus area firms are used when possible.
(2) Affirmative steps shall include:
(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Equal Employment Opportunity
Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

Clean Water and Air Act
Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

Energy Policy and Conservation Act
Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Resource Conservation and Recovery Act
Compliance with the Resource Conservation and Recovery Act (RCRA) requires federal agencies to assess the impact that debris, debris removal, hazardous wastes, and hazardous waste clean-up projects will have on air and water quality and take actions to prevent degradation. RCRA gives EPA the authority to control hazardous waste from the "cradle-to-grave" to facilities that generate hazardous materials and sets forth a framework for the management of non-hazardous waste (42 USC, 6901).

Conflicts of Interest

The City (grantee) and Contractor (subgrantees) will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Copyrights

Reports, maps or other documents produced in whole or in part are works for hire and shall not be the subject of any application for copyright by or on behalf of the Contractor or its Subcontractor. The Contractor shall advise the City or its designee at the time of delivery of any copyrighted or copyrightable work furnished under this Agreement, or any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

Patent Fees and Royalties

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in Funding Agency Contracting Provisions for Construction Projects the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

Responsible Contractors

The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Access and Retention of Records

Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

CODE OF FEDERAL REGULATION (CFR) - Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of

mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

FANN CONTRACTING

CONTRACTORS OPINION OF PROBABLE COST
SWI Job # 22106 COF Project # 01-22003
Schultz Sediment & Detention Basin Flagstaff, Arizona
26-Jul-22

Item #	Line Item Description	Quantity	Unit	Unit Cost	Total
CITY PUBLIC IMPROVEMENTS					
DEMOLITION					
150	REMOVE AND DISPOSE OF EXISTING TREE AND ROOTBALL PER M.A.G. SPECS. 336 & 350.	1	L.S.	$ 250,000.00	$250,000.00
	Sub Total				**$250,000.00**
IMPROVEMENTS					
202	6" OF AB FOR BASIN ACCESS ROAD AND TOP OF BERM	4,700	SY	$ 19.00	$89,300.00
500	48" CMP STORM DRAIN	296	LF	$ 320.00	$94,720.00
501	48" CMP RISER INLET	4	EA	$ 9,900.00	$39,600.00
502	24" DEEP D50=12" RIPRAP OUTLET APRON	53,622	SF	$ 8.00	$428,976.00
503	36" DEEP D50=36" RIPRAP TRENCH	6,409	SF	$ 13.00	$83,317.00
	Sub Total				**$735,913.00**
EARTHWORK					
	CUT	36,336	CY	$ 6.50	$236,184.00
	FILL	29,587	CY	$ 4.00	$118,348.00
	Sub Total				$354,532.00
CONSTRUCTION TOTAL					**$1,340,445.00**
MISCELLANEOUS					
	Mobilization	1	L.S.	$ 145,000.00	$145,000.00
	Erosion Control	1	L.S.	$ 17,500.00	$17,500.00
	Traffic Control	1	L.S.	$ 2,500.00	$2,500.00
	Construction Staking/As-Builts	1	L.S.	$ 42,000.00	$42,000.00
	QA /QC (Materials Testing)	1	L.S.	$ 9,000.00	$9,000.00
	Topographic Survey (Volume Verifications)	1	L.S.	$ 7,000.00	$7,000.00
	Clear and Grub (Approximately 16 acres)	1	L.S.	$ 78,000.00	$78,000.00
	Hydroseed all disturbed areas (City of flagstaff seed mix)	1	L.S.	$ 89,000.00	$89,000.00
	Hauloff stockpile material to a designated location identified at the start of the project (within 5 miles of the site)	1	L.S.	$ 194,000.00	$194,000.00
	Hard Dig / Rock (Contingency)	1	L.S.	$ 100,000.00	$100,000.00
	Sub Total				**$684,000.00**
	Sub Total City Improvements				**$2,024,445.00**
	Owners Contingency	1	L.S.		**$250,000.00**
TOTAL					**$2,274,445.00**

Assumptions:

1 Assume a start date of August 1st with a completion date of October 30th
2 An Administrative NTP will be given by August 1st
3 Erosion Control includes UP TO 2000 LF of 9" wattles and a single construction entrance
4 The grant will NOT have Davis Bacon wage requirements
5 The design consultant (SWI) will provide the necessary documentation to enable layout
6 The contractor is NOT responsible for design, permitting fees or utility coordination
7 There are NO existing utilities on site and thus no conflict will be encountered
8 The contractor is responsible to develop detailed As-Builts illustrating all work, basin volumes, structure elevations and grade control features

Exhibit D

10. C.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Ben Mejia, Planner
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Approval of Preliminary Plat PZ-15-00015-24 Sirius at Timber Sky - Block 4:
Capstone Homes requests Preliminary Plat approval for Sirius at Timber Sky - Block 4 located at 3191 McAllister Ranch Road, a 63 lot single-family subdivision on 21.82 acres in the Single-Family Residential (R1) Zone.

STAFF RECOMMENDED ACTION:

In accordance with the findings presented in this report, approve the Preliminary Plat with the following conditions:

1. The applicant shall provide the purpose of each tract on the final plat.
2. The final plat shall show the patent as shown on Sheet 2 of the preliminary plat and on the Timber Sky Final Block Plat.
3. All lots shown with less than a 60-foot lot width at the 25-foot front setback shall have building envelopes with front setbacks set at the point where the lot width is 60 feet. A note shall be added to the lot typical identifying which lots have alternative front setbacks.

Executive Summary:

The Sirius at Timber Sky - Block 4 subdivision, consisting of 63 single-family lots located on 21.82 acres in the Single-Family Residential (R1) Zone.

Financial Impact:

No financial impacts are anticipated with the Preliminary Plat.

Policy Impact:

There are no policy impacts anticipated with this Preliminary Plat.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives
Robust Resilient Economy - Grow and strengthen a more equitable and resilient economy.

Carbon Neutrality Plan
DD-1: Encourage vibrancy, appropriate density, and attainability in existing neighborhoods, so that more residents live within walking distance of their daily needs.

Regional Plan
Policy LU.5.1. Encourage development patterns within the designated growth boundaries to sustain efficient infrastructure projects and maintenance.
Goal NH.1. Foster and maintain healthy and diverse urban, suburban, and rural neighborhoods in the Flagstaff region.
Policy WR.4.3. Development requiring public utility services will be located within the Urban Growth Boundary.

Has There Been Previous Council Decision on This:

City Council approved a Zoning Map Amendment and an Annexation in supprt of the proposed subdivision in 2016.

Options and Alternatives:

1. Approve the Preliminary Plat as recommended by staff and the Planing & Zoning Commission.
2. Approve the Preliminary Plat with conditions.
3. Deny the Preliminary Plat based on non-compliance with the Zoning Code, the Subdivision Code, and/or the Engineering Design Standards and Specifications for New Infrastructure.

Background/History:

Timber Sky is a proposed 1,300 (maximum density) residential dwelling unit development. The development proposes a mixture of high, medium, and single-family residential units combined with commercial service and open space on 197.58 acres. The site is situated north and south between West Route 66 (“Route 66”) and Interstate-40 and east and west between Woody Mountain Road and Flagstaff Ranch Road. The site slopes gently from south to north with most of the onsite drainage flowing toward an existing culvert under Route 66, which eventually discharges into the Clay Avenue Wash Detention Basin located north of Route 66. There are no designated floodplains on the site. In 2006, the property partially burned in a fire leaving a 700-foot-wide corridor of deforested land through the middle of the site. The remainder of the site is forested with Ponderosa Pine. The site has two pockets of slopes greater than 17% with other basalt rock outcrop features throughout the property. A large amount of fill placed on site, which has the appearance of a steep slope, will not be protected. An existing aboveground 69 kV transmission line crosses the site in an east-west direction connecting to an existing APS substation at the southwestern corner of the property. The line is required to be under grounded with the development of the second phase of Timber Sky.

The applicant, Capstone Homes, is seeking Preliminary Plat approval for Adora Phase II at Timber Sky (Block 3B) within the second phase of Timber Sky consisting of 63 single-family residential lots utilizing conventional zoning standards.

Key Considerations:

The property is zoned Single-Family Residential (R1) Zone, which has a minimum density requirement of 2 units per acre and a maximum of 5 units per acre in the Resource Protection Overlay. The proposed 63 lots on 21.82 acres have a gross density of 2.89 units per acre and a net density of 4.56 units per acre. The application conforms with all the requirements of the R1 Zone.

Community Benefits and Considerations:

The community benefits of this project are encapsulated in the PBB Key Community Priorities/Objectives and the Regional Plan Goals and Policies review process.

Community Involvement:

Inform. The existing zoning of the subject property allows for the proposed subdivision. No public hearings or public outreach are required by either the Zoning Code or the Subdivision Code as part of the Preliminary Subdivision Plat review process.

Attachments: Staff Report
Application
Preliminary Plat
Applicant Legal Opinion on Patent
Presentation

PLANNING & DEVELOPMENT SERVICES REPORT
PRELIMINARY PLAT

PZ-15-00115-24

DATE: **June 22, 2022**
MEETING DATE: **July 27, 2022**
REPORT BY: **Ben Mejia**

REQUEST:
Capstone Homes requests Preliminary Plat approval for Sirius at Timber Sky - Block 4 located at 3191 McAllister Ranch Road, a 63-lot single-family subdivision on 21.82 acres in the R1 (Single-Family Residential) Zone.

STAFF RECOMMENDATION:
Staff recommends the Planning and Zoning Commission, in accordance with the findings presented in this report, forward the Preliminary Plat to the City Council with a recommendation of approval with conditions.

PRESENT LAND USE:
The subject site is currently vacant.

PROPOSED LAND USE:
The Sirius at Timber Sky - Block 4 subdivision, consisting of 63 single-family lots located on 21.82 acres in the R1 (Single-Family Residential) Zone.

NEIGHBORHOOD DEVELOPMENT:
See the attached vicinity map for more information.

North: Timber Sky Block 3B and Sky Cottages, MR Zone
South: I-40
East: Presidio, HC and HR Zones
West: Timber Sky – Block 5, MR Zone

REQUIRED FINDINGS:
The Planning and Zoning Commission shall find the proposed Preliminary Plat meets the requirements of the City Code Title 10, Flagstaff Zoning Code; City Code Title 11, General Plans and Subdivisions; and City Code Title 13, Engineering Design Standards and Specifications.

STAFF REVIEW:

I. Project Information

A. Background
Timber Sky is a proposed 1,300 (maximum density) residential dwelling unit development. The development proposes a mixture of high, medium, and single-family residential units combined with commercial service and open space on 197.58 acres. The site is situated north and south between West Route 66 (“Route 66”) and Interstate-40 and east and west between Woody Mountain Road and Flagstaff Ranch Road. The site slopes gently from south to north with most of the onsite drainage flowing toward an existing culvert under Route 66, which eventually discharges into the Clay Avenue Wash Detention Basin located north of Route 66. There are no designated floodplains on the site. In 2006, the property partially burned in a fire leaving a 700-foot-wide corridor of deforested land through the middle of the site. The remainder of the site is forested with Ponderosa Pine. The site has two pockets of slopes greater than 17% with other basalt rock outcrop features throughout the property. A large amount of fill placed on site, which has the appearance of a steep slope, will not be protected. An existing aboveground 69 kV transmission line crosses the

site in an east-west direction connecting to an existing APS substation at the southwestern corner of the property. The line is required to be undergrounded with the development of the second phase of Timber Sky.

The site is encumbered on its southeast corner by a patent reserving a portion of the property for Transcontinental Highway Route 66. The developability of land subject to the patent is a matter between the applicant, the state, and the federal government. The applicant has been made aware of the issue and has provided an opinion from their legal counsel that development can proceed. The City takes no position on the developability of this land and has included as a condition of approval that the patent be shown on the final plat.

The applicant, Capstone Homes, is seeking Preliminary Plat approval for Sirius at Timber Sky - Block 4 within the second phase of Timber Sky consisting of 63 single-family residential lots utilizing conventional zoning standards.

B. Type of Plat

This Preliminary Plat request is for a single-family residential subdivision consisting of 63 individual lots. All areas in the subdivision not allocated as lots are reserved as tracts. Two preserved knolls are located within the subdivision and are reserved as open space.

II. Required Findings: Conformance with City Development Standards and Regional Plan

Staff reviewed and approved the Preliminary Plat based on conformance with City Code Title 10, Flagstaff Zoning Code; City Code Title 11, General Plans and Subdivisions; and City Code Title 13, Engineering Design Standards and Specifications.

A. City of Flagstaff Zoning Code (Title 10)

i. Single-Family Residential (R1)

This subdivision will create 63 single-family residential lots within the Single-Family Residential (R1) zone. The R1 zone allows a gross density of five (5) units per acre for sites within the Resource Protection Overlay (RPO) and requires a minimum density of two (2) units per acre. The net density of this subdivision is 4.56 units per acre and the gross density is 2.89 units per acre. The proposed lot sizes in this subdivision vary from 0.19 acres (approximately 8,400 square feet) to 0.41 acres (17,951 square feet). All of the lots will exceed the minimum lot size of 6,000 square feet for the R1 zone. This Preliminary Plat complies with the building form and placement standards such as setbacks in the R1 zone (Division 10-40.30.030 of the Zoning Code, page 40.30-8 and 9).

Setback requirements for the R1 zone are:

Front:	15’min.; 25’ min. for parking
Side:	8’ min.
Rear:	25’ min.

ii. Natural Resources

The subject property is located within the Resource Protection Overlay. A Natural Resource Protection Plan (NRPP) was provided in conjunction with this Preliminary Plat. Resources within this plat are limited to forest resources. The resources in Timber Sky are to be averaged over the entire site, so if one block falls short of the minimum required another makes up the difference. This block is preserving the required percentage of 47.5%. The applicant has agreed to true up the averaging data for this plat during civil plan review but, overall, the resources appear to be in conformance for all the site currently constructed.

iii. Historic/Cultural Resources
Cultural resource clearance was completed as part of the original Timber Sky development approval. No additional review was required.

iv. Parks, Open Space, Pedestrian, and Bicycle Facilities
In order to offset the parks and recreation demands for the future Timber Sky residents, active and passive recreation amenities have been incorporated into both the civic and open space requirements. Those amenities include a community center with BBQ grills, picnic tables, a pavilion, sports courts, and walking trails. The majority of these amenities will be constructed as part of phase 2, with the community center under construction.

B. City of Flagstaff Subdivision Standards (Title 11)

i. Preliminary Plat
IDS approved the Preliminary Plat based on conformance with the procedures and application requirements outlined in Section 11-20.60: Preliminary Plat on June 7, 2022.

ii. Subdivision Standards and Regulations
IDS also approved the Preliminary Plat based on conformance with relevant standards in Section 11-20.120: Subdivision Design Standards and Requirements.

ii.1 Lot Design
The proposed subdivision meets the standards for lot design:

- Meet the minimum lot width, depth, and size requirements of the Zoning Code.
- Be designed appropriately for the location and character of the proposed development, street improvements, and underlying topography.
- All lots shall be lawfully built upon and be developable (lots are designed in a way so that development can meet all relevant development standards).
- Buildable area (building envelope) shall be located away from the crest of ridge lines.
- Buildable area shall be determined by setback requirements and the location of natural topographic features.

ii.2 Street Design
The proposed subdivision meets the standards for street design:

- Meet the street cross-section standards (Engineering Standards) for the type of street proposed.
- Street design is appropriate for underlying topography and in relation to existing streets. Where feasible, streets shall be placed on top of ridges to minimize the extent of grading and reduce the visual impact of development.

ii.3 Easement Design
The proposed subdivision meets the standards for easement design:

- Easements shall be provided and dedicated where deemed necessary for specific purposes (the plat will dedicate a public utility easement and a drainage easement).
- Drainage easements shall substantially follow the line of any existing watercourse that traverses the land.

ii.4 Block Design

The proposed subdivision meets the standards for block design:

- Blocks in non-transect zones shall not normally exceed 1,200 feet in length measured from the property lines, except in hillside developments or where a subdivision of one-half acre lots or larger justify or require a variation from this requirement, or where there are unusual conditions of the property being subdivided.

iii. Minimum Required Subdivision Improvements

The subdivider is required to improve all streets, pedestrian ways, alleys, and easements in the subdivision and adjacent to it as required to serve the subdivision. Staff review of the Preliminary Plat along with the impact analyses discussed in the Engineering Standards section below identified the required improvements in conformance with Section 11-20.130: Minimum Required Subdivision Improvements. These improvements will formally be approved with Civil Engineering Plans review, which will occur after Preliminary Plat approval by City Council.

C. City of Flagstaff Engineering Standards (Title 13)

As part of the Preliminary Plat review, Staff conducted a public systems analysis to confirm preliminary compliance with Engineering Standards. Following Preliminary Plat approval, the applicant shall submit and receive approval for Civil Engineering Plans for the subdivision prior to review and approval of the Final Plat. Approval of the Civil Engineering Plans will be contingent on the plat meeting City Engineering Standards.

i. Access and Traffic

The approved Timber Sky Traffic Impact Analysis (TIA) dated June 23, 2016, was prepared by CivTech, and was reviewed by the City, Coconino County, and ADOT. All off-site roadway improvements are regulated by the Development Agreement approved in conjunction with this development. This report will focus on the details in relation to the on-site improvements required for this plat. Phase 2 of Timber Sky will have one primary access point on West Route 66 via Alvan Clark Way and a second primary access via McAllister Ranch Road to Woody Mountain Road, which will be completed to the full roadway section. The proposed subdivision has direct access to McAllister Ranch Road.

The internal subdivision streets are based on City Engineering Standards except for having a right-of-way width of 55 feet versus the 57-foot dimension required, which allows one foot of the required two-foot bench behind the sidewalk to be located in an easement rather than right-of-way. The City Engineer, through a modification request, has approved this exception. The internal streets have a 16.5-foot travel lane with a 5-foot sidewalk separated by a 5-foot landscaped parkway on both sides of the street. The City Engineer previously approved, in association with the Timber Sky Block Plat, a modification request to vary the landscaped parkway in places where significant resources could be preserved. Two other engineering modifications have been approved in conjunction with these plats. The first allows a landscaped entry feature to each subdivision, and the second removes lighting from internal residential streets, as this site is located in Lighting Zone 1. Since these modification requests have been granted, Code requirements have been updated and the proposed lighting meets current engineering standards.

ii. Water and Wastewater

Civil Design & Engineering, Inc., on behalf of the City of Flagstaff Water Services Division, prepared the Water and Wastewater Impact Analysis (WSIA). The analysis is based on the demands generated by Timber Sky with a residential dwelling cap of 1,300 units.

Water

The closest source of Zone A+ water for this site includes an 18-inch waterline within Route 66 along the northern property boundary and a 12-inch waterline located in Woody Mountain Road. These existing Zone A+ waterlines are fed by the Railroad Springs tank and a booster pump located in the Railroad Springs Subdivision. A minimum of three connections will need to be made to the existing distribution system for this development. A looped water system will be required from Route 66 to Woody Mountain Road. Each of the Blocks within Timber Sky will be connected to the water main within the internal collector roadways.

Wastewater

The Water and Wastewater Impact Analysis identified two possible connection points to the City sewer system. The nearest existing sewer line is located along Woody Mountain Road where there is an eight (8) inch PVC sewer main. The second is the Westside Sewer line extension to the existing 18-inch PVC sewer interceptor location in Adirondack Avenue (Railroad Springs). The Rio De Flag Wastewater Treatment Plant will treat all sewage collected in these lines.

Modification to the existing sewer collection system was required for the Timber Sky development. The first improvement included off-site replacement of the eight (8) inch sewer line with an 18-inch, 21-inch, and 24-inch sewer line for a stretch of approximately 3,100 feet along Thompson Street and West Kaibab. The second off-site improvement included installation of the 18-inch sewer line connecting Adirondack Avenue (Railroad Springs) to the project site. This reach of the Westside Sewer line extension is approximately 5,170 feet in length, runs along the Clay Avenue Wash adjacent to McAllister Ranch and has already been completed. Each block within Timer Sky will be connected to the sewer main with the internal collector roadways.

iii. Stormwater

Timber Sky has an open space corridor that will manage major portions of the stormwater on the project site. A series of retention basins will be constructed along the flowline through the property. These basins will convey on-site and off-site flows from the west and south of the project site with an outlet to an existing box culvert under Route 66. The box culvert discharges flow to the Clay Wash Detention Basin located north of Route 66 within the Rio De Flag watershed area.

Low Impact Development (LID) requirements are being met in several ways. The water quality aspects of the LID requirements are being met in the upper reaches of the site at the discharge points of impervious surface areas. The use of bio-retention areas on single-family lots are proposed to meet the requirements for the residential impervious areas. Maintenance of the bio-retention areas on tracts will be the responsibility of the Homeowners Association. These maintenance requirements have been added to the development agreement for this project.

REQUIRED FINDINGS:

The Planning and Zoning Commission shall find the Preliminary Plat meets the requirements of the City Code Title 10, Flagstaff Zoning Code; City Code Title 11, General Plans and Subdivisions; and City Code Title 13, Engineering Design Standards and Specifications.

Recommendation

Staff recommends the Planning and Zoning Commission, in accordance with the required findings presented in this report, forward the Preliminary Plat to the City Council with a recommendation of approval with the following conditions.

Conditions of Approval:

1. The applicant shall provide the purpose of each tract on the final plat.
2. The final plat shall show the patent as shown on Sheet 2 of the preliminary plat and on the Timber Sky Final Block Plat.
3. All lots shown with less than a 60-foot lot width at the 25-foot front setback shall have building envelopes with front setbacks set at the point where the lot width is 60 feet. A note shall be added to the lot typical identifying which lots have alternative front setbacks.

Attachments:

- Application
- Preliminary Plat
- Applicant Legal Opinion on Patent

City of Flagstaff — Community Development Division

211 W. Aspen Ave
Flagstaff, AZ 86001
www.flagstaff.az.gov
P: (928) 213-2618

Date Received	**Application for Subdivision Review**	File Number

Property Owner(s): Abbot - Rhoton Investments LLC		**Phone:** (928) 774-3826
Mailing Address: 3605 S. FLAGSTAFF RANCH RD	**City, State, Zip:** FLAGSTAFF AZ, 86005	**Email** JSUTHERLAND@CAPSTONEHOMESAZ.COM
Applicant(s): JOHN SUTHERLAND		**Phone:** (928) 774-3826
Mailing Address: 3605 S. FLAGSTAFF RANCH RD	**City, State, Zip:** FLAGSTAFF, AZ 86005	**Email:** JSUTHERLAND@CAPSTONEHOMESAZ.COM
Project Representative: JOHN SUTHERLAND		**Phone:** (928) 774-3826
Mailing Address: 3605 S. FLAGSTAFF RANCH RD	**City, State, Zip:** FLAGSTAFF, AZ 86005	**Email:** JSUTHERLAND@CAPSTONEHOMESAZ.COM

Requested Review:
- ☐ Development Master Plan
- ☐ Conceptual Plat
- ☐ Preliminary Plat P&Z and Council
- ☐ Modified Subdivision
- ✓ Preliminary Plat
- ☐ Final Plat- Council

Project Name: BLOCK 4 (TBD) AT TIMBER SKY	**Site Address** SF RESIDENTIAL		**Parcel Number:** 112-01-707
Proposed Use: R1, SINGLE FAMILY RESIDENTIAL	**Existing Use:** UNDEVELOPED	**Subdivision, Tract & Lot Number:** TIMBER SKY, BLOCK 4	
Zoning District: R1, SINGLE FAMILY RESIDENTIAL	**Regional Plan Category:** RESIDENTIAL	**Flood Zone** X	**Size of Site (Sq. ft. or Acres)** 21.82 AC

Property Information:
- ☐ Yes ✗ No Located in an existing Local/National Historic District? (Name:_____)
- ☐ Yes ✗ No Existing structures are over 50 years old at the time of application?
- ✗ Yes ☐ No Subject property is undeveloped land?

Surrounding Uses	North	South	East	West
(Res, Com, Ind)	RES	IND	FUTURE RES	FUTURE RES

Proposed Use:	Number of Lots	Number of Units	Number of acres per use	Building Square Feet
	63	63	21.82	

Please complete a "*Subdivision Review Application*" and provide an initialed "*Application and Information Checklist*" form along with the required number of plans and information as appropriate for a Development Master Plan, Conceptual, Preliminary or Final Plat. **Incomplete submittals will not be scheduled.**

Property Owner Signature: (required)	Date:	Applicant Signature:	Date:
John Sutherland	3/14/22	John Sutherland	3/14/22

For City Use

Date Filed:	**Case Number (s)**	
P & Z Hearing Date:	**Publication and Posting Date:**	
Council Hearing Date:	**Publication and Posting Date:**	
Fee Receipt Number:	**Amount:**	**Date:**

Action by Planning and Zoning Commission:	Action By City Council:
☐ Approved	☐ Approved
☐ Denied	☐ Denied
☐ Continued	☐ Continued

Staff Assignments	Planning	Engineering	Fire	Public Works/Utilities	Stormwater

PLOTTED: May 19, 2022–9:10am

DEDICATION

STATE OF ARIZONA
SS.
COUNTY OF COCONINO

KNOW ALL PERSONS BY THESE PRESENTS: THAT CAPSTONE HOMES, LLC (AN ARIZONA LIMITED LIABILITY COMPANY), AS 'OWNER' AND 'GRANTOR,' HAS SUBDIVIDED UNDER THE NAME SIRIUS AT TIMBERSKY – BLOCK 4, A SUBDIVISION LOCATED IN A PORTION OF SECTION 10, TOWNSHIP 21 NORTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, COCONINO COUNTY, ARIZONA, AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF SIRIUS AT TIMBERSKY – BLOCK 4 AND DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, STREET, AND EASEMENT CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

RIGHT-OF-WAYS DEDICATED

PUBLIC RIGHT–OF–WAY (ROW). GRANTOR HEREBY DEDICATES TO THE CITY OF FLAGSTAFF, IN FEE SIMPLE, ALL PUBLIC RIGHTS–OF–WAY SHOWN ON THE PLAT FOR PUBLIC USE. GRANTOR AS ABUTTING PROPERTY OWNER SHALL MAINTAIN THE SIDEWALK AND LANDSCAPING WITHIN THE RIGHT–OF–WAY BETWEEN THE STREET CURB AND THE ABUTTING PROPERTY, IN COMPLIANCE WITH THE FLAGSTAFF CITY CODE.

EASEMENTS DEDICATED

GRANTOR HEREBY DEDICATES TO THE CITY OF FLAGSTAFF, ARIZONA, AN ARIZONA MUNICIPAL CORPORATION, PERPETUAL NON–EXCLUSIVE EASEMENTS OVER, UNDER, UPON, AND ACROSS ALL EASEMENT AREAS DESIGNATED ON THE PLAT FOR THE EASEMENT PURPOSES, INCLUDING ANY RELATED FACILITIES AND EQUIPMENT AS FOLLOWS:

PUBLIC UTILITY EASEMENT (P.U.E.), FOR PUBLIC USE, FOR UTILITY PURPOSES, INCLUDING WITHOUT LIMITATION, CONSTRUCTION, OPERATION, MAINTENANCE, MODIFICATION, REPLACEMENT AND REPAIR OF ELECTRICITY, ENERGY, GAS, WATER, SEWER, PUBLIC STORM WATER SYSTEM, TELECOMMUNICATIONS, INTERNET SERVICES, CABLE TELEVISION, AND OTHER UTILITIES.

DRAINAGE EASEMENT (DE), FOR PUBLIC USE, FOR DRAINAGE AND FLOOD CONTROL PURPOSES, INCLUDING WITHOUT LIMITATION, CONSTRUCTION, OPERATION, MAINTENANCE, MODIFICATION, REPLACEMENT AND REPAIR OF NATURAL AND MAN–MADE CHANNELS, WASHES, WATERCOURSES, LEVEES, DIKES, DAMS, RETENTION AND DETENTION BASINS, STORAGE BASINS, STORM DRAINS, MONITORING DEVICES. CITY OF FLAGSTAFF IS RESPONSIBLE FOR MAINTENANCE OF THE EASEMENT AREA FOR DRAINAGE AND FLOOD CONTROL PURPOSES.

DRAINAGE MAINTENANCE EASEMENT (DME), FOR CITY ACCESS TO MAINTAIN PRIVATE DRAINAGE WAYS AND DRAINAGE FEATURES, INCLUDING WITHOUT LIMITATION, CONSTRUCTION, OPERATION, MAINTENANCE, MODIFICATION, REPLACEMENT AND REPAIR OF NATURAL AND MAN–MADE CHANNELS, WASHES, WATERCOURSES, RETENTION AND DETENTION BASINS, STORAGE BASINS, STORM DRAINS, MONITORING DEVICES, IN THE EVENT GRANTOR HAS FAILED TO PROPERLY MAINTAIN PRIVATE DRAINAGE WAYS IN ACCORDANCE WITH THE FLAGSTAFF CITY CODE.

SLOPE EASEMENT (SE) FOR SLOPE AND NATURAL DRAINAGE OF WATER PURPOSES ADJACENT TO ROADS, SIDEWALKS, TRAILS, AND OTHER SURFACE IMPROVEMENTS, INCLUDING WITHOUT LIMITATION, CONSTRUCTION, OPERATION, MAINTENANCE, MODIFICATION, REPLACEMENT AND REPAIR OF MAN–MADE AND NATURAL SLOPES, SOIL NAILS, GABIONS, RETAINING WALLS, EROSION CONTROL IMPROVEMENTS, AND VEGETATION. GRANTOR IS RESPONSIBLE FOR MAINTAINING THE STRUCTURAL INTEGRITY OF THE SLOPE, IN COMPLIANCE WITH THE FLAGSTAFF CITY CODE. THE SLOPE EASEMENTS ARE AUTOMATICALLY ABANDONED ON A LOT OR PARCEL WHEN THE CITY OF FLAGSTAFF ISSUES CERTIFICATE OF OCCUPANCY FOR THE LOT OR PARCEL.

VEHICULAR NON–ACCESS EASEMENT (VNAE) FOR TRAFFIC CONTROL PURPOSES. VEHICLE ACCESS AND DRIVEWAYS ARE PROHIBITED IN THE EASEMENT AREA.

THE OWNER HEREBY DEDICATES TO UNISOURCE ENERGY SERVICES AND ITS SUBSIDIARY, UNS GAS:

ASSIGNS ALL AREAS ON THIS PLAT MARKED P.U.E. OR PUBLIC UTILITY EASEMENT AND THE PROPERTY DESIGNATED ON THE PLAT FOR STREETS. WHETHER PUBLIC OR PRIVATE, FOR EXISTING NATURAL GAS FACILITIES TOGETHER WITH THE RIGHT TO INSTALL REQUIRED SERVICE CONNECTIONS OVER OR UNDER THE SURFACE TO SERVE IMPROVEMENTS THEREON OR ADJACENT TO.

EASEMENTS AND GENERAL CONDITIONS

GRANTOR HEREBY DEDICATES TO THE CITY OF FLAGSTAFF, ARIZONA PERPETUAL NON–EXCLUSIVE EASEMENTS OVER, UNDER, UPON, AND ACROSS ALL EASEMENT AREAS DESIGNATED ON THE PLAT FOR THE EASEMENT PURPOSES, INCLUDING ANY RELATED FACILITIES AND EQUIPMENT, AND SUBJECT TO THE FOLLOWING GENERAL CONDITIONS:

1. GRANTOR SHALL NOT ALLOW USE OF THE EASEMENT AREA IN A MANNER THAT INTERFERES WITH EASEMENT;
2. GRANTOR SHALL MAINTAIN EASEMENT AREAS FREE AND CLEAR OF VEGETATION OR OBSTRUCTIONS THAT INTERFERE WITH THE EASEMENT, PER THE FLAGSTAFF CITY CODE AS AMENDED; AND
3. GRANTEE MAY MAINTAIN VEGETATION AND REMOVE OBSTRUCTIONS THAT INTERFERE WITH THE EASEMENT;
4. IN THE EVENT THE CITY OF FLAGSTAFF HAS NOTIFIED GRANTOR AND PROVIDED REASONABLE OPPORTUNITY TO MAINTAIN THE SLOPE, VEGETATION AND/OR REMOVE OBSTRUCTIONS THAT INTERFERE WITH THE EASEMENT, CITY OF FLAGSTAFF MAY ISSUE AN ASSESSMENT AGAINST GRANTOR TO RECOVER THE CITY'S ACTUAL, REASONABLE MAINTENANCE COSTS AND RECORD IT AS A LIEN AGAINST GRANTOR'S PROPERTY UNTIL THE ASSESSMENT AND ANY STATUTORY INTEREST IS PAID;
5. GRANTEE SHALL HAVE A LIMITED, TEMPORARY RIGHT OF ACCESS ACROSS GRANTOR'S ADJACENT PROPERTY FOR EASEMENT PURPOSES IF ACCESS CANNOT BE REASONABLY ACHIEVED BY OTHER MEANS.

BINDING EFFECT. THE EASEMENTS GRANTED WITHIN THIS DEDICATION ARE PERMANENT AND PERPETUAL AND SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS IN INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF.

IMPROVEMENTS. GRANTOR HEREBY DEDICATES TO THE CITY OF FLAGSTAFF ALL IMPROVEMENTS INSTALLED OR CONSTRUCTED BY GRANTOR FOR CITY PUBLIC RIGHTS–OF–WAY AND CITY UTILITIES WITHIN THE EASEMENT AREAS, AND SUCH DEDICATION SHALL BE EFFECTIVE WHEN FORMALLY ACCEPTED BY THE CITY ENGINEER (THE "ACCEPTANCE DATE").

INTERIM LIABILITY.

CAPSTONE HOMES, LLC., ["GRANTOR" OR "OWNER"], DOES HEREBY RELEASE AND DISCHARGE THE CITY OF FLAGSTAFF, AND INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF FLAGSTAFF, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR NEWLY DEDICATED PUBLIC RIGHTS–OF–WAY AS DEPICTED ON THIS PLAT UNTIL THE RIGHT–OF–WAY IS IMPROVED TO CITY STANDARDS AND THOSE IMPROVEMENTS ARE APPROVED AND FORMALLY ACCEPTED BY THE CITY ENGINEER ("ACCEPTANCE DATE"). GRANTOR SHALL MAINTAIN THE NEWLY DEDICATED PUBLIC RIGHTS–OF–WAY UNTIL THE ACCEPTANCE DATE.

NOW, THEREFORE, IN WITNESS WHEREOF, GRANTOR HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE UNDERSIGNED, DULY AUTHORIZED OFFICER THIS _____ DAY OF _____, 202_.

BY: CAPSTONE HOMES, LLC.

BY: _____
CLINTON WHITING
PRESIDENT

STATE OF ARIZONA
SS.
COUNTY OF COCONINO

ON THIS _____ DAY OF _____, 202_, BEFORE ME, THE UNDERSIGNED PERSONALLY APPEARED _____ WHO ACKNOWLEDGED BY SELF TO THE REPRESENT CAPSTONE HOMES, LLC., AND THAT HE/SHE AS SUCH, BEING AUTHORIZED SO TO DO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSE THEREIN CONTAINED.

IN WITNESS WHEREOF: I HEREUNTO FORTH MY HAND AND OFFICIAL SEAL.

_____
NOTARY PUBLIC MY COMMISSION EXPIRES

PRELIMINARY PLAT

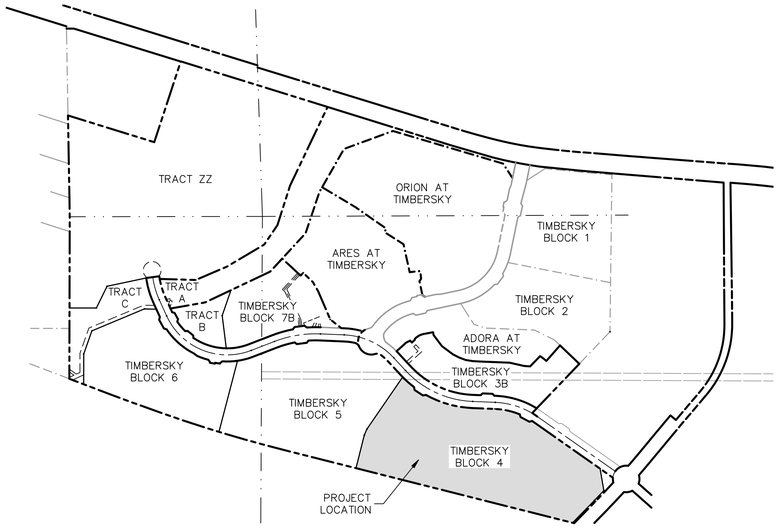
FOR

SIRIUS AT TIMBER SKY - BLOCK 4

FLAGSTAFF, ARIZONA

LOTS 1 THROUGH 63 OF TIMBER SKY BLOCK 4 AND
TRACTS 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J', 'K', AND 'L'

LOCATED IN SECTION 10, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT BASE AND MERIDIAN, COCONINO COUNTY, FLAGSTAFF, ARIZONA



VICINITY MAP

N.T.S.

SHEET LIST		
NAME	NUMBER	TITLE
PP01	1	COVER SHEET
PP02	2	EXISTING BOUNDARY
PP03	3	CIVIL DESIGN
PP04	4	PRELIMINARY PLAT
PP05	5	PRELIMINARY PLAT (NRPP ENVELOPES)
PP06	6	PRELIMINARY PLAT (NRPP ENVELOPE TABLES)
PP07	7	NRPP
L–101	8	OVERLOOK PARK CONCEPTUAL LANDSCAPE PLAN

LEGEND

ROW
EASEMENT
GRAVITY SEWER LINE
PUBLIC WATER LINE
STORM DRAIN PIPE
LOT BOUNDARY
FIRE HYDRANT
AIR RELEASE VALVE
SEWER MANHOLE
STORM DRAIN MANHOLE
CATCH BASIN
GATE VALVE
LIGHT POLE
PROPOSED DRAINAGE FLOW ARROW
EX. LOT LINE
EX. EASEMENT
EX. INTERMEDIATE CONTOUR (6944)
EX. INDEX CONTOUR (6945)
EX. WATER LINE
EX. SEWER LINE
EX. GAS
EX. STORM DRAIN
EX. UNDERGROUND UTIL.
EX. OVERHEAD UTIL.
SECTION LINE
EX. ROAD STRIPING
EX. WATER VALVE
EX. SIGNAGE
EX. ELECTRIC BOX

PROPERTY INFORMATION:

APN# 112–01–707
BLOCK 4

AREA GROSS = 21.82 AC
AREA NET = 17.7 AC
DENSITY GROSS = 2.89 DU/AC
DENSITY NET = 3.56 DU/AC

ZONING: SINGLE–FAMILY DENSITY RESIDENTIAL (R1)

OPEN SPACE SUMMARY

OPEN SPACE FOR TIMBER SKY HAS BEEN ACCOUNTED FOR IN THE OVERALL ROCK OUTCROPPING PRESERVATIONS, COMMUNITY CENTER AND OPEN SPACE WITHIN COLLECTOR ROADWAY MEDIANS AND PARKWAYS. ADDITIONAL OPEN SPACE IS BEING PROVIDED WITHIN THIS SITE.

GROSS SITE AREA = 21.82 AC
15% OPEN SPACE = 3.27 AC
OPEN SPACE PROVIDED WITHIN PARCEL 4 = 3.84 AC

STORMWATER AND IMPERVIOUS SUMMARY

IMPERVIOUS AREA REQUIRED:
63 LOTS @ 35% COVERAGE = 5.12 AC IMPERVIOUS
ROW 4.20 AC @ 79% IMPERVIOUS = 3.32 AC IMPERVIOUS

PROVIDED VOLUME IN BLOCK 4 LID BASIN:
VOLUME PROVIDED = 0.44 AF / 19,200 CF (PROVIDED IN LID BASIN 4)

PRELIMINARY EARTHWORK SUMMARY

CUT: 6,200 CY
FILL: 4,500 CY

PROPERTY OWNER/DEVELOPER:

CAPSTONE HOMES
CONTACT: JOHN SUTHERLAND
3605 S. FLAGSTAFF RANCH RD.
FLAGSTAFF, AZ 86005
(928) 774–3826

CIVIL ENGINEER:

SHEPHARD–WESNITZER, INC.
STEPHEN IRWIN, PE #58405
110 W. DALE AVE.
FLAGSTAFF, AZ 86001
(928) 774–0354

SURVEYOR:

SHEPHARD–WESNITZER, INC.
AARON BORLING, RLS #48756
110 W. DALE AVE.
FLAGSTAFF, AZ 86001
(928) 774–0354

SITE BENCHMARK

2" ALUMINUM CAP IN MEDIAN NORTHEAST CORNER ISLAND OF MCALLISTER RANCH ROAD AND ALVAN CLARK WAY ROUNDABOUT
ELEVATION = 7088.834'

SOURCE OF PROJECT INFORMATION

BOUNDARY INFORMATION PER INST. #3810031, AND SUPPLEMENTAL TOPOGRAPHIC SURVEY PERFORMED BY SHEPHARD–WESNITZER, INC. IN NOVEMBER 2020.

BASIS OF BEARING

NORTH 89–47–14 EAST, 2555.77' FROM THE NORTHWEST QUARTER CORNER OF SECTION 19 TO THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 21 NORTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDAN, COCONINO COUNTY, ARIZONA, ACCORDING TO THE INST. NO. 3810031, OFFICIAL RECORDS OF COCONINO COUNTY, ARIZONA.

LEGAL DESCRIPTIONS

TIMBER SKY BLOCK 4, LOCATED IN THE SOUTH HALF OF THE SOUTHWEST QUARTER; SECTION 19, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, COCONINO COUNTY, ARIZONA. FORMERLY A PORTION ASSESSOR'S PARCEL NUMBER 112–01–165 112–01–166 (TRACT 'ZZ') ACCORDING TO INSTRUMENT NUMBER 3810031, OFFICIAL RECORDS OF COCONINO COUNTY, ARIZONA.

RESOURCE PRESERVATIONS

THE PROJECT DOES FALL WITHIN THE CITY OF FLAGSTAFF RESOURCE PROTECTION OVERLAY ZONE. REFER TO THE NATURAL RESOURCE PROTECTION PLAN WITHIN THE CIVIL CONSTRUCTION PLANS BY SWI.

FLOOD ZONE CLASSIFICATION

THE PROJECT AREA IS WITHIN ZONE X DESIGNATED BY FEMA FIRM'S 04005C–6804G AND 04005C–6812G. THE PROJECT AREA HAS BEEN DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN. THEREFORE, NO BUILDING WILL OCCUR IN A FLOODPLAIN.

UTILITY COMPANY CONTACTS

APS
CONTACT: CHAD BROOKS
2200 E. HUNTINGTON
FLAGSTAFF, AZ 86004
CHAD.BROOKS@APS.COM
PHONE: (928) 773–6440

UNISOURCE ENERGY SERVICES
CONTACT: MARTIN CONBOY
2901 W SHAMRELL BLVD #110
FLAGSTAFF, AZ 86001
MCONBOY@UESAZ.COM
PHONE: (928) 226–2269

LUMEN
CONTACT: MANUEL HERNANDEZ
112 NORTH BEAVER STREET
FLAGSTAFF, AZ 86001
MANUEL.HERNANDEZ248@LUMEN.COM
PHONE: (928) 779–4935

ALTICE USA
CONTACT: SANFORD YAZZIE
1601 SOUTH PLAZA WAY
FLAGSTAFF, AZ 86001
SANFORD.YAZZIE@ALTICEUSA.COM
PHONE: (928) 266–0672

UTILITY COMPANY APPROVAL

ARIZONA PUBLIC SERVICE
CHAD BROOKS BY LETTER DATED 3/16/2022
BY: DATE:

UNISOURCE ENERGY SERVICES
MARTIN CONBOY BY LETTER DATED 3/15/2022
BY: DATE:

LUMEN
KEVIN S. WAGNER ON BEHALF OF MANUEL HERNANDEZ
BY LETTER DATED 4/4/2022
BY: DATE:

ALTICE USA
SANFORD YAZZIE BY LETTER DATED 3/15/2022
BY: DATE:

UTILITY CONFLICT

UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE AND WERE COMPILED FROM RECORD DRAWINGS, SURVEY, AND CONSTRUCTION PLANS FURNISHED BY OTHERS. THE CONTRACTOR IS ULTIMATELY RESPONSIBLE FOR DETERMINING THE ACTUAL LOCATIONS OF ALL UNDERGROUND LINES THAT MAY AFFECT WORK PRIOR TO CONSTRUCTION.

THERE ARE NO APPARENT UTILITY CONFLICTS WITH APS, UNISOURCE, CENTURYLINK, AND ALTICE USA; HOWEVER, THEY DO HAVE EXISTING FACILITIES IN THE AREA THAT WILL NEED TO BE PROTECTED AND/OR RELOCATED.

CERTIFICATE OF LAND SURVERYOR

THIS IS TO CERTIFY THAT THE SURVEY OF THE PROPERTY DESCRIBED AND PLATTED HEREON WAS MADE UNDER MY DIRECTION AND SUPERVISION AND IS ACCURATELY REPRESENTED ON THIS PLAT. I ALSO CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE AS SHOWN, AND THE MONUMENTS DESCRIBED IN IT HAVE BEEN LOCATED AS DESCRIBED.

_____
Aaron D. Borling, RLS 48756

PRELIMINARY

NOT FOR CONSTRUCTION, BIDDING OR RECORDING

FLAGSTAFF ARIZONA

TIMBER SKY BLOCK 4

COVER SHEET

JOB NO:	21264
DATE:	MAY 22
SCALE:	AS SHOWN
DRAWN:	ELK
DESIGN:	ELK, SJV
CHECKED:	SJV, SDJ

REVISIONS			
NO.	DESCRIPTION	DATE	BY

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.6934 fax
www.swoz.com

Shephard Wesnitzer, Inc.

Call at least two full working days before you dig, it's the law. (602)263-1100

ARIZONA811 Arizona Blue Stake, Inc.

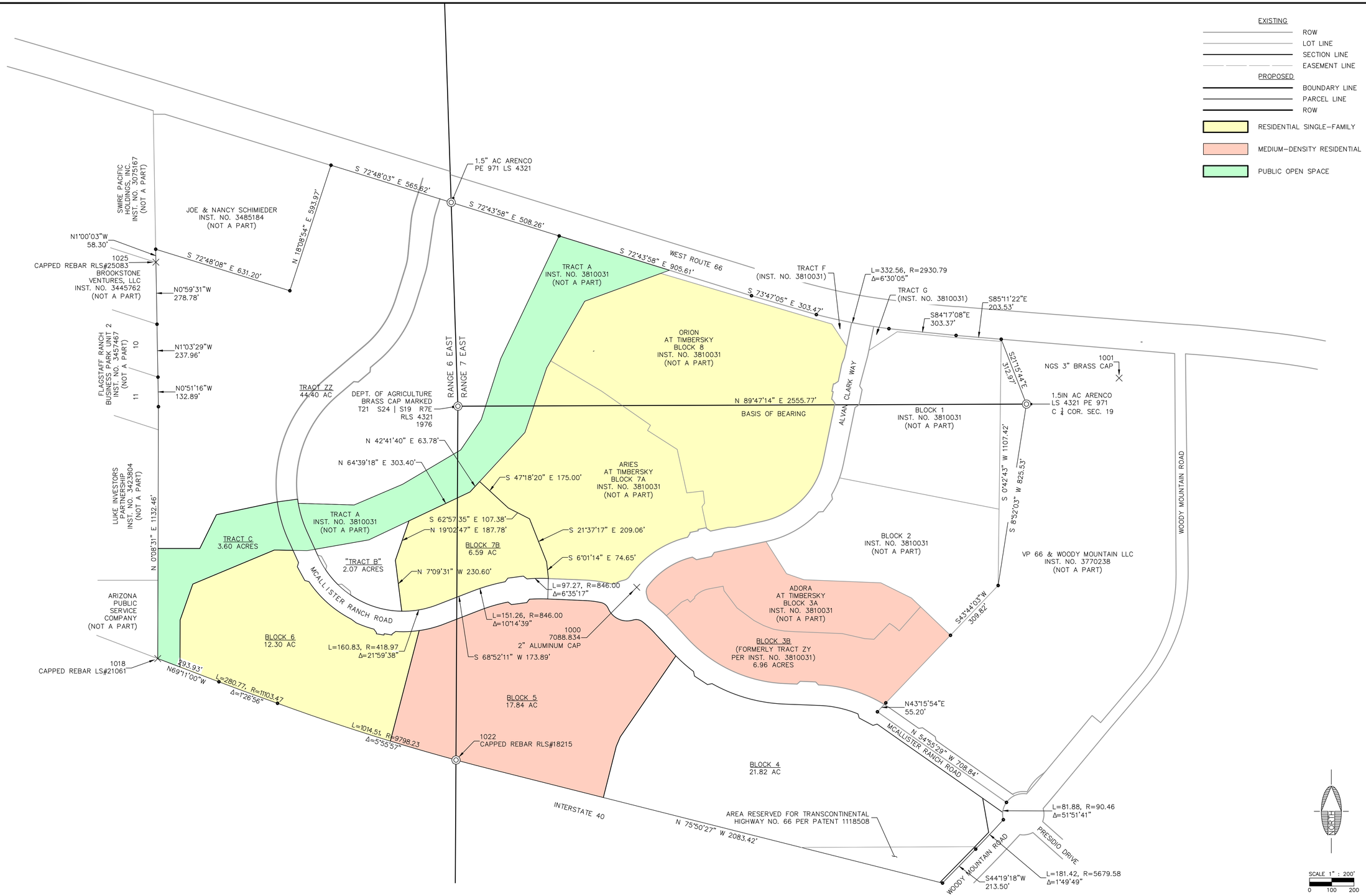
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
PP01

SHT NO. 1 OF 7

FILE: P:\2021\21264\DRAWINGS\PLATS\PRELIMINARY\21264-COVER.DWG EKEISER

PLOTTED: May 19, 2022–9:11am



PRELIMINARY

NOT FOR CONSTRUCTION, BIDDING OR RECORDING

FLAGSTAFF ARIZONA

TIMBER SKY BLOCK 4

EXISTING BOUNDARY

JOB NO:	21264
DATE:	MAY 22
SCALE:	AS SHOWN
DRAWN:	BH, ELK
DESIGN:	BH, SVJ
CHECKED:	SCI

REVISIONS

NO.	DESCRIPTION	DATE	BY

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.8934 fax
www.swiaz.com

Shephard Wesnitzer, Inc.

Call at least two full working days before you begin excavation
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO. PP02

SHT NO. 2 OF 7

FILE: P:\2021\21264\DRAWINGS\PLATS\PRELIMINARY\EXISTING BOUNDARY.DWG EKEISER

PLOTTED: May 19, 2022–9:11am

NOTE
1. BUILDING LOCATIONS SHOWN ON THIS PLAT ARE CONCEPTUAL ONLY, AND MAY BE MODIFIED FOR INDIVIDUAL LOT BUILDING PERMITTING

TYPICAL ROAD CROSS SECTION (A / PP03)
NO SCALE

TYPICAL ENTRANCE CROSS SECTION (B / PP03)
NO SCALE

PRELIMINARY
NOT FOR CONSTRUCTION, BIDDING OR RECORDING

FLAGSTAFF ARIZONA

TIMBER SKY BLOCK 4

CIVIL DESIGN

JOB NO:	21264
DATE:	MAY 22
SCALE:	AS SHOWN
DRAWN:	ELK
DESIGN:	ELK/SJW
CHECKED:	SDI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.6934 fax
www.swiaz.com
Shephard Wesnitzer, Inc.

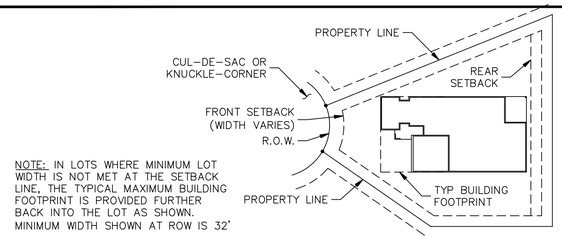
REVISIONS			
NO.	DESCRIPTION	DATE	BY

Call at least two full working days before you begin excavation
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
PP03

SHT NO. 3 OF 7

FILE: P:\2021\21264\DRAWINGS\PLATS\PRELIMINARY\CIVIL DESIGN-21264.DWG EKEISER



TYPICAL CUL-DE-SAC & KNUCKLE LOT DETAIL

NO SCALE

1 / PP04

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C200	105.90	721.02	8°24'56"
C201	14.07	200.00	4°01'55"
C202	75.66	721.00	6°00'46"
C203	107.22	841.00	7°18'16"
C204	21.77	250.00	4°59'18"
C205	24.16	277.50	4°59'18"
C206	24.16	277.50	4°59'18"
C207	41.67	68.00	35°06'36"
C208	70.02	896.00	4°28'39"
C209	42.53	1016.00	2°23'55"
C210	79.40	1016.00	4°28'39"
C211	70.02	896.00	4°28'39"
C212	79.40	1016.00	4°28'39"
C213	68.99	1016.00	3°53'27"
C214	70.01	1016.00	3°56'54"

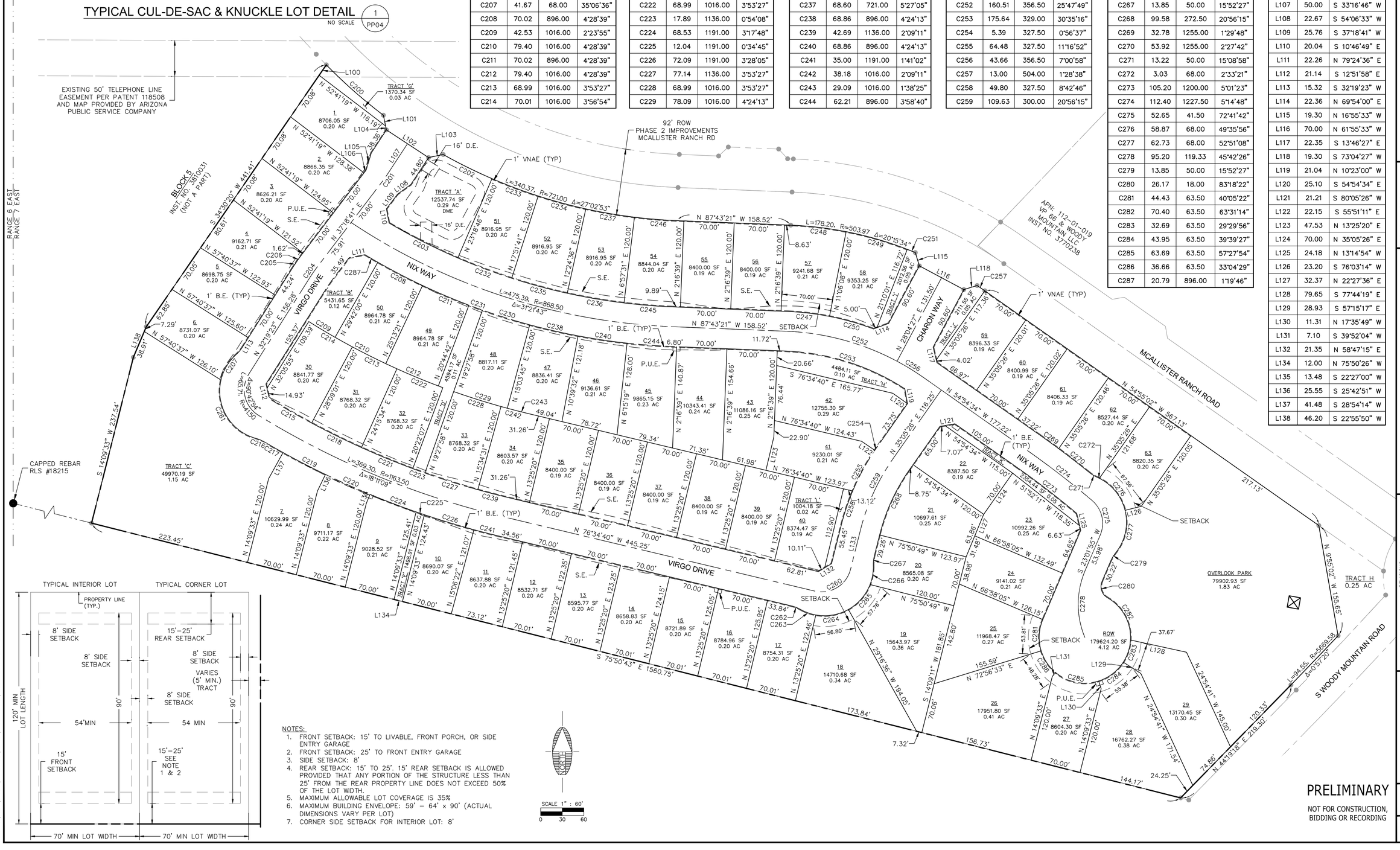
CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C215	67.73	1136.00	3°24'59"
C216	13.19	50.00	15°06'41"
C217	29.60	1191.00	1°25'25"
C218	77.14	1136.00	3°53'27"
C219	66.31	1191.00	3°11'24"
C220	67.85	1191.00	3°15'51"
C221	77.14	1136.00	3°53'27"
C222	68.99	1016.00	3°53'27"
C223	17.89	1136.00	0°54'08"
C224	68.53	1191.00	3°17'48"
C225	12.04	1191.00	0°34'45"
C226	72.09	1191.00	3°28'05"
C227	77.14	1136.00	3°53'27"
C228	68.99	1016.00	3°53'27"
C229	78.09	1016.00	4°24'13"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C230	68.86	896.00	4°24'13"
C231	20.00	896.00	1°16'44"
C232	80.02	841.00	5°27'05"
C233	68.60	721.00	5°27'05"
C234	68.60	721.00	5°27'05"
C235	80.02	841.00	5°27'05"
C236	80.02	841.00	5°27'05"
C237	68.60	721.00	5°27'05"
C238	68.86	896.00	4°24'13"
C239	42.69	1136.00	2°09'11"
C240	68.86	896.00	4°24'13"
C241	35.00	1191.00	1°41'02"
C242	38.18	1016.00	2°09'11"
C243	29.09	1016.00	1°38'25"
C244	62.21	896.00	3°58'40"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C245	68.71	841.00	4°40'52"
C246	58.91	721.00	4°40'52"
C247	59.14	384.00	8°49'29"
C248	77.63	504.00	8°49'29"
C249	88.53	504.00	10°03'53"
C250	63.70	384.00	9°30'16"
C251	12.04	504.00	1°22'07"
C252	160.51	356.50	25°47'49"
C253	175.64	329.00	30°35'16"
C254	5.39	327.50	0°56'37"
C255	64.48	327.50	11°16'52"
C256	43.66	356.50	7°00'58"
C257	13.00	504.00	1°28'38"
C258	49.80	327.50	8°42'46"
C259	109.63	300.00	20°56'15"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C260	64.66	41.50	89°16'09"
C261	104.29	68.00	87°52'15"
C262	13.85	50.00	15°52'27"
C263	22.73	68.00	19°08'54"
C264	46.79	68.00	39°25'29"
C265	46.79	68.00	39°25'29"
C266	27.32	68.00	23°01'12"
C267	13.85	50.00	15°52'27"
C268	99.58	272.50	20°56'15"
C269	32.78	1255.00	1°29'48"
C270	53.92	1255.00	2°27'42"
C271	13.22	50.00	15°08'58"
C272	3.03	68.00	2°33'21"
C273	105.20	1200.00	5°01'23"
C274	112.40	1227.50	5°14'48"
C275	52.65	41.50	72°41'42"
C276	58.87	68.00	49°35'56"
C277	62.73	68.00	52°51'08"
C278	95.20	119.33	45°42'26"
C279	13.85	50.00	15°52'27"
C280	26.17	18.00	83°18'22"
C281	44.43	63.50	40°05'22"
C282	70.40	63.50	63°31'14"
C283	32.69	63.50	29°29'56"
C284	43.95	63.50	39°39'27"
C285	63.69	63.50	57°27'54"
C286	36.66	63.50	33°04'29"
C287	20.79	896.00	1°19'46"

LINE TABLE		
LINE #	LENGTH	DIRECTION
L100	17.64	N 34°30'20" E
L101	20.81	N 11°43'14" W
L102	70.00	N 56°43'14" W
L103	20.81	S 78°16'46" W
L104	5.56	S 11°43'14" E
L105	24.80	S 16°42'22" W
L106	4.88	S 37°18'41" W
L107	50.00	S 33°16'46" W
L108	22.67	S 54°06'33" W
L109	25.76	S 37°18'41" W
L110	20.04	S 10°46'49" E
L111	22.26	N 79°24'36" E
L112	21.14	S 12°51'58" E
L113	15.32	S 32°19'23" W
L114	22.36	N 69°54'00" E
L115	19.30	N 16°55'33" W
L116	70.00	N 61°55'33" W
L117	22.35	S 13°46'27" E
L118	19.30	S 73°04'27" W
L119	21.04	N 10°23'00" W
L120	25.10	S 54°54'34" E
L121	21.21	S 80°05'26" W
L122	22.15	S 55°51'11" E
L123	47.53	N 13°25'20" E
L124	70.00	N 35°05'26" E
L125	24.18	N 13°14'54" W
L126	23.20	S 76°03'14" W
L127	32.37	N 22°27'36" E
L128	79.65	S 77°44'19" E
L129	28.93	S 57°15'17" E
L130	11.31	N 17°35'49" W
L131	7.10	S 39°52'04" W
L132	21.35	N 58°47'15" E
L134	12.00	N 75°50'26" W
L135	13.48	S 22°27'00" W
L136	25.55	S 25°42'51" W
L137	41.48	S 28°54'14" W
L138	46.20	S 22°55'50" W


EXISTING 50' TELEPHONE LINE EASEMENT PER PATENT 118508 AND MAP PROVIDED BY ARIZONA PUBLIC SERVICE COMPANY
RANGE 6 EAST
RANGE 7 EAST
BLOCK 5
INST. NO. 3561031
(NOT A PART)
92' ROW
PHASE 2 IMPROVEMENTS
MCALLISTER RANCH RD
1' VNAE (TYP)
16' D.E.
TRACT 'A'
12537.74 SF
0.29 AC
DME
TRACT 'B'
5431.65 SF
0.12 AC
TRACT 'C'
49970.19 SF
1.15 AC
TRACT 'G'
1370.34 SF
0.03 AC
TRACT 'H'
1004.18 SF
0.02 AC
TRACT 'I'
1498.91 SF
0.03 AC
NIX WAY
VIRGO DRIVE
CHARON WAY
MCALLISTER RANCH ROAD
S WOODY MOUNTAIN ROAD
OVERLOOK PARK
79902.93 SF
1.83 AC
TRACT H
0.25 AC
ROW
179624.20 SF
4.12 AC
APN: 112-01-019
VP 66 & WOODY MOUNTAIN LLC
INST. NO. 3770238
CAPPED REBAR RLS #18215
SETBACK
P.U.E.
S.E.
1' B.E. (TYP)
N 87°43'21" W 158.52'
L=340.37, R=721.00, Δ=27°02'53"
L=475.39, R=868.50, Δ=31°21'43"
L=369.30, R=1163.50, Δ=18°11'09"
L=178.20, R=503.97, Δ=20°15'34"
L=94.55, R=5665.58, Δ=0°57'20"
N 87°43'21" W 158.52'
N 76°34'40" W 445.25'
N 76°34'40" W 123.97'
S 75°50'43" E 1560.75'
S 14°09'33" W 237.54'
N 52°41'19" W 116.19'
N 52°41'19" W 128.38'
N 52°41'19" W 124.95'
N 52°41'19" W 121.52'
N 57°40'37" W 122.93'
N 57°40'37" W 125.60'
N 57°40'37" W 126.10'
S 34°39'20" W 441.41'
N 37°18'41" E 75.91'
N 32°19'23" E 156.28'
N 32°05'55" E 109.59'
N 29°42'00" E 120.00'
N 25°13'21" E 120.00'
N 20°44'42" E 120.00'
N 19°27'58" E 120.00'
N 15°03'45" E 120.00'
N 10°39'32" E 121.18'
N 6°15'19" E 128.00'
N 2°16'39" E 120.00'
N 2°16'39" E 154.66'
N 2°16'39" E 140.87'
N 2°16'39" E 120.00'
N 6°57'31" E 120.00'
N 12°24'36" E 120.00'
N 17°51'41" E 120.00'
N 23°18'46" E 120.00'
N 14°09'33" E 120.00'
N 14°09'33" E 125.41'
N 14°09'33" E 124.43'
N 14°09'33" E 120.00'
N 14°09'33" E 120.00'
N 14°09'33" E 120.00

PLOTTED: May 19, 2022–9:11am

RANGE 6 EAST
RANGE 7 EAST

BLOCK 3A
INST NO. 3810031
(NOT A PART)

BLOCK 3B
APN: 112-01-165
INST NO. 3770238
(NOT A PART)

EXISTING 50' TELEPHONE LINE EASEMENT PER PATENT 118508 AND MAP PROVIDED BY ARIZONA PUBLIC SERVICE COMPANY

BLOCK 5
INST NO. 3810031
(NOT A PART)

TRACT 'G'
1370.34 SF
0.03 AC

92' ROW
PHASE 2 IMPROVEMENTS
MCALLISTER RANCH RD

1' NO ACCESS EASEMENT

TRACT 'A'

NIX WAY

VIRGO DRIVE

TRACT 'B'

TRACT 'C'
49970.19 SF
1.15 AC

TRACT 'D'

TRACT 'E'

TRACT 'H'

TRACT 'I'

TRACT 'J'

TRACT 'K'

TRACT 'L'
1004.18 SF
0.02 AC

APN: 112-01-019
VP 66 & WOODY MOUNTAIN LLC
INST NO. 3770238

MCALLISTER RANCH ROAD

OVERLOOK PARK
79902.93 SF
1.83 AC

ROW
179624.20 SF
4.12 AC

TRACT H
0.25 AC

S WOODY MOUNTAIN ROAD

CAPPED REBAR
RLS #18215

S 14°09'33" W 237.54'

S 34°39'20" W 441.41'

N 37°18'41" E 70.60'

S.E.

1' B.E.

N 87°43'21" W 158.52'

L=340.37, R=7210.00, Δ=2°42'53"

L=178.20, R=503.97, Δ=20°15'34"

L=475.39, R=868.50, Δ=31°21'43"

N 32°19'23" E 156.28'

N 28°04'27" E 135.56'

N 35°05'26" E 116.25'

N 54°54'34" W 177.22'

N 54°35'02" W 567.13'

L=369.30, R=1163.50, Δ=18°11'09"

N 76°34'40" W 445.25'

S 75°50'43" E 1560.75'

N 44°19'18" E 219.30'

N 9°55'02" W 155.65'

L=94.55, R=5669.58, Δ=0°57'20"

S 23°01'55" W 53.98'

L=1407.90', R=4150

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	105.90	721.02	8°24'56"
C2	14.07	200.00	4°01'55"
C3	21.77	250.00	4°59'18"
C4	64.66	41.50	89°16'09"
C5	109.63	300.00	20°56'15"
C6	12.04	504.00	1°22'07"
C7	160.51	356.50	25°47'49"
C8	43.66	356.50	7°00'58"
C9	13.00	504.00	1°28'38"
C10	112.40	1227.50	5°14'48"
C11	52.65	41.50	72°41'42"
C12	95.20	119.33	45°42'26"
C13	34.33	86.90	22°37'54"
C14	9.70	35.00	15°52'27"
C15	40.43	849.19	2°43'40"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C16	47.75	736.00	3°43'02"
C19	48.11	1205.54	2°17'11"
C20	52.84	1206.00	2°30'37"
C21	54.37	1206.00	2°34'58"
C22	55.82	1206.00	2°39'07"
C28	54.00	2434.32	1°16'16"
C29	12.59	111.83	6°26'54"
C30	9.70	35.00	15°52'27"
C31	41.92	83.00	28°56'09"
C32	35.13	86.71	23°12'38"
C33	23.45	83.00	16°11'28"
C34	9.70	35.00	15°52'27"
C35	50.98	257.50	11°20'40"
C36	27.71	303.23	5°14'08"
C37	34.40	78.50	25°06'39"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C42	26.28	78.50	19°10'45"
C43	28.49	78.50	20°47'28"
C44	55.05	1028.19	3°04'03"
C45	60.12	1314.97	2°37'11"
C51	60.13	1121.00	3°04'23"
C55	47.46	1031.00	2°38'15"
C61	54.01	1031.00	3°00'06"
C67	57.39	1669.62	1°58'10"
C68	50.76	345.65	8°24'49"
C69	54.05	911.00	3°23'58"
C70	44.03	911.00	2°46'09"
C71	50.63	1001.00	2°53'52"
C72	52.90	999.87	3°01'53"
C76	55.19	911.00	3°28'16"
C79	23.85	1070.25	1°16'37"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C80	50.68	924.88	3°08'24"
C81	54.03	736.00	4°12'21"
C87	43.02	822.12	2°59'54"
C88	62.59	826.00	4°20'29"
C89	52.01	817.09	3°38'50"
C92	53.10	391.76	7°45'58"
C93	67.06	481.94	7°58'22"
C94	32.90	399.00	4°43'27"
C95	45.29	477.63	5°25'59"
C96	47.32	2522.85	1°04'29"
C97	46.07	1270.00	2°04'42"
C98	7.12	35.00	11°39'45"
C105	50.45	83.00	34°49'27"

SCALE 1" : 60'
0 30 60

PRELIMINARY
NOT FOR CONSTRUCTION, BIDDING OR RECORDING

FLAGSTAFF ARIZONA

TIMBER SKY BLOCK 4

PRELIMINARY PLAT (NRPP ENVELOPES)

JOB NO:	21264
DATE:	MAY 22
SCALE:	AS SHOWN
DRAWN:	ELK
DESIGN:	ELK/SJV
CHECKED:	SDI

NO.	DESCRIPTION	DATE	BY
REVISIONS			

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.6934 fax
www.swiaz.com

Shephard Wesnitzer, Inc.

Call at least two full working days before you begin excavation.
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
PP05

SHT NO. 5 OF 7

FILE: P:\2021\21264\DRAWINGS\PLATS\PRELIMINARY\PRELIMINARY PLAT-NRPP ENVELOPES-21264.DWG EXCISER

PLOTTED: May 19, 2022–9:11am

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	20.81	N 11°43'14" W
L2	70.00	N 56°43'14" W
L3	20.81	S 78°16'46" W
L4	50.00	S 33°16'46" W
L5	46.20	S 22°55'50" W
L6	56.63	N 14°09'11" E
L7	19.30	N 16°55'33" W
L8	70.00	N 61°55'33" W
L9	19.30	S 73°04'27" W
L10	90.24	S 52°41'19" E
L11	37.24	S 33°16'46" W
L12	18.01	S 16°42'22" W
L13	96.55	N 52°41'19" W
L15	54.06	N 34°30'20" E
L16	75.65	S 52°41'19" E
L17	9.00	N 37°18'41" E
L18	8.81	S 52°41'19" E
L19	11.56	N 37°18'41" E
L20	10.86	S 52°41'19" E
L21	33.44	N 37°18'41" E
L22	97.97	N 52°41'19" W
L23	54.06	S 34°30'20" W
L24	42.70	S 52°41'19" E
L25	9.19	S 37°18'41" W
L26	29.62	S 52°41'19" E
L27	4.78	N 37°18'41" E
L28	21.83	S 52°41'19" E
L29	47.78	S 37°18'41" W
L30	84.12	N 52°41'19" W
L31	8.66	N 37°15'20" E
L32	7.91	N 54°57'23" W
L33	43.89	N 34°32'11" E
L34	7.79	N 57°58'13" W
L35	50.67	N 34°30'20" E
L36	56.50	S 52°41'19" E
L37	11.21	S 37°18'41" W
L38	35.10	S 57°40'37" E
L39	10.93	S 33°23'36" W
L40	32.08	S 32°19'22" W
L41	84.17	N 57°40'32" W
L42	8.49	N 31°06'44" E
L43	53.05	N 34°30'20" E
L44	79.24	S 57°40'37" E
L45	12.42	S 32°19'23" W
L46	13.99	S 57°40'37" E
L47	40.58	S 32°19'23" W
L48	95.25	N 57°40'37" W
L49	83.53	S 6°42'30" W
L50	7.32	N 32°19'23" E
L51	93.60	N 57°40'37" W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L52	50.91	S 32°19'23" W
L53	89.88	S 57°40'37" E
L54	54.00	S 75°50'27" E
L55	11.00	N 14°09'33" E
L56	5.04	N 75°50'27" W
L57	23.00	N 14°09'33" E
L58	3.84	S 75°50'27" E
L59	43.81	N 14°09'33" E
L60	7.16	N 75°50'27" W
L61	14.02	N 14°09'33" E
L62	8.37	S 75°50'27" E
L63	13.98	N 14°09'33" E
L64	11.39	N 25°42'51" E
L65	13.96	S 86°32'51" E
L66	5.64	S 28°54'14" W
L67	3.04	N 61°05'46" W
L68	19.85	S 28°54'14" W
L69	103.96	S 14°09'33" W
L70	104.69	N 14°09'34" E
L71	6.82	S 3°27'09" W
L72	9.77	S 25°42'46" W
L73	67.02	S 14°09'34" W
L74	10.23	S 75°50'26" E
L75	37.20	S 14°09'34" W
L76	43.77	S 75°50'26" E
L77	54.00	S 75°50'27" E
L78	81.02	N 14°09'33" E
L80	87.27	S 14°09'33" W
L81	88.25	S 15°06'22" W
L82	43.00	N 74°53'38" W
L83	19.94	N 15°06'22" E
L84	11.63	N 74°53'38" W
L85	69.98	N 14°09'28" E
L86	85.31	S 13°25'20" W
L87	49.80	N 76°34'40" W
L88	37.29	N 15°04'39" E
L89	6.67	N 74°55'21" W
L90	48.17	N 15°04'39" E
L91	90.00	N 2°14'28" E
L92	13.95	S 76°34'40" E
L93	3.48	N 13°25'20" E
L94	40.06	S 76°34'40" E
L95	88.98	S 13°25'20" W
L96	54.00	N 75°50'27" W
L97	84.80	N 13°24'59" E
L99	54.00	S 76°34'40" E
L100	90.12	S 13°23'51" W
L101	54.00	N 75°50'27" W
L102	34.72	N 13°21'29" E
L103	6.83	S 76°38'31" E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L104	15.97	N 13°21'29" E
L105	6.81	N 76°38'31" W
L106	38.74	N 13°21'29" E
L107	26.51	S 75°50'27" E
L108	10.12	S 14°09'33" W
L109	19.32	S 75°50'27" E
L110	94.05	N 13°25'20" E
L111	54.00	N 76°34'40" W
L112	19.30	S 13°25'20" W
L113	7.76	S 77°03'35" E
L114	64.11	S 12°56'25" W
L119	91.46	S 13°25'20" W
L120	37.07	N 76°34'40" W
L121	6.99	N 13°25'20" E
L122	16.93	N 76°34'40" W
L123	71.83	N 13°25'20" E
L124	13.91	S 76°34'40" E
L125	12.64	N 13°25'20" E
L126	40.09	S 76°34'40" E
L127	43.00	S 76°34'40" E
L128	31.70	S 13°25'20" W
L129	6.18	S 76°34'40" E
L130	53.41	S 13°25'20" W
L131	49.18	N 75°50'27" W
L132	84.48	N 13°25'20" E
L137	84.47	S 13°25'20" W
L138	47.60	S 75°46'44" E
L139	80.74	N 13°26'19" E
L142	25.84	N 76°34'40" W
L143	6.42	S 13°25'20" W
L144	12.62	S 29°07'56" E
L145	1.51	S 60°52'04" W
L146	78.74	S 29°07'56" E
L147	45.00	N 60°52'04" E
L148	82.00	N 29°13'37" W
L150	91.53	S 62°29'45" E
L151	76.28	S 14°56'11" W
L152	54.05	N 61°48'27" W
L153	72.05	N 29°16'36" W
L155	79.65	S 75°50'49" E
L156	23.29	S 14°09'11" W
L157	4.45	S 75°50'49" E
L158	7.38	S 14°09'11" W
L159	9.86	S 75°50'49" E
L160	23.33	S 14°09'11" W
L164	21.26	N 14°09'11" E
L165	94.87	S 75°50'49" E
L166	47.25	N 22°27'36" E
L167	23.32	N 65°33'29" W
L168	10.22	N 24°26'31" E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L169	67.90	N 54°54'34" W
L171	8.87	S 72°30'11" E
L172	8.63	S 17°29'49" W
L173	9.82	N 72°30'11" W
L175	90.00	S 54°54'34" E
L176	54.00	S 35°05'26" W
L177	71.32	N 54°54'34" W
L178	5.92	N 35°05'26" E
L179	18.12	N 55°04'12" W
L180	48.13	N 34°25'44" E
L181	57.17	N 23°01'55" E
L182	18.93	N 51°52'11" W
L183	66.92	N 75°14'19" W
L184	24.52	S 35°06'22" W
L185	4.55	S 57°32'50" E
L186	27.74	S 23°01'55" W
L187	85.14	S 66°57'36" E
L188	32.14	N 14°09'11" E
L189	22.24	N 22°27'36" E
L190	83.15	S 66°58'05" E
L191	5.41	S 23°01'55" W
L192	19.25	S 66°58'05" E
L193	48.59	S 23°01'55" W
L194	97.22	N 66°58'05" W
L195	23.82	N 66°58'05" W
L196	82.38	S 72°56'33" W
L197	55.01	S 14°09'11" W
L198	116.50	N 72°56'33" E
L199	13.87	S 30°23'37" E
L200	33.22	S 20°29'07" W
L201	3.48	S 72°56'33" W
L202	4.52	S 17°03'27" E
L203	90.66	S 72°56'33" W
L204	44.37	N 17°03'27" W
L205	111.18	N 72°56'33" E
L206	43.40	S 75°50'27" E
L207	76.62	N 14°09'33" E
L208	3.76	N 25°07'21" W
L209	14.95	N 75°50'27" W
L210	7.72	N 14°09'33" E
L212	89.46	S 14°09'33" W
L213	92.37	S 24°54'41" E
L214	43.00	S 65°05'19" W
L215	87.86	N 24°54'41" W
L216	9.35	N 65°05'19" E
L217	6.81	N 24°54'41" W
L219	12.02	S 57°15'17" E
L220	54.00	N 65°05'19" E
L221	118.05	S 24°55'54" E
L222	54.13	S 61°48'12" W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L223	58.41	N 24°54'41" W
L224	10.12	N 65°05'19" E
L225	36.97	N 25°17'35" W
L226	9.87	S 65°05'19" W
L227	25.78	N 24°54'41" W
L228	34.71	N 28°09'45" E
L229	6.52	N 61°50'59" W
L230	11.86	N 28°09'01" E
L231	6.52	S 61°50'59" E
L232	39.89	N 28°09'01" E
L234	81.21	S 32°05'55" W
L235	7.48	S 12°51'58" E
L236	55.71	S 60°05'38" E
L237	78.67	N 24°14'56" E
L238	9.54	N 66°37'45" W
L239	11.50	N 27°45'16" E
L240	45.17	N 64°08'12" W
L241	89.43	S 28°09'22" W
L242	72.66	N 20°21'13" E
L243	5.60	N 69°43'02" W
L244	16.74	N 22°40'39" E
L245	35.69	S 24°17'52" W
L246	6.17	S 65°42'25" E
L247	17.25	S 24°15'34" W
L248	7.80	N 65°44'26" W
L249	36.40	S 24°15'34" W
L250	90.00	S 15°34'31" W
L251	33.26	N 73°09'57" W
L252	4.83	N 16°50'03" E
L253	26.66	N 73°09'57" W
L254	85.89	N 19°27'58" E
L255	90.00	N 13°25'20" E
L256	36.61	N 76°26'33" W
L257	6.21	S 13°13'37" W
L258	6.46	N 76°46'23" W
L259	14.64	S 13°13'37" W
L260	11.79	N 74°58'07" W
L261	69.08	S 15°34'31" W
L263	90.00	N 13°25'20" E
L264	50.26	N 76°34'40" W
L265	90.00	S 13°25'20" W
L266	50.26	S 76°34'40" E
L267	54.00	S 76°34'40" E
L268	41.95	N 13°25'20" E
L269	8.72	N 76°33'09" W
L270	48.05	N 13°26'51" E
L271	45.30	N 76°34'40" W
L272	90.00	S 13°25'20" W
L273	54.00	S 76°34'40" E
L274	90.00	S 13°25'20" W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L275	54.00	N 76°34'40" W
L276	45.87	N 13°25'20" E
L277	3.32	S 76°34'40" E
L278	18.11	N 13°25'20" E
L279	3.32	N 76°34'40" W
L280	26.02	N 13°25'20" E
L281	44.91	S 76°34'40" E
L282	16.84	N 13°25'20" E
L283	6.08	S 76°34'40" E
L284	8.70	N 13°25'20" E
L285	3.01	S 76°34'40" E
L286	61.73	N 13°25'20" E
L287	48.01	N 76°21'33" W
L288	12.22	S 13°25'20" W
L289	5.99	N 76°34'40" W
L290	75.24	S 13°25'20" W
L291	85.16	S 13°25'20" W
L292	15.09	S 77°11'36" E
L293	5.00	S 13°25'20" W
L294	28.25	S 76°34'40" E
L295	90.00	N 13°25'20" E
L296	43.34	N 76°34'40" W
L297	90.00	S 13°25'20" W
L298	51.47	S 76°34'40" E
L299	90.00	N 13°25'20" E
L300	51.47	N 76°34'40" W
L301	13.45	S 1°27'27" E
L302	41.00	S 13°25'20" W
L303	92.36	S 76°34'40" E
L305	26.77	N 78°09'57" W
L306	5.61	N 13°25'20" E
L307	81.63	N 76°34'40" W
L308	60.13	S 2°16'39" W
L309	50.44	S 76°34'40" E
L310	15.96	N 13°25'20" E
L311	60.91	S 76°34'40" E
L312	1.04	N 13°25'20" E
L313	16.94	S 76°34'40" E
L314	27.04	N 35°05'26" E
L315	9.00	N 53°31'05" W
L316	13.37	N 11°09'19" E
L317	141.09	N 76°34'56" W
L318	74.53	S 2°16'39" W
L319	1.76	N 87°43'21" W
L320	29.68	S 2°16'39" W
L321	19.93	S 17°09'30" W
L322	30.65	N 76°20'39" W
L323	30.05	N 2°16'39" E
L324	17.08	N 87°43'21" W
L325	79.65	N 2°16'39" E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L326	18.83	S 87°43'21" E
L327	7.73	N 2°16'39" E
L328	35.17	S 87°43'21" E
L329	52.13	S 87°43'21" E
L330	83.70	S 2°16'39" W
L331	52.13	N 87°43'21" W
L332	83.70	N 2°16'39" E
L333	98.92	S 6°15'19" W
L334	46.27	S 76°32'36" E
L335	15.58	N 14°38'43" E
L336	12.20	N 87°06'56" E
L337	42.26	N 2°16'42" E
L338	8.01	N 87°43'21" W
L339	14.54	N 2°13'54" E
L340	8.04	N 87°52'51" E
L341	32.24	N 2°17'15" E
L343	90.31	S 10°41'25" W
L344	27.75	S 76°51'19" E
L345	7.83	N 10°39'32" E
L346	32.95	S 79°20'28" E
L347	86.01	N 6°13'21" E
L348	54.01	N 81°32'34" W
L350	46.76	S 76°19'00" E
L351	11.37	N 13°25'20" E
L352	13.72	S 76°34'40" E
L353	68.53	N 10°36'14" E
L354	15.62	N 74°56'15" W
L355	6.36	N 15°03'45" E
L356	39.20	N 76°40'20" W
L357	86.38	S 15°03'45" W
L358	90.00	N 15°03'45" E
L360	12.95	S 13°04'03" W
L361	11.50	N 76°55'57" W
L362	69.58	S 19°27'58" W
L363	10.20	S 71°27'00" E
L364	6.44	S 18°33'00" W
L367	6.13	N 24°06'59" E
L368	9.03	N 64°54'40" W
L369	81.68	N 25°13'11" E
L370	87.90	S 20°44'42" W
L371	82.45	S 25°13'21" W
L372	38.35	N 64°46'39" W
L373	6.43	S 25°13'21" W
L375	22.73	N 29°42'00" E
L376	4.50	S 60°18'00" E
L377	67.33	N 29°42'00" E
L379	26.15	S 17°59'14" W
L380	10.07	N 72°01'38" W
L381	38.69	S 22°44'56" W
L382	3.73	N 67°34'55" W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L383	25.35	S 23°20'12" W
L384	90.00	S 17°51'41" W
L386	54.69	N 12°24'36" E
L387	14.31	N 72°08'19" W
L388	15.59	N 17°53'14" E
L389	12.76	S 76°29'13" E
L390	16.46	N 12°11'22" E
L391	54.10	N 72°30'23" W
L393	90.00	S 12°24'36" W
L395	14.94	N 8°18'02" E
L396	10.23	S 81°41'58" E
L397	48.85	N 6°53'14" E
L398	8.17	N 79°26'24" W
L399	14.02	N 10°33'36" E
L400	7.38	S 79°26'24" E
L401	12.25	N 6°51'06" E
L402	54.01	N 80°18'57" W
L418	32.14	S 2°16'03" W
L419	2.58	S 87°43'11" E
L420	10.92	S 2°16'49" W
L421	2.58	N 87°43'11" W
L422	42.27	S 2°16'50" W
L423	54.00	S 87°43'21" E
L424	85.32	N 2°16'39" E
L425	54.00	N 87°43'21" W
L426	90.00	S 2°16'39" W
L427	54.00	S 87°43'21" E
L428	27.78	N 2°16'39" E
L429	6.43	N 87°43'21" W
L430	14.93	N 2°16'39" E
L431	6.46	S 87°45'30" E
L432	47.29	N 2°14'40" E
L433	54.00	N 87°43'21" W
L434	90.00	S 2°12'49" W
L436	90.01	N 11°06'08" E
L438	17.04	N 79°42'22" W
L439	75.69	S 11°06'08" W
L440	21.61	S 75°05'25" E
L441	4.42	S 16°12'38" W
L443	77.24	N 21°10'01" E
L444	5.53	N 70°21'56" W
L445	12.77	N 19°38'04" E
L447	8.73	S 22°10'25" W
L448	87.78	S 35°05'26" W
L449	46.26	S 54°54'34" E
L450	87.79	N 35°05'26" E
L451	46.26	N 54°55'07" W
L453	75.25	S 35°05'26" W
L454	8.37	S 54°54'31" E
L455	14.75	S 35°05'03" W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L456	41.54	S 54°55'21" E
L457	90.01	N 35°05'26" E
L458	49.91	N 54°55'24" W
L459	90.02	S 35°05'26" W
L461	90.25	N 34°47'42" E
L462	46.86	N 54°55'07" W
L463	46.97	N 35°05'26" E
L464	7.37	N 54°04'23" W
L465	35.13	N 35°02'10" E
L466	10.11	N 4°43'32" W
L467	39.23	N 54°53'39" W
L468	87.87	S 35°05'25" W
L469	5.60	N 76°03'14" E
L470	102.06	N 35°05'18" E
L471	50.90	N 54°54'26" W
L472	90.92	S 35°05'26" W

FLAGSTAFF
ARIZONA

TIMBER SKY BLOCK 4

PRELIMINARY PLAT (NRPP ENVELOPE TABLES)

JOB NO: 21264
DATE: MAY 22
SCALE:
DRAWN: ELK
DESIGN: ELK/SJV
CHECKED: SCI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0334
928.774.6934 fax
www.swoz.com

SWI
Shephard Wesnitzer, Inc.

REVISIONS

NO.	DESCRIPTION	DATE	BY

Call at least two full working days before you dig, excavate or blast.
ARIZONA811 Arizona Blue Stake Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
PP06

SHT NO. 6 OF 7

FILE: P:\2021\21264\DRAWINGS\PLATS\PRELIMINARY\PRELIMINARY PLAT-NRPP ENVELOPES-21264.DWG EKEISER

PLOTTED: May 19, 2022–9:11am

TIMBERSKY PHASE 1-RESOURCE PROTECTION PLAN

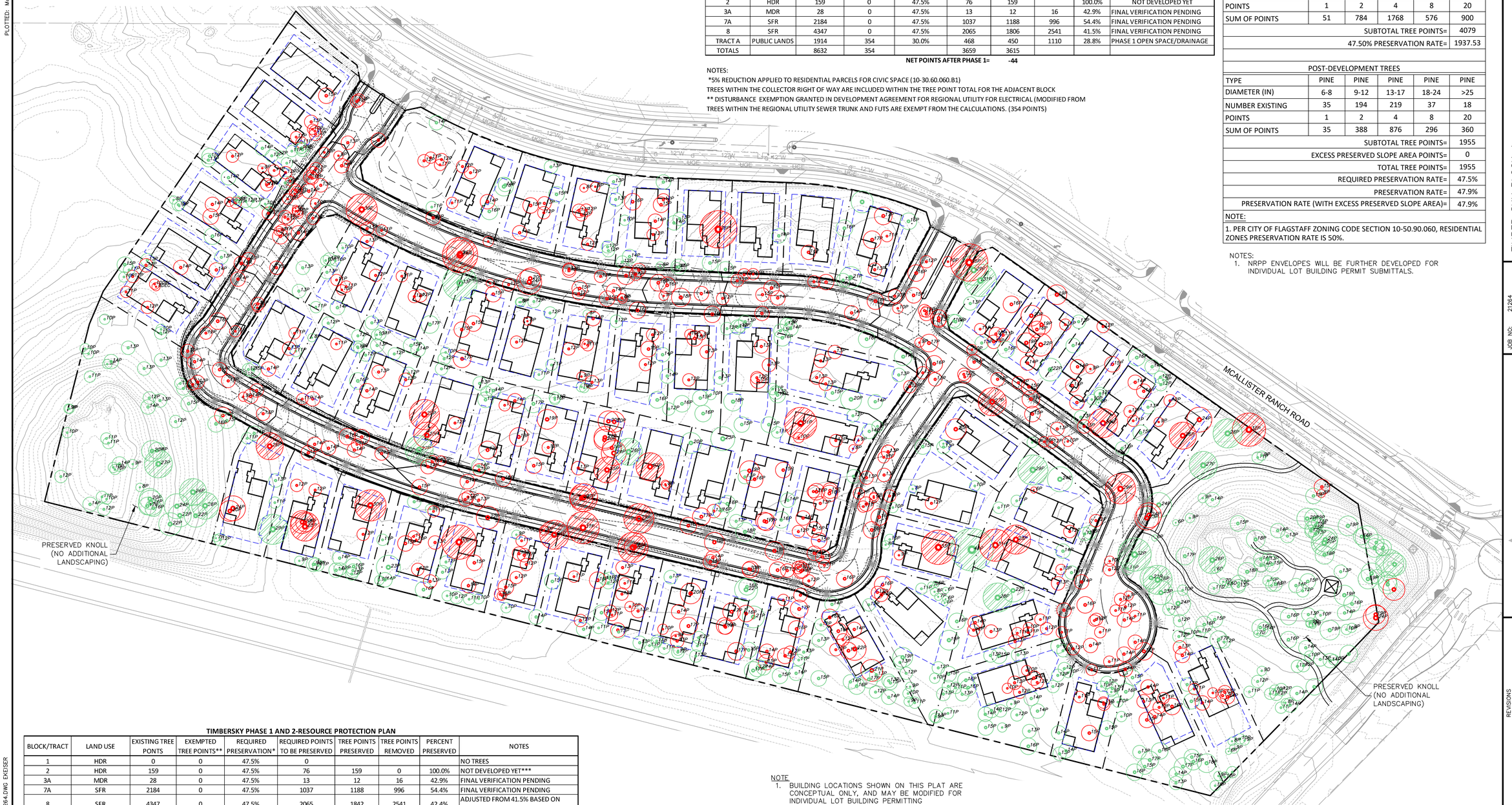
BLOCK/TRACT	LAND USE	EXISTING TREE PONTS	EXEMPTED TREE PONTS**	REQUIRED PRESERVATION*	REQUIRED POINTS TO BE PRESERVED	TREE POINTS PRESERVED	TREE POINTS REMOVED	PERCENT PRESERVED	NOTES
1	HDR	0	0	47.5%				N/A	NO TREES
2	HDR	159	0	47.5%	76	159		100.0%	NOT DEVELOPED YET
3A	MDR	28	0	47.5%	13	12	16	42.9%	FINAL VERIFICATION PENDING
7A	SFR	2184	0	47.5%	1037	1188	996	54.4%	FINAL VERIFICATION PENDING
8	SFR	4347	0	47.5%	2065	1806	2541	41.5%	FINAL VERIFICATION PENDING
TRACT A	PUBLIC LANDS	1914	354	30.0%	468	450	1110	28.8%	PHASE 1 OPEN SPACE/DRAINAGE
TOTALS		8632	354		3659	3615			

NET POINTS AFTER PHASE 1= -44

NOTES:
*5% REDUCTION APPLIED TO RESIDENTIAL PARCELS FOR CIVIC SPACE (10-30.60.060.81)
TREES WITHIN THE COLLECTOR RIGHT OF WAY ARE INCLUDED WITHIN THE TREE POINT TOTAL FOR THE ADJACENT BLOCK
** DISTURBANCE EXEMPTION GRANTED IN DEVELOPMENT AGREEMENT FOR REGIONAL UTILITY FOR ELECTRICAL (MODIFIED FROM TREES WITHIN THE REGIONAL UTILITY SEWER TRUNK AND FUTS ARE EXEMPT FROM THE CALCULATIONS. (354 POINTS)

TOTAL TREE RESOURCES					
TYPE	PINE	PINE	PINE	PINE	PINE
DIAMETER (IN)	6-8	9-12	13-17	18-24	>25
NUMBER EXISTING	51	392	442	72	45
POINTS	1	2	4	8	20
SUM OF POINTS	51	784	1768	576	900
SUBTOTAL TREE POINTS=					4079
47.50% PRESERVATION RATE=					1937.53
POST-DEVELOPMENT TREES					
TYPE	PINE	PINE	PINE	PINE	PINE
DIAMETER (IN)	6-8	9-12	13-17	18-24	>25
NUMBER EXISTING	35	194	219	37	18
POINTS	1	2	4	8	20
SUM OF POINTS	35	388	876	296	360
SUBTOTAL TREE POINTS=					1955
EXCESS PRESERVED SLOPE AREA POINTS=					0
TOTAL TREE POINTS=					1955
REQUIRED PRESERVATION RATE=					47.5%
PRESERVATION RATE=					47.9%
PRESERVATION RATE (WITH EXCESS PRESERVED SLOPE AREA)=					47.9%
NOTE:					
1. PER CITY OF FLAGSTAFF ZONING CODE SECTION 10-50.90.060, RESIDENTIAL ZONES PRESERVATION RATE IS 50%.					

NOTES:
1. NRPP ENVELOPES WILL BE FURTHER DEVELOPED FOR INDIVIDUAL LOT BUILDING PERMIT SUBMITTALS.



TIMBERSKY PHASE 1 AND 2-RESOURCE PROTECTION PLAN

BLOCK/TRACT	LAND USE	EXISTING TREE PONTS	EXEMPTED TREE POINTS**	REQUIRED PRESERVATION*	REQUIRED POINTS TO BE PRESERVED	TREE POINTS PRESERVED	TREE POINTS REMOVED	PERCENT PRESERVED	NOTES
1	HDR	0	0	47.5%	0				NO TREES
2	HDR	159	0	47.5%	76	159	0	100.0%	NOT DEVELOPED YET***
3A	MDR	28	0	47.5%	13	12	16	42.9%	FINAL VERIFICATION PENDING
7A	SFR	2184	0	47.5%	1037	1188	996	54.4%	FINAL VERIFICATION PENDING
8	SFR	4347	0	47.5%	2065	1842	2541	42.4%	ADJUSTED FROM 41.5% BASED ON PRELIM AS-BUILTS FINAL VERIFICATION
3B	MDR	506	84	47.5%	200	200	306	47.4%	NOT DEVELOPED YET***
4	SFR	4297	193	47.5%	1949	1949	2348	47.5%	NOT DEVELOPED YET***
5	MDR	650	76	47.5%	273	273	377	47.6%	NOT DEVELOPED YET***
6	SFR	2279	242	47.5%	968	968	1311	47.5%	NOT DEVELOPED YET***
7B	SFR	1619	228	47.5%	661	665	954	47.8%	PPLAT STAGE***
TRACT A	PUBLIC LANDS	1914	354	30.0%	468	357	1557	22.9%	PHASE 1 AND 2 OPEN SPACE DRAINAGE
TRACT B	COM CENTER -SFR	688	138	47.5%	261	413	275	75.1%	COMMUNITY CENTER****
TRACT C	PUBLIC LAND	927	241	30.0%	206	104	823	15.2%	PHASE 2 OPEN SPACE DRAINAGE
TRACT H	SIGN BLOCK 4 -SFR	108	3	47.5%	50	98	10	93.3%	ENTRY SIGN BLOCK 4
Totals		19706	1559		8227	8228	11514		

NET POINTS PHASE 1 AND PHASE 2 ONGOING (04/21/2022)= 1

NOTES:
*5% REDUCTION APPLIED TO RESIDENTIAL PARCELS FOR CIVIC SPACE (10-30.60.060.B1)
** DISTURBANCE EXEMPTION GRANTED BY RECORDED DEVELOPMENT AGREEMENT BETWEEN COF AND VP66 & WOODY MOUNTAIN, LLC.(DATED RECORDED:12/21/2016). EXEPTED TREES ARE NOT INCLUDED IN CALCULATIONS.
***ASSUMPTION MADE TO ASSUME EXACT PRESERVATION REQ FOR UNDEVELOPED LOTS. DUE TO LOCATION OF TREES ON BLOCK 2, 100% PRESERVATION ASSUMED FOR BLOCK 2.
****ASSUMPTION MADE TO ASSUME THE COMMUNITY CENTER WILL PRESERVE 75%.

NOTE
1. BUILDING LOCATIONS SHOWN ON THIS PLAT ARE CONCEPTUAL ONLY, AND MAY BE MODIFIED FOR INDIVIDUAL LOT BUILDING PERMITTING

PRELIMINARY PLAT LANDSCAPE CALCULATIONS		
SECTION	REQUIREMENTS	QUANTITY
STREET TREE REQUIREMENT (6086 LF)		
PROPOSED TREES REQUIRED	45 LF MIN SPACING	135
SHRUBS	NONE	0
GROUNDCOVER	NONE	0
STREET BUFFER INSTALLED PER PHASE 2 INFRASTRUCTURE PLANS		

NOTES:
1. INTERIOR STREET PARKWAY TREES TO BE INSTALLED AT THE COMPLETION OF HOME CONSTRUCTION FOR EACH INDIVIDUAL LOT. IRRIGATION FOR THE TREES TO BE PROVIDED BY HOMEOWNER'S IRRIGATION SYSTEM. EXACT TREE LOCATIONS MAY BE ADJUSTED DURING THE DESIGN OF THE SITE PLAN OR LANDSCAPE PLAN FOR THE HOME OF EACH LOT.

NORTH

SCALE 1" : 60'
0 30 60

LEGEND
ROW
EASEMENT
LOT LINE
SETBACK
NRPP ENVELOPE
PROTECTED TREE
NEW TREE
REMOVED TREE

PRELIMINARY
NOT FOR CONSTRUCTION, BIDDING OR RECORDING

FLAGSTAFF ARIZONA

TIMBER SKY BLOCK 4

NRPP

JOB NO:	21264
DATE:	MAY 22
SCALE:	AS SHOWN
DRAWN:	ELK
DESIGN:	ELK/SJV
CHECKED:	SCI

NO.	DESCRIPTION	DATE	BY
REVISIONS			

Shepherd Wesnitzer, Inc.
110 W. Dale Avenue
Flagstaff, AZ 86001
928.773.0354
928.774.6934 fax
www.swoz.com

Call at least two full working days before you dig in Arizona
ARIZONA811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)

DRAWING NO.
PP07

SHT NO. 7 OF 7

FILE: P:\2021\21264\DRAWINGS\PLATS\PRELIMINARY\NRPP--21264.DWG EKEISER

PLANT SCHEDULE FOR OVERLOOK PARK			
SYMBOL	BOTANICAL / COMMON NAME	NOTE	QTY
TREES			
	PINUS PONDEROSA/ PONDEROSA PINE	EXISTING TO REMAIN IN PLACE	117
GROUND COVERS	BOTANICAL / COMMON NAME	CONT	QTY
	NATIVE WILD SEED	HYDROMULCH	85,059 SF

NATIVE MEADOW SEED MIX

MONTANE MEADOW SEED MIX BY WESTERN NATIVE SEED:
www.westernnativeseed.com

SPECIES	COMMON NAME	%
Linum perenne lewisii	Blue Flax	6.0
Penstemon strictus	Rocky Mt Penstemon	6.0
Gaillarida aristata	Perennial Gaillardia	3.6
Dalea purpurea	Purple Prairie Clover	3.0
Ratibida columnifera	Prairie Coneflower	3.0
Oxytropis sericea	Silky Locoweed	3.0
Cleome serrulata	Rocky Mt. Beeplant	1.5
Penstemon eatonii	Firecracker Penstemon	1.5
Rudbeckia hirta	Black-eyed Susan	0.9
Heliomeris multiflora	Showy Goldeneye	0.6
Machaeranthera bigelovii	Purple Aster	0.6
Penstemon virgatus	Wand Beardtongue	0.1
Aquilegia coerulea	Blue Columbine	0.2
Elymus trachycaulus	Slender Wheatgrass	17.5
Elymus lanceolatus	Thickspike Wheatgrass	17.5
Bromus ciliatus	Fringed Brome	14.0
Bouteloua gracilis	Blue Grama	7.0
Festuca arizonica	Arizona Fescue	7.0
Sporobolus cryptandrus	Sand Dropseed	4.2
Koeleria macrantha	Junegrass	1.4
Poa fendleriana	Mutton Grass	1.4

SEEDING RATE AT 43.5 LBS. PER ACRE

NOTE
ALL LANDSCAPING MAINTENANCE INCLUDING PARKWAYS AND MEDIANS ARE THE RESPONSIBILITY OF THE SUBDIVISION OWNER/HOA.

NORTH

0 15 30 60
SCALE 1" = 30'

811

CHECKED BY: CS
DRAWN BY: DP,CS

NORRIS DESIGN
Planning | Landscape Architecture | Branding

6 East Aspen Avenue
Suite 260
Flagstaff, AZ 86001
P 928.233.3021
www.norris-design.com

TIMBER SKY
PARCEL 4 "OVERLOOK PARK"
FLAGSTAFF, AZ

OWNER:
CAPSTONE HOMES
3605 SOUTH FLAGSTAFF
RANCH ROAD
FLAGSTAFF, AZ

REGISTERED LANDSCAPE ARCHITECT
CERTIFICATE NO.
36906
CHRIS STEPE
Not Signed
ARIZONA, USA
EXPIRES 12/31/2022

NOT FOR CONSTRUCTION

DATE:
05/19/2022 CONCEPT
PLAN SUBMITTAL

SHEET TITLE:
CONCEPTUAL
LANDSCAPE PLAN

L-101

GAMMAGE & BURNHAM, PLC
ATTORNEYS AT LAW
40 NORTH CENTRAL AVENUE
20TH FLOOR
PHOENIX, ARIZONA 85004

TELEPHONE (602) 256-0566
FACSIMILE (602) 256-4475

Cameron C. Artigue
cartigue@gblaw.com

WRITER'S DIRECT LINE
(602) 256-4418

March 31, 2022

To Whom It May Concern:

This letter explains why the historic "patent easement" on the Timber Sky Block Plat should not affect processing and final plat approval.

In the 1920's, U.S. Route 66 was designated as one of the first transcontinental federal highways. The route was fully paved in the 1930s and became a vital and famous transportation corridor. At that time, the entire area west of Flagstaff (Section 19) was located in the National Forest.

As part of a program to consolidate Forest Service lands, the United States and State of Arizona agreed to a huge land exchange in 1944. As part of that exchange, the United States issued patent No. 1118508 to the State of Arizona. That patent, which covered over 6800 acres, reserved to the United States a "right-of-way for Transcontinental Highway No. 66." The patent did not use the word "easement," but that term best describes the intent of the reservation.

It is critical to understand the odd geography of parcels covered by the patent easement. The easement did not try to duplicate or even contain the route that was already occupied by Route 66 at that time. To the contrary, the patent easement specified five large rectangular parcels with a total area of 115 acres (2 x 40 acres; 1 x 20 acres; 1 x 10 acres; 1 x 5 acres). Three of these five parcels contained segments of Route 66, as well as surrounding area. For example, one 40-acre parcel extended a quarter-mile north of Route 66, while another 40-acre parcel extended south of Route 66. Two of the five parcels, including the one here, were not located near Route 66. Because the five parcels specified were scattered and disconnected, it is clear that the easement was not intended to create a different or substitute right-of-way for Route 66.

In any event, Route 66 has not existed for almost 37 years. The last remaining segment was decertified on June 27, 1985. The road currently signed as "Historic Route 66" has no federal status.

The City has expressed hesitation to approve a final plat of single-family homes on land that falls within this reservation. This is erroneous for three reasons.

First, the patent did not reserve an easement on behalf of the State of Arizona. Indeed, because the patent was issued ***to*** the State of Arizona, it would have been logically impossible for the patent to reserve an easement in favor of the State of Arizona—impossible because one cannot own an easement in one's own land. The only owner of this easement (if it still exists) is the United States.

Second, the City of Flagstaff has previously approved final plats, containing hundreds of single-family homes, that were subject to this same easement. The easement applied to 40-acre parcels of what is now private land north and south of old Route 66. This includes a large portion of Presidio in the Pines, Railroad Springs, as well as Wildwood Hills Mobile Home Park, and the manufactured homes on Zepher Ave and Rock Island Ave. The City had no problem with previous plat approvals.

Third, federal case law suggests that the the easement has expired. The easement was created for the specific purpose of "Transcontinental Highway No. 66." When an easement is created for a specific purpose, the easement terminates when that purpose no longer exists. Bruce & Ely, *The Law of Easements and Licenses in Land* § 1.08 (cataloging cases where highway easements terminated after highway no longer existed). The U.S. Supreme Court explained that old patent easements can disappear in *Marvin B. Brandt Revocable Trust v. United States*, 572 U.S. 93 (2014) (holding that it was "well settled as a matter of property law" that easements can terminate when they "cease to be used." Citing Restatement (Third) of Property section 1.2(1)).

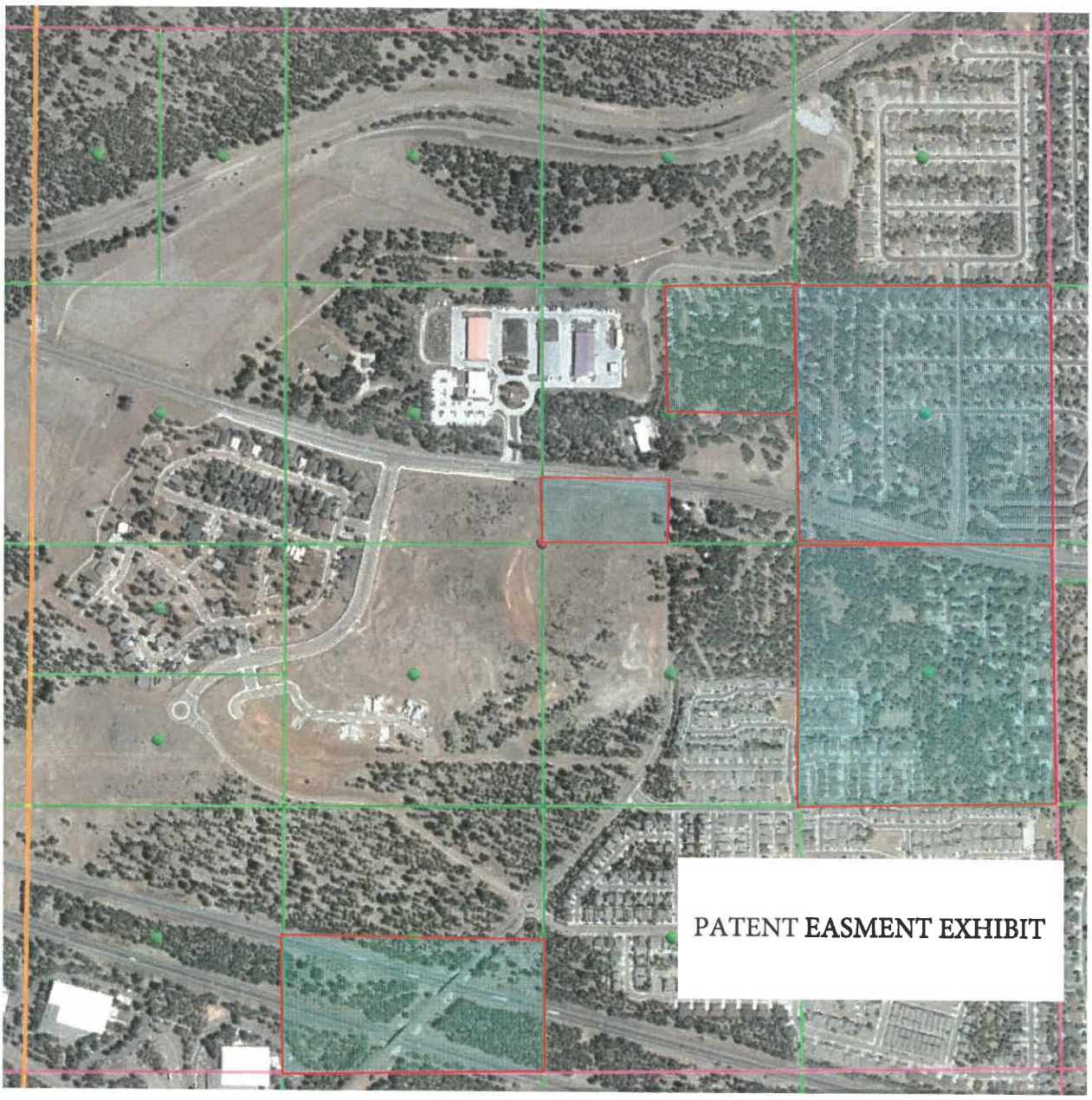
In sum, it is inconceivable that the United States would appear and try to enforce this 80-year-old "Route 66" easement.

Very truly yours,

GAMMAGE & BURNHAM

By
Cameron C. Artigue

CCA/


PATENT EASMENT EXHIBIT

Sirius at Timber Sky

Preliminary Plat Approval Request

City Council| August 23, 2022

Ben Mejia | Planner

Request Overview

- Request from Capstone Homes for **Preliminary Plat approval of Sirius at Timber Sky** located at 3191 McAllister Ranch Road.
- Single family subdivision with 63 single-family home lots on 21.82 acres in the Single-Family Residential (R1) Zone also within the Resource Protection Overlay (RPO)
- Staff approved the Preliminary Plat with conditions on June 7, 2022

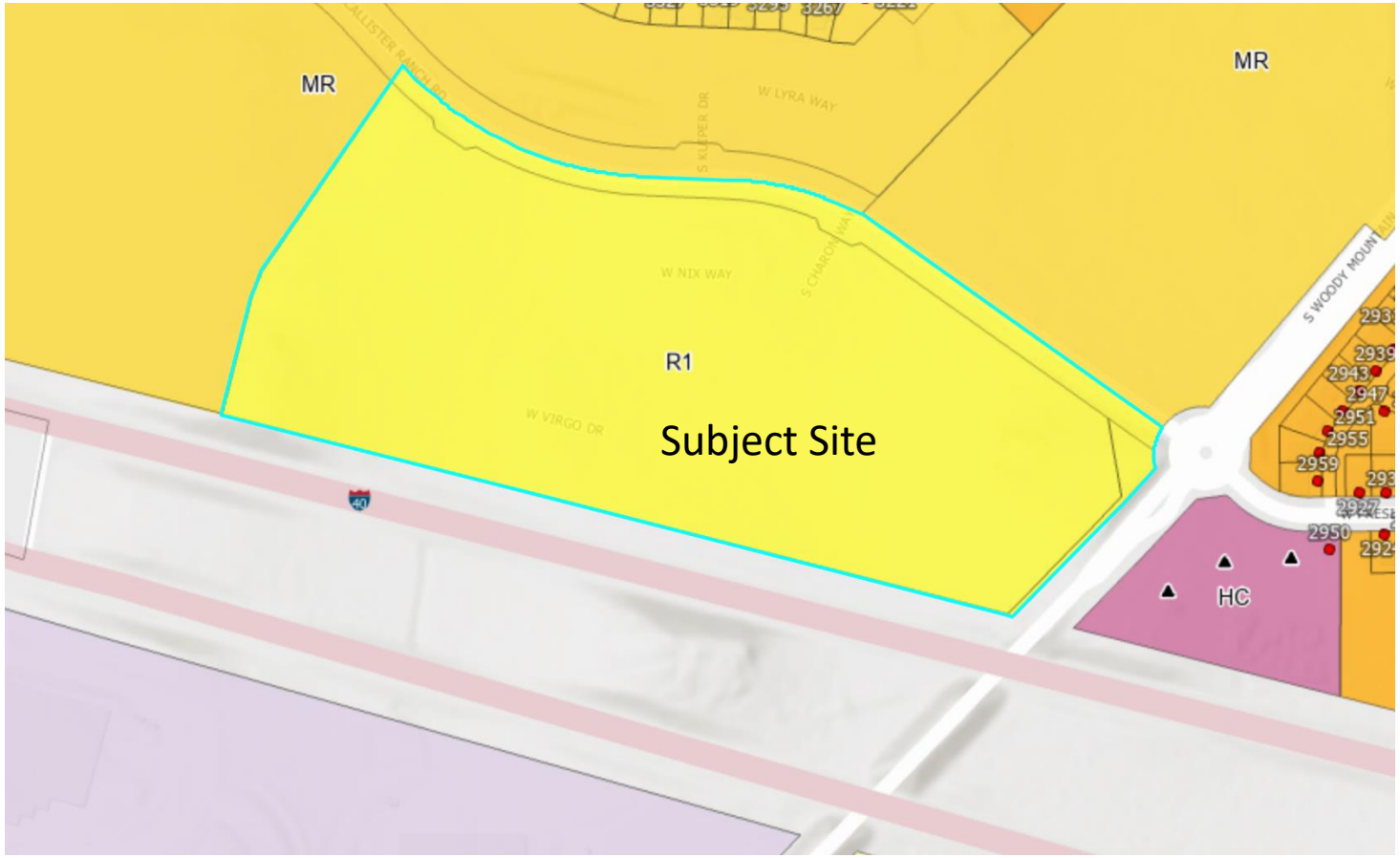
Vicinity Map

North: Timber Sky Block 3B and Sky Cottages, MR Zone

South: I-40

West: Timber Sky Block 5, MR Zone

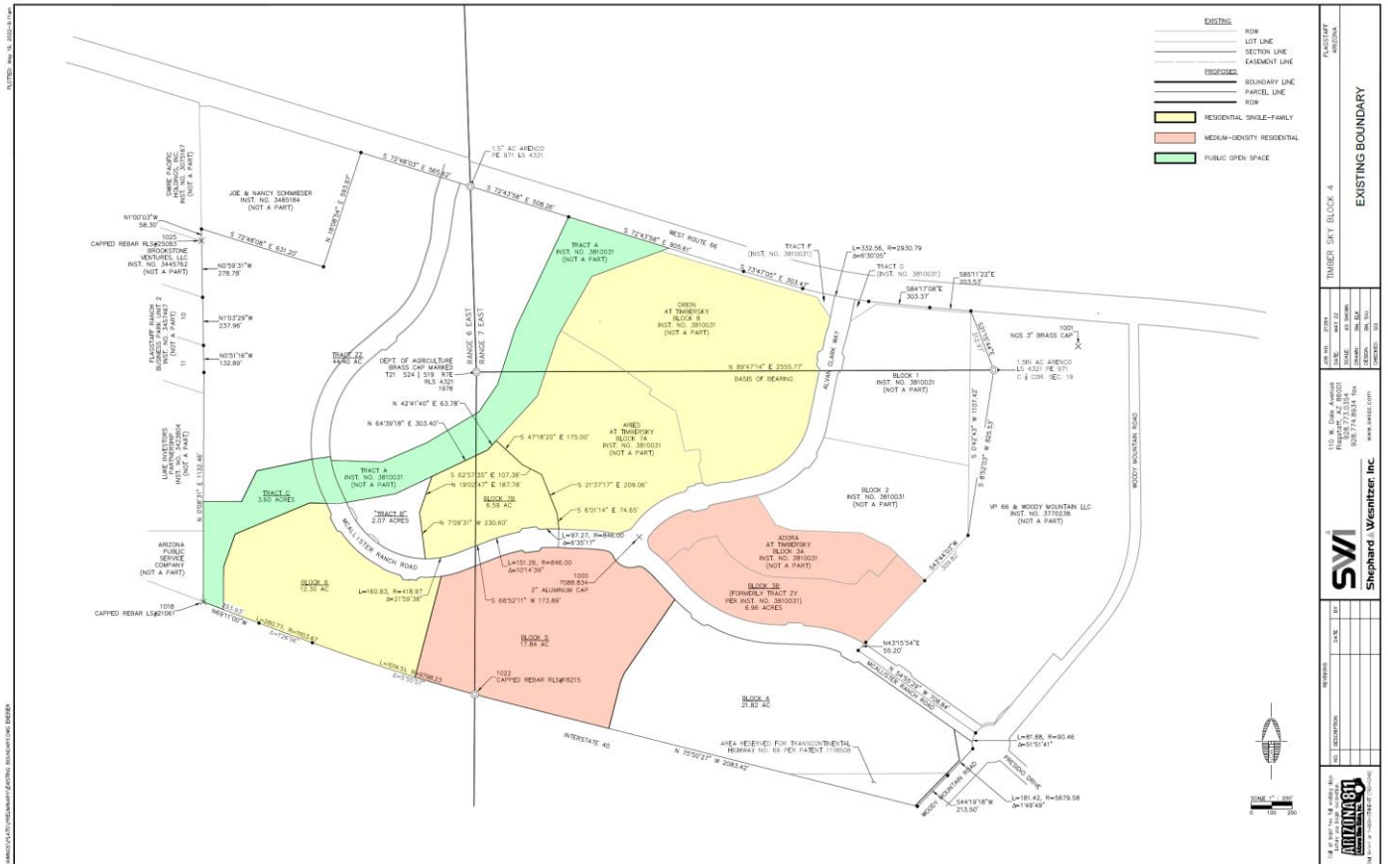
East: Presidio, HC and HR Zones



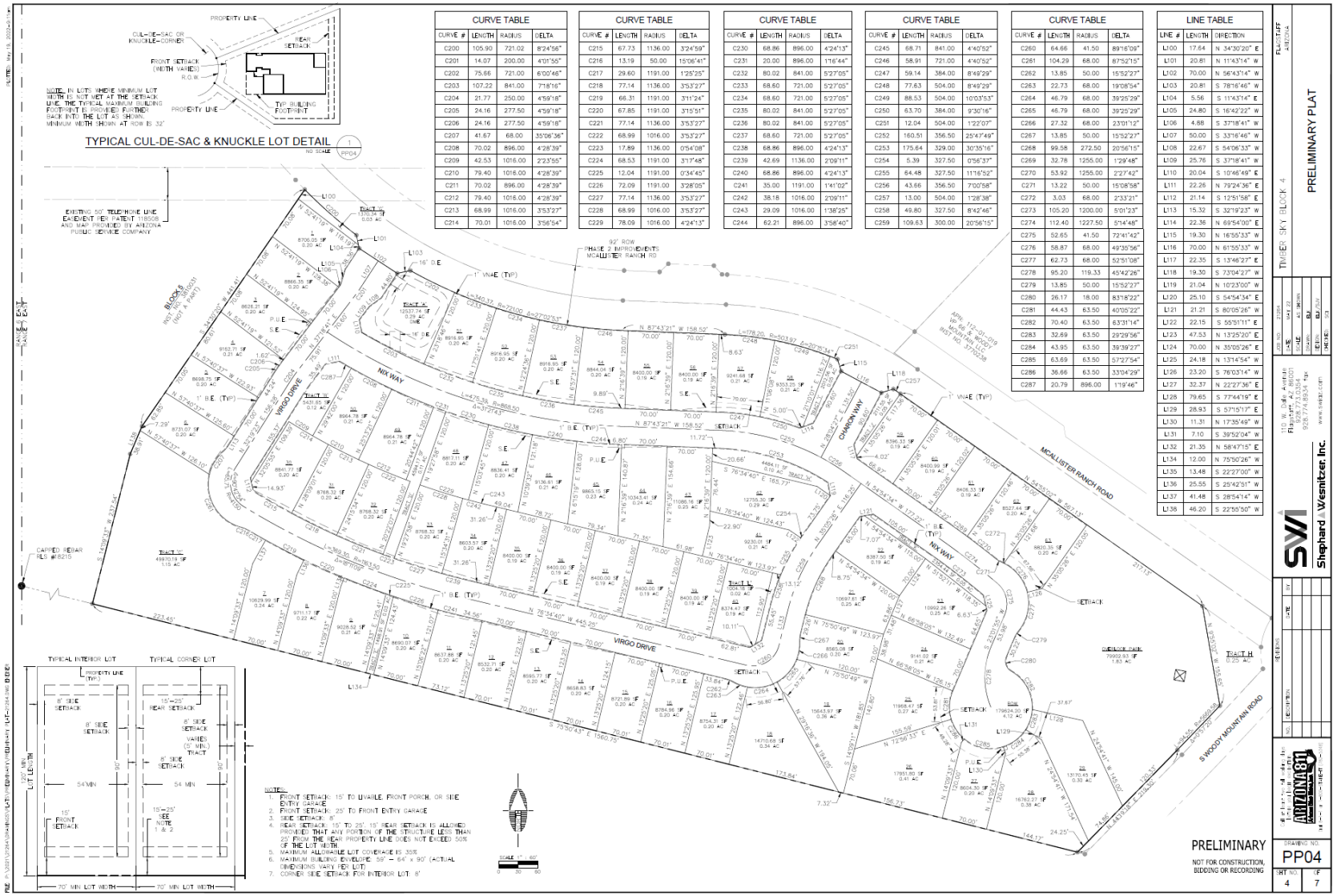
Timber Sky- Background

- **In 2016, a Zoning Map Amendment and Annexation were approved for the Timber Sky Development which proposes a maximum of 1300 residential dwelling units.**

- **Subject site is part of Phase II of the development of Timber Sky.**



Sirius at Timber Sky - Preliminary Plat



CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C200	105.90	721.02	8°24'56"
C201	14.07	200.00	4°01'55"
C202	75.66	721.00	6°00'46"
C203	107.22	841.00	7°18'16"
C204	21.77	250.00	4°59'18"
C205	24.16	277.50	4°59'18"
C206	24.16	277.50	4°59'18"
C207	41.67	68.00	35°06'36"
C208	70.02	896.00	4°28'39"
C209	42.53	1016.00	2°23'55"
C210	79.40	1016.00	4°28'39"
C211	70.02	896.00	4°28'39"
C212	79.40	1016.00	4°28'39"
C213	68.99	1016.00	3°53'27"
C214	70.01	1016.00	3°56'54"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C215	67.73	1136.00	3°24'59"
C216	13.19	50.00	15°06'41"
C217	29.60	1191.00	1°25'25"
C218	77.14	1136.00	3°53'27"
C219	66.31	1191.00	3°11'24"
C220	67.85	1191.00	3°15'51"
C221	77.14	1136.00	3°53'27"
C222	68.99	1016.00	3°53'27"
C223	17.89	1136.00	0°54'08"
C224	68.53	1191.00	3°17'48"
C225	12.04	1191.00	0°34'45"
C226	72.09	1191.00	3°28'05"
C227	77.14	1136.00	3°53'27"
C228	68.99	1016.00	3°53'27"
C229	78.09	1016.00	4°24'13"

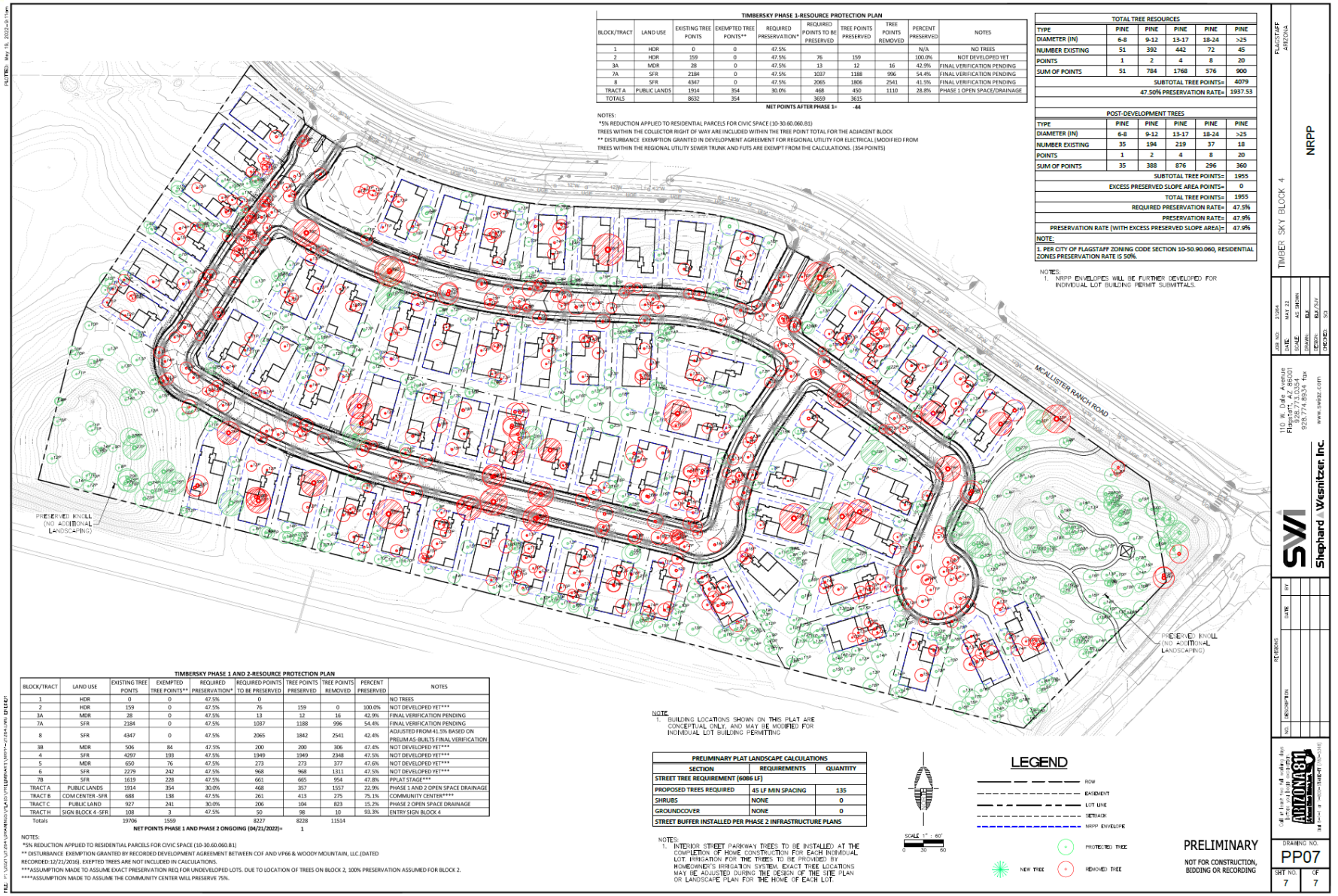
CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C230	68.86	896.00	4°24'13"
C231	20.00	896.00	1°16'44"
C232	80.02	841.00	5°27'05"
C233	68.60	721.00	5°27'05"
C234	68.60	721.00	5°27'05"
C235	80.02	841.00	5°27'05"
C236	80.02	841.00	5°27'05"
C237	68.60	721.00	5°27'05"
C238	68.86	896.00	4°24'13"
C239	42.69	1136.00	2°09'11"
C240	68.86	896.00	4°24'13"
C241	35.00	1191.00	1°41'02"
C242	38.18	1016.00	2°09'11"
C243	29.09	1016.00	1°38'25"
C244	62.21	896.00	3°58'40"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C245	68.71	841.00	4°40'52"
C246	58.91	721.00	4°40'52"
C247	59.14	384.00	8°49'29"
C248	77.63	504.00	8°49'29"
C249	88.53	504.00	10°03'53"
C250	63.70	384.00	9°30'16"
C251	12.04	504.00	1°22'07"
C252	160.51	356.50	25°47'49"
C253	175.64	329.00	30°35'16"
C254	5.39	327.50	0°56'37"
C255	64.48	327.50	11°16'52"
C256	43.66	356.50	7°00'58"
C257	13.00	504.00	1°28'38"
C258	49.80	327.50	8°42'46"
C259	109.63	300.00	20°56'15"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C260	64.66	41.50	89°16'09"
C261	104.29	68.00	87°52'15"
C262	13.85	50.00	15°52'27"
C263	22.73	68.00	19°08'54"
C264	46.79	68.00	39°25'29"
C265	46.79	68.00	39°25'29"
C266	27.32	68.00	23°01'12"
C267	13.85	50.00	15°52'27"
C268	99.58	272.50	20°56'15"
C269	32.78	1255.00	1°29'48"
C270	53.92	1255.00	2°27'42"
C271	13.22	50.00	15°08'58"
C272	3.03	68.00	2°33'21"
C273	105.20	1200.00	5°01'23"
C274	112.40	1227.50	5°14'48"
C275	52.65	41.50	72°41'42"
C276	58.87	68.00	49°35'56"
C277	62.73	68.00	52°51'08"
C278	95.20	119.33	45°42'26"
C279	13.85	50.00	15°52'27"
C280	26.17	18.00	83°18'22"
C281	44.43	63.50	40°05'22"
C282	70.40	63.50	63°31'14"
C283	32.69	63.50	29°29'56"
C284	43.95	63.50	39°39'27"
C285	63.69	63.50	57°27'54"
C286	36.66	63.50	33°04'29"
C287	20.79	896.00	1°19'46"

LINE TABLE		
LINE #	LENGTH	DIRECTION
L100	17.64	N 34°30'20" E
L101	20.81	N 11°43'14" W
L102	70.00	N 56°43'14" W
L103	20.81	S 78°16'46" W
L104	5.56	S 11°43'14" E
L105	24.80	S 16°42'22" W
L106	4.88	S 37°18'41" W
L107	50.00	S 33°16'46" W
L108	22.67	S 54°06'33" W
L109	25.76	S 37°18'41" W
L110	20.04	S 10°46'49" E
L111	22.26	N 79°24'36" E
L112	21.14	S 12°51'58" E
L113	15.32	S 32°19'23" W
L114	22.36	N 69°54'00" E
L115	19.30	N 16°55'33" W
L116	70.00	N 61°55'33" W
L117	22.35	S 13°46'27" E
L118	19.30	S 73°04'27" W
L119	21.04	N 10°23'00" W
L120	25.10	S 54°54'34" E
L121	21.21	S 80°05'26" W
L122	22.15	S 55°51'11" E
L123	47.53	N 13°25'20" E
L124	70.00	N 35°05'26" E
L125	24.18	N 13°14'54" W
L126	23.20	S 76°03'14" W
L127	32.37	N 22°27'36" E
L128	79.65	S 77°44'19" E
L129	28.93	S 57°15'17" E
L130	11.31	N 17°35'49" W
L131	7.10	S 39°52'04" W
L132	21.35	N 58°47'15" E
L134	12.00	N 75°50'26" W
L135	13.48	S 22°27'00" W
L136	25.55	S 25°42'51" W
L137	41.48	S 28°54'14" W
L138	46.20	S 22°55'50" W

Resource Protection Plan



TIMBERSKY PHASE 1-RESOURCE PROTECTION PLAN

BLOCK/TRACT	LAND USE	EXISTING TREE POINTS	EXEMPTED TREE POINTS**	REQUIRED PRESERVATION*	REQUIRED POINTS TO BE PRESERVED	TREE POINTS PRESERVED	TREE POINTS REMOVED	PERCENT PRESERVED	NOTES
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TOTAL TREE RESOURCES					
TYPE	PINE	PINE	PINE	PINE	PINE
DIAMETER (IN)	6-8	9-12	13-17	18-24	>25
NUMBER EXISTING	51	392	442	72	45
POINTS	1	2	4	8	20
SUM OF POINTS	51	784	1768	576	900
SUBTOTAL TREE POINTS=					4079
47.50% PRESERVATION RATE=					1937.53

POST-DEVELOPMENT TREES					
TYPE	PINE	PINE	PINE	PINE	PINE
DIAMETER (IN)	6-8	9-12	13-17	18-24	>25
NUMBER EXISTING	35	194	219	37	18
POINTS	1	2	4	8	20
SUM OF POINTS	35	388	876	296	360
SUBTOTAL TREE POINTS=					1955
EXCESS PRESERVED SLOPE AREA POINTS=					0
TOTAL TREE POINTS=					1955
REQUIRED PRESERVATION RATE=					47.5%
PRESERVATION RATE=					47.9%
PRESERVATION RATE (WITH EXCESS PRESERVED SLOPE AREA)=					47.9%

NOTE:
1. PER CITY OF FLAGSTAFF ZONING CODE SECTION 10-50.90.060, RESIDENTIAL ZONES PRESERVATION RATE IS 50%.

NOTES:
1. NRPP ENVELOPES WILL BE FURTHER DEVELOPED FOR INDIVIDUAL LOT BUILDING PERMIT SUBMITTALS.

TIMBERSKY PHASE 1 AND 2-RESOURCE PROTECTION PLAN

BLOCK/TRACT	LAND USE	EXISTING TREE POINTS	EXEMPTED TREE POINTS**	REQUIRED PRESERVATION*	REQUIRED POINTS TO BE PRESERVED	TREE POINTS PRESERVED	TREE POINTS REMOVED	PERCENT PRESERVED	NOTES
1	HDR	0	0	47.5%	0				NO TREES
2	HDR	159	0	47.5%	76	159	0	100.0%	NOT DEVELOPED YET***
3A	MDR	28	0	47.5%	13	12	16	42.9%	FINAL VERIFICATION PENDING
7A	SFR	2184	0	47.5%	1037	1188	996	54.4%	FINAL VERIFICATION PENDING
8	SFR	4347	0	47.5%	2065	1842	2541	42.4%	ADJUSTED FROM 41.5% BASED ON PRELIM AS-BUILTS FINAL VERIFICATION
3B	MDR	506	84	47.5%	200	200	306	47.4%	NOT DEVELOPED YET***
4	SFR	4297	193	47.5%	1949	1949	2348	47.5%	NOT DEVELOPED YET***
5	MDR	650	76	47.5%	273	273	377	47.6%	NOT DEVELOPED YET***
6	SFR	2279	242	47.5%	968	968	1311	47.5%	NOT DEVELOPED YET***
7B	SFR	1619	228	47.5%	661	665	954	47.8%	PPLAT STAGE***
TRACT A	PUBLIC LANDS	1914	354	30.0%	468	357	1557	22.9%	PHASE 1 AND 2 OPEN SPACE DRAINAGE
TRACT B	COM CENTER -SFR	688	138	47.5%	261	413	275	75.1%	COMMUNITY CENTER****
TRACT C	PUBLIC LAND	927	241	30.0%	206	104	823	15.2%	PHASE 2 OPEN SPACE DRAINAGE
TRACT H	SIGN BLOCK 4 -SFR	108	3	47.5%	50	98	10	93.3%	ENTRY SIGN BLOCK 4
Totals		19706	1559		8227	8228	11514		
					NET POINTS PHASE 1 AND PHASE 2 ONGOING (04/21/2022)=	1			

NOTES:
*5% REDUCTION APPLIED TO RESIDENTIAL PARCELS FOR CIVIC SPACE (10-30.60.060.B1)
** DISTURBANCE EXEMPTION GRANTED BY RECORDED DEVELOPMENT AGREEMENT BETWEEN COF AND VP66 & WOODY MOUNTAIN, LLC.(DATED RECORDED:12/21/2016). EXEPTED TREES ARE NOT INCLUDED IN CALCULATIONS.
***ASSUMPTION MADE TO ASSUME EXACT PRESERVATION REQ FOR UNDEVELOPED LOTS. DUE TO LOCATION OF TREES ON BLOCK 2, 100% PRESERVATION ASSUMED FOR BLOCK 2.
****ASSUMPTION MADE TO ASSUME THE COMMUNITY CENTER WILL PRESERVE 75%.

NOTE
1. BUILDING LOCATIONS SHOWN ON THIS PLAT ARE CONCEPTUAL ONLY, AND MAY BE MODIFIED FOR INDIVIDUAL LOT BUILDING PERMITTING

PRELIMINARY PLAT LANDSCAPE CALCULATIONS		
SECTION	REQUIREMENTS	QUANTITY
STREET TREE REQUIREMENT (6086 LF)		
PROPOSED TREES REQUIRED	45 LF MIN SPACING	135
SHRUBS	NONE	0
GROUNDCOVER	NONE	0
STREET BUFFER INSTALLED PER PHASE 2 INFRASTRUCTURE PLANS		

NOTES:
1. INTERIOR STREET PARKWAY TREES TO BE INSTALLED AT THE COMPLETION OF HOME CONSTRUCTION FOR EACH INDIVIDUAL LOT. IRRIGATION FOR THE TREES TO BE PROVIDED BY HOMEOWNER'S IRRIGATION SYSTEM. EXACT TREE LOCATIONS MAY BE ADJUSTED DURING THE DESIGN OF THE SITE PLAN OR LANDSCAPE PLAN FOR THE HOME OF EACH LOT.

SCALE 1" = 60'
0 30 60

LEGEND
ROW
EASEMENT
LOT LINE
SETBACK
NRPP ENVELOPE
PROTECTED TREE
NEW TREE
REMOVED TREE

PRELIMINARY
NOT FOR CONSTRUCTION, BIDDING OR RECORDING

FLAGSTAFF ARIZONA
TIMBER SKY BLOCK 4
NRPP

JOB NO. 21354
DATE MAY 22
SCALE AS SHOWN
DRAWN ELF
DESIGN ELF/SVI
CHECKED SVI

110 W. Dale Avenue
Flagstaff, AZ 86001
928.774.8934 tel
928.774.8934 fax
www.swsltz.com

SVI Shephard Wesnitzer, Inc.

NO.	DESCRIPTION	DATE	BY
	REVISIONS		

Call before you dig
ARIZONA811
Arizona Blue Stake, Inc.

DRAWING NO.
PP07
SHT NO. 7 OF 7

Required Finding #1: Zoning Code (Title 10)

Meets Single-Family Residential (R1) Zone Standards

Density

- Gross 2.89 units/acre and Net 4.56 units/acre is within R1 range of 2 minimum and 5 maximum units/acre

Lot design and resource protection

- Lots designed to meet resource protection requirements using specific building envelopes.

Lot sizes

- All lots meet minimum lot size of 6,000 sq.ft.
- All lots meet requirements for minimum width and depth

Staff has included as a condition of approval that where lots have frontages below 60', setbacks are applied where width reaches 60'

Setbacks

- Conforms with the R1 minimum setbacks:
- Front = 15' min; 25' min for parking;
- Side = 8' min
- Rear = 25' min

Zoning Code allows City Council to approve alternate lot sizes and setbacks on a final plat

Required Finding #1: Zoning Code (Title 10)

Meets other relevant standards

- Historic/Cultural Resources
  - Cultural Resource clearance completed with original approval
- Parks, Open Space, Pedestrian, Bicycle Facilities
  - Open space and amenity area requirements are provided within the Timber Sky Development, however additional open space is provided in this subdivision.
  - Sidewalks are provided throughout the subdivision.

Required Finding #2: Engineering Standards (Title 13)

Meets Engineering Standards

- Public systems analysis conducted to confirm preliminary compliance with Engineering Standards
  - Compliance confirmed with Civil Engineering Plans (after Preliminary Plat approval)
- Access and Traffic
  - A Traffic Impact Analysis (TIA) was not required for this subdivision. A TIA was completed in conjunction with the rezoning that included this site.

Meets Engineering Standards

Water and Wastewater

- New 8” water line provided with the new streets serving subdivision
- New 8” sewer line –each lot to be provided with a tap

Stormwater

- Regional detention for the entire Timber Sky Development
- LID is provided in Tract A

Required Finding #3: Subdivisions Standards (Title 11)

Meets Subdivision and Land Split Regulations (Chapter 11-20)

- Preliminary Plat procedures, application requirements
- Minimum Required Subdivision Improvements
  - Identified in public systems analyses (previous slides)

Required Finding #3: Subdivisions Standards (Title 11)

Meets Subdivision and Land Split Regulations (Chapter 11-20)

Subdivision Standards and Regulations

- Lot Design
- Street Design
- Easement Design
- Block Design

Findings and Recommendation

Required Findings

- **The Planning & Zoning Commission shall find the Preliminary Plat meets the requirements of City Code** Title 10, Flagstaff Zoning Code; City Code Title 11, General Plans and Subdivisions; and City Code Title 13, Engineering Design Standards and Specifications

Staff Recommendation

- **The Planning and Zoning Commission, based on the required findings, forwards this Preliminary Plat to the City Council with a recommendation for approval subject to following conditions:**

1. The applicant shall provide the purpose of each tract on the final plat.

2. The final plat shall show the patent as shown on Sheet 2 of the preliminary plat and on the Timber Sky Final Block Plat.

3. All lots shown with less than a 60-foot lot width at the 25-foot front setback shall have building envelopes with front setbacks set at the point where the lot width is 60 feet. A note shall be added to the lot typical identifying which lots have alternative front setbacks.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Richard Tutwiler, Interim Library Director
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Adoption of Resolution No. 2022-39: A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement between Coconino County and the City of Flagstaff to establish an advisory Library Board for the Coconino County Free Library District.

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2022-39 by title only
2) City Clerk reads Resolution No. 2022-39 by title only (if approved above)
3) Adopt Resolution No. 2022-39

Executive Summary:

This Intergovernmental Agreement (IGA) encompasses the formation of the Library Board, and is being proposed because the existing IGA expired in June 2022. The IGA outlines standards by which the Library District Advisory Board operates, including membership, terms of board members, vacancies, organization, number of meetings, and effective date and terms of the agreement.

Financial Impact:

None.

Policy Impact:

No alterations to existing policies.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

High Performing Governance: Serve the public by providing high quality internal and external customer service Enhance the organization's fiscal stability and increase efficiency and effectiveness Implement innovative local government programs, new ideas and best practices; be recognized as a model for others to follow

Inclusive and Engaged Community: Facilitate and foster diversity and inclusivity Enhance community outreach and engagement opportunities Livable Community: Provide educational opportunities for Flagstaff residents of all ages

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.

Policy ED.2.3. Encourage efforts to provide a full range of high-quality educational opportunities for life-long learning for all residents.

Has There Been Previous Council Decision on This:

Yes, the City Council approved an IGA to form a Library District Advisory Board on November 18, 2009.

Options and Alternatives:

1) The City Council approves this Intergovernmental Agreement with Coconino County for the formation of a Library District Board. 2) The City Council declines to enter into this agreement and directs staff to look at alternatives.

Background/History:

The City and Coconino County have had an agreement for since 2009 regarding the formation and operation of a Library District Advisory Board for the Library District; this agreement expired in June 2022.

Key Considerations:

The goal of this Intergovernmental Agreement is the formation of a Library Board for the Library District to help guide Executive Library Leadership on the wants and needs of both the City of Flagstaff and larger Coconino County community that it serves.

Expanded Financial Considerations:

None.

Community Benefits and Considerations:

The local community will continue to use the City's libraries for educational, recreational, and personal growth. The formation of a Library District Board allows for community input and feedback to be presented to both Executive Library Leadership and the Library Board. The City will be able to continue to meet the needs of the community.

Community Involvement:

IGA has been viewed and approved by the Coconino County Board of Supervisors. Physical copies delivered to City Clerk's office; two fully executed documents to be returned to the Clerk of the Board for Coconino County.

Expanded Options and Alternatives:

None.

Attachments: Res. 2022-39
Library District Advisory Board IGA - Digital-Unsigned
Presentation

RESOLUTION NO. 2022-39

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY AND THE CITY OF FLAGSTAFF TO ESTABLISH AN ADVISORY LIBRARY BOARD FOR THE COCONINO COUNTY FREE LIBRARY DISTRICT

RECITALS:

WHEREAS, pursuant to A.R.S. Section 11-952 the governing bodies of the City of Flagstaff and Coconino County may enter into an Intergovernmental Agreement to jointly exercise common powers or contract for services; and

WHEREAS, the City of Flagstaff and Coconino County are members of the Coconino County Free Library District; and

WHEREAS, the City of Flagstaff and Coconino County wish to reaffirm their agreement regarding the formation, membership, and duties of a Flagstaff City-Coconino County Public Library Board.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental Agreement between Coconino County and the City of Flagstaff to establish the Flagstaff City-Coconino County Public Free Library Board, attached hereto as Exhibit A.

The existing Flagstaff City-Coconino County Public Library Board is hereby reinstated with all appointed Board Members maintaining their existing appointment terms in accordance with the Intergovernmental Agreement.

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 23rd day August, 2022.

_____

MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
A – Intergovernmental Agreement

After recording, return to:

City Clerk
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

INTERGOVERNMENTAL AGREEMENT

Coconino County
and
City of Flagstaff

Flagstaff City — Coconino County Public Library Board

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____ 2022 ("Effective Date"), by and between the City of Flagstaff ("Flagstaff"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Coconino County ("County"), a body politic and corporate as provided in Sections 11-105 and 11-201 of the Arizona Revised Statutes, with offices at 219 East Cherry Street, Flagstaff, Arizona 86001. The City and the County may also be referred to as "Party" or "Parties" in this Agreement.

RECITALS

A. The Parties belong to the Coconino County Free Library District ("District") and sponsor or operate one or more public libraries ("Library") funded by and under the auspices of the District;

B. The Parties wish to reaffirm their agreement regarding the formation, membership and duties of a Flagstaff City — Coconino County Public Library Board (the Library Board");

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement the Operating Parties agree as follows:

1. Formation of the Library Board.

There is hereby established the Flagstaff City — Coconino County Public Library Board to consider and deliberate upon matters of concern to the City Council of the City of Flagstaff, the Board of Supervisors of the County, and the citizens of the City and the County that affect the operation and efficiency of the Library in order to provide an optimum level of library services using available resources. The Library Board shall act in an advisory capacity to, and make recommendations to, the Library Director, the City Manager, the City Council and the Board of Supervisors.

2. Membership.

The Board shall be composed of one (1) City Council Member, four (4) City residents, three (3) Board members appointed by the Board of Supervisors of the County, one (1) appointee being a member of the County Board of Supervisors and two (2) being County residents. The City Council Member and the Supervisor shall be ex officio, non-voting members.

3. Terms of Board Members; Vacancies.

3.1. Of the City residents first appointed to the Board, one shall be designated to serve for a term of one (1) year, one shall be designated to serve for a term of two (2) years, and two shall be designated to serve a term of three (3) years from the date of their appointment. Thereafter, City residents shall be appointed for a term of office of three (3) years.

3.2. Of the two County residents first appointed to the Board, one shall be designated to serve for a term of one (1) year, and the other shall be designated to serve for a term of two (2) years. Thereafter, County residents shall be appointed for a term of office of three (3) years.

3.3. The City Council and the Board of Supervisors shall promptly fill vacancies for the unexpired term of any member of the Board of appointments for which each governing body is responsible.

4. Organization of the Board

4.1. Within sixty (60) days after the effective date of this Agreement, and at the first meeting of the Board, the members of the Board shall elect a chairperson and a Vice-Chairperson. Elections for those officers shall be held thereafter annually on or about that anniversary date. No member shall serve more than three (3) successive terms as Chairperson.

4.2. The Library Director may be an ex-officio, non-voting member of the Board.

5. Meetings.

5.1. The Board shall hold not less than ten (10) regular meetings annually which shall at all times be open to the public. The time and place of the meetings shall be posted in accordance with any currently applicable State statutes, including but not limited to the Arizona Open Meeting Law, regulating public meetings and proceedings.

5.2. A quorum shall be one more than half the voting membership of the Board.

5.3. If any Board member has two (2) consecutive unexcused absences, the remaining Board members may vote to terminate the appointment of the unexcused member. The Chairperson shall determine prior to any meeting if a member's absence is excusable.

6. Effective Date and Term

6.1. This Agreement shall be effective with respect to the City and the County at the time of its adoption by their governing bodies.

6.2. This Agreement shall continue in force and effect until midnight on June 30, 2024, unless sooner terminated as indicated in this Agreement; provided, however, that this Agreement shall be automatically renewed for two (2) additional terms of two (2) years unless notice of intent not to renew is given by either Party no less than sixty (60) days prior to the end of its initial term.

6.3. Notwithstanding anything to the contrary contained in this Agreement, it may be terminated by either Party, with respect to such Party, upon six (6) months' prior written notice of its intent to do so, without penalty or further obligation, in accordance with the provisions of Arizona Revised Statutes § 38-511.F, in the event of the occurrence of any of the circumstances described in A.R. S. § 38-511.A.

7. Indemnification

7.1. Each party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other party (as "Indemnitee") for, from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney fees, (hereinafter collectively referred to as "Claims") arising out of noncompliance with State or Federal law or 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 or 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.

7.2. Notwithstanding any other provision of this Agreement to the contrary, any agreement by one party to hold harmless or indemnify the other party shall be limited to, and be payable only from, the indemnifying party's available insurance or self-insurance coverage for liability assumed by contract available as a part of its general liability insurance program.

8. Notices

Unless otherwise specified in this Agreement, any notice or other communication required or permitted to be given under this Agreement 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 in accordance with this Section:

To City:	To County:
City Manager City of Flagstaff 211 W Aspen Ave Flagstaff, AZ 86001	Deputy County Manager Coconino County 219 East Cherry Street Flagstaff, AZ 86001

9. Authority to Contract

Each of the Operating Parties represents and warrants that it has full power and authority to enter into and perform its obligations under this Agreement, in accordance with A.R.S. Sec. 11-952.

10. Prior Agreements, Integration, Modification

10.1. The parties acknowledge and agree that they have not relied upon any statements, representations, agreements, or warranties, except as expressed in this Agreement, and that this constitutes the parties' entire agreement with respect to the matters addressed in the

Agreement. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement.

10.2. This Agreement may be modified or amended only by written agreement signed by or for all parties, and any such modification or amendment will become effective on the date specified in the amendment.

11. Severability

In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect, to the extent that the enforcement of such remaining terms shall continue to reflect substantially the intent of the parties to this Agreement.

12. Waiver

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision of this Agreement, nor shall any waiver by any party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach of this Agreement.

13. Headings

The headings used in this Agreement are for convenience only and are not intended to alter or affect the meaning of any provision of this Agreement.

14. Governing Law

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Arizona.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

City of Flagstaff

Paul Deasy, Mayor

Dated: _____

Attest:

City Clerk

Approved as to form and as to authority granted by law:

City Attorney

Coconino County

Patrice Horstman, Chair of Board

Dated: _____

Clerk of the Board

Approved as to form and as to authority granted by law:

Deputy County Attorney

Library District Board IGA

City of Flagstaff – Coconino County

Library District Board IGA

What the IGA covers

- Formation of the Library Board
  - The Library Board considers and deliberates matters of concern that affect the operation and efficiency of the Library District.
    - Acts in an advisory capacity to the Library Director, City Manager, City Council and Board of Supervisors.
    - Will make recommendations to provide an optimum level of library services using available resources.

Library District Board IGA

What the IGA covers

- Membership
  - IGA states that the Board will be composed of the following:
    - 1 City Council Member
    - 4 City Residents
    - 3 Board Members appointed by the Board of Supervisors (One of which sits on the Board of Supervisors)
    - 2 County Residents

Library District Board IGA

What the IGA covers

- Terms of Board Members and Vacancies
  - Each Board Member will serve a term of office of three (3) years total.
  - City Council and Board of Supervisors shall promptly fill vacancies for unexpired term of any member of the Board for which the governing body is responsible.

Library District Board IGA

What the IGA covers

- Organization of the Board
  - Members of the Board shall elect a chairperson and a Vice-Chairperson.
  - No member shall serve more than three (3) successive terms as Chairperson.
  - The Library Director may be an ex-officio, non-voting member of the Board.

Library District Board IGA

What the IGA covers

- Meetings
  - The Board shall hold not less than ten (10) regular meetings annually, all open to the public. Time and place of meetings will follow applicable State statutes.
  - A quorum shall be one more than half the voting membership of the Board.
  - If any Board Member has two (2) consecutive unexcused absences, the remaining Board members may vote to terminate the appointment of the unexcused member.

Library District Board IGA

Why a Library Board against a Commission?

- The Library Board is made up of citizen representatives and residents of the community.
- Board members are not voted on by the community; they are selected by elected officials.
- They represent the interests of both City of Flagstaff residents and those living in Coconino County outside of City limits.

Date and Term

- Agreement shall continue until midnight on June 30, 2024.
  - Unless sooner terminated as indicated in IGA.
  - IGA shall be automatically renewed for two (2) additional terms of two (2) years unless notice of intent not to renew is provided by either Party.

Suggested Action

- Recommendation: City Council approve the renewal of the IGA that governs the formation and operation of the Library District Board.

11. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Allison Hughes, Support Services Manager

Co-Submitter: Keith Chamberlain

Co-Submitter: Stacey Brechler-Knaggs

Date: 08/19/2022

Meeting Date: 08/23/2022

TITLE:

Consideration and Adoption of Resolution No. 2022-38: A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement between Coconino County and the City of Flagstaff for the Application for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2022 Local Solicitation/ CFDA #16.738

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2022-38 by title only
2) City Clerk reads Resolution No. 2022-38 by title only (if approved above)
3) Adopt Resolution No. 2022-38

Executive Summary:

Approval of the IGA will enable the City of Flagstaff to pass through U.S. Department of Justice funding to the Coconino County Sheriff's Department for the purchase of four (4) Daniel Defense rifles with sights, magazine pouch, optic, and weapon mounted light. CCSO will also purchase one 40 mm gas launcher.

Financial Impact:

There is no significant financial impact to the City of Flagstaff in terms of expenditures. This grant is budgeted in FY 2022-23 in the amount of $72,751 account number 001-04-062-6101-2-4273.

Policy Impact:

Allows us to provide additional funding to assist Flagstaff Police Department in meeting the communities' expectations in regards to our community policing efforts.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

Safe & Healthy Community: The Intergovernmental Agreement will allow the Flagstaff Police Department and the Coconino County Sheriff's Office to utilize the Federal Fiscal Year 2022 Grant funds to prevent and control crime, administer justice and assist crime victims. This contributes to a Safe and Healthy Community by providing public safety services with resources, staff & training responsive to the community's needs.

Carbon Neutrality Plan

DD-2: These funds assist in providing public safety services with adequate resources and staff time in ensuring that our neighborhoods are safe for community members to travel in.

Regional Plan

Goal LU.1. Invest in existing neighborhoods and activity centers for the purpose of developing complete, and connected places.

Goal NH.1. Foster and maintain healthy and diverse urban, suburban, and rural neighborhoods in the Flagstaff region.

City funds will be used to supplement overtime for community policing and property crime interdiction initiatives. As our citizens request additional patrols or when we can identify an area that would benefit from additional police presence, these funds will be beneficial in assuring we can provide these necessary services.

Has There Been Previous Council Decision on This:

Yes - Council approved the previous Intergovernmental Agreement in order to benefit from the Federal Fiscal Year 2021 JAG grant.

Options and Alternatives:

- Approve the Intergovernmental Agreement between the City and County.
- Not approve the IGA between the City and County.

Background/History:

The U.S Department of Justice, Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA), was created in 1984 to provide federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist crime victims. The Edward Byrne Memorial Justice Assistance Grant (JAG) Program allows states, tribes, and local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. JAG blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs to provide agencies with the flexibility to prioritize and spend funds where they are most needed. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state.

Key Considerations:

The JAG formula program provides agencies with the flexibility to prioritize and place justice funds where they are needed most. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state. The City has been certified as disparate and must submit a joint application for the aggregate of funds allocated. The JAG disparate jurisdictions are certified by the Director of the Bureau of Justice Assistance (BJA), based in part on input from the state's Attorney General. The disparate allocation occurs when the City is scheduled to received one and one half times more than the County, while the County bears more than 50% of the costs of prosecution of incarceration that arise for Part 1 violent crimes committed in the city. City funds will be used to supplement overtime for community policing and property crime interdiction initiatives. As our citizens request additional patrols or when we can identify an area that would benefit from additional police presence, these funds will be beneficial in assuring we can provide these necessary services. As part of the joint application process an IGA is required to be submitted to the funding agency indicating who will serve as applicant/fiscal agent for the joint funds. The IGA will authorize payment to the County in the amount of $11,201.10 for the JAG funds upon successful award.

Expanded Financial Considerations:

The Federal Fiscal Year 2022 JAG funds have been requested in the amount of $37,337.00 of which the City will agree to the terms of the Intergovernmental Agreement and pass on the appropriate funds through the County. The County will request a total of $11,201.10 to be used to purchase of four (4) Daniel Defense rifles with sights, magazine pouch, optic, and weapon mounted light. CCSO will also purchase one 40 mm gas launcher.

Community Benefits and Considerations:

The Intergovernmental Agreement will allow the Flagstaff Police Department and the Coconino County Sheriff's Office to utilize the Fiscal Year 2022 Grant funds to prevent and control crime, administer justice and assist crime victims. This contributes to a Safe and Healthy Community by providing public safety services with resources, staff & training responsive to the community's needs.

Community Involvement:

Inform the Council and public on the application of this grant and intended use of these funds.

Expanded Options and Alternatives:

1. Approve as recommended.
2. Disapprove the IGA with the County and potentially reduce the full funding to City and County.

Attachments: Res. 2022-38
IGA

RESOLUTION NO. 2022-38

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY AND THE CITY OF FLAGSTAFF FOR THE APPLICATION FOR THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2022 LOCAL SOLICITATION / CFDA #16.738

RECITALS:

WHEREAS, this Agreement is made under the authority of Arizona Revised Statues Section 11-952 as a joint exercise of powers; and

WHEREAS, both parties are required to enter into this Intergovernmental Agreement as co-applicants of a grant under Edward Byrne Memorial Justice Assistance Grant Program and to designate a fiscal agent for purposes of administering grant funds; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental Agreement between Coconino County and the City of Flagstaff, Arizona, attached hereto as Exhibit A, which shall become effective upon the date first executed by both parties ("Effective Date").

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 23rd day of August, 2022.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
Exhibit A – IGA

GMS APPLICATION NUMBER: 2022-JAG

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FLAGSTAFF, AZ AND COUNTY OF COCONINO, AZ

EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2021 LOCAL SOLICITATION / CFDA #16.738

This Agreement is made and entered into this____day of_____, 2022, by and between COCONINO COUNTY, acting by and through its governing body, the Board of Supervisors, hereinafter referred to as COUNTY, and the CITY of FLAGSTAFF, acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Coconino County, State of Arizona:

WHEREAS, this Agreement is made under the authority of Arizona Revised Statues Section 11-952 as a joint exercise of powers; and,

WHEREAS, both parties are required to enter into this Intergovernmental Agreement as co-applicants of a grant under Edward Byrne Memorial Justice Assistance Grant Program and to designate a fiscal agent for purposes of administering grant funds; and,

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

CITY agrees to serve as fiscal agent for purposes of accepting the JAG program grant award and to pay COUNTY a total of $11,201.00 of JAG funds.

Section 2.

COUNTY agrees to use $11,201.00 for the purposes outlined in the FY 2022 JAG Program award period of October 1, 2021 through September 30, 2025.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against either party other than claims for which liability may be imposed by the Federal Tort Claims Act. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

Section 4.

Each party to this agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party. Neither party agrees to indemnify or hold harmless the other party.

Section 5.

Notwithstanding any other provision contained herein, this Agreement may be terminated if either party does not receive sufficient grant funds to carry out their purposes under the JAG program. Each party agrees to appropriate funds to continue its effort to apply for funding from the JAG program. If JAG funds are not awarded, the obligations of the parties shall terminate.

Section 6.

Before this Agreement can become effective and binding on either party, it must be approved by the respective governing bodies and the legal counsel of each party.

Section 7.

This Agreement shall remain in effect for the period of October 1, 2020, through September 30, 2024.

Section 8.

The County and the City, as co-applicants, agree to comply with the and Mandatory Award Terms and Conditions, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, and Standard Assurances provisions attached as Exhibit A to this Agreement.

Section 9.

This Agreement may be cancelled pursuant to Arizona Revised Statutes Section 38-511.

Approved by Resolution of the respective governing bodies hereto:

Dated:_____ Dated:_____

CITY OF FLAGSTAFF, AZ	COUNTY OF COCONINO, AZ
Paul Deasy, Mayor	Patrice Horstman, Chairwoman
ATTEST:	ATTEST:
City Clerk	Clerk of the Board
APPROVED AS TO FORM AND PROPER AUTHORITY:	APPROVED AS TO FORM AND PROPER AUTHORITY:
City Attorney	Deputy County Attorney

EXHIBIT A

"General Conditions" for OJP Awards in FY 2022

Requirements of the award; incorporation by reference; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2021 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2021 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2021 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at https://ojp.gov/funding/Part200UniformRequirements.htm.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at https://ojp.gov/financialguide/DOJ/index.htm), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at https://ojp.gov/training/fmts.htm. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP

Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested

by DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant

Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at https://www.sam.gov/SAM/. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at https://ojp.gov/funding/Explore/SAM.htm (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or

Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.everify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise

imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (https://www.e-verify.gov/) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award

Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient)--(1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of

All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at https://ojp.gov/funding/Explore/SubawardAuthorization.htm (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, $250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if

contract would exceed $250,000)), and are incorporated by reference here.

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ) (or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at https://ojp.gov/funding/Explore/Interact-Minors.htm (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating

Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward

Requirements" in the "DOJ Grants Financial Guide").

Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees.

Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in

certain "education programs."

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at https://www.ecfr.gov/cgi-bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

Compliance with general appropriations-law restrictions on the use of federal funds (FY 2021)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at https://www.ojp.gov/funding/explore/award-condition-general-appropriations-law-restrictions-use-federal-award-funds-fy-2021, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at https://oig.justice.gov/hotline/contact-grants.htm (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at https://oig.justice.gov/hotline.

Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or

safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

Safe policing and law enforcement subrecipients

If this award is a discretionary award, the recipient agrees that it will not make any subawards to State, local, college, or university law enforcement agencies unless such agencies have been certified by an approved independent credentialing body or have started the certification process. To become certified, law enforcement agencies must meet two mandatory conditions: (1) the agency's use of force policies adhere to all applicable federal, state, and local laws; and (2) the agency's use of force policies prohibit chokeholds except in situations where use of deadly force is allowed by law. For detailed information on this certification requirement, see https://cops.usdoj.gov/SafePolicingEO.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Collin Seay, Police Lieutenant
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

~~**Consideration and Adoption of Resolution No. 2022-40:** A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement (IGA) Between Coconino Community College and Flagstaff Police Department for High Country Training Academy. This is a Arizona POST accredited basic training academy for police certification operated out of Coconino Community College.~~

STAFF RECOMMENDED ACTION:

~~1) Read Resolution No. 2022-40 by title only~~
~~2) City Clerk reads Resolution No. 2022-40 by title only (if approved above)~~
~~3) Adopt Resolution No. 2022-40~~

Executive Summary:

The Flagstaff Police Department (FPD) hires approximately 15-25 police officer recruits per year, and we send our recruits to various academies around the state that require us to pay for basic training tuition and housing/per diem costs for each recruit. We typically send recruits to Prescott, Phoenix-area, or Yuma academies around the state each year. On average, the city spends approximately $10,000 per recruit in tuition and housing/per diem costs to attend a basic training academy. FPD must compete with other agencies for academy seats which is a highly competitive market with the needs for new police recruits around the state and limited police academies, and we typically only get a minimal number of spots in each academy class. Once we receive academy seats, we must arrange for long-term housing in either an extended hotel stay or a vacation rental out of town which is very costly when academy lengths are typically 20-24 weeks. We also limit our accountability over our recruits because of their distance from the city. This makes it challenging to assist with their needs during their time at the academy and sometimes leads to recruit turnover before graduating the academy. Many academies are moving toward a model that if an agency is requesting more than five seats in an academy, they want a full-time training officer to teach at the academy which results in loss of staffing in patrol and a high cost of paying the housing and per diem of the training officer.

FPD has partnered with Dr. Nate Southerland (Provost) and the Coconino Community College to create the High Country Training Academy which will be operated locally by the College out of the Lone Tree campus. FPD will provide the Class Sergeant who is responsible for the delivery of instruction of the class, and the College will reimburse the salary at the rate of $139,700 per year (rate will increase slightly each year). FPD will also provide additional staffing and adjunct instructors to help deliver the 832 hours of total instruction for the recruits to receive Arizona POST certification right here in Flagstaff. There will be two academy 21-week sessions per year that start in October and March. We also have created a user group of police agencies in the Flagstaff area to include the Coconino County Sheriff's Office and Northern Arizona University Police Department to share the instructor and staff workload for the 832

hours of basic training instruction. This project will save the city money for basic training for recruits, and it will keep the money spent on basic training local to Flagstaff. The Flagstaff area agencies will get priority seating in these academy classes, and we will have direct accountability over our recruit staff to give them best chance possible of graduating the police academy.

Financial Impact:

The city will save money on basic academy training costs as our recruits who accept job offers will house themselves locally when they accept the offer.

Coconino Community College will charge the city $3,912.00 per recruit for enrollment into the twenty-one week Arizona POST certified police academy. In exchange, Coconino Community College will reimburse the city up to $110,000 in salary and $29,700 in benefits per year for the academy class Sergeant who will be responsible for delivering the 663 hours of Arizona POST mandatory basic training and an additional 169 hours of elective training for a total of 832 hours. There will be two academy session per year, one in October and one in March.

Policy Impact:

None

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

High Performing Governance: Serve the public providing high quality internal and external customer service.

High Performing Governance: Encourage public trust through transparency, accessibility and use of the City's public participation policy.

Team Flagstaff Strategic Plan: Provide exceptional service.

Regional Plan

3) Provide sustainable and equitable public facilities, services, infrastructure systems in an efficient and effective manner to serve all population areas and demographics.
8) Improve effectiveness of notification, communication and engagement with residents, neighborhoods and businesses and about City services, programs, polices projects and developments.

Has There Been Previous Council Decision on This:

The Council has approved IGAs for FPD to use different academies around the state that require a higher cost and relocation of our police officer recruits.

Options and Alternatives:

Approve or disapprove the IGA for FPD to partner with Coconino Community College to use High Country Training Academy for basic training. The alternative would be to continue to use outside of Flagstaff training academies that come with a higher cost.

Background/History:

In 2018, Arizona POST began cutting funding for police academies from around the state. Prior to 2018, Arizona POST covered the lodging and per diem for recruits who lived outside of 50 miles of the training academy. As a result, local agencies like FPD who do not have a police academy within 50 miles were forced to budget these additional funds for academy expenses. Remote agencies around the state such as Lake Havasu, Yuma, Kingman, Globe, the West valley, the East Valley, and Show Low have all opened their own training academies for basic training to offset these costs and to guarantee spots in an academy for their police recruits.

Larger agencies who ran academies prior to 2018 started to turn outside agencies away from the usage of their academy because outside agencies were not able to provide staffing to these academies to help with the operation of the academy.

Key Considerations:

By approving this IGA, the city will be able to keep its money local by partnering with Coconino Community College.

Expanded Financial Considerations:

Coconino Community College will charge a tuition per recruit of $3,912.00, but the city will receive a yearly reimbursement of $139,700 for providing the academy Sergeant, staff, and adjunct instructors.

Community Benefits and Considerations:

Flagstaff Police Officer recruits will be trained locally by our trained supervisors and general instructors from within the community. Existing personnel will get the opportunity to sharpen their own skills by teaching topics throughout the year which will strenthen our on-going officer training ability. Also, the academy will use adjunct instructors from within the community to teach POST and elective material.

Community Involvement:

Coconino Community College is the local college of our city and county, and basic training will be accredited through the college to start our police recruits on a pathway towards a college education. Credits will be awarded to police recruits for completing the Arizona POST basic police academy through the college.

Expanded Options and Alternatives:

Approve or disapprove the IGA between the City of Flagstaff and the Coconino Community College.

Attachments:

11. D.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Edward Schenk, Water Services Manager - Stormwater
Co-Submitter:	Brad Hill
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Adoption of Resolution No. 2022-41: A resolution of the Flagstaff City Council adopting a Notice of Intention to increase stormwater rates or rate components, fees or service charges and establishing a date for a public hearing on the proposed changes for November 15, 2022

STAFF RECOMMENDED ACTION:

1. Read Resolution No. 2022-41 by title only
2. City Clerk reads Resolution No. 2022-41 by title only (if approved above)
3. Adopt Resolution No.2022-41

Executive Summary:

This action adopts a Notice of Intention, which is required by Arizona Revised Statues Section 9-511.01 prior to a municipality increasing water/stormwater rates, rate components, fee or service charges. Arizona Revised Statutes require a Notice of Intention be adopted by City Council at least 60 days prior to the public hearing and published a copy of the Notice of Intention in the local newspaper not less than 20 days before the public hearing. A written report must be filed with the City Clerk and posted on the City website at least 30 days prior to the public hearing. This report will be filed and posted by September 16, 2022.

Financial Impact:

The City is recognizing the need to establish stormwater rates that will allow the Water Services Division to address the capital improvements needed in our community and an increase in operations to include flood response. An increase in stormwater rates is needed in order to meet current expenditures, provide for an increased capital improvement program and provide sound fiscal management to the Stormwater Fund.

The new stormwater rates and services fees would go into effect on January 1, 2023.

Policy Impact:

Policy impacts include a staff recommendation to remove the residential cap of 5 Equivalent Rate Units (ERUs) to provide greater community equity of stormwater rate fees.

Additional discussion of suspending the 2009 Stormwater Credit Manual to increase community equity will be presented but is not actionable for this Notice-of-Intention (NOI) item.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

COUNCIL GOALS:

Safe & Healthy Community: Provide public safety services with resources, staff & training responsive to the community's needs

Innovative Infrastructure: Deliver outstanding services to residents through a healthy, well maintained infrastructure system

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

REGIONAL PLAN:

Policy E&C.3.1. Develop and implement a comprehensive and proactive approach to prepare the community for and to minimize the impacts of climate change induced hazards.

Policy E&C.3.4 Increase the region's preparedness for extreme climate events.

Policy WR.5.4. Develop any necessary stormwater infrastructure improvements consistent with City of Flagstaff stormwater master plans or studies as adopted by the City

Policy WR.5.1. Preserve and restore existing natural watercourse corridors, including the 100-year floodplain, escarpments, wildlife corridors, natural vegetation, and other natural features using methods that result in a clear legal obligation to preserve corridors in perpetuity, where feasible

Policy WR2.2 Maintain and develop facilities to provide reliable, safe and cost-effective stormwater services.

Has There Been Previous Council Decision on This:

Stormwater service charges were amended on December 4, 2018, and new service charge went into effect on January 1, 2019. Ordinance 2018-40

Stormwater service charges were amended on December 19, 2017, and new service charge went into effect on February 1, 2018. Ordinance 2017-32 amended section 12-02-002-003, Schedule of Stormwater Management Utility Service Charges and Fees within the Flagstaff City Code.

Options and Alternatives:

Adopt Resolution

Do not adopt Resolution and provide staff direction on future considerations of service charge increases or service level decreases. This will leave the Stormwater Fund operations and capital project program unchanged. The Fund will have a negative balance within three (3) years without action.

Background/History:

The Flagstaff community has a large list of needs as it relates to Stormwater. Recent wildfire activity around Flagstaff has resulted in more regular flood response and the need for stormwater infrastructure upsizing in the Spruce Wash and Schultz Creek drainages. The City of Flagstaff has spent in excess of $2 million in the last 2 years in response to this post-fire flooding. Additionally, the North East Area Master Drainage Study (2010) has identified 37 projects which have a current cost estimate of $74.4 million. The current funding for Stormwater capital improvements is $600,000 per year which is insufficient to address the 2010 needs analysis.

To meet the community need and current Stormwater expenditures, an increase in Stormwater fees is recommended. This Notice of Intent is the first requirement set forth in ARS 9-511.01 which sets forth

requirements for a Stormwater service charge increase.

Key Considerations:

In accordance with the adopted City of Flagstaff Water Policies:

Utility rates and revenues should generate sufficient revenues to meet operational costs, capital program requirements, debt service obligations, and maintain adequate reserves consistent with sound financial management practices.

Utility rates should be set proportionate to the cost of providing the water service to each customer class to promote fairness and equity.

A financial plan that follows the water policies and goals established by City Council on April 1, 2014.

Expanded Financial Considerations:

The current Stormwater Fund rate is $3.74/ERU, set in 2018 to provide debt servicing for the Rio de Flag Flood Control Project and to supplement the Stormwater Capital Improvement Program (set up in 2006). The current stormwater rate does not reflect post-fire flood mitigation needs, climate change impacts, nor the rapid increase in construction materials and labor. The current rate is low on the national level based on the complexity of the Stormwater Section (Western Kentucky University Stormwater Utility 2021 Survey).

Community Benefits and Considerations:

Regular rate reviews and modification are necessary to maintain a stable financial position for the Stormwater Fund.

A new rate assessment will help provide long term flood response, a new level of service for the Stormwater Section.

Community Involvement:

A public hearing will be advertised to be held at the November 15, 2022, City Council meeting.

Attachments: Res. 2022-41
Presentation

RESOLUTION NO. 2022-41

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL ADOPTING A NOTICE OF INTENTION TO INCREASE WATER SERVICES RATES OR RATE COMPONENTS, FEES OR SERVICE CHARGES; AND SETTING A PUBLIC HEARING DATE ON NOVEMBER 15, 2022

RECITALS:

WHEREAS, the City of Flagstaff provides water, reclaimed water, wastewater, sewer and stormwater utility services (collectively "Water Services"); and

WHEREAS, Arizona Revised Statutes ("A.R.S.") § 9-511.01 requires any municipality engaging in a domestic water or wastewater business to follow specific procedures before increasing rates or rate components, fees or service charges related to water and wastewater; and

WHEREAS, the City is proposing a new rate to generate revenues that will be used to fund the increased capital and operational needs of the Stormwater Section.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. Notice of Intention.

The City Council hereby adopts a notice of intention to increase Water Services rates or rate components, fees or service charges.

SECTION 2. Public Hearing.

A public hearing will be held before the City Council to consider proposed increases to Water Services rates or rate components, fees or service charges at the regularly scheduled public meeting on **Tuesday, November 15, 2022, at 6:00 p.m. in the Council Chambers at City Hall, 211 West Aspen Avenue, Flagstaff, Arizona 86001.**

SECTION 3. Written Report and Cash Flow Analysis.

The City Management Services Division is directed to prepare a written report or supply data supporting the increased rates or rate components, fees or service charges.

The written report or data shall include cash flow projections that indicate all anticipated revenues from residential and nonresidential customers and the overall expenses for providing water or wastewater service.

This information shall be made available for public inspection at least thirty (30) days and preferably at least sixty (60) days before the public hearing, by filing it with the City Clerk's Office to be maintained as a public record, and by posting it on the City website.

SECTION 4. Effective Date.

This resolution shall be immediately effective.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 23rd day of August, 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Stormwater Rate Adjustment- Notice of Intent

Council Presentation: August 23, 2022

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

Stormwater Rate Adjustment -Notice of Intent

Overview

- Staff is seeking adoption of a Notice of Intent to raise the Stormwater Rates
- Tonight's Discussion Points
    - Previous Council Direction
    - Purpose of Rate Adjustment
    - Jurisdictional Roles
    - Rate Basis and Policy Recommendations
    - Timeline
    - Council Direction to Adopt or Not Adopt Resolution 2022-41

Previous Council Direction

- Council approved Resolution 2018-44, on December 4, 2018
  - Increased Stormwater utility fees by $1.48/ERU
  - To a new rate of $3.74 per Equivalent Rate Unit (ERU)
  - Funding $32M for major capital projects including Rio de Flag Flood Control Project
  - $600,000 annually for capital projects

Stormwater Rate Adjustment -Notice of Intent

Purpose of Rate Adjustment

- Increased fire and flood events over the past few years have made current infrastructure insufficient
- Increased fire and flood events have increased demand on operations – staffing and equipment
- Mitigation costs for new flood areas, such as Spruce Wash and Schultz Creeks
- Address some Capital Improvement Projects identified by 2010 Northeast Area Master Drainage Study
- Completion of critical capital projects will reduce flood response operations costs

Stormwater Rate Adjustment -Notice of Intent

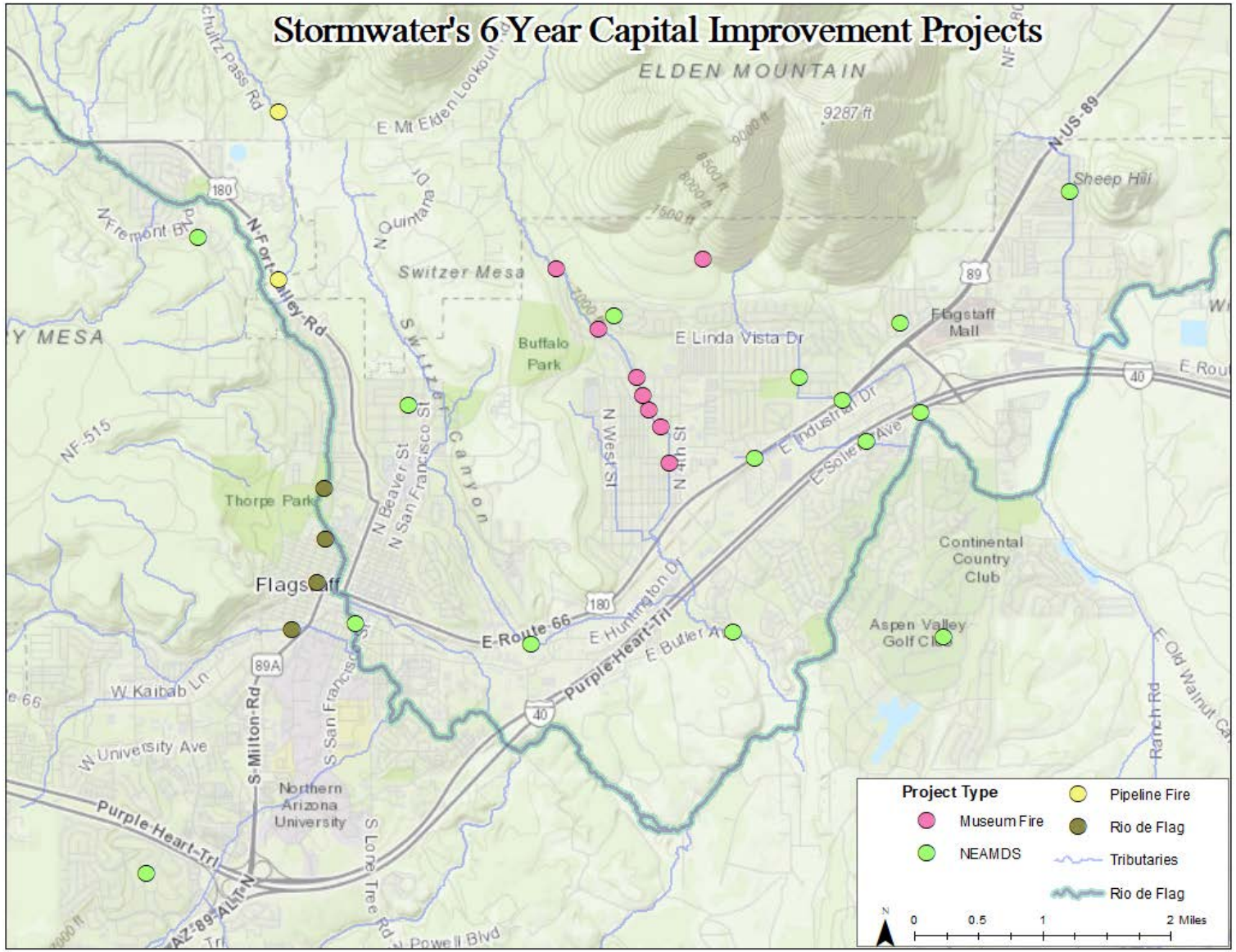
Current Rates

- Limited Capital Funding
- Large increased Operating Cost
  - Temporary Flood Mitigation
  - Flood Response
  - Currently Unfunded
- Unsustainable Budget

Proposed Rates

- Increased Capital Funding
  - Permanent Flood Mitigation
  - GO Bond or Rates
- Increased Operating Cost
  - Pre-Season Flood Mitigation
  - Staffing & Equipment
  - Master Planning
- Sustainable Budget

Stormwater Rate Adjustment – Notice of Intent



Purpose of Rate Adjustment

Stormwater Capital Needs – Six- year horizon

STORMWATER CAPITAL NEEDS- 6 YEAR HORIZON							
Project Area	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029	TOTAL
Rio de Flag	$ 4,135,744	$ 16,209,000	$ 218,405	$ 570,583	$ 834,763	$ -	$ -	**$ 21,968,495**
Spot improvements	$ 700,868	$ 78,375	$ 81,902	$ 85,587	$ 89,439	$ 93,464	$ 97,670	**$ 1,227,304**
Museum Fire	$ 13,440,212	$ 8,987,000	$ 5,733,131	$ 4,279,373	$ -	$ -	$ -	**$ 32,439,716**
Pipeline Fire	$ -	$ -	$ -	$ 3,423,498	$ 5,366,334	$ -	$ -	**$ 8,789,832**
NEAMDS study	$ 14,815	$ 1,828,750	$ 4,531,904	$ 2,852,915	$ 4,978,765	$ 4,392,791	$ 2,832,416	**$ 21,432,356**
Future Projects	$ -	$ -	$ -	$ -	$ -	$ 498,473	$ 2,344,068	**$ 2,842,541**
TOTAL	**$ 18,291,639**	**$ 27,103,125**	**$ 10,565,342**	**$ 11,211,957**	**$ 11,269,301**	**$ 4,984,728**	**$ 5,274,154**	**$ 88,700,245**

Jurisdictional Roles

- The City Stormwater Program provides:
  - The City Stormwater Maintenance Program
  - Capital Improvements within City neighborhoods
  - Assumes FEMA Floodplain Management Responsibilities
  - Stormwater Development Review and Enforcement Responsibilities
  - Assumes MS4 Permit Responsibilities
- The County Flood Control District take responsibilities for un-incorporated areas

Rate Basis – ERU

- Stormwater Rates are based on Equivalent Runoff Units (ERUs)
  - 1 ERU is equal to 1,500 square foot of impervious area
  - Residential properties have a maximum of 5 ERUs
    - Average Residential property for the City of Flagstaff has 3 ERUs
  - Commercial properties do not have a maximum ERU

Proposed Policy Recommendations

Staff Recommends Updating the Following Policies:

- Eliminate/Suspend Stormwater Credit Manual, as it is obsolete- grandfather in existing participants
  - Future policy amendment
- Remove maximum of 5 ERU's for Residential properties
  - Within Rate Adjustment process

Development of Financial Plan

- Increase operating cost
  - Additional $600K is needed in 2024
- Significant Capital Expenditure over the next 6 years
  - Projected annual need is $12.7 million
- Mixture of Revenue Bonds, GO Bonds, Grants and Rate Revenue (cash) will be utilized to fund capital expenditure
  - November GO Bond election will impact the Rate Adjustment
    - Voter approved – Some capital projects funded by property tax revenue
    - Voter not approved – All capital projects funded by stormwater fee
    - Both scenarios will be presented

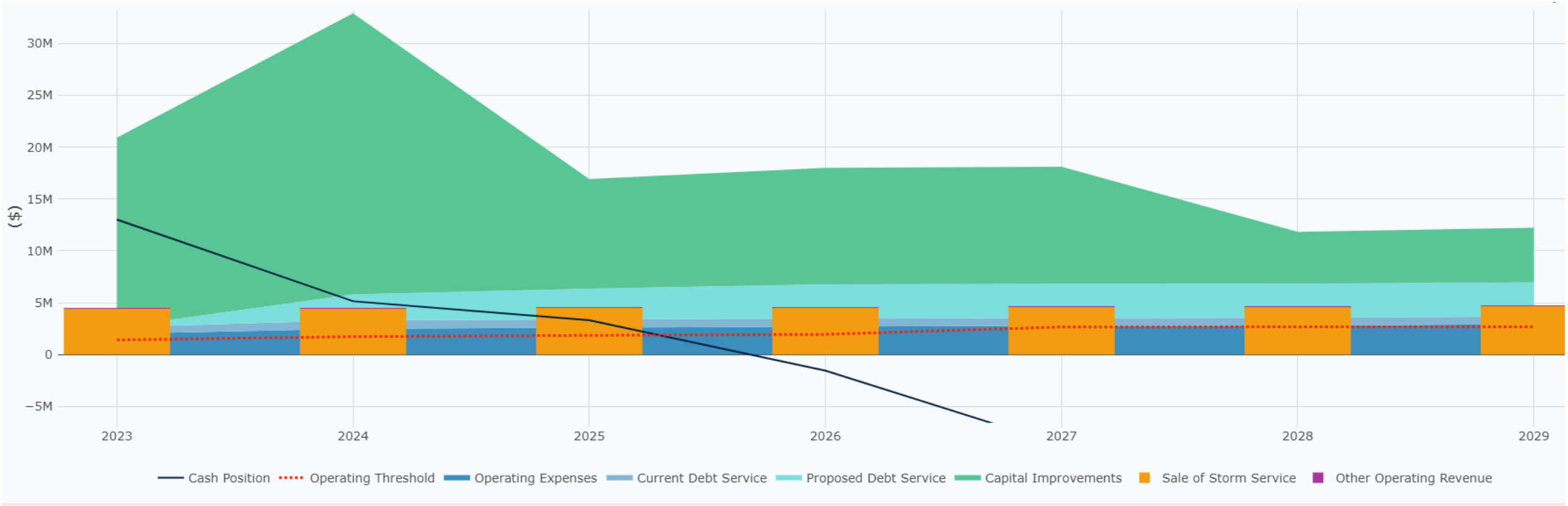
Projected Capital Expenditure

Operations Budget	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
O&M Budget	$ 1,826,108	$ 1,451,962	$ 1,527,412	$ 1,556,355	$ 1,640,283	$ 1,631,785	$ 1,692,541
Additional O&M	$ 175,000	$ 1,036,706	$ 1,063,637	$ 1,140,874	$ 1,119,944	$ 1,149,374	$ 1,234,146
Total O&M Needs	**2,001,108**	**2,488,668**	**2,591,050**	**2,697,229**	**2,760,226**	**2,781,159**	**2,926,687**

** Additional O&M covers increases in personnel, capital equipment, pre-season flood mitigation and master planning

Capital Budget	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
Rate Funded	9,491,639	1,071,125	4,765,342	411,957	8,269,301	4,984,728	5,274,154
Revenue Bond		16,000,000		6,500,000	3,000,000		
Grant Funded	1,500,000	1,045,000					
Go Bond	7,300,000	8,987,000	5,800,888	4,300,000	-	-	-
Total Capital	**18,291,639**	**27,103,125**	**10,565,342**	**11,211,957**	**11,269,301**	**4,984,728**	**5,274,154**

Status Quo: Projected Cash Position



Summary

- Current revenues are not sufficient to pay for increased operating cost (flood mitigation) and future capital expenditures
- Significant rate increase will be needed to meet future stormwater obligations
- Next Water Commission meeting, we will present two rate scenarios
  - GO Bonds approved– some capital funding through property tax
  - GO Bond not approved - Rates fund all capital projects, funded by customers

Rate Implementation Timeline, If NOI is Approved

8/23/2022	CM-Notice of Intent
9/15/2022	Rate Analysis Report
9/15/2022	Water Commission Meeting - Presentation
9/16/2022	Documents on Water Service Website
9/16/2022	60 Day Public Notice
Sept/Oct	Community Outreach
10/15/2022	Copy to City Clerk (no less than 30 days before PH)
10/25/2022	Council Work Session
10/26/2022	Newspaper Notice (no less than 20 days before PH)
11/15/2022	Council Meeting-Public Hearing, 1st Read
11/29/2022	Council Meeting-Public Hearing, Ordinance 2nd Read
1/1/2023	Rate Effective 1/1/2023

Stormwater Rate Adjustment -Notice of Intent

Council Options

- Read/Adopt Resolution 2022-41
- Direct staff to provide additional information and delay the Read/Adoption of Resolution 2022-41 to the September 18th Council Meeting.
- Do Not Adopt Resolution 2022-41 and Provide Direction on Future Consideration of Service Charge Increases
- Do Not Adopt Resolution 2022-41 and Provide Direction on Future Consideration of Service Level Reductions

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Tiffany Antol, Senior Planner
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Adoption of Ordinance No. 2022-18: An ordinance of the City Council of the City of Flagstaff amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code, Division 10-40.60: Specific to Uses, Section 10-40.60.220 Marijuana Establishments Subsection C. Hours of Operation for Marijuana Dispensaries, providing for penalties, repeal of conflicting ordinances, severability, and establishing an effective date.

STAFF RECOMMENDED ACTION:

At the August 23, 2022, Council Meeting:

1) Read Ordinance No. 2022-18 by title only for the first time
2) City Clerk reads Ordinance No. 2022-18 by title only (if approved above)

At the September 6, 2022, Council Meeting:

3) Read Ordinance No. 2022-18 by title only for the final time
4) City Clerk reads Ordinance No. 2022-18 by title only (if approved above)
5) Adopt Ordinance No. 2022-18

Executive Summary:

The proposed amendment is to extend the hours of operation for Marijuana Dispensaries from 7:00 p.m. to 10 p.m. The Planning & Zoning Commission recommends the City Council approve the amendment as proposed (3-1).

Financial Impact:

There are no anticipated financial impacts affiliated with the proposed Zoning Code Text Amendment.

Policy Impact:

There are no anticipated policy impacts affiliated with the proposed Zoning Code Text Amendment.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

Robust Resilient Economy - Maintain & enhance equitable & effective business recruitment, retention, & expansion program through the community.

Carbon Neutrality Plan

CR-1: Ensure all mitigation actions improve Flagstaff's ability to adapt to the future.

Regional Plan

Goal ED.1. Create a healthy environment for business by ensuring transparent, expeditious, and predictable government processes.
Goal ED.3. Regional economic development partners support the start-up, retention, and expansion of existing business enterprises.
Policy ED.4.2. Promote variety and flexibility in land use and development options within the urban growth boundary.

Has There Been Previous Council Decision on This:

There have been no previous Council decisions on this specific request.

Options and Alternatives:

The City Council may adopt, modify, or deny the proposed amendment.

Background/History:

Noble Herb, which currently runs a permitted Marijuana Dispensary in Flagstaff, is requesting to modify Section 10-40.60.220.C, which sets the operation hours for Marijuana Dispensaries, as follows:

Current Text
A Marijuana Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than **7:00** p.m.
Proposed Text
A Marijuana Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than **10:00** p.m.

The applicant's narrative describing this request and a list of zoning code requirements across the state are attached for the Council's review.

Key Considerations:

A Zoning Code Text Amendment shall be evaluated based on the following findings:

A. Finding #1: The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;
The amendment's primary purpose is to extend the hours of operation for Marijuana sales to align with other similar uses in the community such as pharmacies.This amendment is supported by goals and policies within the Regional Plan including the following:

- Goal ED.1. Create a healthy environment for business by ensuring transparent, expeditious, and predictable government processes.
- Goal ED.3. Regional economic development partners support the start-up, retention, and expansion of existing business enterprises.
- Policy ED.4.2. Promote variety and flexibility in land use and development options within the urban growth boundary.

B. Finding #2: The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City;
The provisions of the amendment are not anticipated to be detrimental to the public interest, health, safety, convenience, or welfare of the city. To assist in ensuring that the Marijuana Establishment land uses are not detrimental, minimum separation requirements are established from facilities and locations that contain any of the following uses: daycares, educational, family recreation and entertainment, public libraries and parks, drug or alcohol rehabilitation, and other Marijuana Establishments. In addition, provisions have been incorporated pertaining to the security, disposal of marijuana remnants and by-products, and prohibition of onsite consumption of marijuana products and emissions of dust, fumes,

vapors, smoke, or odors into the environment from a Marijuana Establishment.

C. Finding #3: The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.

The amendment is internally consistent, utilizes the existing format, and does not conflict with other Zoning Code provisions. It maintains the Zoning Code's purpose as a comprehensive contemporary set of land uses and requirements that are straightforward, usable, and easily understood.

Community Involvement:

Inform. The applicant held a neighborhood meeting for the proposed zoning code text amendment on May 2, 2022, using the Zoom platform. Notices were sent directly to the Persons of interest on file with Planning and Development Services, in addition to an advertisement in the Arizona Daily Sun. No one from the public attended this meeting.

A formal work session was held with the Planning & Zoning Commission on May 25, 2022, and the City Council on May 31, 2022. Both work sessions were advertised in the Arizona Daily Sun.

A public hearing was held with the Planning & Zoning Commission on June 22, 2022. All public hearings were advertised in the Arizona Daily Sun.

Attachments:

Ord. 2022-18
Application
Applicant Narrative
Citizen Participation Plan

ORDINANCE NO. 2022-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 10, FLAGSTAFF ZONING CODE, DIVISION 10-40.60: SPECIFIC TO USES, SECTION 10-40.60.220 MARIJUANA ESTABLISHMENTS, SUBSECTION C. HOURS OF OPERATION FOR MARIJUANA DISPENSARIES, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff wishes to amend Flagstaff City Code Title 10, Flagstaff Zoning Code, Division 10-40.60: Specific to Uses, Section 10-40.60.220 Marijuana Establishments, subsection C. hours of operation for Marijuana Dispensaries; and

WHEREAS, citizen review sessions were held at the Planning Commission work session on May 25, 2022, and the City Council work session on May 30, 2022, to discuss the proposed Zoning Code text amendment in accordance with Section 10-20.50.040 of the Flagstaff Zoning Code; and

WHEREAS, the Planning and Zoning Commission held a public hearing on June 22, 2022, and provided a recommendation to City Council on the proposed Zoning Code text amendment; and

WHEREAS, the Council has read and considered the staff report prepared by the Planning and Development Services section of the Community Development division and all attachments to those reports, and the Council finds that the proposed Zoning Code text amendment is in conformance with the General Plan, and the findings of Section 10- 20.50.040 of the Flagstaff Zoning Code have been met.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. Amend Flagstaff City Code, Title 10, Flagstaff Zoning Code, Division 10-40.60: Specific to Uses, Section 10-40.60.220 Marijuana Establishments, subsection C. hours of operation for Marijuana Dispensaries, as follows:

10-40.60.220 Marijuana Establishments

C. A Marijuana Dispensary shall have operating hours not earlier than 8:00 am and not later than ~~7:00 p.m.~~ 10:00 P.M.

SECTION 3. The amendment is consistent with and conforms to the goals of the Regional Plan (General Plan).

SECTION 4. The amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, and will add to the public good as described in the General Plan.

SECTION 5. The amendment is internally consistent with other applicable provisions of this Zoning Code.

SECTION 6. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 7. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 8. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 9. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 6th day of September, 2022.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

City of Flagstaff

Community Development Division

211 W. Aspen Ave
Flagstaff, AZ 86001
www.flagstaff.az.gov

P: (928) 213-2618
F: (928) 213-2609

Date Received	**Application for Zoning Code Text Amendment**	File Number PZ-21-00277

Applicant(s)/Property Owner(s)	Title	Phone	Email
Noble Herb LLC		602-703-5320	doug@nobleherbaz.com
Mailing Address		**City, State, Zip**	
460 N. Switzer Canyon Drive, Suite 100		Flagstaff, AZ 86001	
Representative (If applicable)	**Title**	**Phone**	**Email**
Pele Fischer, Attorney	Peacock Legal, PLC	602-803-3668	pele@peacock.legal
Mailing Address		**City, State, Zip**	
4602 E. Thomas Rd., W2		Phoenix, AZ 85018	

Property Address	City, State, Zip
522 E Route 66	Flagstaff, AZ 86001

Application Name: Marijuana Dispensary Operating Hours
Zoning Code Text Amendment
Chapter Name and Number: Chapter 10.40 Specific to Zones
Division Name and Number: 10-40.60 Specific to Uses
Section Name and Number: 10-40.60.220 Marijuana Establishments
Chapter Name and Number:
Division Name and Number:
Section Name and Number:
Chapter Name and Number:
Division Name and Number:
Section Name and Number:

Additional Information:

Owner's Signature (required)	Date:	Representative Signature (If applicable)	Date:
	4/12/22	Pele P Fischer	4/12/22

For City Use		
Date Filed:	File Number(s):	Fee Receipt Number:
P & Z Hearing Date:	Publication and Posting Date:	Amount:
Council Hearing Date:	Publication and Posting Date:	Date:
Received by:	Comments:	

ZONING CODE AMENDMENT APPLICATION

Title: XXXXXXXXXXXXX - *Hours of Operation for Marijuana Dispensaries.*
Date: April 12, 2022

NARRATIVE

PROPOSED AMENDMENT:
The proposed amendment (Exhibit A to the Resolution No. XXXX) modifies the existing marijuana establishment hours of operation provision of the Flagstaff Zoning Code, 10-40.60.220 Marijuana Establishments.

Reason for the Request:
The purpose of the amendment is to extend the allowed hours a marijuana establishment may operate. The reason for the proposed amendment is to increase the accessibility of marijuana to patients and consumers, decrease the burden in obtaining marijuana for patients and consumers, and create more jobs in a thriving and high desired for employment industry.

CRITERIA #1: The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan. A change in operational hours still maintains and upholds council and staff's original stipulations for marijuana establishment operations except for an extension of operational hours. The extension of operational hours is consistent with other similarly situated businesses and the community character of the Plan.

Furthermore, the proposed amendment expanding the operating hours of marijuana establishments is consistent and conforms with many of the City's Economic Development policies and goals. Expanding the operating hours for marijuana establishments will align Flagstaff's hours with those permitted in other major cities in Arizona. Expanding the permitted hours of operation for marijuana dispensaries will allow for dispensaries to increase the hours for current employees and create demand to hire new employees. The demand for marijuana products will continue to grow with the population, and the expanded hours of operation will attract marijuana brands to sell their products at Flagstaff marijuana establishments.

CRITERIA #2
The proposed amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the City as a result of extending the hours a marijuana dispensary may operate. The Arizona Department of Health Services regulated the Medical and Adult Use Marijuana programs in Arizona. State statute and rules regulate the security of marijuana dispensaries. All security requirements must be strictly adhered to. Please see R9-17-318 and R9-18-312 attached.

Furthermore, allowing for additional operating hours is important in mitigating and preventing the spread of COVID-19 or other comparable communicable / contagious diseases. Currently, there is a large rush of customers around closing. Extending the operational hours will allow for additional hours which should spread out customer visits allowing for less rushes, more social distancing, and a better flow of customers visits, etc.

CRITERIA #3
The proposed amendment is internally consistent with other applicable provisions of this Zoning Code and does not conflict with any other Zoning Code provision. The amendment maintains the contemporary set of land uses and requirements of the purpose of the Zoning Code and is usable, straightforward, and easily understood.

Benefit to the Community:

The proposed amendment will benefit the community and the overall quality of life in the City of Flagstaff. The amendment will have a positive impact on the well-being of the community by expanding patient and consumer access and promoting patients' right to choose alternative treatment and therapeutics. The current hours limit the ability of those individual with schedule constraints or those that work outside typical business hours to obtain marijuana.

Although delivery currently does help serve some patients in these groups, delivery is only available to medical patients by law at this time. A large portion of consumers under the adult-use program use marijuana for medicinal reasons but decline to obtain a medical card due to resource barriers or privacy concerns. Expanding the hours of operation will expand patient and consumers' access to powerful pain and inflammation treatment.

The proposed amendment will benefit the City of Flagstaff from an economic standpoint. Jobs in the cannabis industry are in high demand and expanding the permitted hours of operation will create more jobs at marijuana establishments. Flagstaff's population has been quickly growing and the expanded hours of operation will help businesses better serve patients in a timely manner.

Furthermore, the increasing demand for marijuana products and expanded hours of operation will attract marijuana brands and businesses to work with the marijuana establishment licensees in Flagstaff. This will create jobs at cultivation, processing, and retails sites, and increase the variety of marijuana products available to patients in Flagstaff. The proposed amendment to expand the permitted operating hours of dispensaries will further benefit the community and promote the tourism and events industry in Flagstaff by making marijuana accessible to those who want to visit and contribute to the tourism industry.

Noble Herb
Zoning Code Text Amendment Application
Citizen Participation Plan

Noble Herb is holding a neighborhood meeting via Zoom on May 2nd, 2022 at 6:00 p.m.. regarding its application for a zoning code text amendment. The request amendment expands the permitted hours of operation for marijuana dispensaries from 8:00 a.m. until 7:00 p.m., to 8:00 a.m. until 10:00 p.m..

Noble Herb will keep the Director informed of the status and results of any communication and comments received by the public. Noble Herb will send the Director an email with any communication or comments received from the public when received and Noble Herb will email the Director its response once completed and ready to release to the public.

Noble Herb
Zoning Code Text Amendment Application
Copy of Letter Sent to Registry of Persons/ Unpublished Arizona Daily Sun Ad

NEIGHBORHOOD MEETING REGARDING ZONING CODE TEXT AMENDMENT APPLICATION

NOBLE HERB will hold a neighborhood meeting schedule for ***May 2nd, 2022***, at ***6:00 pm via Zoom*** regarding its application requesting to amend the City of Flagstaff Zoning Code. You may join the public meeting using the link or meeting ID below.

Application **XXXXXXX** - ***Hours of Operation for Marijuana Establishment*** proposes amending Section 10-40.60.220(D) to expand the permitted operating hours of marijuana dispensaries from 8:00 a.m. until 7:00 p.m., to 8:00 a.m. until 10:00 p.m.

https://us02web.zoom.us/j/3358825940
Meeting ID: 335 882 5940

Please contact Noble Herb via Peacock Legal, PLC at (480) 535-3395.

Noble Herb
Zoning Code Text Amendment Application
"Registry of Persons and Groups"
As Required in Zoning Code Section 10-20.30.080.B

Friends of Flagstaff's Future
P.O. Box 23462
Flagstaff, AZ 86002
info@friendsofflagstaff.org
(928) 556-8663

Michele A. James
Executive Director
Friends of Flagstaff's Future
P.O. Box 23462
Flagstaff, Arizona 86002

Northern Arizona Building Association
1500 East Cedar Avenue, Suite 86
Flagstaff, AZ 86004
tbociung@nazba.org
(928) 779-3071

Northern Arizona Association of Realtors, Jeffrey Herd
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naargovaffairs@outlook.com
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Norm Wallen
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jchristelman@coconino.az.gov

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tyler.b.denham@gmail.com

Jess McNeely
Coconino County Community Development
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wmcneely@coconino.az.gov

Steve Finch
Flagstaff Lodging, Restaurant & Tourism Association
PO Box 30622
Flagstaff, AZ 86003
sfinch@flrta.org
(928) 326-6008

Rachel Bass
3083 W. Easterday Lane
Flagstaff 86001
rsilverton@gmail.com

David Hayward
Neighborhood Homes, LLC
510-331-3380
david@neighborhoodhomes.com

Barry Levitan
19 S San Francisco St
Flagstaff, AZ 86001
bllips@aol.com

Case No. XXXXXXXX Zoning Code Text Amendment – 2022: Hours of Operation for Marijuana Dispensaries

HOW TO READ THIS DOCUMENT

Unless otherwise stated, existing provisions that are being deleted are show in bold red through text, like this: ~~**Provisions that are being deleted are shown with a bold red through text.**~~

Provisions that are being added are showing in bold blue text, like this: **Provisions that are being added are shown in bold blue text.**

Section 1. Amend Title 10 Flagstaff Zoning Code, Division 10-40.60: Specific to Uses, Section 10-40.60.220: Marijuana Establishments, as follows:

10-40.60.220 Marijuana Establishments

C. A Marijuana Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than ~~**7:00 p.m.**~~ **10:00 p.m..**

11. F.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Tiffany Antol, Senior Planner
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Adoption of Resolution No. 2022-37 and Ordinance No. 2022-19: A Resolution of the Flagstaff City Council declaring as a public record that certain document filed with the City Clerk and entitled "PZ-22-00089 Marijuana Operations and Retail Establishments" and an Ordinance of the Flagstaff City Council amending the Flagstaff City Code, Title 10, Flagstaff Zoning Code, to allow recreational marijuana retail sales by establishments that may not be dual licensees and clarify definitions and terms in relation to Marijuana Operations.

STAFF RECOMMENDED ACTION:

At the August 23, 2022, Council Meeting:

1) Read Resolution No. 2022-37 by title only for the first time
2) City Clerk reads Resolution No. 2022-37 by title only (if approved above)
3) Read Ordinance No. 2022-19 by title only for the first time
4) City Clear reads Ordinance No. 2022-19 by title only for the first time

At the September 6, 2022, Council Meeting:

5) Adopt Resolution No. 2022-37
6) Read Ordinance No. 2022-19 by title only for the final time
7) City Clerk reads Ordinance No. 2022-19 by title only (if approved above)
8) Adopt Ordinance No. 2022-19

Executive Summary:

The primary purpose of this proposed Zoning Code Text Amendment is to allow for recreational only marijuana retail sales, clarify existing definitions and extend the separation distances between retail establishments. The Planning & Zoning Commission recommends the City Council approve the amendment as proposed (4-0).

Financial Impact:

There are no anticipated financial impacts affiliated with the proposed Zoning Code Text Amendment.

Policy Impact:

There are no anticipated policy impacts affiliated with the proposed Zoning Code Text Amendment.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

Robust Resilient Economy - Maintain & enhance equitable & effective business recruitment, retention, & expansion program throughout the community

Carbon Neutrality Plan

CR-1: Ensure all mitigation actions improve Flagstaff's ability to adapt to the future.

Regional Plan

Goal ED.1. Create a healthy environment for business by ensuring transparent, expeditious, and predictable government processes.
Goal ED.3. Regional economic development partners support the start-up, retention, and expansion of existing business enterprises.
Policy ED.3.1. Encourage regional economic development partners to continue proactive programs to foster the retention and expansion of existing enterprises and home-based business in the community.
Policy ED.3.5. Advocate the economic sustainability and growth of businesses with opportunities for transitional commercial space, leased space, and property ownership.
Policy ED.4.2. Promote variety and flexibility in land use and development options within the urban growth boundary.

Has There Been Previous Council Decision on This:

There have been no previous Council decisions on this specific Zoning Code Text Amendment.

Options and Alternatives:

The City Council may adopt, modify, or deny the proposed amendment.

Background/History:

The “Smart and Safe Arizona Act” (the “Act”), certified as Proposition 207, was passed by Arizona voters at the November 3, 2020, general election and became effective on December 1, 2020. The Act declared that “the responsible adult use of marijuana should be legal for persons twenty-one years of age or older subject to state regulation, taxation, and local ordinance.”

The Act allows for Marijuana Establishments, which are entities licensed by the Arizona Department of Health Services to operate a retail location for the sale of recreational marijuana, an off-site marijuana cultivation facility, and an off-site manufacturing facility. Pursuant to the licensing rules in the Act, the vast majority of the marijuana establishment licenses were given to entities that were already operating medical marijuana dispensaries. However, the Act also directed the Arizona Department of Health Services to issue twenty-six additional marijuana establishment licenses across the State of Arizona for the purpose of encouraging social equity in marijuana establishment ownership. Social equity licenses were issued to applicants who qualified under the Social Equity Ownership Program at a random drawing on April 8, 2022.

On March 16, 2021, the Flagstaff City Council adopted Ordinance 2021-03, which enacted certain regulations regarding the use and sale of recreational marijuana in Flagstaff. One of the regulations adopted by Council prohibits the operation of recreational marijuana establishments in Flagstaff, except where authorized by a dual licensee that is permitted by the State of Arizona to operate both a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location. Under the current rules, social equity licenses are not dual licenses—they are recreation only.

To allow recreational-only retail establishments, the Marijuana Dispensary definition would need to be amended as follows:

A. Definitions

Current Text

Marijuana Dispensary: A medical or dual licensee (as defined in A.R.S. 36-2850, as amended) Marijuana Dispensary certified by the State of Arizona to sell Marijuana and Marijuana products to consumers, which may include the cultivation, manufacturing, processing, packaging, or storage of Marijuana products as an accessory use to the dispensary.

Proposed Text

Marijuana Retail Establishment: A Non-Profit Medical Marijuana Dispensary, a Dual-Licensed establishment (as defined in A.R.S. 36-2850, as amended), or a single recreational retail establishment certified by the State of Arizona to sell Marijuana and Marijuana products to consumers, which may include the cultivation, manufacturing, processing, packaging, or storage of Marijuana products as an accessory use to the dispensary.

Staff recommends the revision of a few other terms in the code to align the Zoning Code with Arizona Revised Statutes. This includes the following changes:

Marijuana Off-Site Cultivation Location → Marijuana Off-Site Cultivation **Establishment**
Marijuana Off-Site Manufacturing Location → Marijuana Off-Site Manufacturing **Establishment**
Marijuana Establishment → Marijuana **Operation**

B. Separation Requirements

Marijuana Establishments (to be renamed Marijuana Operations), which include retail establishments, cultivation establishments, manufacturing establishments, and testing facilities, are regulated by Section 10-40.60.220 of the Zoning Code to protect the public health, safety, and welfare. Marijuana Dispensaries (as currently defined – proposed to be called Marijuana Retail Establishments) are only permitted in the Highway Commercial (HC) zone. Section 10-40.60.220.F includes minimum separation requirements for a Marijuana Establishment, measured in a straight line from the boundary of the lot or parcel containing any of the existing uses listed below:

1. Two thousand feet from another Marijuana Establishment;
2. Five hundred feet from a residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility licensed by the State of Arizona;
3. Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center, or other similar school or education facility that caters to children;
4. Five hundred feet from a daycare home or daycare center;
5. Five hundred feet from a public library or public park; and
6. Five hundred feet from a facility devoted to family recreation or entertainment.

The Planning and Zoning Commission recommends that the existing two thousand (2,000) foot separation required between establishments be increased to two thousand five hundred (2,500) feet. Attached to this report are maps of the existing sales locations with the existing 2,000-foot separation delineated, 2,500 foot separation delineated, and one-mile separation delineated to provide reference for this decision.

Key Considerations:

A Zoning Code Text Amendment shall be evaluated based on the following findings:

A. Finding #1:The proposed amendment is consistent with and conforms to the objectives and policies of the General Plan and any applicable specific plan;

The amendment's primary purpose is to implement the City Council's direction to update the Zoning Code to conform with the issuance of social equity licenses and to maintain consistency and conformance with the Regional Plan's (General Plan) goals and policies.Therefore, the modifications

would allow for recreational-only retail establishments in addition to Medical Marijuana Dispensaries and Dual-Licensed establishments (both medical and recreational). The proposed provisions address multiple goals and policies of the Regional Plan including:

- Providing submittal and locational requirements that are transparent and minimize duplication with the State of Arizona's requirements to be a certified Marijuana Establishment that is allowed to cultivate, manufacture, sell, and store marijuana products (Regional Plan Goal ED.1.);
- Allowing the Marijuana Establishment land uses (Marijuana Dispensary, Marijuana Off-Site Cultivation Location, Marijuana Off-site Manufacturing Location, and Marijuana Testing Facility) in several commercial and industrial zones that will permit new and existing marijuana-based businesses to be retained, expanded, and located in Flagstaff, as well as providing for scientific testing of marijuana products (Regional Plan Goal ED.3., and Policies CC.5.1., CC.5.5., ED.3.1., ED.3.5., and ED.4.2.); and,

B. Finding #2 The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City;
The provisions of the amendment are not anticipated to be detrimental to the public interest, health, safety, convenience, or welfare of the city. To assist in ensuring that the proposed Marijuana Establishment land uses are not detrimental, minimum separation requirements are established from facilities and locations that contain any of the following uses: daycares, educational, family recreation and entertainment, public libraries and parks, drug or alcohol rehabilitation, and other Marijuana Establishments. In addition, provisions are already incorporated pertaining to the security, disposal of marijuana remnants and by-products, and prohibition of onsite consumption of marijuana products and emissions of dust, fumes, vapors, smoke, or odors into the environment from a Marijuana Establishment.

C. Finding #3 The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.
The amendment is internally consistent, utilizes the existing format, and does not conflict with other Zoning Code provisions. It maintains the Zoning Code's purpose as a comprehensive contemporary set of land uses and requirements that are straightforward, usable, and easily understood.

Community Involvement:
Inform. A formal work session was held with the Planning & Zoning Commission on May 25, 2022, and the City Council on May 31, 2022. Both work sessions were advertised in the Arizona Daily Sun. A public hearing was held with the Planning & Zoning Commission on June 22, 2022. All public hearings were advertised in the Arizona Daily Sun.

Attachments: Application
Res. 2022-37
Ord. 2022-19
PZ-22-00089: Marijuana Operations and Retail Establishments
2000 foot separation map
2500 foot separation map
One mile separation map

City of Flagstaff

Community Development Division

211 W. Aspen Ave
Flagstaff, AZ 86001
www.flagstaff.az.gov

P: (928) 213-2618
F: (928) 213-2609

Date Received	Application for Zoning Code Text Amendment	File Number
5/3/22		PZ-22-00089

Applicant(s)/Property Owner(s)	Phone	Email
Michelle McNulty/City of Flagstaff Planning Director	928-213-2607	Michelle.McNulty@flagstaffaz.gov
Mailing Address		**City, State, Zip**
211 W Aspen		Flagstaff, AZ 86001
Representative (If applicable)	**Phone**	**Email**
Tiffany Antol Zoning Code Manager	928-213-2605	tantol@flagstaffaz.gov
Mailing Address same as above		**City, State, Zip**

Property Address N/A	City, State, Zip

Application Name: PZ-22-00089 Recreational Only Marijuana Dispensary and Dispensary Separation Requirements
Zoning Code Text Amendment
Chapter Name and Number: Definitions "M" 10-80.20.130
Division Name and Number:
Section Name and Number:
Chapter Name and Number: Marijuana Establishments 10-40.60.220
Division Name and Number:
Section Name and Number:
Chapter Name and Number:
Division Name and Number:
Section Name and Number:

Additional Information:

Owner's Signature (required)	Date:	Representative Signature (If applicable)	Date:
Michelle McNulty	5/5/22		

For City Use

Date Filed:	File Number(s):	Fee Receipt Number:
P & Z Hearing Date:	Publication and Posting Date:	Amount:
Council Hearing Date:	Publication and Posting Date:	Date:
Received by:	Comments:	

RESOLUTION NO. 2022-37

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "PZ-22-00089 MARIJUANA OPERATIONS AND RETAIL ESTABLISHMENTS"

RECITALS:

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full; and

WHEREAS, the City of Flagstaff wishes to incorporate by reference amendments to the Flagstaff Zoning Code, Ordinance No. 2022-19, by first declaring said amendments to be a public record.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

That certain document known as *"PZ-22-00089 Marijuana Operations and Retail Establishments"* attached hereto as Exhibit A is hereby declared to be a public record, and one (1) paper copy and one (1) electronic copy maintained in compliance with A.R.S. § 44-7041 shall remain on file with the City Clerk and kept available for public use and inspection.

SECTION 2. Effective Date.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 6th day of September 2022.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

Exhibits:
A. PZ-22-00089 Marijuana Operations and Retail Establishments

ORDINANCE NO. 2022-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 10, FLAGSTAFF ZONING CODE, BY ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT ENTITLED "PZ-22-00089 MARIJUANA OPERATIONS AND RETAIL ESTABLISHMENTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff wishes to amend Flagstaff City Code, Title 10, Flagstaff Zoning Code, to allow for recreational marijuana retail sales by establishments that may not be dual licensees and clarify definitions and terms in relation to Marijuana Operations; and

WHEREAS, citizen review sessions were held at the Planning Commission work session on May 25, 2022, and the City Council work session on May 30, 2022, to discuss the proposed Zoning Code text amendments in accordance with Section 10-20.50.040 of the Flagstaff Zoning Code; and

WHEREAS, the Planning and Zoning Commission held a public hearing on June 22, 2022, and provided a recommendation to City Council on the proposed Zoning Code text amendments; and

WHEREAS, the Council has read and considered the staff report prepared by the Planning and Development Services section of the Community Development division and all attachments to that report, and the Council finds that the proposed Zoning Code text amendments are in conformance with the General Plan, and the findings of Section 10-20.50.040 of the Flagstaff Zoning Code have been met.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. That certain document known as "PZ-22-00089 Marijuana Operations and Retail Establishments", one (1) paper copy and one (1) electronic copy of which are on file in the office of the City Clerk of Flagstaff, Arizona, has been declared a public record by Resolution No. 2022-37 of the City of Flagstaff, Arizona, and is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

SECTION 3. The amendments are consistent with and conform to the goals of the Regional Plan (General Plan).

SECTION 4. The amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, and will add to the public good as described in the General Plan.

SECTION 5. The amendments are internally consistent with other applicable provisions of this Zoning Code.

SECTION 6. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 7. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 8. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 9. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 6th day of September 2022.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Case No. PZ-22-00089 Marijuana Operations and Retail Establishments

HOW TO READ THIS DOCUMENT
Unless otherwise stated, existing provisions that are being deleted are shown in bold red strikethrough text, like this: ~~**Provisions that are being deleted are shown with a bold red strikethrough text.**~~

Provisions that are being added are shown in bold blue text, like this: **Provisions that are being added are shown in bold blue text.**

Section 1. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.30 Non-Transect Zones, Section 10-40.30.040 Commercial Zones, Subsection B. Commercial Zones – Allowed Uses., Table 10-40.30.040.B., as follows:

Section 10-40.30.040 Commercial Zones

Table 10-40.30.040.B. Commercial Zones – Allowed Uses						
Primary Land Use[1]	**Specific Use Regulations**	**Commercial Zones**				
		SC	**CC**	**HC**	**CS**	**CB**
~~**Marijuana Dispensary**~~	~~**10-40.60.220**~~	~~**--**~~	~~**--**~~	~~**P**~~	~~**--**~~	~~**--**~~
Marijuana Retail Establishment	**10-40.60.220**	**--**	**--**	**P**	**--**	**--**

Section 2. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.30 Non-Transect Zones, Section 10-40.30.050 Industrial Zones, Subsection B. Industrial Zones – Allowed Uses., Table 10-40.30.050.B., as follows:

Section 10-40.30.050 Industrial Zones

Table 10-40.30.050.B. Industrial Zones – Allowed Uses						
Primary Land Use[1]	Specific Use Regulations	Industrial Zones				
		RD	LI	LI-O	HI	HI-O
Marijuana Off-Site Cultivation ~~**Location**~~ **Establishment**	10-40.60.220	--	P	P[7]	P	P[7]
Marijuana Off-Site Manufacturing ~~**Location**~~ **Establishment**	10-40.60.220	--	P	P[7]	P	P[7]

Section 3. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.60: Specific to Uses, Section 10-40.60.220 Marijuana Establishments, as follows:

10-40.60.220 Marijuana ~~Establishments~~ Operation

A. **Applicability.** Prior to the submittal of a Building Permit or Business license application, or prior to the occupancy of a structure, for a Marijuana ~~Establishment~~ **Operation**, the applicant shall complete a Concept Plan in accordance with Section 10-20.30.050, Concept Plan Review.

B. The Concept Plan application shall include the following:

1. A notarized authorization executed by the property owner acknowledging and consenting to the use of the property as a Marijuana ~~Establishment~~ **Operation**;

2. The name of the Marijuana ~~Establishment~~ **Operation** and the name of the owner(s) of the Marijuana ~~Establishment~~ **Operation**;

3. The name, address, birth date, and valid registry identification card number of each ~~nonprofit medical Marijuana Dispensary agent or registered Marijuana facility~~ **Marijuana Operation** agent;

4. A security plan describing details of alarm systems and exterior lighting in compliance with Division 10-50.70, Outdoor Lighting Standards, and including a floor plan showing the location, dimensions, and type of security measures demonstrating that the Marijuana ~~Establishment~~ **Operation** will be secured, enclosed, and locked as required by law;

5. A scaled survey sealed by a land surveyor registered in the State of Arizona depicting the property lines of the lot or parcel that is proposed to contain the Marijuana ~~Establishment~~ **Operation** and the separations from the nearest lot or parcel that contain any of the existing uses listed in subsection F of this section; and

6. An affidavit signed and notarized by the applicant attesting that the lot or parcel proposed to contain the Marijuana ~~Establishment~~ **Operation** meets the separation requirements from the nearest lot or parcel containing any of the existing uses listed in subsection F of this section.

C. A Marijuana ~~Dispensary~~ **Retail Establishment** shall have operating hours not earlier than 8:00 a.m. and not later than 7:00 p.m.

D. A Marijuana ~~Establishment~~ **Operation** shall:

1. Not be located in a temporary building or structure (e.g., shipping container, storage structure, tent, trailer, vehicle, etc., as determined by the ~~Zoning Administrator~~ **Planning Director**);

2. Not emit dust, fumes, vapors, smoke, or odors into the environment;

3. Prohibit consumption of Marijuana on the premises, including the parking area associated with the Marijuana ~~Establishment~~ **Operation**;

4. Display a current City of Flagstaff business license;

5. Include a secure storage area that can be enclosed and locked as required by law;

6. Have a single secure entrance or, if a dual licensee, demonstrate appropriate security measures to deter and prevent the theft of Marijuana and to reasonably regulate customer access to the premises, including equipping all entrances and exits with an alarm system;

7. Provide additional exits in accordance with the Building Code or Fire Code; and

8. Dispose of Marijuana remnants and by-products in accordance with State and local regulations.

E. A Marijuana ~~Dispensary~~ **Retail Establishment** shall not have a drive-through service or an outdoor seating area for dispensary customers. An outdoor seating area for employees shall be designed in a manner that prohibits access and use by dispensary customers.

F. A Marijuana ~~Establishment~~ **Operation** shall meet the following minimum separations, measured in a straight line from the boundary of the lot or parcel containing the use to the property boundary of the lot or parcel containing any of the existing uses listed below:

1. ~~Two thousand feet~~ **Two thousand five hundred feet** from another Marijuana ~~Establishment~~ **Operation**;

2. Five hundred feet from a residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility licensed by the State of Arizona;

3. Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center, or other similar school or educational facility that caters to children;

4. Five hundred feet from a daycare home or daycare center;

5. Five hundred feet from a public library or public park; and

6. Five hundred feet from a facility devoted to family recreation or entertainment.

Section 4. Amend Title 10 FLAGSTAFF ZONING CODE, Division 10-40.60: Definition of Specialized Terms, Phrases, and Building Functions, Section 10-80.20.130 Definitions "M", to modify the following:

10-80.20.130 Definitions "M"

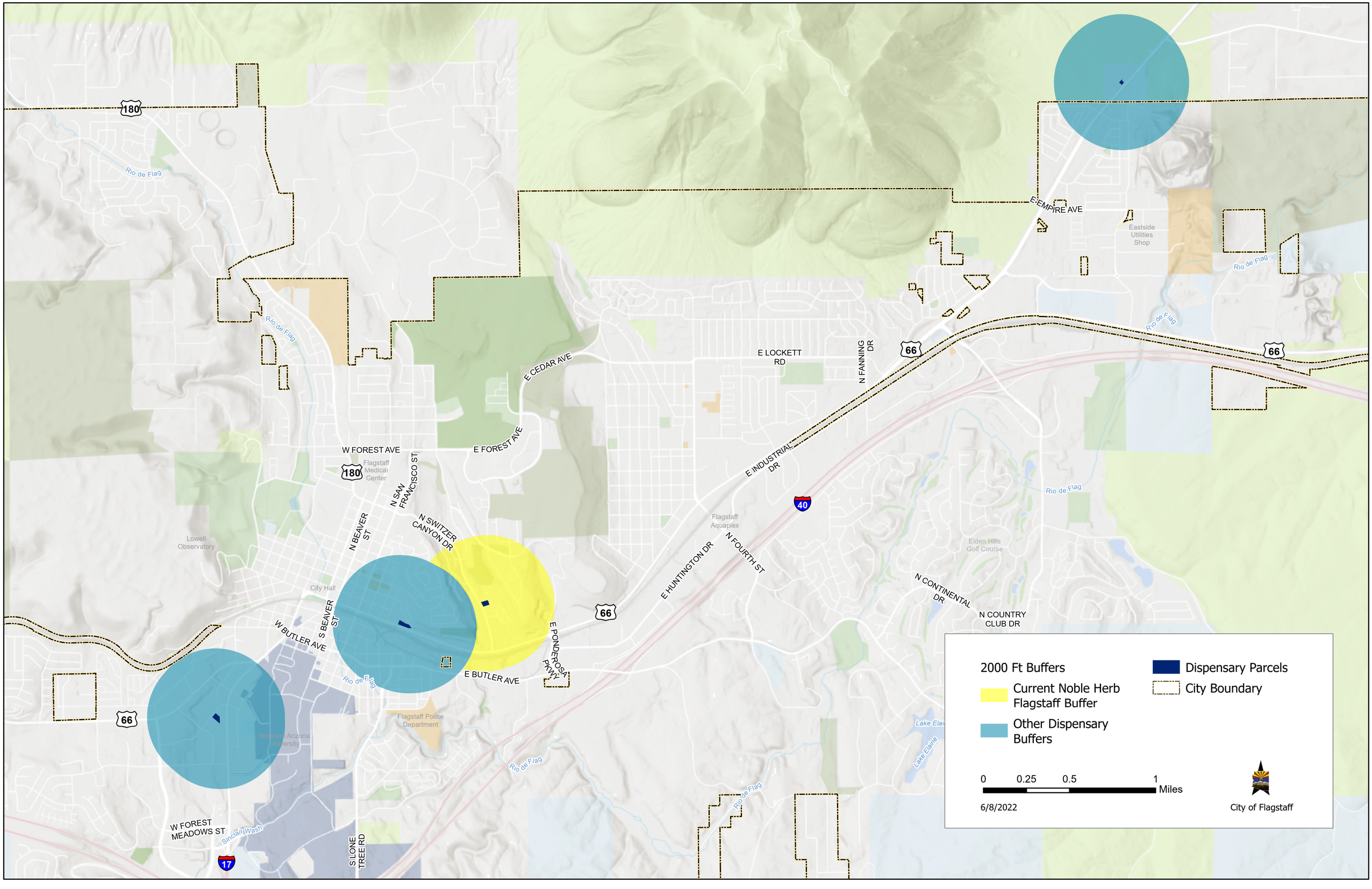
~~**Marijuana Dispensary: A medical or dual licensee (as defined in ARS §36-2850, as amended) marijuana dispensary certified by the State of Arizona to sell marijuana and marijuana products to consumers, which may include the cultivation, manufacturing, processing, packaging, or storage of marijuana products as an accessory use to the dispensary.**~~

Marijuana ~~**Establishment**~~ **Operation:** Means any of the following: Marijuana ~~**Dispensary**~~ **Retail Establishment**, Marijuana Off-Site Cultivation ~~**Location**~~ **Establishment**, Marijuana Off-Site Manufacturing ~~**Location**~~ **Establishment**, and Marijuana Testing Facility.

Marijuana Off-Site Cultivation ~~**Location**~~ **Establishment**: A location used by an entity certified by the State of Arizona to cultivate, manufacture, package, process, and store marijuana and marijuana products, excluding the sale or transfer of marijuana and marijuana products to consumers.

Marijuana Off-site Manufacturing ~~**Location**~~ **Establishment**: A location used by an entity certified by the State of Arizona to manufacture, package, process, and store marijuana and marijuana products, excluding the sale or transfer of marijuana and marijuana products to consumers.

Marijuana Retail Establishment: A Non-Profit Medical Marijuana Dispensary, Dual-Licensed establishment (as defined in A.R.S. §36-2850, as amended), or a single recreational retail establishment certified by the State of Arizona to sell Marijuana and Marijuana products to consumers, which may include the cultivation, manufacturing, processing, packaging, or storage of Marijuana products as an accessory use to the dispensary.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Current Noble Herb Flagstaff Buffer
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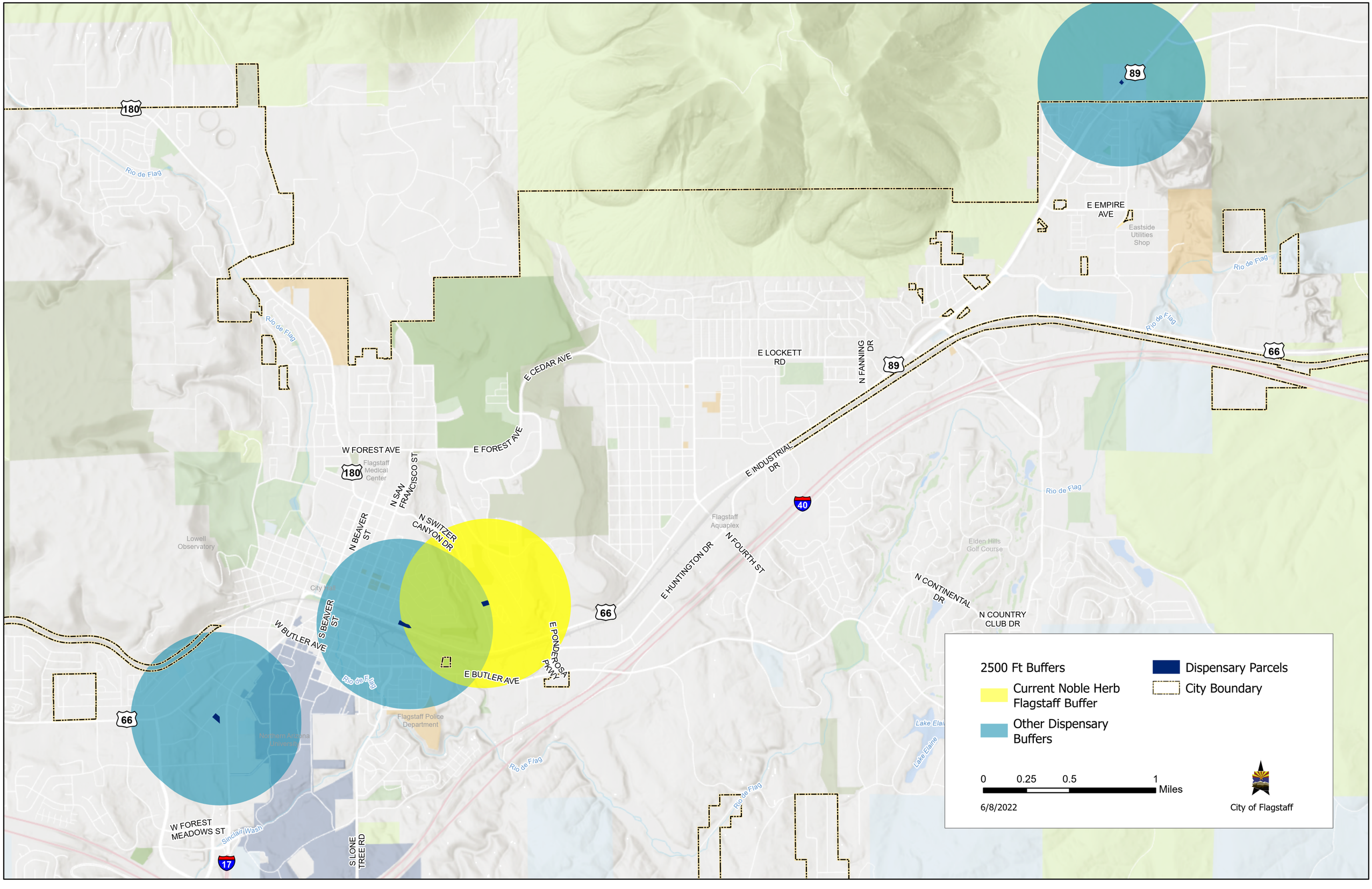
City of Flagstaff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Current Noble Herb Flagstaff Buffer
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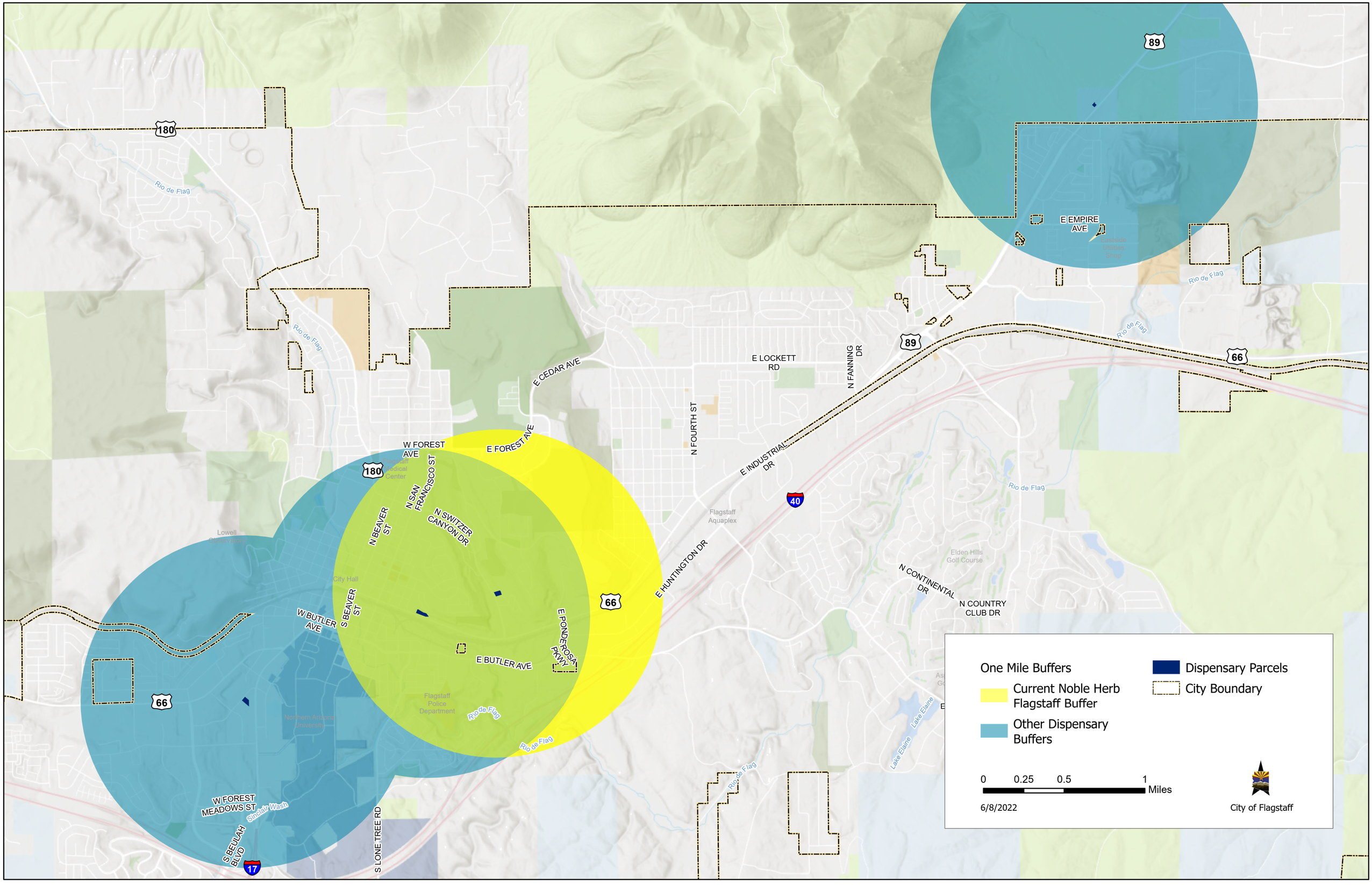
6/8/2022
City of Flagstaff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City Hall
One Mile Buffers
Current Noble Herb Flagstaff Buffer
Other Dispensary Buffers
Dispensary Parcels
City Boundary
0 0.25 0.5 1 Miles
6/8/2022
City of Flagstaff

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Kevin Fincel, Deputy City Attorney
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE:

Consideration and Adoption of Ordinance No. 2022-22: An ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title 6, Police Regulations, Chapter 6-10, Regulation of Recreational Marijuana; providing for repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.

STAFF RECOMMENDED ACTION:

At the August 23, 2022 Council Meeting:

1) Read Ordinance No. 2022-22 by title only for the first time
2) City Clerk reads Ordinance No. 2022-22 by title only (if approved above)

At the September 6, 2022 Council Meeting:

3) Read Ordinance No. 2022-22 by title only for the final time
4) City Clerk reads Ordinance No. 2022-22 by title only (if approved above)
5) Adopt Ordinance No. 2022-22

Executive Summary:

The “Smart and Safe Arizona Act” (the “Act”), certified as Proposition 207, was passed by Arizona voters at the November 3, 2020, general election and became effective on December 1, 2020. The Act declared that “the responsible adult use of marijuana should be legal for persons twenty-one years of age or older subject to state regulation, taxation, and local ordinance.”

The Act allows for Marijuana Establishments, which are entities licensed by the Arizona Department of Health Services to operate a retail location for the sale of recreational marijuana, an off-site marijuana cultivation facility, and an off-site manufacturing facility. Pursuant to the licensing rules in the Act, the vast majority of the marijuana establishment licenses were given to entities that were already operating medical marijuana dispensaries. However, the Act also directed the Arizona Department of Health Services to issue twenty-six additional marijuana establishment licenses across the State of Arizona for the purpose of encouraging social equity in marijuana establishment ownership. Social equity licenses were issued to applicants who qualified under the Social Equity Ownership Program at a random drawing on April 8, 2022.

On March 16, 2021, the Flagstaff City Council adopted Ordinance 2021-03, which enacted certain regulations regarding the use and sale of recreational marijuana in Flagstaff. One of the regulations adopted by Council prohibits the operation of recreational marijuana establishments in Flagstaff, except where authorized by a dual licensee that is permitted by the State of Arizona to operate both a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location. Under the current rules, social equity licenses are not dual licenses—they are recreation only.

To allow recreational marijuana retail establishments that are not dual licensees, Chapter 6-10, Regulation of Recreational Marijuana, Section 6-10-001-0004 will be deleted.

Financial Impact:

Unknown. Additional recreational marijuana establishments may or may not increase the City's tax base.

Policy Impact:

None.

Connection to PBB Priorities/Objectives, Carbon Neutrality Plan & Regional Plan:

Priority Based Budget Key Community Priorities and Objectives

Advance social equity and social justice in Flagstaff.
Grow and strengthen a more robust, diverse, and resilient economy.

Carbon Neutrality Plan

N/A

Regional Plan

Policy ED.3.7. Support and encourage regional agriculture.
Goal ED.4. Support efforts to recruit diverse new businesses and industries compatible with the region.

Has There Been Previous Council Decision on This:

Yes. On March 16, 2021, the Flagstaff City Council adopted Ordinance 2021-03, which enacted certain regulations regarding the use and sale of recreational marijuana in Flagstaff. One of the regulations adopted by Council prohibits the operation of recreational marijuana establishments in Flagstaff, except where authorized by a dual licensee that is permitted by the State of Arizona to operate both a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location.

Attachments: Ord. 2022-22

ORDINANCE NO. 2022-22

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

RECITALS:

WHEREAS, the "Smart and Safe Arizona Act," certified as Proposition 207 (the "Act"), was passed by Arizona voters at the November 3, 2020 general election; and

WHEREAS, the Act authorizes in part (1) the sale of non-medicinal recreational marijuana to adults who are at least twenty-one years of age, (2) adults over age twenty-one to possess marijuana for recreational use, (3) adults over age twenty-one to possess, transport, cultivate, or process marijuana plants in a primary residence, and (4) cities to enact regulations relating to marijuana including limitations on recreational marijuana retail establishments, marijuana testing facilities, and delivery of recreational marijuana; and

WHEREAS, on March 16, 2021, the Flagstaff City Council adopted Ordinance 2021-03, which enacted certain regulations regarding the use and sale of recreational marijuana in Flagstaff; and

WHEREAS, one of the regulations adopted by Council prohibits the operation of recreational marijuana establishments in Flagstaff, except where authorized by a dual licensee that is permitted by the State of Arizona to operate both a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location; and

WHEREAS, in accordance with and as permitted by state law and codified rule, the City Council seeks to protect public health, safety, and welfare by amending Chapter 6-10, Regulation of Recreational Marijuana to allow for the operation of recreational marijuana retail establishments that may not be dual licensees.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. Flagstaff City Code Title 6, *Police Regulations*, Chapter 6-10, *Regulation of Recreational Marijuana*, Section 6-10-001-0004 is hereby amended as follows:

6-10-001-0004 ~~MARIJUANA ESTABLISHMENT PROHIBITED; EXCEPTION~~ RESERVED

~~The operation of a marijuana establishment is prohibited in Flagstaff, except where authorized for a dual licensee that:~~

~~(1) Is permitted by the State of Arizona to operate both a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location, and~~

~~(2) Has not terminated its status as a dual licensee with the Arizona Department of Health Services by forfeiting either its marijuana establishment license or nonprofit medical marijuana dispensary registration.~~

SECTION 2. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 3. Severability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 5. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 6th day of September 2022.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

12. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Shannon Anderson, Senior Deputy City Manager

Co-Submitter: Stacy Saltzburg, City Clerk

Co-Submitter: Greg Clifton

Date: 08/19/2022

Meeting Date: 08/23/2022

TITLE

Bond Public Outreach Plan

STAFF RECOMMENDED ACTION:

City staff will inform City Council what is included in the bond public outreach plan.

EXECUTIVE SUMMARY:

City Council agreed on ballot measures to refer to a Citizen Bond Committee for recommendations in April 2021. The Citizen Bond Committee members met from November 2021 through May 2022 to craft recommendations for City Council's consideration. In June 2022 City Council heard the Citizen Bond Committee recommendations and advanced two (2) bond measures to the November 8, 2022 election ballot.

INFORMATION:

City Council advanced two (2) bond measures - infrastructure and housing. The infrastructure bond includes wildfire suppression, stormwater flood mitigation, and wastewater treatment infrastructure. The housing bond measure includes rental and homeownership opportunities for residents of Flagstaff. City staff have been working together, along with NuPoint Marketing, to create a public outreach plan and materials. This information will be shared with City Council in the attached presentation.

Attachments: Presentation

Bond Public Outreach Plan

August 23, 2022

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

Bond Outreach Team

- Justyna Costa
- Sarah Darr
- Dan Folke
- Jim Huchel
- Lisa Deem
- Brad Hill
- Ed Schenk
- Stacy Saltzburg
- Greg Clifton
- Rick Tadder
- Sarah Langley
- Sam Victor
- Mark Gaillard
- Mark Wilson
- Nicole Antonopoulos
- Heidi Hansen
- Ralph Schmid
- Lori Pappas
- NuPoint Marketing Team

Outreach Goal & Objectives

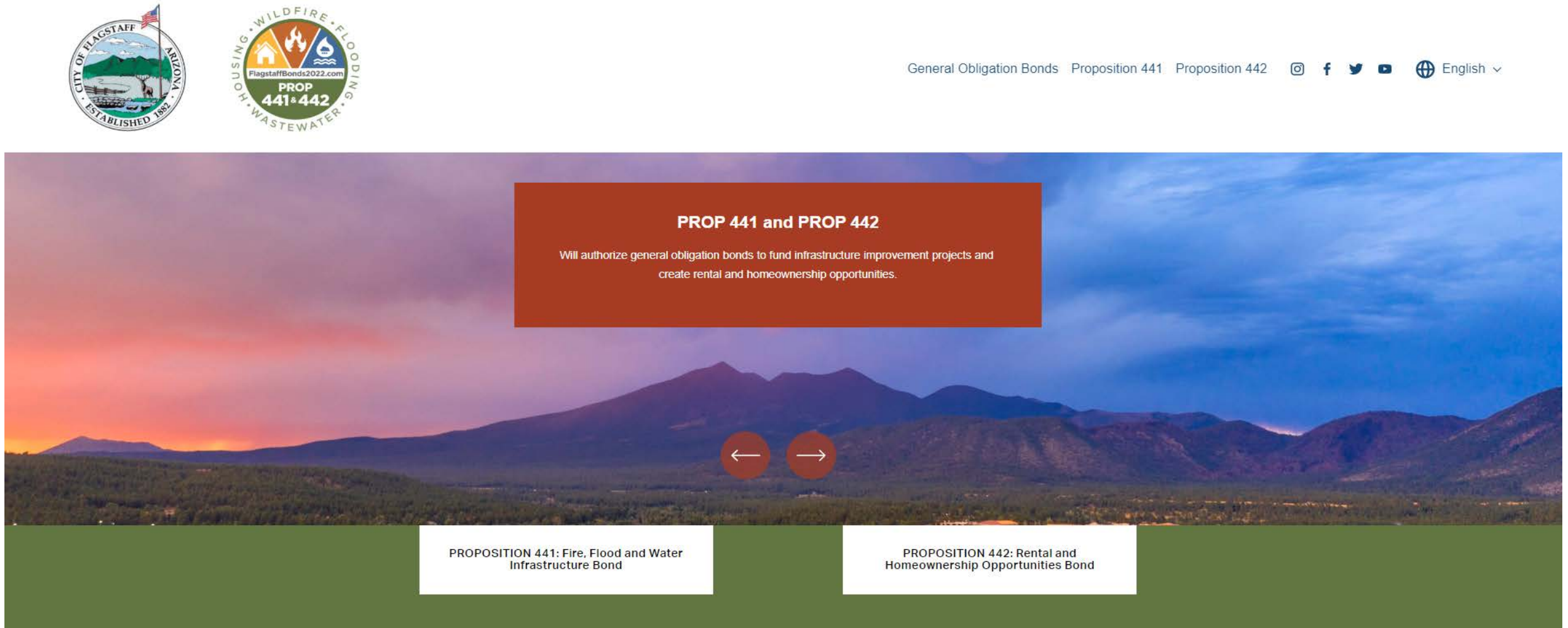
- Educate voters on Propositions 441 & 442
- Help the voting public understand the needs and how the propositions help meet those needs
- Build an understanding on how general obligation bonds work and the financial impacts should the propositions pass
- Use consistent language to limit confusion
- Offer information through a variety of channels accessible to all demographics

Outreach Methods

- Bond logo
- Bond website
- Publicity pamphlet
- In-person presentations
- Recorded presentation
- Printed materials
- Advertising
- Social media
- Displays for City facilities
- Posters and Banners
- Videos
- News releases and ongoing media relations
- Emails to key Flagstaff groups and organizations

Bond Website

To learn more, scan the QR code or visit www.flagstaffbonds2022.com



Publicity Pamphlet

- General voting information
- Sample ballot for Mayor and Council
- Candidate statements
- General obligations bonds required information and FAQs
- Proposition No. 441
- Proposition No. 442

Bond Logo

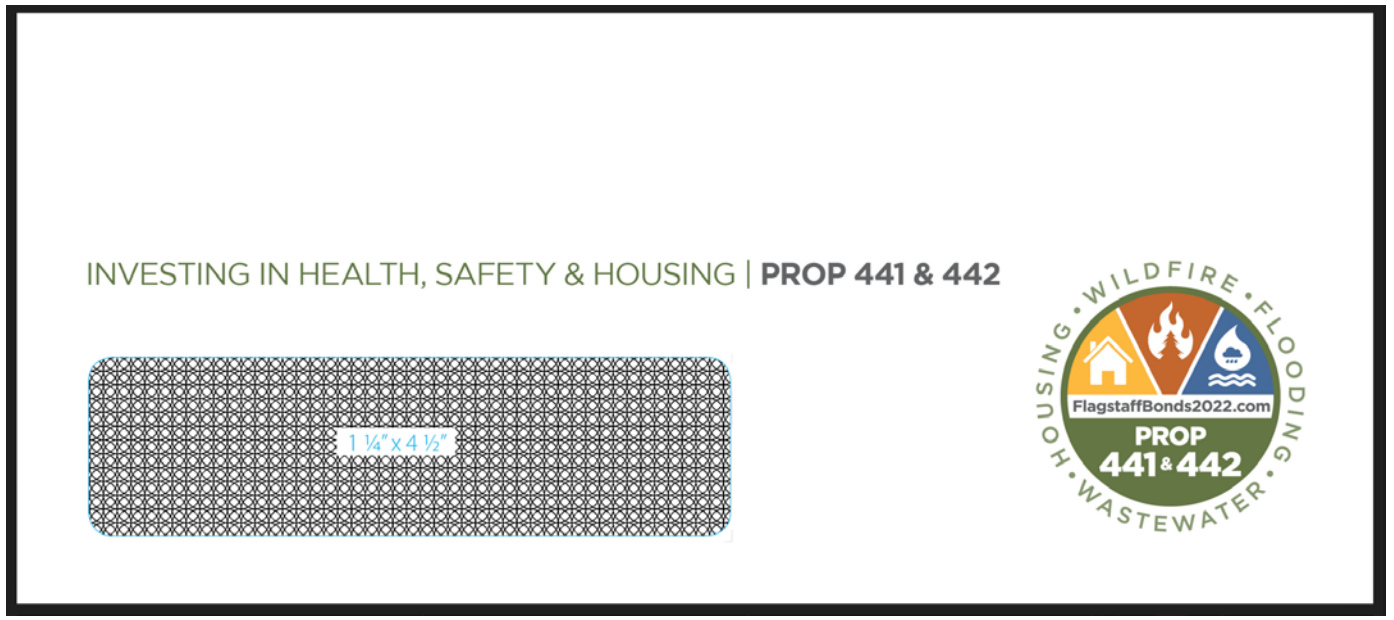
TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Printed & Electronic Materials

- Rack Card
- Fact Sheet
- Q & A
- Available in English and Spanish

Advertising

- Traditional: AZ Daily Sun, Navajo Hopi Observer, Flagstaff Business news
- Radio
- Digital
- Municipal Services bill



Displays for City Facilities

Displays will include:

- QR Code to website
- Bond recognition through logo
- Fact Sheets in English and Spanish
- Rack Cards in English and Spanish
- Stickers

Posters & Banners

- Shared with groups and organizations
- Displayed on City property

Videos

- Bonds 101
- Proposition 441
- Proposition 442
- Wastewater Treatment Plants Virtual Tour
- Spanish subtitles will be available for viewers

In- Person & Recorded Presentation

Agenda

- Why are we here today
- General Obligation Bonds
- Proposition 441: Wildfire, Flood, and Wastewater Infrastructure
- Proposition 442: Rental and Homeownership Opportunities
- Q&A

Social Media

- Organic City of Flagstaff social media
  - Twitter
  - Facebook
  - Instagram
- Paid social media

News Releases & Ongoing Media

- Announcement of available outreach materials
- Announcement of town hall presentation dates
- Guest column/ letter to the editor

Emails to Groups & Organizations

- Summary of bond measures
- Share links to information on the website
  - Recorded presentation
  - Printed material documents
  - Videos

Questions

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

13. A.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Co-Submitter:	Stacy Saltzburg
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE

Future Agenda Item Request (F.A.I.R.): A Citizens' Petition titled "Nuclear Weapons: Existential Threat"

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 August 5, 2022, requesting "the Flagstaff City Council pass a resolution in support of the 5 elements of the Back from the Brink campaign."

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 #2022-03

2022-03

RECEIVED
AUG 05 2022
BY:

PETITION TO FLAGSTAFF CITY COUNCIL

Pursuant to Flagstaff City Charter Article II Section 17 and Flagstaff City Code Title I Chapter 12

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: Nuclear Weapons: Existential Threat

Action Requested: Flagstaff City Council pass a Resolution in Support of the 5 elements of the Back From The Brink Campaign

Printed Name of Submitter: David Spence, M.D.
(Submitter must also sign below and complete information)

Contact Information: cell: #928 380 5690 email: ds0268@gmail.com
(Phone Number and/or e-mail address)

PETITION SIGNATURES

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
7/24/22	Melanie Nelson	2454 W. Zephyr Ave 86001	Melanie Nelson
7/24/22	Clare Aslan	5196 S Opal Rd 86005	Clare Aslan
7/24/22	Art Wilson	2340 Cactus Circle 86004	Art Wilson
7/24/22	Eric Zeliff	3956 N. Tom O'Shanter Flagstaff, AZ 86004	Eric Zeliff
7/24/22	James W Swift	2930 N Prescott Rd.	James W Swift
7/24/22	CHANCE SPINNER	1170 HOLMES FLAG AZ	Chance Spinner
7/24/22	Thomas J Cleman	5261 E Hickory Dr.	Tom Cleman
7/24/22	Sonya N. Kennedy	5261 E Hickory Dr.	Sonya N. Kennedy
7/24/22	Celisa Manly	2494 N Earle Drive	Celisa Manly
7.24.22	Beatrice Whitehouse	1341 Indian Springs	Beatrice Whitehouse

9

RECEIVED BY CITY OF FLAGSTAFF		
DATE RECEIVED	BY	COUNCIL MEETING DATE
8/5/22	Stacy Saltzburg	8/23/2022

(87)

PETITION TO FLAGSTAFF CITY COUNCIL (Continued)

TITLE OF ISSUE: Nuclear Weapons: Existential Threat **PAGE** 2 **OF** 3

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
7/24/22	Shonto Begay	603 W. Birch #1 Flagstaff, AZ 86001	
7/26/22	Lora Trujillo	4805 E Mt. Pleasant Dr Flagstaff, AZ 86004	
7/26/22	Patricia Presley-Spade	540 E. Dohrmen Flagstaff, AZ 86005	
7/26/22	Eric Lidarden	4343 E. Solimen #2088 Flagstaff, AZ 86004	
7/26/22	Travis Pinn	2821 N Main St. Flagstaff, AZ 86004	
7/31/22	KAY BORDWELL	1427 W. COCHRAN FLAGSTAFF, AZ 86005	
7/31/22	Pamela J. Garcia	1545 Rasmodell Flag Flagstaff, AZ 86001	
7/31/22	Gillian Thomas	3767 W. Park Dr. Flagstaff AZ 86004	
7/31/22	Jason Browne	402 Beaver St. Flagstaff AZ	
7/31/22	DAVID BONNELL	402 S LEROUX, FLG, AZ 86001	
7/31/22	VINCENT CARANCHINI	1181 N WATERSIDE DR. FLAGSTAFF AZ 86004	
7/31/22	Gisela S. Ray	411 W. Birch Ave #3 Flagstaff AZ 86001	
7-31-22	ALISON LEE	5955 N. BROKEN ARROW FLAGSTAFF, AZ 86004	
3 AUG 22	John Nystedt	105 W. Pine Ave. Flagstaff, AZ 86001	
8-3-22	Annette Nystedt	105 W Pine Ave. Flagstaff AZ 86001	
8.3.22	Sherman M. Stephens	1739 W. Stevanna Way Flagstaff, AZ 86001	
8.3.22	Martha R. Taylor	1739 W. Stevanna Way Flagstaff, AZ 86001	

13. B.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Fobar, Deputy City Clerk
Co-Submitter:	Stacy Saltzburg
Date:	08/19/2022
Meeting Date:	08/23/2022

TITLE

Future Agenda Item Request (F.A.I.R.): A Citizens' Petition titled "Protect Abortion Access"

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 August 8, 2022, requesting "the Flagstaff City Council to add a future agenda item to discuss protecting Flagstaff residents from possible arrest and prosecution for providing, accessing, or assisting with abortion services."

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 #2022-04

2022-04

RECEIVED
AUG 08 2022
BY:

PETITION TO FLAGSTAFF CITY COUNCIL

Pursuant to Flagstaff City Charter Article II Section 17 and Flagstaff City Code Title I Chapter 12

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: Protect Abortion Access

Action Requested: We are asking the Flagstaff City Council to add a future agenda item to discuss protecting Flagstaff residents from possible arrest and prosecution for providing, accessing or assisting with abortion services.

Printed Name of Submitter: Susan Shapiro

(Submitter must also sign below and complete information)

Contact Information: (908) 655-7672 ne85610@gmail.com

(Phone Number and/or e-mail address)

PETITION SIGNATURES

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
8/6/2022	Susan Shapiro	496 W. Old Territory Trl. Flagstaff	Susan Shapiro
8/6/22	Sydney Sherat	600 W University Hgts Dr N. Flagstaff, AZ 86005	Sydney Sherat
8/6/22	MARILYN WEISSMAN	1055 E. APPEE WAY FLAGSTAFF AZ 86001	Marilyn Weissman
8/6/22	Kyle Nitschke	2518 S. Eureka Ln. Flagstaff, AZ 86001	
8/6/22	Emma Schraner	2212 N. Center St Flagstaff, AZ 86001	Emma Schraner
8/6/22	Sanjam Ahuja	1115 N. Rockridge Rd, Flag, AZ 86001	
8/6/22	Keith Brockhus	700 S. Blackbird Roost #3 Flagstaff, AZ 86001	Keith Brockhus
8/6/22	Jasmine Vithe	920 North Leroux St Flagstaff, AZ 86001	
8.6.22	DEBRA Block	310 E CHERRY AVE FLAGSTAFF AZ 86001	
8.6.22	nena Jacobs	4100 e Roadrunner ln Flagstaff AZ 86004	

RECEIVED BY CITY OF FLAGSTAFF		
DATE RECEIVED	BY	COUNCIL MEETING DATE
8/8/22	Stacy Saltzburg	8/23/2022

PETITION TO FLAGSTAFF CITY COUNCIL (Continued)

TITLE OF ISSUE: Protect Abortion Access **PAGE** 2 **OF** 5

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
08/06/2022	Elliot Kennedy	658 E David Dr	Elliot Kennedy
08/06/2022	Casandra Sedillo	608 W Clay Ave	
8/6/2022	Jennifer Knox	1918 N San Francisco	
8/6/2022	Katy Barrow	3022 N Peak View St	
8/6/2022	Kylie McCauley	4100 E Roadrunner Ln	
8/6/22	Erinn Andersen	2803 N Jamison Blvd	
8/6/22	Rachel Ryan	1160 N. Rockridge Rd	
8/6/22	Sara Ryan	1160 N Rockridge Rd	
8/6/2022	LEITH RYAN	1160 N. Rockridge RD	
8/6/22	BECKY DAGGETT	1195 E Apple Way	Becky Daggett
8/6/22	ELI COHEN	708 N. MAGMA WAY	
8/6/22	Paul Lenze	3601 Lake Mary Rd	
8/6/22	Grace Chenal	2101 E. Sixth Ave	
8/6/22	Sean Parson	2507 N. EAST ST	
8/6/22	Sarah Andrews	118 E Benton Ave	
8/6/22	Rebecca Mau	3428 N. Pine DR	
8/6/22	Maria Galvez	4516 E Hollygreen Rd	Maria Galvez
8/6/22	Jennifer Hunter	115 E. Terrace Ave. Apt. 23	
8/6/22	DONJA JELESIJEVIC	1120 E. PONDEROSA PKWY	
8/6/22	Robert O Baer	6197 E. OLSON Dr	
8/6/22	Sarah Hunter	1347 E. Hatcher Dr	
8/6/22	Valerie Piet	2164 S. HIGHLAND MESA RD	
8/6/22	Kimberly Samuels-Crow	514 N Charles Rd Flagstaff, AZ 86001	K Samuels-Crow

PETITION TO FLAGSTAFF CITY COUNCIL (Continued)

TITLE OF ISSUE: Protect Abortion Access **PAGE** 3 **OF** 5

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
8.6.22	nena Jacobs	4100 e Roadrunner in Flagstaff AZ 86004	
8-6-22	Florence Borgeson	2754 N Oakmont RD 86004 Flagstaff, AZ	
8-6-22	Mitche Galloway	22 E. Ridgecrest Flagstaff, AZ	
8/6/22	Aubrey Sonderegger	3850 N Patterson Blvd Flagstaff, AZ 86004	
8/6/22	Sofya Rodgers	3196 Kweo Trail Flagstaff, AZ 86005	
8/6/22	Jane Reutsma	145 E. Aztec Lane Flagstaff AZ 86001	
8/6/22	Julie Piering	3115 N. Alta Vista Dr. Flagstaff AZ 86004	
8/6/2022	Heidi Kathleen McIlwee	2535 E. Heid. Lap Ave Flagstaff AZ 86004	
8-6-22	George Castleberry	2233 Hemberg Dr Flagstaff AZ 86004	
8/6/2022	Annalise Wille	818 W. Birch Ave. Flagstaff, AZ 86001	
8/6/2022	Sarah Teague	1830 S. Milton Rd. N=145 Flagstaff AZ 86001	
8/6/2022	Gioia Woods	4545 S. Lance Rd Flagstaff AZ 86005	
8/6/2022	Aeka Joshi	1115 N. Rockridge Rd. Flagstaff AZ 86001	
8/6/2022	Al Felder	719 W. Whiting Rd. Flagstaff AZ 86001	
8/6/2022	Emily Lau	5000 N mall way Flagstaff AZ 86004	
8/7/22	Claire Karban	1105 E Ponderosa Pkwy, Flagstaff AZ 86001	
8/7/22	Edward Dujardin	1105 E Ponderosa Pkwy, Flagstaff AZ 86001	Ed Dujardin
8/7/22	Helen Gorchey	825 E Ponderosa Flagstaff AZ 86001	Helen Gorchey
8/7/22	GEENA COLTRANE	1385 W UNIVERSITY AVE #293 FLAGSTAFF AZ 86001	
8/7/2022	Dorothy Hoagland	2530 N Sweet Clover Way Flagstaff AZ 86004	D Hoagland
8/7/2022	Maggie Meiers	224 Comanche Flag AZ 86005	
8/7/2022	Abigail Sperl	138 W. Mexican hat trl.	Abigail Sperl
8/7/2022	Emily Woods	2250 N. Rio de Flag dr Flagstaff, AZ 86004	E Woods

PETITION TO FLAGSTAFF CITY COUNCIL (Continued)

TITLE OF ISSUE: Protect Abortion Access **PAGE** 4 **OF** 5

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
8/6/22	Kim C Buckley	5205 E Cortland Blvd, Building K-172	Kim C Buckley
8/6/22	Mary Ruetten	3402 S. Brown Sage Loop Flagstaff, AZ 86005	
8/6/22	Hannah Kolus	1428 N. Lomalai Ln Flagstaff, AZ 86001	Hannah Kolus
8/6/22	Anathea Edleman	5946 E. Abineau Canyon Dr Flagstaff AZ 86004	
8/6/22	Samantha Ritchie	823 W Birch Ave Flagstaff AZ 86001	
8/6/22	Catharine Vanderbeek	[illegible] Flagstaff, AZ. 86001	
8/6/22	William McGoulen	515 S Maricopa St. Apt 1302, Building 1, Flagstaff, AZ	
8/6/22	Ellen Wade	120 E. Astro Lane Flagstaff 86001	E C Wade
8/6/22	JILL K. STEPHENSON	1913 E. Linda Vista Dr, Flagstaff, 86004	Jill K. Stephenson
8/6/22	Kelly Poe Wilson	710 W. Grand Canyon Blvd AZ 86001	
8/6/22	Alex Lam	6000 N Main Way Apt 261 Flagstaff, AZ 86004	
8/6/22	Lindsey Brown	2020 N 2nd St Apt B Flagstaff, AZ 86004	Lindsey Brown
8/7/22	Nancy Branham	5181 E Hawthorne Flagstaff, AZ 86004	Nancy Branham
8/7/22	CHARLOT ROOT	2043 N. RAINTREE FLAGSTAFF 86004	Charlot Root
8/7/22	JAMES K. HASKINS	4015 E. COLLEGE APT 257 FLAGSTAFF AZ 86004	James K Haskins
8/7/22	MALINDA LYNCH	2113 E. Skyline Dr Flagstaff, AZ 86004	
8/7/22	JANE BARNWELL	825 E Ponderosa Pkwy	
8/7/22	Karen Enyedy	811 W. Cherry Ave #2 Flagstaff, AZ 86001	Karen Enyedy
8/7/22	Robert Breunig	811 W Cherry Ave #2 Flagstaff Az 86001	Robert Breunig
8/7/22	Antoinette Berson	3910 Hidden Hollow Flagstaff AZ 86001	Antoinette Berson
8-7-22	Helen Washkey	12276 Curtis Ct. Bellemont, AZ 86015	
8/7/22	Bruce Weiss	7250 N Rio De Flag Flg, AZ 86004	
8/7/22	Lukas Pico	1118 E Morning Ln, Flagstaff, Az, 86004	

PETITION TO FLAGSTAFF CITY COUNCIL (Continued)

TITLE OF ISSUE: Protect Abortion Access **PAGE** 5 **OF** 5

DATE SIGNED	PRINTED NAME	RESIDENCE ADDRESS	SIGNATURE
8/6/22	KATHERINE GRAHAM	2743 N Ockmont Dr.	
8/6/22	Sara Day	6197 E. Olson Dr.	
8/6/22	Taryn Bickle	901 S O'Leary St Unit 52	
8/6/22	Maggie Huntington	2235 N. Crescent Dr	
8/6/22	RYAN CROW	514 N CHARLES RD FLAG, AZ 86001	
8/6/22	Madison Moore	9905 W. Pinto Dr Flag AZ 86004	
8/6/22	Lynne Moore	9905 W. Pinto Flagstaff AZ 86004	
8/6/22	Sandra Lubarsky	1021 N. Navajo Dr. 86001	
8/6/22	MARCUS FORD	1021 N. NAVAJO DR	